

ORIGINAL

**JAMES GEORGE DEEB**

**PRINCIPAL**

**TAHI PTY LTD ACN 010 231 893**

**TRUSTEE**

**TRUST DEED**

**THE WHITE SUPERANNUATION FUND**

REF: JGD:10076

NO DUTY PAYABLE

M. Mait  
Commissioner of Stamp Duties,  
Queensland

15/7/98

THIS DEED is made the

5<sup>TH</sup> day of JUNE

1998

**BETWEEN:** JAMES GEORGE DEEB of C/- Level 12, Corporate Centre, 2 Corporate Court, Bundall, Queensland ('the Principal')

**AND:** TAHI PTY LTD ACN 010 231 893 of C/- 3/56 Santa Cruz Boulevard, Clear Island Waters, Queensland (the 'Trustee')

**RECITALS:**

- A. It has been determined to establish a superannuation fund for the purpose of providing retirement and other benefits for certain persons who shall be eligible to be Members of the Fund and who shall elect to participate in the Fund and obtain the benefits under it for themselves, in the event of their death for their Dependants, and for other approved ancillary purposes.
- B. The Trustee has agreed to act as Trustee of the Fund in accordance with the provisions of this Trust Deed.
- C. The Fund is established and maintained solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Gainful Employment or in other circumstances acceptable to the Commissioner or for the Dependants of Members in the event of the death of a Member.
- D. The Fund shall be conducted so as to attract the concessional rate of Taxation which is applicable to superannuation funds.

**NOW THIS DEED WITNESSES:**

1. **ESTABLISHMENT**

The Principal establishes a fund (the "Fund") which is known by the name of **The White Superannuation Fund** and which commences on the Date of Establishment of Fund specified in Schedule A.

2. **STRUCTURE AND PURPOSE**

(a) **Divisions of Deed**

This Deed is divided into Division A, Division B and Division C. Division A shall govern the management and administration of the Fund, Division B shall govern the Classes of Membership and Contributions payable to the Fund and Division C shall govern the method of determination and payment of Benefits from the Fund.

(b) **Sub-division C1 applies where Trustee is Constitutional Corporation**

In the event that the Trustee of the Fund is a Constitutional Corporation, sub-division C1 of Division C shall operate for the purposes of the determination and payment of Benefits in respect of Members.

(c) **Sub-division C2 applies where Trustee includes Individual Trustees**

In the event that the Trustee of the Fund includes any Individual Trustees, sub-division C2 of Division C shall operate for the purposes of the determination and payment of Benefits in respect of Members.

(d) **Trustee Election to alter operation of sub-division C2**

Where the Trustee is a Constitutional Corporation, the Trustee may make an election in writing to the effect that:

- (i) sub-division C1 of Division C shall cease to operate from the date specified in the election; and
- (ii) sub-division C2 of Division C shall commence to operate from that date,

in which case, sub-division C2 of Division C shall operate for the purposes of the determination and payment of Benefits in respect of Members from the date specified in the election.

"**Benefit**" means any amount which is payable by the Trustee out of the Fund pursuant to this Deed to or in respect of a Member;

"**Benefit Entitlement**" means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount;

"**"C" Class Accumulation Account**" means the Accumulation Account of a Member for the period that person was a Member of the "C" Class;

"**child**" has the meaning attributed to that word in the Relevant Law;

"**Class**" means Membership Class;

"**Commissioner**" means, as the case requires, the Commissioner of Taxation, the Insurance and Superannuation Commissioner or such other regulatory body as shall have responsibility for administration of superannuation;

"**Complying Superannuation Fund**" in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Relevant Law;

"**Constitutional Corporation**" has the same meaning as defined for the purposes of the Relevant Law;

"**Contributions**" means gross payments to the Fund by Members and Employers in accordance with the provisions of this Deed prior to the withdrawal of any Taxation payable in respect of those Contributions;

"**Deed**" means these presents and any authorised alterations, additions, amendments, modifications or variations to it;

"**Dependant**" in relation to a Member or former Member means:

- (i) the Spouse of a former Member or the widow or widower of a deceased Member; or
- (ii) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as the child of the Member; or
- (iii) any other person who, in the opinion of the Trustee, was substantially dependent on the Member at the relevant time;

"**Directors**" means the directors or board of management for the time being of the Trustee or any Employer, as the case requires, and "**Director**" has a corresponding meaning;

"**Eligible Company**" means a company which satisfies the definition contained in sub-clause 14(a);

"**Eligible Person**" means any person who is engaged in Part-Time Gainful Employment or Full-Time Gainful Employment or who is otherwise permitted to become a Member of the Fund under the Relevant Law;

"**Eligible Rollover Fund**" has the same meaning as contained in Part 24 of the Superannuation Industry (Supervision) Act 1993;

"**Eligible Termination Payment**" has the same meaning as contained in Section 27A of the Tax Act;

"**Employee**" means a person in the employment of an Employer **PROVIDED THAT** an Employer may deem any person to be an Employee for such period and on such terms and conditions as it shall determine for the purposes of the Employer making Contributions in order to avoid liability for the superannuation guarantee charge under the Guarantee Act;

"**Employer**" means any Participating Employer and in relation to an Employee or Member means the Employer of such Employee or Member;

"**Equalisation Account**" means the account established pursuant to sub-clause 12(e);

"**Financial Assistance**" means financial assistance granted to the Fund under Part 23 of the Superannuation Industry (Supervision) Act 1993;



**"Pensioner"** means a Member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of a Pension;

**"Pension Account"** means the account established in respect of a Pensioner in accordance with sub-clause 27(b);

**"Policy"** means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks and it further includes any policy which provides that Benefits shall be payable to the Trustee on the death or disablement of a Member;

**"Preserved Payment"** means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in this Deed in order for the Fund to be a Complying Superannuation Fund and "Preserved Payment Benefit" means a Benefit arising from a Preserved Payment;

**"Principal"** means the Principal named in Schedule A;

**"Public Offer Fund"** has the same meaning as contained in Part 1 of the Superannuation Industry (Supervision) Act 1993;

**"Relative"**, in relation to a Member or former Member means any of the following, namely:

- (i) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member; and
- (ii) the Spouse of any person specified in paragraph (i);

**"Relevant Law"** means any requirements under the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations, the Superannuation Entities (Taxation) Act 1987, the Superannuation (Resolution of Complaints) Act 1993, the Tax Act and any other present or future legislation which the Trustee must comply with in order for the Fund:

- (i) to qualify for concessional Taxation treatment as a Complying Superannuation Fund; or
- (ii) to meet any other requirements of the Commissioner,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

**"Retires from Employment"** means actual retirement by a Member from employment with the Employer or retirement as defined by the Relevant Law for the payment of Benefits;

**"Retires from Gainful Employment"** means actual retirement by a Member from Gainful Employment or retirement as defined for the purposes of the Relevant Law for the payment of Benefits;

**"Reversionary Beneficiary"** means a Dependant nominated by a Pensioner and in default of a nomination by the Pensioner a Dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Pensioner;

**"Roll Over Payment"** means any payment made by or received by the Trustee at the request of a Member or former Member or in other circumstances which satisfy the Relevant Law to or from any Approved Benefit Arrangement and shall include an Eligible Termination Payment by an Employer in consequence of the termination of the employment of a Member;

**"Shortfall Component"** has the same meaning as contained in section 64 of the Guarantee Act;

**"Spouse"** in the definition of "Dependant" and "Relative" means:

- (i) a person legally married to a Member at any time; or
- (ii) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and in relation to a deceased Member the term "widow" or "widower" includes such a person,



(b) **Headings to Clauses**

The headings in this Deed are for convenience of reference only and shall not affect the interpretation of this Deed.

(c) **Defined words**

For convenience, the first letters of words and expressions defined in this Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

(d) **Statutory enactments**

References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any enactment in substitution or replacement for such statutory enactment. Any reference in this Deed to a provision of an enactment shall include the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

(e) **Fund Subject to Relevant Law**

This Deed shall be read and construed on the basis that the Relevant Law is deemed to be incorporated into the Deed to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Commissioner and this Deed shall be further read and construed on the basis that:

(i) **Inconsistency**

where there is any inconsistency between a provision in this Deed and a provision under the Relevant Law the latter shall prevail to the extent of the inconsistency;

(ii) **Decision of Trustee Final**

in the event of any doubt arising as to the effect of a Relevant Law or if there is an inconsistency between the Relevant Law and a provision of this Deed, the decision of the Trustee shall be final,

**PROVIDED THAT** this Deed shall not be so read or construed and no such provision of the Relevant Law shall be so incorporated if to do so would constitute a breach of the power granted by Clause 40 to add to, amend, alter, modify, rescind or vary the provisions of this Deed.

(f) **Requirements of Commissioner**

Any references to any requirements, consents or approvals being required to be given by the Commissioner or for the purposes of satisfying the Relevant Law shall mean requirements, consents or approvals of the Commissioner or under the Relevant Law.

(g) **Superannuation Guarantee Legislation**

The Trustee shall administer the Fund in order to facilitate the acceptance of Contributions in accordance with the Guarantee Act and shall provide all such certificates, reports and other information as shall be required by the Guarantee Act.

6. **GENERAL PROVISIONS**

(a) **Employer's Powers not Prejudiced**

Nothing in this Deed shall affect the powers of an Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between an Employer and its Employee. The existence or cessation of any actual or prospective or possible Benefit under the Fund shall not be grounds for claiming or increasing damages in any action brought against an Employer in respect of any termination of employment or otherwise.

(b) **Admission to Membership**

- (i) Upon actual or deemed receipt of an application for Membership the Trustee may determine to admit the applicant to Membership of the Fund.
- (ii) The Member shall be deemed to have joined the Fund on a date determined by the Trustee or, where the Trustee makes no such determination, on the date the completed application for Membership is received or is deemed to have been received.
- (iii) Subject to any other conditions which may be applied pursuant to the provisions of this Deed, the Trustee may impose such conditions on an applicant's admission and the rights and duties of the applicant as a Member as it shall determine and may limit and impose such conditions upon Benefits as it sees fit and the Trustee may remove or vary all or any of the aforesaid conditions at any time.
- (iv) Upon admission to Membership of the Fund the Member shall be bound by this Deed in all respects as if the Member were an original party to the Deed.

(c) **Members and Beneficiaries to Provide Information**

Each applicant for Membership and any Beneficiary shall when requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund, and shall submit to medical examinations as required by the Trustee by a registered medical practitioner who is acceptable to the Trustee.

Where a Member or Beneficiary fails to comply with the provisions of this Clause the Trustee may suspend the collection of any Contributions in respect of that Member or withhold any Benefits in respect of that Member or Beneficiary or impose such other conditions on the continued Membership of that Member or on the Beneficiary as the Trustee shall deem appropriate.

(d) **Incorrect or Misleading Information**

Where a Member or Beneficiary furnishes information required by the Trustee which affects or is likely to affect the Benefits payable to or in respect of a Member or Beneficiary and the information supplied is incorrect or misleading or any relevant information is deliberately withheld the Trustee may in its absolute discretion alter or amend the Benefits to amounts that would have applied had full and accurate information been supplied.

(e) **Information re Age**

A Member shall inform the Trustee as soon as practicable after the Member ceases Part-Time Gainful Employment or Full-Time Gainful Employment after age 65 years.

(f) **Cessation of Membership**

A person shall cease to be a Member of the Fund upon the earliest to occur of the following:

- (i) the date upon which payment of all the Member's Benefits is made to the Member or to an Approved Benefit Arrangement on behalf of the Member;
- (ii) the death of the Member;
- (iii) the date on which Unclaimed Benefits in respect of a Member are paid to the Commissioner;
- (iv) the date when Benefits payable to or on behalf of a Member cease to be payable; or
- (v) such date as the Trustee shall reasonably determine,

**PROVIDED THAT** where a Policy providing disablement benefits has been effected in respect of the Member, that Member shall remain a Member for such period following resignation, dismissal or retirement from Gainful Employment as the Trustee shall determine.

- (iii) advise the Member that a proxy may be appointed to vote on behalf of the Member at the meeting **PROVIDED THAT** the Member lodges the form of proxy with the Trustee not later than 24 hours before the meeting;
- (iv) be accompanied by a form of proxy approved by the Trustee;
- (v) set out the matters including any resolutions to be considered at the meeting;

(e) **Deemed Service**

every notice served shall be deemed to have been validly given if it is given personally to the Member or if posted by prepaid ordinary mail addressed to the Member at the last known address of the Member and when so posted the notice shall be deemed to have been given 3 days after the date of posting;

(f) **Chairperson**

the Trustee shall appoint a chairperson of the meeting and shall make such regulations concerning the conduct of the meeting as it may decide;

(g) **Quorum**

a quorum for the meeting shall be 10 Members present in person or at least 25% of the Members of the Fund whichever is the lesser **PROVIDED THAT** if a quorum is not present within 30 minutes of the time appointed for the meeting the chairperson of the meeting shall adjourn the meeting to the same time and place in the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting;

(h) **Voting**

each Member shall be entitled to one vote with the chairperson being given a casting vote in the event of an equality of votes.

11. **THE FUND**

(a) **Fund vested in Trustee**

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions and subject to the trusts, powers, authorities and discretions contained in this Deed.

(b) **Fund Assets**

The gross assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall include:

- (i) the amount, if any, standing or transferred to the credit of the Fund at or after the date from which this Deed comes into effect;
- (ii) such Contributions (if any) as the Members shall make to the Fund at any time;
- (iii) such Contributions as an Employer makes to the Fund at any time;
- (iv) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (v) profits and other benefits arising from any investment and the accumulation of those profits;
- (vi) the proceeds (including bonuses) of any Policy held by the Fund;
- (vii) moneys, investments and other property transferred to the Fund as a Roll Over Payment;
- (viii) such Shortfall Components as are received by the Fund; and



- (x) any amount credited to the Pension Account of a Beneficiary;
- (xi) any amount of Levy determined by the Trustee to be appropriate to debit;
- (xii) such other amounts as the Trustee shall from time to time determine.

(d) **Income Account**

- (i) The Trustee shall establish an Income Account for the Fund to which shall, subject to paragraph 15(e)(v), be credited the following:
  - A. all income and profits of the Fund each year;
  - B. credits arising out of adjustments pursuant to sub-clause (f) below;
  - C. any amount transferred from the Equalisation Account pursuant to sub-clause (e) below;
  - D. the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Account;
  - E. any Financial Assistance received by the Fund and not credited to an Account;and profits of the Fund shall include any surplus arising from a valuation undertaken at any time during the year in accordance with sub-clause (g) below.
- (ii) The Income Account shall, subject to paragraph 15(e)(v), be debited with the following:
  - A. any loss sustained on the disposal of any investments of the Fund;
  - B. any costs or charges incurred pursuant to Clause 19 which are not debited to an Account;
  - C. any debits arising out of adjustments pursuant to sub-clause (f) below;
  - D. the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Account;
  - E. any deficiency arising from a valuation undertaken in accordance with sub-clause (g) below;
  - F. any amount payable or which may become payable by way of Taxation in respect of Contributions, Shortfall Components and income and profits of the Fund which are not debited to an Account as the Trustee determines to be equitable;
  - G. any amount of Levy payable by the Fund and not debited to an Account;
  - H. any income transferred to the Equalisation Account.
- (iii) Following the debiting of the Income Account as specified in paragraph (d)(ii) above, at the end of each Fund Year the Trustee shall determine the Fund Earning Rate.
- (iv) Subject to paragraph 15(e)(v), the amount determined as the earnings of the Fund shall be allocated from the Income Account to each Account in proportion to the amount standing to the credit of that Account at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Account since that date.
- (v) Any amount remaining in the Income Account after distribution of earnings pursuant to paragraph (d)(iv) above shall be transferred to the Equalisation Account established under sub-clause (e) below.

- (ii) the collection, and prompt payment into an authorised account of the Fund or the otherwise appropriate dealing with all moneys due to the Fund;
- (iii) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law; and
- (iv) the preparation of an annual balance sheet of the Fund, a statement of financial position, an operating statement or such accounts and statements in respect of each Fund Year as are required by the Relevant Law.
- (v) the preparation and lodgement of an annual return to the Commissioner and of such other certificates, statements, forms, documents and information in such manner and within such time as is required by the Relevant Law.

(d) **Audit**

The Trustee shall:

- (i) make suitable arrangements for the auditing of the accounts, books and relevant records of the Fund by an approved Auditor annually or at such other times as required by the Relevant Law; and
- (ii) obtain from the approved Auditor a certificate at such time and in such form as required by the Relevant Law.

(e) **Information for Trustee**

When requested by the Trustee, an Employer shall give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by an Employer pursuant to this Deed and shall not be required to verify that information.

(f) **Disclosure and Reporting Requirements**

The Trustee shall arrange to provide to:

- (i) Employers;
- (ii) the Commissioner;
- (iii) the Actuary;
- (iv) the Auditor; and
- (v) any other persons specified in the Relevant Law,

such information or documentation, at such time and in such manner as shall be required by the Relevant Law.

(g) **Production of Books or Access to Premises**

The Trustee shall make suitable arrangements for the production of any books or information in relation to the Fund and the access to premises where any such books or information are kept for the purpose of inspection and the taking of copies in accordance with the Relevant Law.

(h) **Directions of Commissioner**

The Trustee must comply with any direction or requirement of the Commissioner in relation to the Fund including but not limited to the acceptance of Contributions into the Fund, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

- (ii) Individual Trustees of which one half shall consist of Employer Trustees and one half shall consist of Member Trustees and which may include an additional Independent Trustee;
- (iii) an Eligible Company;
- (iv) such other persons or bodies as shall satisfy the Relevant Law or be appointed by the Commissioner under the Relevant Law.

(d) **Appointment of Trustee**

A Trustee of the Fund shall be appointed in writing in accordance with the provisions hereof by the Trustee provided that in the event that there is no Trustee of the Fund then the majority of Members shall determine who shall act as Trustee in accordance with the provisions of this Deed and the Relevant Law and shall take such steps as are necessary to appoint the persons to the office of Trustee.

(e) **Member Representatives**

The Members of the Fund shall, if required by the Relevant Law, nominate for appointment a person or persons to represent Members as a Member Representative on the following terms:

- (i) each person nominated shall be an Employee aged at least eighteen years;
- (ii) the procedure for nomination for appointment and removal of the Member Representative shall be determined by the Trustee having regard to the Relevant Law and shall include consideration of such matters as:
  - A. the number of Member Representatives to hold office and the term of that office;
  - B. the eligibility, nomination procedure and voting procedure for any election; and
  - C. the method of filling of any casual vacancies;
- (iii) the procedure established under paragraph (ii) above shall be published by the Trustee as required by the Relevant Law;
- (iv) the number of persons to be appointed following nomination shall be the same number of persons as are appointed as Employer Representatives.

(f) **Employer Representatives**

The Employers of the Fund shall, if required by the Relevant Law, nominate a person or persons to represent the Employers as an Employer Representative on such terms as they shall determine **PROVIDED HOWEVER** that the number of persons to be appointed following nomination shall be the same number of persons as are appointed as Member Representatives.

(g) **Appointment and Removal of Member Representatives**

The person or persons nominated by the Members for appointment or removal as a Member Representative under sub-clauses (e) or (j) shall be advised to the existing Trustee (if any) and the Employer Representatives within seven days of the nomination. The Trustee and the Employer Representatives shall take such steps as are necessary to appoint or remove the person to or from the relevant position.

(h) **Appointment and Removal of Employer Representative**

The person or persons nominated by the Employers for appointment or removal as an Employer Representative under sub-clauses (f) or (k) shall be notified to the existing Trustee (if any) and the Member Representatives within 7 days of the nomination. The Trustee and the Member Representatives shall take such steps as are necessary to appoint or remove the person to or from the relevant position.

(i) **Independent Trustee or Independent Director**



(vi) if the person ceases to be a Member Representative or an Employer Representative.

(m) **Continuity of Office**

Any person who acts as a Trustee shall on ceasing to be a Trustee under this Clause do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

(n) **Office of Trustee**

The office of Trustee shall be filled at all times and in the event of a vacancy occurring other than in the case of an Independent Trustee who is not the sole Trustee of the Fund, a new Trustee shall be appointed within 90 days of such vacancy occurring in accordance with the provisions of this Deed.

(o) **Numbers of Individual Trustees**

Where the Trustee consists of Individual Trustees, there shall be such number of persons as shall be agreed between the Employers (if any) and the Members but in the absence of any such agreement the number of Trustees shall not be less than two.

(p) **Member may be Trustee**

No Individual Trustee, Director of an Eligible Company or officer or employee of an Employer shall by virtue of their office or the powers delegated to them by the Trustee be disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

(q) **Quorum of Individual Trustees**

A quorum of Trustees shall be two thirds of the Individual Trustees in office for the time being including at least one Member Trustee and one Employer Trustee or shall be such other number of Trustees as shall be agreed upon or as shall be required by the Relevant Law.

(r) **Chairperson**

The Individual Trustees or the Directors of an Eligible Company shall on an annual basis appoint a person to be chairperson and such person shall hold office as chairperson until:

- (i) any fixed term of appointment as chairperson expires;
- (ii) the person retires as chairperson by written notice given to the other Trustees or Directors;
- (iii) the chairperson ceases to be a Director or Trustee;
- (iv) the chairperson is removed by resolution of the Individual Trustees or the Directors of the Eligible Company.

The chairperson shall be responsible to chair each meeting but the chairperson shall not have a second or casting vote.

15. **TRUSTEE'S INVESTMENT POWERS**

(a) **Investment Strategy**

The Trustee shall formulate and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund which strategies may be reviewed from time to time and shall be formulated and effected in accordance with the Relevant Law.

(b) **Authorised Investments**

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested in accordance with the investment strategies of the Fund as determined under sub-clause 15(a) in any of the following investments:

- (ii) Where the Trustee determines to provide investment choice, it shall establish an investment strategy for each of the investment choices available to Members and Beneficiaries under the Fund and where appropriate shall allocate or designate particular assets of the Fund to be held within that strategy and shall advise Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Relevant Law to enable Members and Beneficiaries to make an informed decision regarding the effect of, and risks associated with, each of those investment strategies. The advice provided shall include the various directions that a Member or a Beneficiary can give to the Trustee under paragraph (vi) below and the circumstances in which any such directions can be given or altered.
- (iii) The Trustee shall continually monitor each of the investment strategies established under paragraph (ii) above and the assets held within each strategy in order to ensure that each of those investment strategies is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.
- (iv) The Trustee shall establish a sub-account within the Income Account established under Clause 12(d) in respect of each strategy and shall debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee shall determine.
- (v) The Trustee shall determine a Fund Earning Rate in respect of the sub-accounts established under paragraph (iv) above and shall allocate the earnings of the Fund to each Account in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the Member's or Beneficiary's Account at the beginning of the Fund Year in respect of which the allocation is being made, an appropriate adjustment being made for amounts (if any) credited or, debited to the Member's or Beneficiary's Account during that Fund Year.
- (vi) Upon admission of a person to Membership of the Fund or at any time whilst a person remains a Member or Beneficiary of the Fund, that person may, where the Trustee has determined to offer investment choice in accordance with paragraph (i) above, select one or, where the Trustee has determined to permit Members to select multiple strategies, more than one of the investment strategies formulated by the Trustee under paragraph (ii) above and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Fund in accordance with the investment strategy or strategies selected by that person under this paragraph **PROVIDED THAT** any such directions by the Member or Beneficiary shall only be given in the circumstances permitted by, and in accordance with, the Relevant Law and without limiting any of the foregoing the Trustee shall ensure that the Member or Beneficiary is provided with such information as shall be required by the Relevant Law in order to enable the Member or Beneficiary to make an informed decision.
- (vii) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to paragraph (vi) above shall complete a request or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary. The Trustee shall not be bound to act on the request or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.
- (viii) Except to the extent permitted by the Relevant Law, a Member or Beneficiary or any other person shall not direct the Trustee to make a particular investment in respect of a Member or Beneficiary of the Fund. Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustee shall be made for an additional investment strategy or strategies for those particular investments ("asset specific investment strategy") to be formulated by the Trustee and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with paragraph (ii) above. The Trustee may in its absolute discretion approve or reject any requests made under this paragraph. If the Trustee approves a request made under this paragraph, the Member or Beneficiary who made the request shall be informed accordingly by the Trustee and the provisions of paragraphs (ii), (iii), (iv), (v), (vi) and (vii) above shall, with any necessary modifications thereof, apply to any request approved by the Trustee under this paragraph.



- (xi) to appoint a person who shall be responsible for the chairing of meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;
- (xii) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to Clause 18;
- (xiii) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (xiv) to seek modifications of or exemptions from the application of the Relevant Law to the Fund **PROVIDED THAT** the Trustee shall be relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted; and
- (xv) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

(b) **Exercise of Trustee Powers**

All the powers and discretions conferred upon the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee of the Fund.

(c) **Trustee Discretion**

The Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed shall have an absolute and uncontrolled discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which shall be final and binding **PROVIDED THAT** the Trustee shall not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination **PROVIDED FURTHER THAT** the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed shall be subject to the Relevant Law.

(d) **Trustee Delegation**

The Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee shall determine and the Trustee may vary, limit or revoke any such delegation **PROVIDED THAT** any such delegation shall only be undertaken in accordance with the Relevant Law.

(e) **Trustee Direction**

Except in those circumstances which are acceptable within the Relevant Law the Trustee shall not be subject to direction from any person in the exercise of any of its powers.

17. **LIMITATION OF LIABILITY**

(a) **Liability of Trustees, Directors and officers**

Neither the Trustee nor any of its Directors or officers shall be liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund except if that person:

- (i) fails to act honestly; or
- (ii) intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise; or
- (iii) incurs a monetary penalty in respect of a civil penalty order under the Relevant Law.



This indemnity shall extend to the circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

(f) **Limitation of Indemnity**

The indemnity provided under this Clause in respect of the Trustee or any Directors, officers, agents or servants of the Trustee shall not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

19. **REMUNERATION OF TRUSTEE**

(a) **Costs and Disbursements**

The Trustee shall be entitled to charge professional fees and to recover costs and disbursements incurred in respect of the provision of its services as Trustee of the Fund which fees, costs and disbursements will be debited to the Income Account or directly to the Accumulation Account or Pension Account of a Member as determined by the Trustee and which fees, costs and disbursements may reduce the Member's Withdrawal Benefit **PROVIDED THAT** the Trustee shall not be entitled to receive any remuneration from the Fund or any person in relation to the performance of the Trustee's duties, or the provision of any other services, in relation to the Fund if the receipt of such remuneration would result in the Fund being treated as a Public Offer Fund, where the Fund would not otherwise be so treated.

(b) **Fees Determined Annually**

The fees charged (if any) by the Trustee shall be determined at the commencement of each Fund Year. Prior notice of any changes which are intended to be made to the fees chargeable shall be provided to the Members and any Employers by the Trustee.

(c) **Reimbursement**

The Trustee shall be entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (i) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax but excluding any incidental expenses which are not out-of-pocket expenses or disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (ii) such fees and expenses of the Auditor as the Trustee shall consider reasonable;
- (iii) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (iv) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;
- (v) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
- (vi) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
- (vii) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions and the attendance of the Trustee before the Tribunal;
- (viii) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices;

21. **ACTUARIAL INVESTIGATIONS**

In the event that an Actuary has been appointed, the Trustee may ask the Actuary for information or advice from time to time in accordance with the provisions of this Deed but the Trustee shall be under no obligation to be bound by or to act upon the advice so provided except in circumstances required by the Relevant Law.

22. **CONTRIBUTIONS TO FUND**

(a) **Determination of Contributions**

A Member or (if applicable) an Employer shall contribute to the Fund in respect of each Member such amount and in such manner and at such times as each of them shall in their absolute and uncontrolled discretion determine.

(b) **Designation of Class Entitlements**

Where a Member makes a Contribution, or where an Employer makes a Contribution in respect of a Member, and the Member is a Member of more than one Membership Class the Member or the Employer shall designate in relation to that particular Contribution (or in respect of all future Contributions) which Membership Class or Classes each Contribution is being made to and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts applicable to that Class or those Membership Classes.

(c) **Contributions in Cash or Assets**

Any Contributions made by a Member or an Employer shall be made to the Trustee within the Fund Year in respect of which it is paid or within such period as the Relevant Law may allow either in cash or by transfer of an asset or assets **PROVIDED THAT** the assets transferred must be authorised investments as set out in sub-clause 15(b) of this Deed **PROVIDED THAT** any transfer of an asset under this Clause shall be made upon the terms and conditions specified under the Relevant Law, and shall not be made if the Trustee or an agent or delegate of the Trustee is prohibited by the Relevant Law from acquiring the asset.

(d) **No Obligation to Contribute**

In the absence of any agreement to the contrary neither a Member nor an Employer shall be under any obligation to make a Contribution to the Fund in respect of any Fund Year and a Member may remain a Member of the Fund notwithstanding a Contribution is not made in respect of that Member in respect of any Fund Year.

(e) **Limitation on Commencing Contributions**

The Trustee shall refuse to commence to accept Contributions to the Fund or in respect of a Member if the member is not in Part-Time Gainful Employment or Full-Time Gainful Employment or is not otherwise authorised to have Contributions made on the Member's behalf by the Relevant Law.

(f) **Two Year Period**

The Trustee shall refuse to accept Contributions to the Fund by or in respect of a Member:

(i) if the Member:

- A. has ceased for a continuous period of two years to be in Full-Time Gainful Employment or Part-Time Gainful Employment; but
- B. has not retired from the workforce,

**PROVIDED THAT** the Contributions are not otherwise authorised to be made on the Member's behalf by the Relevant Law; or

(ii) if the Member has retired from the workforce.

(g) **Level of Contributions**



The Trustee may in accordance with the Relevant Law and, where required by the Relevant Law the Trustee shall, transfer a Member's Benefit to an Eligible Rollover Fund and shall provide any information to the trustee of the Eligible Rollover Fund at such time and in such manner as required by the Relevant Law.

(e) **Preserved Payment Transfers**

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the amount transferred or rolled-over to an Approved Benefit Arrangement, the Trustee shall ensure that the governing rules of the Approved Benefit Arrangement provide that if the Member wishes to leave the Approved Benefit Arrangement the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Relevant Law.

24. **TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS**

(a) **Takeover or Transfer of Benefits**

Where a Member is or was a member of or is or was the beneficiary under any other Approved Benefit Arrangement the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Approved Benefit Arrangement at the time of transfer.

(b) **Rights and Entitlements of Member in Transferred Benefits**

The Trustee shall hold any such amounts transferred in accordance with paragraph (a) above as part of the Fund and reflect such equivalent rights, entitlements and interests in the particular Member's Accumulation Account or Pension Account as existed in the other Approved Benefit Arrangement and, if the Trustee so determines, the Member shall be deemed to have become a Member of the Fund on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit was transferred.

25. **MONEYS OWING TO FUND OR AN EMPLOYER**

Where a Member owes any moneys to the Fund or to an Employer (including costs of any prosecution or civil proceedings together with interest on those moneys at a rate determined by the Trustee) or if the Member has committed any fraud upon an Employer or is guilty of dishonesty, defalcation or serious misconduct such that moneys are owing to an Employer, the Trustee may debit the Accumulation Account of the Member for a sum equivalent to the said moneys owing from that part of the Benefit of the Member which would otherwise be payable and the Trustee shall:

(a) **Fund**

if the said moneys are owed to the Fund, retain them in the Fund; or

(b) **Employer**

if the said moneys are owed to an Employer, retain those moneys in the Fund or pay them to that Employer or as that Employer directs,

**PROVIDED HOWEVER** that the exercise of the lien by the Trustee under this Clause shall only be done if permitted by the Relevant Law.

26. **FORFEITURE OF BENEFIT ENTITLEMENTS**

(a) **Conditions of Forfeiture**

Any Member or Beneficiary or after the death of a Member, any of the Dependents of the Member:

- (i) who assigns or charges or attempts to assign or charge any Benefit Entitlement;



(viii) for any other purpose approved in writing by the Commissioner,

**PROVIDED THAT** where a Member remains in the employment of an Employer any payments made to that Member shall be limited to the relief of hardship of the Member or of the Dependants of the Member and **PROVIDED FURTHER THAT** the Trustee shall only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law.

(e) **Readjustment of Member Interest**

Where a forfeiture of a Benefit Entitlement occurs under this Clause in respect of a Member, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that Member, then the Trustee may, readjust any rights, entitlements or interests of the Member in the Fund and may provide the Member with such rights or entitlements as the Trustee considers appropriate **PROVIDED THAT** the rights or entitlements shall not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

(f) **Severability**

If any part of this Clause should be construed as illegal, invalid or void the legality and validity of the remaining parts of this Clause shall not be affected and the illegal, invalid or void part shall be deemed to be deleted.

27. **PENSION PAYMENT AND PENSION ACCOUNT**

(a) **Application to Convert to Pension**

At such time as the Member shall be eligible for the payment of a Benefit in accordance with the Relevant Law, and on the written application of a Member, the Trustee may pay to the Member from the Fund a Pension on the conditions set out in Clause 28:

- (i) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member; or
- (ii) in respect of any amounts credited to the Pension Account of a Member under sub-clause 27(c)(i)B.

(b) **Establishment of Pension Account**

Where a Member has made an application under sub-clause (a) above and the Trustee determines to pay all or any part of the Benefit to the Member as a Pension, the Trustee must establish a Pension Account in respect of the Member to which Account the Trustee shall transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.

(c) **Operation of Pension Account**

- (i) The following amounts shall be credited to the Pension Account of a Pensioner:
  - A. any amount transferred under sub-clause (b) above;
  - B. any amount paid into the Fund in respect of a Pensioner as a transfer or a Roll Over Payment which the Trustee considers it appropriate to credit;
  - C. the proceeds of any Policy effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
  - D. such earnings of the Fund ascertained in accordance with sub-clause 12(d) and paragraph 15(e)(v) as the Trustee shall determine to be equitable;
  - E. any credit arising out of any adjustments made in accordance with sub-clause 12(f);
  - F. any Shortfall Component paid in respect of the Pensioner;

- (iii) the amount of the Pension in any year shall be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time **PROVIDED THAT** the amount shall not be greater than or lesser than the amounts calculated as the maximum and minimum limits specified by the Relevant Law for the payment of a Pension;
- (iv) the Pension shall not be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner or on the death of a Reversionary Beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Relevant Law;
- (v) the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing.

(b) **Pension Account Limitation**

Where a Pension is payable to or in respect of a Member or where the Trustee purchases an Annuity on behalf of a Member, the total instalments of such Pension or the total purchase price of such Annuity shall, subject to sub-clause 32(k), not exceed the amount standing to the credit of a Member or Pensioner in the relevant Accumulation Account or Pension Account of the Member or Pensioner at the relevant time.

(c) **Pension Increase**

Any Pension payable pursuant to the provisions of this Deed shall, if required by the Relevant Law and agreed to by the Trustee, be increased in the course of payment from time to time by such amount as the Trustee in its absolute discretion considers appropriate to compensate the Pensioner for cost of living increases **PROVIDED HOWEVER** that any increase shall be at least the minimum required by the Relevant Law in respect of the type of Pension being paid.

(d) **Reversionary Beneficiary**

After the death of a Pensioner who was at the time of death still in receipt of a Pension under this Deed, the Trustee may in its discretion determine to pay to the Reversionary Beneficiary a Pension or a lump sum Benefit which amount shall not exceed an amount calculated in accordance with the Relevant Law.

(e) **Death of Pensioner**

In the event of the death of a Pensioner whilst there is still an amount standing to the credit of the Pension Account of the Pensioner and where no Reversionary Beneficiary has been nominated the balance of such Pension Account shall be dealt with in accordance with the provisions of Clause 31 hereof **PROVIDED HOWEVER** that in the event that such an application is not in accordance with the Relevant Law the balance of such Pension Account shall be dealt with in accordance with sub-clause 26(c) and (d) as though it were a forfeited Benefit or otherwise as permitted by the Relevant Law.

29. **COMMUTATION OF PENSION**

(a) **Conditions of Commutation**

On the written application of a Pensioner or Reversionary Beneficiary, the Trustee may commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to such Pensioner or Reversionary Beneficiary as applicable **PROVIDED THAT**:

- (i) the commutation of the Pension is permitted by the Relevant Law;
- (ii) the amount of the commuted Benefit including the value of any remaining Pension payable shall be subject to the provisions of sub-clause 32(k);
- (iii) where any amount remains in the Fund after the entitlement of all Pensioners and Reversionary Beneficiaries have been paid out then the amount so remaining shall be dealt with in accordance with sub-clause 26(c) and (d) as though it were a forfeited Benefit; and
- (iv) the commutation would not be to the disadvantage of the Fund, the Employers, the remaining Members, Pensioners or Reversionary Beneficiaries.



The receipt by a Dependant, the legal personal representative, Relative or other person of a Benefit paid under this Clause shall be a complete discharge to the Trustee in respect of any amount paid to that person and the Trustee shall not be bound to see to the application thereof.

32. **PAYMENT OF BENEFITS**

(a) **Address for Benefits**

Benefits are payable at the principal office for the time being of the Trustee or otherwise as may be determined by the Trustee and advised to the Member or Beneficiary. The Trustee may forward the Benefits to the postal address or bank account of the Member or Beneficiary last notified to the Trustee or to such other place as the Trustee shall determine.

(b) **Notification of Address**

Every Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary, shall (except where no further Benefit is payable from the Fund) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Beneficiary changes address at any time of:

- (i) the place of residence of the Beneficiary and the full postal address of that residence; and
- (ii) the bank account (if any) to which the Beneficiary requests that the Benefit be paid.

(c) **Receipt for Benefits**

Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in a form from time to time required by the Trustee.

(d) **Notification of Claims and Proofs**

Where a Benefit is payable to or in respect of a Member, prior to payment of the Benefit the Trustee shall notify:

- (i) the Member, in the case of a Benefit payable to the Member;
- (ii) the Nominated Beneficiary, the Reversionary Beneficiary, the legal personal representative, any known Dependants or any other person who the Trustee reasonably believes may have an entitlement to or an interest in the Benefit, in the case of a Benefit payable on death of a Member;
- (iii) in any other case, such persons as the Trustee reasonably believes may have an entitlement to or interest in the Benefit,

in writing of the period within which the person may seek to claim an entitlement to the Benefit and where a person has produced to the Trustee such evidence, done all such acts and executed all such documents as the Trustee may reasonably require in order to satisfy the Trustee that the person is entitled to the payment of part or all of the Benefit under this Deed, the Trustee shall pay such Benefit **PROVIDED THAT** the Trustee must notify in writing any person mentioned in paragraphs (i), (ii) and (iii) above of the period within which the person may object to the payment of the Benefit and may defer the payment of the Benefit until that period for objections has elapsed.

(e) **Notification Outside Time Limit**

Where a person has failed to notify the Trustee of a claim or of the intention to make a claim within the period determined by the Trustee under the proviso in sub-clause 32(d), no payment shall be made to the person unless the Trustee is satisfied that such a payment may be made from the Fund in accordance with this Deed and the Relevant Law.

(f) **No Personal Claim**



required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

(b) **Tax on Contributions and Shortfall Components**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member. Where such Taxation has been deducted from a Contribution or Shortfall Component a reference to the crediting of the Contribution or Shortfall Component to an Accumulation Account shall mean the crediting of the net Contribution or Shortfall Component after the deduction of such Taxation.

(c) **Tax on Income**

The Trustee may make provision for and shall deduct any Taxation payable in relation to the taxable income of the Fund not otherwise deducted under this Clause from the Income Account or from Accumulation Accounts or Pension Accounts of Members.

(d) **Payment to Relevant Authority**

The Trustee shall pay all Taxation which is not being transferred with the agreement of the Trustee to an Insurer or otherwise transferred as provided under the Tax Act, and any Levy which is due and payable by the Fund, to the relevant authorities within the required time for payment.

34. **POLICIES OF ASSURANCE**

(a) **Trustee to effect Policy**

The Trustee may effect separate Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one way and partly in another. The Trustee shall not be responsible or liable to a Member, a Member's Legal Personal Representative or the Dependants of a Member should the Trustee determine not to exercise the power to effect such Policy or Policies.

(b) **Trustee required to effect Policy**

Notwithstanding anything in sub-clause 34(a), where:

- (i) the Trustee has informed a Member that a Policy of a specified type (including the quantum of cover) will be effected in respect of the Member, the Trustee must effect such Policy **PROVIDED THAT** the Member has not requested the Trustee in writing not to effect such Policy; or
- (ii) a Member requests the Trustee in writing to effect a Policy of a specified type (including the quantum of cover) in respect of the Member, and the Trustee agrees to effect such Policy on the basis that to do so is in the best interests of the Member or the Dependants of the Member, the Trustee must effect such Policy **PROVIDED THAT** the Member has not in writing withdrawn, cancelled or altered the Member's original request,

**PROVIDED ALWAYS THAT** the Trustee is able to obtain such Policy or Policies in respect of the Member.

(c) **Premiums for Policy**

The premiums for any Policy effected may be debited to the Income Account or directly to the Accumulation Account of the Member in respect of whom the Policy is effected or alternatively in such proportions amongst other Members as the Trustee considers to be equitable which premiums may be debited against the Member's Withdrawal Benefit.

(d) **Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable pursuant to this Deed in respect

- (i) a deed of appointment placing the Employer in receivership or under official management is executed by the appointor of that receiver or manager;
- (ii) a resolution of its members or an order of a Court places the Employer in liquidation; or
- (iii) the Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

(b) **Contributions by Members**

Where an Employer of a Member has terminated its Contributions in respect of that Member pursuant to sub-clause 37(a) the Member may continue to make Contributions to the Fund.

(c) **Benefits Held for Members**

In the event that Contributions by an Employer cease in the circumstances described in sub-clause 37(a) and the Member does not continue to make Contributions to the Fund then the Trustee shall deal with the Members's Benefits in accordance with the existing provisions of the Deed.

38. **TRANSFER OF PARTICIPATING EMPLOYER'S BUSINESS**

If a Participating Employer (the "Former Employer") is amalgamated with or disposes of its undertaking to another Participating Employer (the "New Employer"), Contributions shall be deemed not to have terminated and the Members who are Employees of the Former Employer shall become Employees with the New Employer and the New Employer may make future Contributions in respect of those Members.

39. **RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER**

If an Employer is reconstructed, goes into liquidation for the purpose of reconstruction, is merged or amalgamated with another employer or disposes of all or the majority of its undertaking, the Trustee may deal with the interests of Members in all or any of the following ways:

(a) **Deed of Adoption**

enter into a deed of adoption with its successor as an Employer with the object of carrying on a Complying Superannuation Fund either under this Deed or any similar deed or rules on such terms and conditions as the Trustee considers to be reasonable and which protects the interests of the Members; or

(b) **Transfer Assets**

transfer some or all of the assets of the Fund representing the assets applicable to Members who were Employees of the former Employer to a Complying Superannuation Fund conducted by a new employer in accordance with and subject to the provisions of Clause 23 in respect of some or all Members or former Members; or

(c) **Continue Fund**

continue to operate the Fund for the benefit of any Members still employed by the former Employer; or

(d) **Terminate Fund**

terminate the Fund in accordance with Clause 41.

40. **VARIATION OF TRUST DEED**

The provisions of this Deed including this Clause may be added to, amended, altered, modified, rescinded or varied (the "Variation") from time to time by the Trustee which Variation may be prospective or retrospective and which shall be effected on the following basis:

(a) **Resolution or Deed**

The Variation shall be:



- (i) give written notice to each Employer and Member that the Fund is to terminate on the Termination Date;
- (ii) arrange to pay or transfer Benefits to Members, former Members and Beneficiaries in accordance with sub-clause (c) below, after deducting from the assets of the Fund the costs of administering and winding up the Fund.

(c) **Exhaustion of Fund**

Subject to sub-clause 32(h), the Trustee shall pay the following Benefits in the following order to the extent that the assets of the Fund permit:

- (i) Benefits to which Members, former Members or their Dependants who have not been paid a Benefit immediately prior to the Termination Date are entitled at the Termination Date;
- (ii) the provision of additional Benefits to Members, former Members and their Dependants as the Trustee in its absolute discretion considers appropriate;
- (iii) payment to such of the Employers of Members or former Members (if any) as have made Contributions to the Fund as the Trustee in its absolute discretion considers appropriate.

**-DIVISION B**

**MEMBERSHIP CLASSIFICATION AND CONTRIBUTIONS**

42. **MEMBERSHIP CLASSIFICATION**

(a) **Classes of Membership**

There shall be three classes of Membership of the Fund which shall be designated:

- "A" Membership Class
- "B" Membership Class
- "C" Membership Class

**PROVIDED HOWEVER** that the Trustee shall have the power to create such other Membership Classes with such rights and entitlements as the Trustee shall decide.

(b) **Original Self-Employed Person and Employee Class**

All Members who have joined the Fund as persons who are self-employed or persons who are unsupported by an Employer, within the meaning of the Tax Act, or persons otherwise nominated by their Employer and accepted by the Trustee shall become "A" Class Members and shall remain "A" Class Members unless and until the Trustee makes a written nomination for a Member to become a Member of an alternative Class when the Member shall become a Member of the Class into which the Member is nominated **PROVIDED HOWEVER** that the Member shall also remain an "A" Class Member unless the Trustee nominates otherwise and the Member consents in writing to the Trustee's nomination.

(c) **Other Employer Nominated Classes**

All Members who have become Members as a result of being employed by an Employer which is admitted to make Contributions to the Fund pursuant to Clause 35 and who are not otherwise admitted as "A" Class Members under sub-clause (b) above shall become either "B" Class Members or "C" Class Members and shall remain Members of such Class unless and until otherwise nominated by the Trustee with the consent of their Employer to become a Member of an alternative Class when the Member shall become a Member of the Class into which the Member is nominated **PROVIDED HOWEVER** that the Member shall also remain a Member of the "B" or "C" Class, as appropriate, unless the Trustee nominates otherwise.

(d) **Reclassification**



In circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay some part of the Equalisation Account which the Trustee considers represents the interest of that Member in that Account to the Member's Accumulation Account for purposes of the payment of a Benefit.

46. **RETENTION OF BENEFIT IN FUND**

Where a Member or Beneficiary does not require Benefits to be immediately paid, the Trustee may in its absolute discretion retain all or any part of any Benefit payable under this Division in the Fund until:

(a) **Request**

the Member or Beneficiary entitled requests that it be paid to that Member or Beneficiary;

(b) **Death**

the Member dies in which event it will be paid in accordance with Clause 31;

(c) **Payment otherwise Required**

the payment of the Benefit is required in accordance with the provisions of this Deed or the Relevant Law; or

(d) **Discretion**

the Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever shall first occur and the amount then payable shall be the Benefit standing to the credit of that Member's or Beneficiary's Accumulation Account as at the date of payment **PROVIDED HOWEVER** that all Benefits must be paid at such time and in such manner as shall be required by the Relevant Law.

**-SUB-DIVISION C1-**

**DETERMINATION OF BENEFITS (LUMP SUM)**

47. **APPLICATION OF SUB-DIVISION C1**

This sub-division shall apply to the determination and payment of Benefits in respect of Members where the Trustee of the Fund is a Constitutional Corporation and has not elected in writing that sub-division C2 shall apply.

48. **RETIREMENT BENEFITS**

(a) **Lump Sum Payment**

Where a Member:

(i) who is a self-employed person Retires from Gainful Employment;

(ii) Retires from Employment with an Employer and the Trustee determines to pay a Benefit at that time;

(iii) satisfies the Relevant Law for the payment of Benefits under this Clause notwithstanding that the Member continues in employment,

then such Member shall be paid the amount standing to the credit of the Accumulation Account of the Member as at the date upon which payment is made.

(b) **Pension Payment**

Where a Member is eligible for payment of a Benefit in accordance with sub-clause (a) above and the Trustee determines to pay the Benefit as a Pension, such Pension shall be paid in accordance with the provisions of Clauses 27 and 28.

50. **EARLY RETIREMENT FROM EMPLOYMENT**

In the event that a Member of any Class:

- (a) who is a self-employed person Retires from Gainful Employment prior to the Normal Retirement Age; or
- (b) Retires from Employment with an Employer prior to the Normal Retirement Age and the Trustee determines to pay the Benefit at that time,

then the Trustee shall pay to the Member the following amounts:

(i) **"A" Class Membership**

The full amount standing to the credit of the Member's "A" Class Accumulation Account as at the date of payment.

(i) **"B" Class Membership**

In respect of a Member's "B" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:

- A. the Member's Withdrawal Benefit;
- B. an amount equivalent to a percentage of the balance of the Member's "B" Class Accumulation Account as at the date of payment such amount being the amount calculated in accordance with Schedule D attached to this Deed;
- C. such further portion of the balance of the Member's "B" Class Accumulation Account as the Employer shall determine, with the consent of the Trustee.

(ii) **"C" Class Membership**

In respect of a Member's "C" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:

- D. the Member's Withdrawal Benefit;
- E. such further portion of the balance of the Member's "C" Class Accumulation Account as the Employer shall determine with the consent of the Trustee.

(iii) **Pension Payments**

Where a Member is eligible for payment of a Benefit in accordance with sub-clauses (a) or (b) above and the Trustee determines to pay the Benefit as a Pension, such Pension shall be paid in accordance with the provisions of Clauses 27 and 28.

51. **PAYMENT ON DEATH**

On the death of a Member whilst still a Member the Trustee shall pay the full amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made in accordance with the provisions of Clause 31.

**-SUB-DIVISION C2-**

**DETERMINATION OF BENEFITS (OLD-AGE PENSION)**

52. **APPLICATION OF SUB-DIVISION C2**



- (i) In the event that a Member of any Class shall become in the opinion of the Trustee Temporarily Totally Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee a non-commutable income stream equal to the following amount:
  - F. in the case of a Member in respect of whom the Trustee receives an income Benefit under a Policy effected in relation to Temporary Total Disablement - the amount payable to the Trustee as a result of the Temporary Total Disablement of the Member under the Policy;
  - G. in respect of any other Member - an income Benefit determined by the Trustee **PROVIDED THAT** the total income Benefit received by the Member may not reduce the Member's Withdrawal Benefit and any payment of an income Benefit under this sub-clause shall be subject to the limitations contained in the Relevant Law.
- (ii) A Member shall cease to be Temporarily Totally Disabled in the event that the Member:
  - A. ceases to satisfy the definition of Temporary Total Disablement;
  - B. attains the Normal Retirement Age; or
  - C. becomes entitled to another Benefit payable under this Deed.
- (iii) An income Benefit under this Clause shall:
  - A. in the case of a Benefit payable under a Policy be paid in accordance with, and shall cease in the circumstances set out in the Policy;
  - B. in any other case shall be paid in the manner and in the circumstances determined by the Trustee for this purpose from time to time; and
  - C. in all cases comply with the requirements of the Relevant Law which are prescribed for this purpose from time to time.
- (iv) Payment of Contributions to the Fund by the Member (if any) may be suspended during such period in which any income Benefit is payable under this Clause.
- (v) The Member will continue to be a Member of the Fund during the period in which the Member is Temporarily Totally Disabled and for the eligibility period as is specified in the Policy in respect of the Temporary Total Disablement and the aggregate of those periods will for the purpose of the Fund be deemed to be included in the Member's period of Membership of the Fund.

55. **EARLY RETIREMENT FROM EMPLOYMENT**

In the event that a Member of any Class:

- (a) who is a self-employed person Retires from Gainful Employment prior to the Normal Retirement Age;  
or
- (b) Retires from Employment with an Employer prior to the Normal Retirement Age and the Trustee determines to pay the Benefit at that time,

then the Trustee shall pay to the Member the following amounts:

- (i) **"A" Class Membership**

The full amount standing to the credit of the Member's "A" Class Accumulation Account as at the date of payment.

- (ii) **"B" Class Membership**

IN WITNESS WHEREOF the parties have executed this Deed on the date set out in Schedule A.

**SIGNED SEALED AND DELIVERED** by **JAMES GEORGE DEEB** as Principal  
in the presence of:

▲ *[Signature]*

▲ *[Signature]*  
Signature of Witness

▲ PAULINE ANN NEWMAN  
Name of Witness (Print)

**SIGNED SEALED AND DELIVERED** by )  
Mervyn Stephen White as Trustee )  
in the presence of: )

▲ *[Signature]*

▲ *[Signature]*  
Signature of Witness

▲ S.A. PAYNE  
Name of Witness (Print)



**SIGNED SEALED AND DELIVERED** by )  
Jennifer Joan Burrows as Trustee )  
in the presence of: )

▲ *[Signature]*

▲ *[Signature]*  
Signature of Witness

▲ S. A. PAYNE  
Name of Witness (Print)



**SCHEDULE A**

**DATE OF DEED:**

The <sup>X</sup> 5<sup>TH</sup> day of JUNE 1998

**PRINCIPAL:**

James George Deeb

**TRUSTEE:**

Tahi Pty Ltd ACN 010 231 893

**NAME OF FUND:**

The White Superannuation Fund

**DATE OF  
ESTABLISHMENT  
OF FUND:**

The <sup>X</sup> 5<sup>TH</sup> day of JUNE 1998

**PROPER LAW  
GOVERNING FUND:**

State of Queensland

**SCHEDULE B  
APPLICATION FOR MEMBERSHIP  
CONFIDENTIAL**

**TO: THE TRUSTEE  
THE WHITE SUPERANNUATION FUND**

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I, the undersigned person, being eligible hereby apply for admission to membership of the Fund. I agree and undertake as follows:

1. I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time.
2. I will upon request make full disclosure in writing of any information required by the Trustee in respect of my membership of the Fund including my medical condition.
3. I understand the terms and conditions of the Trust Deed and more particularly the terms and conditions of Divisions B and C of the Deed concerning Benefits payable.
4. I will notify the Trustee if at any time I cease to be Gainfully Employed as defined in the Deed.
5. I agree to the Trustee acting as Trustee of the Fund.

**DATED** the                    day of                    19

Name:..... Signature:.....

Address:.....

Occupation:.....

Membership Class:..... Date of Birth:.....

**NOMINATED DEPENDANT(S)**

I nominate the undermentioned persons as my Nominated Dependants:

FULL NAME	RELATIONSHIP	% OF TOTAL BENEFIT
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SCHEDULE C

PARTICIPATING EMPLOYERS ADMITTED TO FUND

UNDER CLAUSE 35

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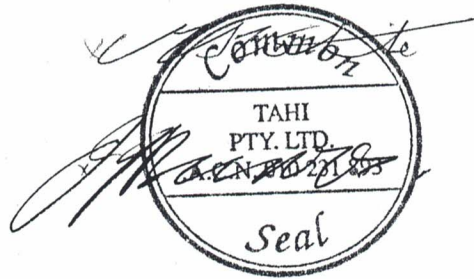
NAME OF PARTICIPATING  
EMPLOYERS

DATE OF ADMISSION

EXECUTION OF  
PARTICIPATING  
EMPLOYERS OR OF TRUSTEE  
CONFIRMING ADMISSION

Tahi Pty Ltd ACN 010 231 893

✓ 5.6.98



**SCHEDULE D**

**PERCENTAGE VESTING SCHEDULE**

**THE WHITE SUPERANNUATION FUND**

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No of Years Completed as a Member of the Fund	Percentage Balance of Member's Accumulation Account
at least	less than
0	1
1	2
2	3
3	4
4	5
5	6
6	7
7	8
8	9
9	10
10 or more	

