

1



## Part 14 - Amendment

---

### **52 Amendment of this deed**

#### **52.1 Method of amendment**

- (a) Subject to clauses 52.1(b) and 52.1(c) and the Superannuation Law, the Trustee may at any time by resolution or by instrument in writing amend, alter, vary, modify or delete with immediate, prospective or, to the extent that the law allows, retrospective effect from time to time, any or all of the provisions of this deed.
- (b) No reduction of the accrued Benefit of a Member can be made without the written consent of the particular Member.
- (c) No amendment may be made under clause 52.1(a) which would cause the trusts contained in this deed to fail by reason of the application of the rule against perpetuities.
- (d) No amendment may be made under clause 52.1(a) that would allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee unless the governing rules provide and will continue to provide after the amendment that the Fund has as its sole or primary purpose, the provision of old age pensions.

#### **52.2 Notification of Members of Amendment**

As soon as practicable after this deed has been amended under clause 52.1, the Trustee must give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlements of the Member.

# Part 13 - Termination of Trust

---

## 51 Termination

### 51.1 Events of termination

The trusts declared under this deed will cease and terminate and the Fund must be wound up in accordance with this Part 13 on the occurrence of any of the following events:

- (a) if there are no Members in the Fund and the Trustee resolves to terminate the Fund;
- (b) all Members agree to terminate the Fund;
- (c) the Trustee decides that it is not reasonable to continue to operate the Fund; or
- (d) the Fund is required to be terminated to comply with the Superannuation Law.

### 51.2 Notice to Members

On the trusts ceasing and terminating due to an event set out in clause 51.1, the Trustee must give written notice to each Employer and to each the Member, if any, that the Fund will be wound up on the Closing Date, which will be a date no later than any date on which the Fund is required to be wound up under clause 51.1(d).

### 51.3 No further Contributions

As from the Closing Date:

- (a) no Employer or Member may make any further Contributions, other than arrears of Contributions due to the Closing Date; and
- (b) arrears of Contributions, if any, must be called in immediately.

### 51.4 Order of payment of Benefits

On the trusts ceasing and terminating due to an event set out in clause 51.1, subject to clause 51.8, the Trustee must make provision out of the Fund, after meeting expenses and liabilities, as is necessary to provide for the payment of the following Benefits in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained his or her Normal Retirement Date equal to his Member's Accumulation Account;
- (c) payment to each Member who is still in the employment of the Employer and has not attained his or her Normal Retirement Date equal to his or her Benefit had he or she resigned immediately prior to the Closing Date; and
- (d) payment to each Member who is still in the employment of the Employer of such amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 51.4(b) and 51.4(c) as can be paid without being regarded as excessive amounts under the Superannuation Law.

## Part 12 - Family Law

---

### 46 Information to Members and Non Member Spouses

If a Member's Benefit or Benefit Entitlement becomes subject to a Payment Split, the Trustee must provide the Member and the Non Member Spouse with all notices and information, and in such form as required under the Superannuation Law.

---

### 47 Trustee may create new interest for Non Member Spouse

- (a) The Trustee may admit a Non Member Spouse in respect of a Payment Split as a Member:
  - (i) if the Non Member Spouse provides a written request as required by the Superannuation Law to the Trustee in a form approved by the Trustee; or
  - (ii) on its own initiative in the circumstances permitted by the Superannuation Law.
- (b) If the Trustee admits a Non Member Spouse as a Member under this clause 47, the Trustee must reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

---

### 48 Non Member Spouse may request transfer of interest

If the Non Member Spouse in respect of a Payment Split is not admitted as a Member under clause 47, the Trustee must:

- (a) either:
  - (i) transfer or roll over the entitlement of the Non Member Spouse to an Approved Benefit Arrangement; or
  - (ii) pay the entitlement of the Non Member Spouse to the Non Member Spouse if permitted or required to do so by the Superannuation Law; and
- (b) reduce the Member's Benefit Entitlement in respect of the Payment Split by the amount required by the Superannuation Law and otherwise as determined by the Trustee in accordance with the Superannuation Law.

---

### 49 Family Law fees

- (a) In addition to its other powers under this deed, the Trustee may charge reasonable fees in respect of any action taken by the Trustee which is permitted or required by Family Law and for which the Trustee is entitled to charge fees.
- (b) The Trustee is entitled to recoup those fees in accordance with the Superannuation Law from:
  - (i) a Member's Benefit Entitlement; or
  - (ii) the entitlements of the Non Member Spouse.

- (iii) contains a declaration signed and dated by the two witnesses stating that the Binding Death Benefit Nomination was signed by the Member in their presence.
- (b) A Member may nominate in a Binding Death Benefit Nomination :
  - (i) the person or persons to whom their Benefit must be paid so long as that person or each of those persons are a Legal Personal Representative or Dependant of the Member;
  - (ii) the proportions in which the Benefit will be paid to that person or each of those persons; and
  - (iii) the manner in which those benefits must be paid to the person or each of those persons.
- (c) A Binding Death Benefit Nomination may be confirmed, amended or revoked at any time by the Member and will otherwise be effective until revoked.
- (d) A Binding Death Benefit Nomination may be revoked by making a later valid Binding Death Benefit Nomination or by otherwise revoking it by notice in writing given to the Trustee.

---

## **44 Payment of death benefits**

### **44.1 Application**

This clause 44 applies to a Member's Benefit that is payable under clause 36(a) on or following the death of a Member.

### **44.2 Payment if Non Binding Death Benefit Nomination**

Subject to clause 44.3 and the Superannuation Law, on or following the death of a Member, if that Member had made one or more Non Binding Death Benefit Nomination, any Benefit payable in respect of that Member may be paid or applied in accordance with clause 44.6 to:

- (a) one or more of the Nominated Beneficiaries (if any) designated in the most recent Non Binding Death Benefit Nomination made by that Member;
- (b) other Dependants of that Member and in such proportions as the Trustee, in its absolute discretion, determines; or
- (c) one or more of the Legal Personal Representatives of that Member.

### **44.3 Payment if Binding Death Benefit Nomination**

Subject to clause 44.7, if a Member made a valid Binding Death Benefit Nomination, any Benefit payable on or following the death of the Member must be paid by the Trustee in accordance with that Binding Death Benefit Nomination.

### **44.4 Payment if Binding Death Benefit Nomination is invalid or ineffective**

If a Member had made a Binding Death Benefit Nomination that is invalid or ineffective at the date of death, the Binding Death Benefit Nomination will be treated as a Non Binding Death Benefit Nomination.

- (b) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
- (c) the amount of any costs of all proceedings, civil or criminal, incurred by an Employer in attempting to recover any amount owing by the Member to the Employer or in respect of his or her proven fraud, dishonesty, misconduct or negligence,

provided that this clause 39 must not be relied on to reduce the Member's Benefit below the amount required in accordance with the Superannuation Law to be vested in the Member.

### **39.2 Evidence of amounts owed to Employer**

Subject to the Superannuation Law, a written statement signed by an Employer and given to the Trustee that:

- (a) specifies the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of the relevant Member; and
- (b) requests that the Member's Benefit is reduced by that amount,

will be sufficient authority to the Trustee to reduce the extent of the Member's Benefit by the specified amount.

### **39.3 Payment of amounts to Employer**

On receipt of a written statement under clause 39.2, the Trustee is entitled to pay to the relevant Employer all amounts actually owing or incurred as specified in the relevant statement and is entitled to retain any amount contingently owing pending the occurrence or non occurrence of the contingency.

---

## **40 Statement of Unclaimed Benefits**

The Trustee must give to the Statutory Authority a statement of Unclaimed Benefits and must pay any Unclaimed Benefits to the Statutory Authority at the time and in the manner as is required by the Superannuation Law.

---

## **41 Limitation on payment**

Despite any other provision in this deed, the Trustee must not pay any Benefits to Members, Dependants or Beneficiaries if any such payment would cause the Fund to breach the Superannuation Law.

---

## **42 Forfeited Benefits**

### **42.1 Forfeiture**

Benefits payable out of the Fund must, subject to the Superannuation Law, be forfeited if:

- (a) without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge all or any part of those Benefits; or
- (b) required under the Bankruptcy Act.

---

## **32 Preservation**

The Trustee must Preserve amounts of Contributions in respect of Members or Beneficiaries on the terms and conditions that are required by the Superannuation Law.

---

## **33 Payment of Unrestricted Non Preserved Amount**

Despite any other provisions in this deed which may be construed to the contrary and subject to the Superannuation Law:

- (a) a Member may elect at any time to withdraw the whole or any part of the Unrestricted Non Preserved Amount of that Member by giving notice to the Trustee in the form and manner that the Trustee may determine from time to time; and
- (b) the minimum Unrestricted Non Preserved Amount which may be withdrawn by a Member under clause 33(a) will be determined by the Trustee and notified to Members of the Fund.

---

## **34 Payment of additional Benefits**

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay, in addition to amounts otherwise payable under this deed, any part of the Fluctuation Account, which the Trustee considers equitable, to the Member's Accumulation Account for purposes of payment of a Benefit.

---

## **35 Retention of Benefit in Fund**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may, in its absolute discretion, retain all or any part of any Benefit payable under this Part 11 in the Fund until the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary or until they are required to be paid under the Superannuation Law or this deed.

---

## **36 Compulsory payment of Benefits**

The Trustee must pay a Member's Benefits as soon as practicable after:

- (a) the Member dies; or
- (b) payment of the Benefit is required in accordance with the provisions of this Deed or the Superannuation Law.

---

## **37 Voluntary payment of Benefits**

Subject to the Superannuation Law, a Member may elect to receive a Benefit on or after the occurrence of any of the following events:

- (a) if the Member Retires from Gainful Employment;
- (b) if the Member suffers Permanent Incapacity;
- (c) if the Member suffers Temporary Incapacity;

- (a) pay all or any of the Benefit of that Member in the Fund to any Approved Benefit Arrangement or back into the Fund in a manner permitted by the Superannuation Law;
- (b) roll over an amount which is the subject of an application by a Member under clause 29.6 that has been accepted by the Trustee to the trustee of an Approved Benefit Arrangement; or
- (c) retain or apply all or any of the Benefit of that Member within the Fund in a manner permitted by the Superannuation Law,

pay, apply or retain the Benefit in accordance with that election or application.

### **30.5 Trustee to protect Preservation on roll over**

Where a Member or former Member has a Preserved Payment Benefit in the Fund which forms part of the amount transferred or rolled over to an Approved Benefit Arrangement, the Trustee must ensure that the governing rules of the Approved Benefit Arrangement provide for the amount of the Preserved Payment Benefit to be preserved and vested in accordance with the Superannuation Law.



- (ii) if the amount of any Benefits that the application relates to exceeds the Maximum Splittable Amount; or
- (iii) subject to clause 29.6(d), if the Spouse of the Applicant is aged:
  - (A) 65 years or more; or
  - (B) between the relevant Preservation Age and 65 years and satisfies item 101 in schedule 1 of the SIS Regulations.
- (d) Despite clause 29.6(c)(iii), an application is not invalid under that clause if the application includes a statement by the Applicant's Spouse that the Spouse is aged:
  - (i) between the relevant Preservation Age and 65 years, and does not satisfy item 101 in schedule 1 of the SIS Regulations; or
  - (ii) less than the relevant Preservation Age.
- (e) The Applicant must specify, in the application, the amount from his or her:
  - (i) Taxed Splittable Contributions;
  - (ii) Untaxed Splittable Contributions; or
  - (iii) both,

that the Applicant seeks to split for the benefit of his or her Spouse.
- (f) The Trustee may at its discretion accept an application made under clause 29.6(a) if:
  - (i) the application complies with clauses 29.6(a) to 29.6(e); and
  - (ii) the Trustee has no reason to believe that the statement referred to in clause 29.6(d) is untrue; and
  - (iii) the amount that the application relates to does not exceed the Maximum Splittable Amount for the relevant Financial Year.
- (g) Where the Trustee accepts an application under this clause 29.6, the Trustee must as soon as practicable, and in any case within 90 days after receiving the application, roll over or transfer to an Approved Benefit Arrangement or Allot the amount of the Splittable Contribution that is the subject of the application for the benefit of the Applicant's Spouse.
- (h) Before the Trustee Allots any amount under clause 29.6(g) for the benefit of the Spouse:
  - (i) the Trustee must ensure that the requirements of clause 9.2 are satisfied where the Fund is a Self Managed Superannuation Fund; and
  - (ii) either, the Spouse must:
    - (A) be a Member; or
    - (B) apply to become and be accepted as a Member.
- (i) Subject to the Superannuation Law, if an Applicant requests a split of:
  - (i) his or her Untaxed Splittable Contributions, the Trustee can only give effect to the application where the amount specified in the application is less than or equal to the Non Concessional Contributions that would form part of any

## Part 10 - Contributions to the Fund

---

### **28 Contributions to the Fund**

#### **28.1 Eligibility to make Contributions**

Subject to the consent of the Trustee and the provisions of clause 29, Contributions to the Fund may be made by a Member, an Employer or any other Permitted Entity.

#### **28.2 Amount of Contributions**

Subject to the provisions of clause 29 and the Superannuation Law, the Trustee may receive amounts by way of Contributions that are:

- (a) determined from time to time by each contributor; or
- (b) deemed to be made by Superannuation Law.

#### **28.3 Superannuation Guarantee legislation**

Where the Trustee accepts Contributions in accordance with the Guarantee Act, the Trustee must provide all certificates, reports and other information that the Guarantee Act requires to be provided.

---

### **29 General provisions concerning Contributions**

#### **29.1 Form of Contribution**

A Contribution made under this Part 10 may be made either in cash or by transfer of an asset or assets provided that the assets transferred are authorised investments and are transferred on the terms and conditions provided under the Superannuation Law and the acquisition of the assets is not prohibited by the Superannuation Law.

#### **29.2 Obligations to contribute**

- (a) Subject to the requirements of the Superannuation Law and in the absence of any agreement to the contrary, no Member, Employer or Permitted Entity is under any obligation to make a Contribution to the Fund in respect of any Fund Year.
- (b) Subject to the Superannuation Law, a Member may remain a Member of the Fund even if no Contributions are made in respect of that Member for any Fund Year.

#### **29.3 Limitation on commencing Contributions**

The Trustee must refuse to accept Contributions to the Fund by or in respect of a Member if the Fund is not authorised by the Superannuation Law to accept Contributions made on that Member's behalf.

#### **29.4 Limit on Contributions**

The Trustee must refuse to accept any Contributions or Shortfall Component if:

## **25.8 Refusal to be medically examined**

If any Member or person who has applied to become a Member refuses or omits to:

- (a) take any step reasonably required under clause 25.7;
- (b) do anything which would or might prejudice the relevant Policy or Annuity; or
- (c) do anything which would or might result in some or all of the relevant Policy money not becoming payable,

the Trustee may adjust the Benefit to be provided by the Fund for and in respect of that Member or person as the Trustee considers appropriate.

---

## **26 Membership notification requirements**

### **26.1 Product Disclosure Statements**

The Trustee must give to all new Members a Disclosure Document containing information and details relating to the Fund that are required by the Superannuation Law.

### **26.2 Disclosure and reporting requirements**

The Trustee must provide annually to Members, former Members and Beneficiaries, all information in writing and copies of accounts, records and documents of the Fund that are required by the Superannuation Law.

### **26.3 Former Member notices**

- (a) The Trustee must give to former Members or their Legal Personal Representatives a written statement containing all information and details relating to the Benefits of the former Members that the Superannuation Law requires to be provided.
- (b) No Member or Dependent of a Member is entitled to obtain information or details on the operation of the Fund or on any matter which may relate to the conduct of the Fund which, in the opinion of the Trustee, would be inappropriate to disclose other than as provided for in this clause 26.

### **26.4 Inspection of deed and other Documents**

- (a) A copy of this deed or any other documents required by the Superannuation Law to be made available for inspection must be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary.
- (b) Unless otherwise required by the Superannuation Law, it is sufficient for this clause 26.4 to make a copy of this deed or other documents available to the Member or Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when that office or business is open.

### **26.5 Meetings and Members**

The Trustee must notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held in accordance with the provisions of the Superannuation Law and for the purposes of this deed are to be called and conducted.

## Part 8 - General matters

---

### **23 Policies of insurance**

#### **23.1 Member Policies**

The Trustee may, in its absolute discretion, effect 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 and partly in another.

#### **23.2 Member may request a specific Policy**

Where a Member requests in writing the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect that Policy, except if it is of the opinion that the Policy is not in the best interests of the Member or the Dependants of the Member and provided that the Member has not in writing withdrawn, cancelled or altered the Member's original request.

#### **23.3 Trustee to effect Policy if required**

If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of a Member, the Trustee must effect the Policy except if the Member has requested the Trustee in writing not to effect that Policy.

#### **23.4 Premiums**

Any premiums for a Policy effected may, if the Trustee considers it appropriate, be debited to an Insured Member's Accumulation Account.

#### **23.5 Limitation on liability of Trustee**

Where a Trustee is not required to exercise the power to effect a Policy or Policies, the Trustee is not responsible or liable to a Member, a Member's Legal Personal Representative or Dependant if the Trustee determines not to exercise the power to effect that Policy or those Policies.

---

### **24 Payment of Tax and Levies**

#### **24.1 Deduction of Tax on Benefit**

The Trustee must deduct from any Benefit payable to any Member or Beneficiary under this deed any Tax required to be deducted from it.

#### **24.2 Tax on Contributions and Shortfall Components**

The Trustee or any other appropriate organisation (with the agreement of the Trustee) may deduct any Tax 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.

# Part 7 - Record Keeping

---

## 22 Records, Reports and Audit

### 22.1 Trustee obligations

The Trustee must:

- (a) keep accounts and issue receipts in respect of all money and any other assets received into and disbursed from the Fund and of all dealings in connection with that money or assets;
- (b) collect and promptly pay all money due to or received on behalf of the Fund to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution or into a trust account of a solicitor, accountant, investment manager or administration manager;
- (c) pay all premiums to Insurers that are required to maintain any Policies or Annuities;
- (d) keep and retain in safe custody all records, books, accounts, minutes, reports and other documentation for the period that the Superannuation Law requires;
- (e) prepare and lodge all documents that the Superannuation Law requires to be lodged;
- (f) ensure the Fund is audited at the end of each Fund Year or at such other time as is required by the Superannuation Law and ensure that the Auditor provides all certificates that are required by the Statutory Authority in accordance with the Superannuation Law;
- (g) once in each Fund Year, report on the affairs of the Fund to the Member in any form that the Superannuation Law requires;
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are kept for the purposes of inspection in accordance with the Superannuation Law; and
- (i) record against a Member's Benefit or Benefit Entitlement, a Payment Flag that has been validly served on the Trustee in accordance with the Superannuation Law until the time when it is validly lifted.

### 22.2 Provision of information

The Trustee must provide any information or documentation required by the Superannuation Law to:

- (a) Employers;
- (b) the Statutory Authority;
- (c) the Actuary;
- (d) the Auditor;
- (e) Members; and

- (c) any Tax or Levy not attributed to a Member Account; and
- (d) the cost of any Policy not credited to a Member Account.

#### **17.4 Trustee to determine Earnings and Fund Earning Rate**

At the end of each Fund Year or at any other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee must determine:

- (a) the Earnings of the Fund in respect of the period since the previous determination; and
- (b) the Fund Earning Rate.

#### **17.5 Distribution of Earnings**

Subject to clauses 18 and 20 and the Superannuation Law, the Fund Earning Rate determined under clause 17.4 must be used to determine, at the Trustee's discretion, the proportion of the Earnings to be credited or debited from the Income Account to other Accounts, including Member Accounts, Pension Accounts or Reserve Accounts.

#### **17.6 Trustee to notify Members**

The Trustee must notify the Members of the basis of the calculation of the Fund Earning Rate when required to do so by the Statutory Authority or the Superannuation Law.

---

### **18 Fluctuation Account**

#### **18.1 Establishment**

The Trustee may establish a Fluctuation Account.

#### **18.2 Transfers to Fluctuation Account**

The Trustee must transfer any amount remaining in the Income Account after distribution of Earnings under clause 17.5 to the credit of the Fluctuation Account.

#### **18.3 Separation of Account moneys**

Amounts credited to the Fluctuation Account do not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account must be credited to the Fluctuation Account.

#### **18.4 Use of Fluctuation Account**

Subject to the Superannuation Law, the Fluctuation Account may be used:

- (a) as part of a reserving strategy to stabilise investment earnings;
- (b) to supplement the Fund Earning Rate;
- (c) to pay any Tax; and
- (d) to provide for any contingencies the Trustee decides to provide for.

## Part 6 - Accounts of the Fund

---

### **14 Trustee to open Accounts**

The Trustee has the power to open and operate the Accounts.

---

### **15 Accumulation Account**

#### **15.1 Establishment**

The Trustee must establish an Accumulation Account in respect of each Member or Beneficiary.

#### **15.2 Amounts to be credited**

The Trustee must credit all amounts that are required by this deed and the Superannuation Law to be credited to the Accumulation Account, including:

- (a) Contributions;
- (b) the portion of the Earnings (if positive) that the Trustee determines in accordance with clause 17.4;
- (c) amounts received by transfer from Approved Benefit Arrangements;
- (d) proceeds of any Policy or Annuity attributable to the Member;
- (e) any Financial Assistance received by the Fund that is attributable to the Member;
- (f) any amounts transferred or Allotted from other Accounts;
- (g) any Levy or Shortfall Component paid in respect of the Member; and
- (h) any other amounts as the Trustee determines and that are permitted by the Superannuation Law.

#### **15.3 Amounts to be debited**

The Trustee must debit all amounts that are required by this deed and the Superannuation Law to be debited to the Accumulation Account, including:

- (a) Benefits paid to Members or Beneficiaries;
- (b) the portion of the Earnings (if negative) that the Trustee determines in accordance with clause 17.4;
- (c) amounts transferred to Approved Benefit Arrangements;
- (d) any Tax calculated in accordance with clause 24 attributable to the Member for whom the Accounts or Account has been established;
- (e) any amounts transferred or Allotted to other Accounts;
- (f) any costs or expenses attributable to the Member including the cost of any Policies effected by the Trustee in respect of the Member; and

- (r) to provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (s) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity will be in the name of the Trustee or, if the Trustee determines, in the name of the Member or former Member;
- (t) 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;
- (u) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
- (v) to accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component in accordance with the Superannuation Law;
- (w) to borrow from any person, company, trust, government or institution on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law;
- (x) to give a charge over, or in relation to, an asset of the Fund on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law; and
- (y) to draw down any bill of exchange, promissory note or other negotiable instrument on terms satisfactory to the Trustee and to the extent that it is not limited by or contrary to the Superannuation Law.

## **12.2 Discretion of Trustee**

Subject to any exceptions in the Superannuation Law and despite any other provision in this deed, no discretion under the rules of this Fund can be exercised by a person other than the Trustee, unless the Fund is a Self Managed Superannuation Fund.

## **12.3 Power of delegation**

The Trustee may delegate to any person, or where there is more than one Trustee, to any one or more of the Trustees, any of the powers, duties and discretions conferred on the Trustee under this deed on such terms and conditions as the Trustee determines and the Trustee may vary, limit or revoke any such delegation provided that any such delegation must only be undertaken in accordance with the Superannuation Law.

---

# **13 Liability and indemnification of Trustee**

## **13.1 Liability**

The Trustee (and when the Trustee is a Constitutional Corporation, its Directors or officers) is not liable for:

- (a) any act, omission or mistake in connection with the exercise of its powers, duties or discretions vested by this deed or with the proper performance of its duties under this deed;



- (i) in the acquisition by any means of land or interest in land of any tenure, improved or unimproved and wherever situated;
- (j) on loan to any person or deposit with any person, wherever situated, with or without security and for any period whatsoever;
- (k) on deposit with any Authorised Deposit Taking Institution for any period;
- (l) in erection of buildings or structures or the making of improvements on land with any tenure, whether improved or unimproved and wherever situated;
- (m) on any Policy or Annuity with an Insurer and any choses in action, interest for life or any lesser term or any reversion or otherwise arising and whether as original Policy holder or by assignment; and
- (n) in any other investments which the Trustee considers appropriate and which satisfy the Superannuation Law.

### **11.3 Power to hold investment in different names**

Any investment may be held in the names that the Trustee determines from time to time including the name of a nominee (whether individual or corporation).

### **11.4 Disclosure of Trustee's interest in investment**

The Trustee and any Director must disclose details of any interest in any investment in the manner prescribed by the Corporations Act and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

### **11.5 Specific investments**

Subject to clauses 11.1 and 11.2, the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee determines in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund or in respect of different classes for certain Members or Beneficiaries.

---

## **12 Trustee powers generally**

### **12.1 General powers**

Subject always to the Superannuation Law and without prejudice to the powers vested in the Trustee by this deed or otherwise, the Trustee has the following powers that may be exercised or not in the Trustee's absolute discretion:

- (a) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund;
- (b) to commence, carry on and defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, remission, breach of duty or breach of the terms of this deed;
- (c) to carry on a business;

## Part 4 - Other persons in Fund

---

### **10 Appointment and removal of other persons**

#### **10.1 Appointment**

Subject to the Superannuation Law and the law generally, the Trustee may appoint in writing one or more persons, as appropriate, as:

- (a) Investment Manager, who has powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
- (b) Actuary, who must be a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (c) Administrator, who has power to carry out some or all of the administration of the Fund;
- (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
- (e) Custodian, who has powers, discretions and authorities relating to holding the legal title and the custody of title, deeds and any documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund provided that person is not prohibited from acting under the Superannuation Law; and
- (f) any other consultants, officers or attorneys as may be desirable for the proper management and administration of the Fund.

#### **10.2 Removal**

The Trustee may remove from office any person or company appointed to any position under this clause 10 and must remove such person or company when so required by the Superannuation Law.

- (i) a Constitutional Corporation where each Member is a Director of the Constitutional Corporation and each Director is a Member; or
  - (ii) Individual Trustees where each Member is an Individual Trustee and each Individual Trustee is a Member of the Fund.
- (d) The requirements in clauses 9.2(b) and 9.2(c) are subject to any alternative tests or exceptions to the general rules outlined in those clauses contained in section 17A(3) of the SIS Act, or any other Superannuation Law.
- (e) For the purposes of clause 9.2(c), no Member of the Fund may be employed by another Member of the Fund unless permitted by the Superannuation Law.
- (f) If the Fund has fewer than five Members and is not a Self Managed Superannuation Fund, the Trustee must be an Approved Trustee or a RSE Licensee that is a Constitutional Corporation.

### 9.3 Appointment of Trustee

- (a) Subject to the Superannuation Law, a majority of Members may, by deed or other written instrument, appoint a person or persons to act as Trustee provided that the person or persons have given their written consent to the appointment and give any other consents or declarations required by the Superannuation Law.
- (b) The Legal Personal Representative of:
- (i) a deceased Member;
  - (ii) a Member who has lost legal capacity; or
  - (iii) a Member who has appointed that Legal Personal Representative as their attorney under an enduring power of attorney,
- may exercise the particular Member's decision making power to appoint a Trustee on behalf of the Member.
- (c) Where a Member is under the age of 18 years, a parent or guardian of the particular Member is permitted to exercise that Member's power to appoint a Trustee.
- (d) Where the Fund has no remaining Members and where there is no other person who has the power to appoint a Trustee under this clause 9.3 on behalf of the last person ceasing to be a Member, the Legal Personal Representative of the last Member to have a Legal Personal Representative has the power to appoint a Trustee.

### 9.4 Ceasing to act as Trustee

A Trustee must immediately cease to act as Trustee of the Fund:

- (a) if, being an individual, he or she dies or otherwise loses his or her legal capacity;
- (b) if, being a Constitutional Corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;
- (c) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;

## Part 2 - The Fund

---

### **7 Structure of the Fund**

#### **7.1 Fund vested in Trustee**

The Fund is at all times to be vested in the Trustee and must be managed by the Trustee on the terms and conditions contained in this deed and subject to the trusts, powers, authorities and discretions contained in this deed.

#### **7.2 Class of Members**

The Trustee has the power to create any additional class or classes of Membership with those rights, entitlements, conditions of eligibility and Benefits as the Trustee thinks appropriate.

#### **7.3 Composition of the Fund**

The gross assets of the Fund consist of all cash, investments and other property for the time being held and received by or on account of the Trustee on the trusts of this deed.

- (f) a reference to a statute, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (g) a party includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (h) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a firm and a trust;
- (i) if any dispute arises as to the interpretation of any of the provisions of this deed or as to the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in the deed) the decision of the Trustee is final and binding;
- (j) all monetary amounts are in Australian dollars, unless otherwise stated, and a reference to payment means payment in Australian dollars; and
- (k) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day.

### **3.2 Severability**

If any provision of this deed is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this deed without affecting the validity or enforceability of the remaining provisions of this deed.

### **3.3 Fund subject to Superannuation Law at all times**

- (a) The provisions contained in this deed are at all times subject to the Superannuation Law and are deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Tax treatment or to satisfy any other requirements of the Statutory Authority.
- (b) In the event that there is an inconsistency between the deed and the Superannuation Law, the Superannuation Law prevails to the extent of the inconsistency.

---

## **4 Other provisions to note**

### **4.1 Exercise of powers and rights**

All powers, rights, decisions, discretions, appointments or other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this deed, may be fully and effectively exercised, made, done or performed by or on behalf of a Trustee:

- (a) where the Trustee is a Constitutional Corporation, by resolution of the Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if allowed by the Superannuation Law, by a majority of persons holding the office of Trustee,

**RSE Licensee** has the same meaning given to that term in the SIS Act.

**Self Managed Superannuation Fund** means a superannuation fund which satisfies the requirements of a self managed superannuation fund set out in the Superannuation Law.

**Severe Financial Hardship** has the same meaning given to that term in the Superannuation Law.

**Shortfall Component** has the same meaning given to that term in the Guarantee Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994 (Cth).

**Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Spouse** has the same meaning given to that term in the SIS Act.

**Statutory Authority** means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body or person that has responsibility for the administration of superannuation.

**Superannuation Law** means any requirement under the SIS Act, the SIS Regulations, the *Occupational Superannuation Standards Act 1987* (Cth), the *Occupational Superannuation Standards Regulations 1987* (Cth), the *Family Law Act 1975* (Cth), the Corporations Act, the Corporations Regulations, the Taxation Act, the *Financial Sector (Collection of Data) Act 2001* (Cth), the *Financial Institutions Supervisory Levies Collection Act 1998* (Cth), the Superannuation (Unclaimed Money and Lost Members) Act, and any other present or future legislation which the Trustee must comply with in order for the Fund:

- (a) to qualify for concessional Tax treatment as a Complying Superannuation Fund; or
- (b) to meet any other requirement of the Statutory Authority,

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

**Superannuation Lump Sum** has the same meaning as in the Taxation Act.

**Superannuation (Unclaimed Money and Lost Members) Act** means the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth)

**Taxation Act** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax (Transitional Provisions) Act 1997* (Cth) and any regulations issued under those Acts.

**Tax** includes income tax, pay roll tax, land tax, stamp duty and any other taxes, duties or surcharges paid or payable by the Trustee on behalf of the Fund or a Member or, where applicable, by any Member, former Member, Dependant or Beneficiary.

**Taxed Splittable Contribution** has the same meaning given to that term in the SIS Regulations.

**Temporarily Totally Disabled** means disablement as a result of illness (whether physical or mental), accident or injury which commences at or prior to a Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier) and which causes the Member to be continuously absent from the Member's business, trade, profession,

**Interdependency Relationship** has the same meaning given to that term in Superannuation Law.

**Investment Manager** means a person appointed as an Investment Manager of the Fund in accordance with clause 10.1(a).

**Legal Personal Representative** has the same meaning given to that term in the SIS Act.

**Levy** includes a levy payable by the Fund in accordance with the *Superannuation Supervisory Levy Act 1991* (Cth), the *Superannuation (Fund Assistance Levy) Act 1993* (Cth) and any other legislation or regulations which impose a levy or levies on the Fund.

**Maximum Splittable Amount** has the same meaning given to that term in the SIS Regulations.

**Member** means a person who has been admitted as a member of the Fund under clause 25.

**Member Account** means a Member's Accumulation Account or Pension Account as the case may be.

**Membership** means a Member's or Beneficiary's membership of the Fund.

**Nominated Beneficiary** means one or more Dependants or Legal Personal Representatives of a Member nominated by the Member as a nominated Beneficiary.

**Non Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is not binding on the Trustee.

**Non Concessional Contribution** has the same meaning given to that term in the Taxation Act.

**Non Member Spouse** in relation to a Member has the same meaning given to that term in the Superannuation Law. A person ceases to be a Non Member Spouse when:

- (a) the entitlement of the Non Member Spouse in respect of a Payment Split is paid to the Non Member Spouse or transferred or rolled over in accordance with the Superannuation Law; or
- (b) he or she becomes a Member.

**Normal Retirement Age** means the age of 65 years or any other age being not less than 55 years as is acceptable to or required by the Superannuation Law and as the Trustee determines.

**Part Time Gainful Employment** means, in relation to a Member, a Member who is in Gainful Employment on a part time basis within the meaning of the Superannuation Law.

**Payment Flag** has the same meaning given to that term in the Superannuation Law.

**Payment Split** has the same meaning given to that term in the Superannuation Law.

**Pension** means a Benefit payable by instalments that satisfies the meaning of Pension in regulation 1.06 of the SIS Regulations or any other provision of the Superannuation Law.

**Pensioner** means a member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and includes a Reversionary Beneficiary in receipt of a Pension.

**Benefit Entitlement** means any amount held in the Fund which may become payable to a Beneficiary but to which the person has not become absolutely and indefeasibly entitled and includes a contingent right to payment of an amount.

**Binding Death Benefit Nomination** means a nomination made by a Member in relation to the payment or application of a death benefit that is binding on the Trustee.

**Child** has the same meaning given to that term in the SIS Act.

**Closing Date** means the date determined in accordance with this deed on which the Fund will be wound up.

**Compassionate Ground** has the same meaning given to that term in the Superannuation Law.

**Complying Superannuation Fund** in relation to a year of income means a fund which is a complying superannuation fund in accordance with the Superannuation Law.

**Constitutional Corporation** has the same meaning given to that term in the Superannuation Law.

**Contributions** means payments to the Fund by Members, Employers and other Permitted Entities in accordance with the provisions of this deed prior to the deduction of any Tax payable in respect of those Contributions.

**Contributions Cap** means a Member's concessional contributions cap, Non Concessional Contributions cap or CGT cap (as the case requires) as defined in the Taxation Act.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Custodian** means the person appointed as custodian of the assets of the Fund under clause 10.1(e).

**Date of Establishment** means the date of commencement of the Fund as set out in schedule 1.

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

- (a) the Spouse of the Member or former Member or the widow or widower of a deceased Member;
- (b) any Child of a Member or former Member;
- (c) any person with whom the Member is in an Interdependency Relationship; or
- (d) any other person who, in the opinion of the Trustee, was financially dependant on the Member at the relevant time.

**Directors** means, where the Trustee is a Constitutional Corporation, the directors or board of management for the time being of the Trustee as applicable.

**Disclosure Document** means any document required to be given under the Corporations Act to a person applying to be a Member.

**Earnings** means all net income and net capital gains derived from the assets of the Fund whether realised or unrealised after deducting any capital losses and such allowances for expenses and Tax as the Trustee considers appropriate.



# Part 1 - How to read this deed

---

## 1 Overview of deed

This deed explains the way the Fund will operate and also sets out the roles and the responsibilities of each of the Trustees as well as the obligations of any person, company or entity associated with or having some responsibility under this deed.

The deed comprises fourteen parts. Each part deals with a specific aspect of the Fund. These parts are described as follows:

Part number	Description
Part 1	How to read this deed
Part 2	The Fund
Part 3	Trustees
Part 4	Other persons in the Fund
Part 5	Powers of Trustees
Part 6	Accounts of the Fund
Part 7	Record keeping
Part 8	General matters
Part 9	Membership of the Fund
Part 10	Contributions to the Fund
Part 11	Benefits
Part 12	Family Law
Part 13	Termination of Trust
Part 14	Amendment

---

## 2 Definitions

In this deed:

**Account** means any one of the following (as the case requires):

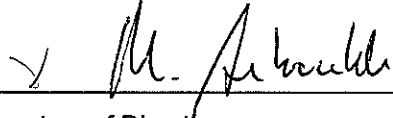
- (a) Accumulation Account;
- (b) Equalisation Account;
- (c) Forfeiture Account;
- (d) Income Account;

<b>29</b>	<b>General provisions concerning Contributions</b>	<b>36</b>
29.1	Form of Contribution	36
29.2	Obligations to contribute	36
29.3	Limitation on commencing Contributions	36
29.4	Limit on Contributions	36
29.5	Ineligible Contributions	37
29.6	Contributions Splitting	37
<b>30</b>	<b>Transfers from and to Approved Benefit Arrangements</b>	<b>39</b>
30.1	Transfers from Approved Benefit Arrangements	39
30.2	Payment of Benefits deferred	39
30.3	Transfers to Approved Benefit Arrangements	39
30.4	Roll overs	39
30.5	Trustee to protect Preservation on roll over	40
<b>Part 11 - Benefits</b>		<b>41</b>
<b>31</b>	<b>Types of Benefits</b>	<b>41</b>
31.1	Benefit Entitlement	41
31.2	Election	41
31.3	Benefit Entitlement - with cashing restrictions	41
31.4	Transfer of Policy as Benefit	41
31.5	Transfer of assets as Benefit	41
<b>32</b>	<b>Preservation</b>	<b>42</b>
<b>33</b>	<b>Payment of Unrestricted Non Preserved Amount</b>	<b>42</b>
<b>34</b>	<b>Payment of additional Benefits</b>	<b>42</b>
<b>35</b>	<b>Retention of Benefit in Fund</b>	<b>42</b>
<b>36</b>	<b>Compulsory payment of Benefits</b>	<b>42</b>
<b>37</b>	<b>Voluntary payment of Benefits</b>	<b>42</b>
<b>38</b>	<b>Pension Benefit</b>	<b>43</b>
<b>39</b>	<b>Reduction of Member's Benefit</b>	<b>43</b>
39.1	Reduction in Member's Benefit by amounts owed to Employer	43
39.2	Evidence of amounts owed to Employer	44
39.3	Payment of amounts to Employer	44
<b>40</b>	<b>Statement of Unclaimed Benefits</b>	<b>44</b>
<b>41</b>	<b>Limitation on payment</b>	<b>44</b>
<b>42</b>	<b>Forfeited Benefits</b>	<b>44</b>
42.1	Forfeiture	44
42.2	Application of forfeited money	45
42.3	Forfeiture Account	45
42.4	Treatment of money in Forfeiture Account	45
42.5	Unclaimed Benefits Account	45
<b>43</b>	<b>Death Benefit Nominations</b>	<b>45</b>
43.1	Non Binding Death Benefit Nomination	45
43.2	Binding Death Benefit Nomination	45

10.1	Appointment	20
10.2	Removal	20
<b>Part 5 - Powers of Trustees</b>		<b>21</b>
<b>11</b>	<b>Investment powers of Trustees</b>	<b>21</b>
11.1	Investment strategy	21
11.2	Power of investment	21
11.3	Power to hold investment in different names	22
11.4	Disclosure of Trustee's interest in investment	22
11.5	Specific investments	22
<b>12</b>	<b>Trustee powers generally</b>	<b>22</b>
12.1	General powers	22
12.2	Discretion of Trustee	24
12.3	Power of delegation	24
<b>13</b>	<b>Liability and indemnification of Trustee</b>	<b>24</b>
13.1	Liability	24
13.2	Indemnity	25
13.3	Limitation of clause	25
<b>Part 6 - Accounts of the Fund</b>		<b>26</b>
<b>14</b>	<b>Trustee to open Accounts</b>	<b>26</b>
<b>15</b>	<b>Accumulation Account</b>	<b>26</b>
15.1	Establishment	26
15.2	Amounts to be credited	26
15.3	Amounts to be debited	26
<b>16</b>	<b>Pension Account</b>	<b>27</b>
16.1	Establishment	27
16.2	Amounts to be transferred	27
16.3	Amounts to be credited	27
16.4	Amounts to be debited	27
<b>17</b>	<b>Income Account</b>	<b>27</b>
17.1	Establishment	27
17.2	Amounts to be credited	27
17.3	Amounts to be debited	27
17.4	Trustee to determine Earnings and Fund Earning Rate	28
17.5	Distribution of Earnings	28
17.6	Trustee to notify Members	28
<b>18</b>	<b>Fluctuation Account</b>	<b>28</b>
18.1	Establishment	28
18.2	Transfers to Fluctuation Account	28
18.3	Separation of Account moneys	28
18.4	Use of Fluctuation Account	28
18.5	Adjustment of Member Account	29
<b>19</b>	<b>Reserve Accounts</b>	<b>29</b>

**EXECUTED as a deed.**

**EXECUTED** by Ingwe Investments Pty )  
Ltd (ACN 155 910 544) as Trustee in )  
accordance with the *Corporations Act* )  
2001 by being signed by the following )  
officer:



\_\_\_\_\_  
Signature of Director

X MARK EDWARD ARBUCKLE

\_\_\_\_\_  
Name of Director *(please print)*

82

