

**THE U & J SCHARF  
SUPERANNUATION FUND**

**Prepared On Instructions From:**

**MORTIMER & CO**

**ACCOUNTANTS**

**6 Mary Street, Kingaroy, QLD, 4610.**

**Phone: (07) 4162-1422**

**By:**

**CORPORATE NETWORK LTD**

**Companies House, 74-76 Campbell Street, Sydney, NSW, 2000**

**Phone: 1800 25 7123**

**Fax: 1800 25 2905**

SUPERANNUATION FUND : DEED

STAMP DUTY

THIS DEED OF TRUST

is made on This Thirty-First day of October, 2006

in the State of Queensland

by Uri SCHARF  
Judith Joy SCHARF

hereinafter called "the Trustee(s)"

RECITALS:

- (A) FOUNDER(S): The following desire the establishment of a superannuation fund, the first members of which will be:  
Uri SCHARF  
Judith Joy SCHARF
- (B) FUND NAME: The fund shall be known as  
THE U & J SCHARF SUPERANNUATION FUND
- (C) TRUSTEE(S): The Trustee(s) has/have resolved to establish a superannuation fund as desired by the Founder(s) and to accept appointment as Trustee(s) of the Fund.

PROVISIONS:

For the purpose of establishing and maintaining the Fund the Trustee(s) hereby covenants and declares as follows:

The Relevant Law

- 1.1 The Deed and Rules when executed establish a Superannuation Fund which enables the Fund to comply with the Relevant Law (see Rule 35.32).

How the Fund May Operate.

- 1.2 The Deed and Rules are designed to allow the Fund to operate as a Self Managed Superannuation Fund, including a single member fund.

The Fund may be sponsored by one or more employers and one or more employers may

contribute to the fund.

What is a Self Managed Superannuation Fund (SMF)

- 1.3 A Self Managed Superannuation Fund (SMF) is a fund which has fewer than 5 and which complies with the Relevant Law relating to SMFs.

Unless the Trustee is a company, each Member must be a Trustee of the Fund and each Trustee must be a Member. If the Trustee is a company then each Member must be a director of the company and each director of the company must be a Member of the Fund.

A disqualified person must not be a trustee of a SMF (see Section 121 of the Superannuation Industry Supervision Act 1993) and there are limitations on the capacity of overseas residents to maintain SMFs.

No member of the Fund may be an employee of another member of the Fund, unless the members concerned are relatives. (Note there is an extended and complex definition of who constitutes an "employee" for this purpose in Section 17A(6) of the Superannuation Industry Supervision Act 1993).

While the Fund is a SMF, the Trustee may receive no remuneration from the Fund or from any other person for any duties or services performed by the Trustee in relation to the Fund.

What is a Single Member Fund

- 1.4 A fund with only one member is a SMF if and only if it has two individual trustees one of whom is the member and the other of whom is a relative. If the other trustee is not a relative, then the member must not be an employee of that trustee. (Note extended definition of "employee").

The trustee of a single member fund may also be a company, but if so, the member must be either the sole director or one of two directors, the other of whom is a relative. If the other director is not a relative, then the member must not be an employee of the other director. (Note extended definition of "employee").

The same restriction on remuneration of trustees set out in 1.3 above applies.

Who may join the Fund

- 1.5 The Deed and Rules allow anyone to be a Member of the Fund if permitted by the Relevant Law.

Members may include employees, self employed persons, children and spouses of Members. (Note while the Fund is a SMF no member may be the employee of any other member unless they are related.)

Subject to the restrictions provided in the Relevant Law, retired persons may join the Fund and make a contribution by rollover of a benefit from another fund.

Contributions

- 1.6 Any person who is allowed by the Relevant Law to contribute to a fund may contribute to this Fund in accordance with the Relevant Law. This includes employees and/or their employers, and self employed persons. Parents may contribute on behalf of children and spouses may contribute on each other's behalf. Government co-contributions are also allowable.

Contributions may be by way of salary deductions or other monetary contributions, or

## THE U & J SCHARF SUPERANNUATION FUND

by way of transfers of assets into the Fund. Specific assets may be held for specific members or classes of members.

There is no limit on the amount of contributions which can be made by or on behalf of a member other than those set out in the Relevant Law from time to time. In particular the restrictions set out in the Tax Act should be noted.

### Benefits

- 1.7 The Fund may provide benefits to Members and their dependants on the death or retirement of the Member in the circumstances allowed by the Relevant Law and the Rules.

Benefits may be paid in accordance with the Relevant Law, including at or after age 65 or on earlier retirement due to permanent disability, or death.

The Relevant Law contains no distinction between male and female retirement ages.

Subject to the provisions of the Relevant Law, benefits may be paid as pensions, annuities or lump sums, or some combination of those.

### Who can be a Trustee of the Fund

- 1.8 If the Fund is to be a Self Managed Superannuation Fund the Trustee of the Fund must comply with the requirements of the Relevant Law about who can be a trustee. (See clauses 1.3 and 1.4 above and also Rule 19.)

If the Fund is to have 5 or more Members the Trustee must be a company and specific rules apply about Member representation on the board of the trustee company. (See Rule 19.)

In certain circumstances, it is necessary for the Trustee to be an "Approved Trustee" as defined in the Relevant Law.

The Trustee may be appointed and removed by the members in accordance with the Rules. (See Rule 19.)

### Trustee's Powers

- 1.9 The Trustee/s must manage the Fund for the benefit of the Members and has wide powers that are subject to restrictions which are set out in the Relevant Law and also in the Rules.

The Trustee may invest the Fund in investments of any kind provided these are allowed by the Relevant Law (see Rule 6).

There are investment restrictions in the Relevant Law relating to "in house assets". Generally, all investments must be made on an "arms length basis" and investments that confer a benefit on a "related party" are subject to restrictions in the Relevant Law. A Related Party includes a relative or a business associate or a related company, partnership or trust of the Members, the Trustee or the Employer.

The Relevant Law and the Rules contain major restrictions on the power of the Trustee to borrow. (See Rule 22.)

While the Fund is a SMF, the Trustee must receive no remuneration.(See Rule 27.)

Resolutions of the Trustees must be carried by a majority of votes with the chair having a second or casting vote. Where the Trustee is a company, resolutions of the directors must be carried by a simple majority with the chair having a second or casting vote. (See Rule 20.)

THE U & J SCHARF SUPERANNUATION FUND

Trustee's Duties and Obligations

- 1.10 The obligations of the Trustee in relation to the management of the Fund and to the Members are provided in the Relevant Law and the Rules (see Rule 21).

The Trustee must act honestly and exercise the same degree of care skill and diligence that a prudent person would exercise in dealing with another's property for whom they felt morally bound to provide.

The Trustee must make prescribed disclosures to the Regulator and must keep Fund records for at least 10 years. The Trustee must also comply with the provisions of the Corporations Act 2001 and the Corporations Regulations regarding the provision of Product Disclosure Statements to members of the Fund and others.

Accounts and Audit

- 1.11 The Fund must be audited annually by an approved auditor and reports must be lodged with ATO. Taxation returns must be lodged for the Fund annually. (See Rule 26.)

Termination of Fund

- 1.12 The Fund can be terminated by the members, and in some limited circumstances must be terminated (see Rule 32).

Amendment of Deed and Rules

- 1.13 The Deed and Rules may be amended by the Trustee in accordance with the Rules and the Relevant Law. (See clause 8 and Rule 29.)

Enquiries Complaints and Disputes

- 1.14 Rule 33 deals with the manner in which the Trustee must deal with enquiries complaints and disputes by and with the members.

Creation of the Trust

2. THE U & J SCHARF SUPERANNUATION FUND shall come into operation on This Thirty-First day of October, 2006 and shall continue until determined in accordance with the Relevant Law and the Rules.

Primary Purpose of the Fund

3. The primary purpose of the Fund is to ensure that the balance to credit of each Individual Member's Account is applied in payment of a Pension in accordance with the Relevant Law.

A Member may elect to commute that credit or any part of it to a lump sum payment, and the Trustee may invite a Member to make such an election.

Property of the Fund

4. The Trustee shall henceforth hold all the property of the Fund on the trusts contained in the Rules as amended from time to time.

Rules have Same Force and Effect as Deed

5. The Rules shall have the same force and effect as if they were set out in the body of this Deed.

Legal Jurisdiction

THE U & J SCHARF SUPERANNUATION FUND

6. This Deed and the Rules shall in all respects be governed by and construed in accordance with the laws of Queensland.

Appointment and Removal of Trustees

7. Trustees of the Fund may be appointed and removed as set out in the Rules and the Relevant Law.

Amendment of Deed and Rules

8. The Trustee may amend vary or alter all or any of the provisions of this Trust Deed or the Rules on the terms set out in the Rules and the Relevant Law.

THE U & J SCHARF SUPERANNUATION FUND

EXECUTED AS A DEED

IN WITNESS WHEREOF this Deed creating  
THE U & J SCHARF SUPERANNUATION FUND  
is executed hereunder by the Trustee(s) on  
This Thirty-First day of October, 2006

The signatories hereby consent to act as Trustees of the Fund and covenant and agree that the  
Fund will be administered according to the Rules.

Uri SCHARF

SIGNED SEALED  
and DELIVERED  
by the above

)  
)  
)

*Uri Scharf*  
.....

in the presence of (witness)

*Pat A Martin*

*Pat A Martin*  
.....

Judith Joy SCHARF

SIGNED SEALED  
and DELIVERED  
by the above

)  
)  
)

*J.J. Scharf*  
.....

in the presence of (witness)

*Pat A Martin*

*Pat A Martin*  
.....

## SUPERANNUATION FUND RULES : INDEX

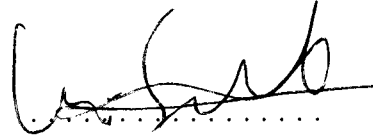
<u>RULE</u>	<u>DEALS WITH</u>
1	Location of Definitions and Interpretation
2	Purpose of the Fund
3	Membership
4	Contributions
5	The Fund
6	Investments
7	Accounts
8	Powers of Trustee
9	Transfer of Benefits
10	Pension Benefits
11	Retirement Benefit
12	Death Benefit
13	Permanent Disablement Benefit
14	Withdrawal or Early Retirement Benefit
15	Payment Restrictions
16	Forfeiture and Rollover of Benefits
17	Application of Forfeited Benefits
18	Disclosure and Reporting
19	Trustees - Appointment and Removal
20	Trustee's Meetings
21	Trustee's Obligations
22	Trustee Borrowings
23	Exercising Trustee's Discretions
24	Indemnity of Trustee
25	Trustee's Disclosure of Interest
26	Audit - Trustee's Accounts and Records
27	Trustee's Remuneration
28	Remuneration of Professional Persons
29	Amendment of Rules - by resolution or by deed
30	Inspection of Trust Deed
31	Employer/s
32	Termination of Fund
33	Enquiries by Members
34	Other/Miscellaneous Rules
35	Definitions and Interpretation



## SUPERANNUATION FUND : RULES

This and the following 20 pages are the Rules referred to in the Deed establishing  
THE U & J SCHARF SUPERANNUATION FUND.

Confirmed by the Trustee(s) :



J. J. Scharf  
.....

on : This Thirty-First day of October, 2006

### LOCATION OF DEFINITIONS AND INTERPRETATION:

- 1.1 Definitions and Interpretation of words and phrases used in the Deed and Rules are to be found at Rule 35.

### PURPOSE OF FUND

- 2.1 The primary purpose of the Fund is to ensure that the balance to credit of an IMA is applied in payment of a pension in accordance with the Relevant Law unless the Member elects to commute that credit or any part of it to a lump sum payment in accordance with the Relevant Law.

### MEMBERSHIP

- 3.1 Any individual who is entitled by the Relevant Law to be a member of a Superannuation Fund, including an Employee, a Spouse, a Member's Child or a Self Employed Person, may join this Fund with the written approval of the Trustee. For so long as the Fund is a SMF, no Member of the Fund shall be an employee of another Member, unless the Members concerned are relatives.
- 3.2 An Employer may request the Trustee to admit an Employee as a member of the Fund and may thereafter make contributions on the employee's behalf. The Trustee must notify the member that he has become a member.
- 3.3 Upon admittance of a member to membership of the Fund, the Member shall be bound by the provisions of the Trust Deed and these Rules.

### CONTRIBUTIONS

- 4.1 All contributions by or on behalf of a Member shall, unless the contribution is entitled to be treated as an unreserved amount in accordance with the Relevant Law, be dealt with as Preserved Contributions.
- 4.2 Any person authorised by the Relevant Law to make contributions to the Fund may do so, in such amount and at such intervals as it decides from time to time provided that the Trustee shall only accept contributions for a member which are permitted by the Relevant Law and shall apply such contributions in accordance with the Relevant Law.
- 4.3 If Employer contributions are to be made on behalf of the Employee, the Employer and the Employee shall agree an amount to be deducted from the salary or wages of the Employee and the Employer shall remit these contributions to the Trustee within fourteen days of the end of the calendar month in which they were deducted. The Employer shall advise the Trustee of the amount of the contribution by each Member.

THE U & J SCHARF SUPERANNUATION FUND

- 4.4 Contributions payable by the Employer shall be paid in such manner and at such time as is agreed between the Employer and the Trustee.
- 4.5 Any payment of contributions by the Employer at the direction of the Trustee direct to any investment manager, life insurance company or other like body shall be deemed to be both payment to the Trustee and payment by the Trustee to that body.
- 4.6 The Employer may from time to time waive all or part of any obligation of a Member to pay contributions to the Fund if the Employer pays to the Fund an amount equal to the contributions left unpaid by that Member.
- 4.7 A Member may apply to the Trustee to roll over, transfer or allot an amount of benefits for the benefit of the Member's spouse that is equal to an amount of the splittable contributions made by, for or on behalf of the Member in the last financial year that ended before the application was made or in the financial year in which the application is made where the Member's entire benefit is to be rolled over or transferred in that year. The Trustee shall give effect to such application within 90 days of receiving it, provided that the following conditions are met:
- (a) The application complies with the Relevant Law;
  - (b) The application is in the form if any required by the Trustee;
  - (c) The Member or the Member's spouse provides any information required by the Trustee necessary to ensure and evidence compliance with the Relevant Law; and
  - (d) Where the application specifies a fund other than this Fund to receive the splittable contribution, the Member produces evidence of the receiving fund's capacity to accept the contribution.

In this clause, the term "splittable contribution" has the meaning given to it by the Superannuation Industry (Supervision) Regulations 1994 as amended from time to time.

THE FUND

- 5.1 The 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 pursuant to the Trust Deed and these Rules and shall include:
- (a) contributions made in accordance with Rule 4;
  - (b) interest and dividends or other income arising from any investment and the accumulation thereof;
  - (c) all insurance policies; and
  - (d) any other property transferred to the Fund pursuant to the Trust Deed and these Rules.

INVESTMENTS

- 6.1 Subject to the provisions of the Relevant Law and these Rules, the Trustee shall have the power to apply all moneys or other assets forming part of the Fund in or upon investments of any kind (not limited to investments authorised by law for the investment of trust funds) with or without security as the Trustee shall think fit as if the Trustee were the beneficial owner thereof entitled to invest in that manner. Further, the Trustee shall have power to deal with those investments as fully and effectively and with the same unrestricted powers in all respects as a person absolutely and beneficially entitled when dealing with his own property and may do so without being responsible for loss occasioned thereby.

THE U & J SCHARF SUPERANNUATION FUND

Other powers of investment if any are set out in Schedule 1 to these Rules.

- 6.2 At June 30 of each year, and at any time and from time to time the assets of the Fund may be revalued according to their then market value as determined by the Trustee and based upon such information and advice as the Trustee thinks fit. Any profit or loss resulting from the revaluation, including provision for liabilities as the Trustee considers prudent, shall be credited or debited, as the case may be, in accordance with Rule 6.3. A revaluation may be made and the profit or loss credited or debited even though at the date of revaluation a Member's right to payment of monies standing to his credit in the Fund has become vested.
- 6.3 Subject to the provisions of Rule 6.4(d), profits or losses arising from the investment of assets during each financial year of the Fund, except for such provision for liabilities including taxation as the Trustee considers prudent, shall be credited or debited, as required, in accordance with these Rules and the Relevant Law.
- 6.4 (a) The Trustee may invest any part of a Member's IMA in the payment of premiums for a policy of life, disability or accident insurance for his benefit or (at the Member's request) in payment of the consideration for an annuity.
- (b) The Trustee may in its discretion effect a policy of life, disability or accident insurance, accept an assignment of any such policy or accept an assignment of any rights or benefits in respect of any annuity.
- (c) The Trustee shall have the power to continue a policy for such period as it thinks fit or to discontinue or surrender it.
- (d) The Trustee may in its discretion at the request of a Member or class of Members make a separate investment or accept a transfer of assets or benefits pursuant to Rule 9 on behalf of that Member or class of Members. The Trustee shall record on whose behalf the investment is made or transfer of assets accepted for the purpose of establishing an IMA in respect thereof. In such an event, the income less expenses, any profits or losses arising from the investment and any applicable costs or charges which are incurred pursuant to these Rules shall not be allocated to the General Fund Account but shall be allocated directly to the appropriate Contribution Account maintained for the Member or class of Members concerned. Should the Trustee accept a transfer of assets into the Fund, the rules regarding investment in in-house assets shall be observed.

POWERS OF TRUSTEE

- 7.1 In addition to the powers granted to it by the Trust Deed these Rules and the law in relation to the Fund and its administration, the Trustee shall have all the rights, powers and privileges that a natural person would have in administering his own affairs to the effect that the Trustee has the power to do all acts and things it considers necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations as Trustee of the Fund.

Other powers of the Trustee if any are set out in Schedule 2 to these Rules.

ACCOUNTS

- 8.1 The following accounts shall be established when required:
- (a) a General Fund Account, which shall be maintained in accordance with Rule 8.2;
- (b) Members' Contribution Accounts with respect to all Members which shall be maintained in accordance with Rule 8.5;
- (c) Members' Preserved Contribution Accounts with respect to all Members which

## THE U & J SCHARF SUPERANNUATION FUND

shall be maintained in accordance with Rule 8.5;

- (d) Employer's Contribution Accounts which shall be maintained in accordance with Rule 8.5;
- (e) a Reserve Account which shall be maintained in accordance with Rule 8.4;
- (f) an Earnings Fluctuation Reserve Account which shall be maintained for moneys applied pursuant to these Rules;
- (g) a Taxation Reserve Account to which shall be credited amounts set aside for income tax payable on contributions to and earnings of the Fund and capital gains tax payable on the realisation of assets of the Fund and to which shall be debited income tax and capital gains tax paid from this account to the Australian Taxation Office;
- (h) a Permitted Pension Account/s to be maintained in accordance with the Relevant Law and otherwise as required by the Regulator.

### THE GENERAL FUND ACCOUNT

8.2 Subject to Rule 6.4(e), the General Fund Account shall be:

- (a) credited with all contributions received in accordance with Rule 4;
- (b) credited with all interest, dividends and other income of the Fund together with all realised capital gains received in accordance with the terms of the Trust Deed and these Rules; and
- (c) debited with all losses, outgoings, taxes, transfers to reserve accounts, expenses and costs incurred in the establishment and maintenance of the Fund together with all realised capital losses incurred.

### APPLICATION OF THE GENERAL FUND ACCOUNT

- 8.3 (a) All amounts received into the General Fund Account pursuant to Rule 8.2 shall be applied as follows within the time limits prescribed by the Relevant Law:
- (i) all personal contributions made by any Member shall be credited to that Member's Contribution Account or to the Member's Preserved Contribution Account as appropriate;
  - (ii) all Employer's contributions in respect of any Member shall be credited to the Employer's Contribution Account for that Member; and
  - (iii) such amounts as the Trustee thinks fit shall be credited to the Earnings Fluctuation Reserve Account.
- (b) At any time chosen by the Trustee but subject to the Relevant Law a credit or debit balance remaining in the General Fund Account may be credited or debited as required between all Members' Contribution Accounts and all Employers' Contribution Accounts according to the balance of those accounts at the time of such crediting or debiting.

### APPLICATION OF THE RESERVE ACCOUNT

- 8.4 (a) The balance standing to the credit of the Reserve Account shall, within the time permitted by and in accordance with the Relevant Law, be applied by the Trustee in the following manner:
- (i) to provide benefits that other Members or their Dependants have a right to

THE U & J SCHARF SUPERANNUATION FUND

receive from the Fund;

- (ii) to provide additional benefits for other Members or their Dependants on a basis that the Trustee in its discretion considers reasonable;
- (iii) to make a payment to the Employer;
- (iv) to meet the expenses of the Fund;
- (v) to be credited to the Earnings Fluctuation Reserve Account; or
- (vi) for other purposes approved by the Regulator.

INDIVIDUAL MEMBERS' ACCOUNTS (IMAs)

8.5 The accounts established by the Trustee for a Member shall be collectively known as "the Individual Member's Account" or the IMA and shall have:

- (a) recorded in each IMA the Normal Retirement Date, the age, the sex, the date of commencement of service with the Employer, the date of commencement of membership of the Fund, the Member's eligible service period, the Tax File Number, the type of benefit to which the Member is entitled and any other information which the Trustee thinks fit;
- (b) recorded in the Employer's Contribution Account the Employer's contributions made to the Fund;
- (c) recorded in the appropriate Member's Contribution Account the Member's contributions made to the Fund by the Member or on his/her behalf.
- (d) recorded the proportionate allocations made to the Member's Contribution Account and the Employer's Contribution Account in accordance with Rules 8.3(b) and 6.2;
- (e) debited from the Employer's Contribution Account or the Member's Contribution Account premiums paid on policies of insurance pursuant to Rule 6.4 and any income tax payable on contributions to the Fund on account of the Member;
- (f) credited to the Member's Contribution Account or the Employer's Contribution Account the proceeds of policies effected pursuant to Rule 6.4 in the same proportion as premiums were paid from these accounts;
- (g) credited to the relevant Permitted Pension Account any amounts rolled over from an IMA or from any other superannuation fund or Approved Deposit Fund from which that Member is entitled to receive a benefit and all income earned from those amounts; and
- (h) debited to the relevant Permitted Pension Account all pension payments made to the Member and all expenses including income tax properly chargeable to that account.

TRANSFER OF BENEFITS

9.1 Subject to the Relevant Law, a member may request a benefit or asset to which he or she is entitled to be transferred by the Trustee to another complying superannuation fund or Approved Deposit Fund, or to purchase an annuity or Permitted Pension on his or her behalf. The Trustee may agree to the Member's request in its discretion if the rules of the Permitted Pension Fund or the Approved Deposit Fund permit the transfer and prohibit benefits to be paid earlier than these Rules.

9.2 Subject to the Relevant Law, a Trustee may accept a rollover of benefit or a transfer of

THE U & J SCHARF SUPERANNUATION FUND

assets including a life insurance policy into the Fund on the written request of a Member.

- 9.3 If the fund from which those assets are transferred requires that any part of them should be preserved then that part shall be credited to the Member's Preserved Contribution Account. This provision extends to funds established or approved as at 1 July 1986 pursuant to s.23(ja) or S23FB of the Tax Act.

PENSION BENEFITS

- 10.1 The Trustee may pay a Permitted Pension provided it is paid in accordance with these Rules and the Relevant Law.
- 10.2 The amount of any Pension payable hereunder must be determined by the Trustee having regard to:
- (a) the provisions of the Relevant Law;
  - (b) the amount standing to the credit of the IMA from which the benefits will be paid;
  - (c) any other benefits that may become payable from that IMA;
  - (d) the period for which the Pension will be paid; and
  - (f) any other matters that the Trustee considers relevant.
- 10.3 In addition to any other requirements set out in these Rules or in the Relevant Law from time to time, any pension paid must comply with the following:
- (a) Pension payments must be made to the primary beneficiary and can only be transferred to a reversionary beneficiary in accordance with the Relevant Law on the death of the primary beneficiary or of another reversionary beneficiary.
  - (b) Pension payments must be made at such intervals as the Trustee and the beneficiary agree, but must be made at least once in each year.
  - (c) The capital value of the pension and the income from it, cannot be used as security for a borrowing.
  - (d) Payments of pensions in any year, except a payment by way of commutation, may not be larger in total than the maximum limits or smaller than the minimum limits calculated in accordance with the provisions of the Relevant Law.
  - (e) The provisions of subregulation 1.06(7) of the Superannuation Industry (Supervision) Regulations 1994 (in this Clause 10 called the "SIS Regulations") from time to time are complied with and for the purposes of these Rules, that subregulation is deemed to be set out in these Rules.
- 10.4 If the pension to be paid is a Market Linked Pension, then the provisions of Regulation 1.06(8) of the SIS Regulations must be complied with and that subregulation is deemed to be set out in these Rules.
- 10.5 Notwithstanding these Rules, but subject to the Relevant Law, the Trustee may increase the pension annually as from the anniversary of its commencement in accordance with subregulation 1.06(7) of the SIS Regulations.
- 10.6 The Trustee may at any time pursuant to a request from the Member pay to him a lump sum equivalent to a commutation not exceeding his pension entitlement provided that the commutation shall be made in accordance with the provisions of subregulations 1.07A, B, or C of the SIS Regulations as appropriate to the type of pension and the provisions of subregulations 1.07A, B, and C as amended from time to time are deemed

## THE U & J SCHARF SUPERANNUATION FUND

to be set out in these Rules.

- 10.7 The Trustee may at any time apply the amount to the credit of an IMA in the purchase of an annuity in the name of the Member or of the dependant of a deceased member or may pay or transfer that amount by way of rollover as an Eligible Termination Payment to a Permitted Pension Account established for the benefit of that Member.
- 10.8 If the pension to be paid is a Defined Benefit Pension, then it shall be paid in accordance with the provisions of subregulation 1.06(7) of the SIS Regulations.
- 10.9 The Trustee may pay a Defined Benefit Pension in accordance with subregulation 1.06(7) of the SIS Regulations provided only that the following conditions are met:
- (a) The Fund was in existence before 11 May 2004;
  - (b) The person to whom the pension is to be paid was a member of the Fund on 11 May 2004;
  - (c) The person to whom the pension is to be paid retires before 1 July 2005, or such other date as the Relevant Law allows from time to time on or after reaching age 55 or attaining age 65; and
  - (d) The person becomes entitled to be paid a Defined Benefit Pension after 11 May 2004 and before 1 July 2005 or such other date as the Relevant Law allows from time to time; and
  - (e) The first pension payment is made within 12 months after the day when the person becomes entitled to the Defined Benefit Pension.
- 10.10 A Permitted Pension may be paid to a Member who has attained Preservation Age while remaining employed but it shall be paid only in accordance with the provisions of the Relevant Law from time to time.

### RETIREMENT BENEFIT

- 11.1 On the retirement of a Member from on or after the Normal Retirement Date the Trustee shall subject to the other provisions of these Rules apply the amount standing to the credit of the Member's IMA at the time of retirement including the proceeds (if any) of any policy of life insurance to pay benefits to the Member or as he directs in writing.
- 11.2 The Trustee shall make payments due to a Member on his attaining age 65, or such other age prescribed by the Relevant Law from time to time, provided that:
- (a) If the Member continues in part-time employment after attaining age 65 or such other age prescribed by the Relevant Law from time to time, payment may at the request of the Member be deferred to age 70, or retirement, whichever first happens or such other age as is prescribed; and
  - (b) if the Member continues in full-time employment or is gainfully employed on a full-time basis after age 65, payment may be deferred until the time required by the Relevant Law.

### DEATH BENEFIT

- 12.1 A member may by written notice, require the Trustee to pay benefits in accordance with a Binding Death Benefit Nomination providing that the Notice complies with the Relevant Law and the Trustee has given the Member the information it reasonably believes the Member reasonably needs for the purpose of understanding the rights of the Member to require the Trustee to provide the benefits in accordance with the Nomination.

THE U & J SCHARF SUPERANNUATION FUND

- 12.2 Subject to Clause 12.1, on the death of a Member the Trustee shall, subject to these Rules, apply the amount standing to the credit of the Member's IMA after revaluation at the date immediately prior to his death to or for the benefit of such one or more of the nominated beneficiaries as are set out in the statement of preference completed by the Member. The Trustee may, however, disregard that statement of preference and apply that amount for the benefit of such one or more Dependants or nominated beneficiaries of the deceased Member in such shares and in such manner as the Trustee determines or it may pay the benefit to the legal personal representative of the deceased Member.
- 12.3 Where a beneficiary is a minor or under a legal disability the Trustee may;
- (a) pay the amount of the benefit to which the beneficiary is entitled to his or her parent or guardian and the receipt of the parent or guardian is a complete discharge and release to the Trustee who may not be called on to enquire into or supervise the application of that benefit; or
  - (b) hold the benefit upon trust for that beneficiary until he or she has attained the age of 18 years with power to invest the benefit under the power of investment contained in these Rules and to make advances of capital or income to or for the benefit of that beneficiary; or
  - (c) pay the benefit to the legal personal representative of the member; or
  - (d) pay the benefit to the Trustee of a trust established for the benefit of that beneficiary during infancy or for any longer period. Before making any such payment the Trustee must satisfy itself that the trust to which the benefit is to be paid has been properly established and contains powers and discretions in the trustee of that trust appropriate to the circumstances of the beneficiary for whom it has been established.
- 12.4 The Trustee shall make the determinations referred to in Rule 12.1 within six months of being notified of the death of a Member and shall notify the beneficiaries in writing. If the Trustee concludes that a Member has no beneficiaries at the time of his death or is unable to determine who they are and no determinations and notifications are made by the Trustee within six months of death the amount referred to in Rule 12 shall be transferred to the Member's legal personal representative. If no grant of Probate or Letters of Administration shall have been made in the estate of the Member within two years from the date of his death, or such longer period as the Trustee shall determine, then the Trustee shall apply the amount in accordance with Rule 16.

PERMANENT DISABLEMENT BENEFIT

- 13.1 If a Member ceases to be gainfully employed as a result of Permanent Disablement the Trustee shall, subject to the other provisions of these Rules and the requirements of the Relevant Law, apply the amount standing to the credit of the Member's IMA including the proceeds of any policy of disability insurance to pay benefits to the Member or as he directs in writing or, in the event of his being unable to manage his affairs, to such one or more of his Dependants and in such proportions as the Trustee determines.
- 13.2 Notwithstanding the provisions of Rule 13.1, a Member who has ceased full-time or part-time gainful employment because of ill-health (whether physical or mental) which prevents him from engaging in employment of the kind that he engaged in at the onset of the ill-health may remain as a Member of the Fund and the Trustee may accept on his behalf contributions allowed by the Relevant Law.

WITHDRAWAL OR EARLY RETIREMENT BENEFIT

- 14.1 If the employment by the Employer of a Member is terminated before the Normal Retirement Date otherwise than in the circumstances referred to in Rules 12.1 or 13.1,



## THE U & J SCHARF SUPERANNUATION FUND

and any subsequent Employer does not make any contributions to the Fund on his behalf, the Trustee shall, subject to the other provisions of these Rules, apply the amount standing to the credit of the Member's IMA to pay benefits to the Member or as he shall direct in writing.

- 14.2 Any part of the amount standing to the credit of the IMA which is not paid or transferred to the Member shall be applied by the Trustee in accordance with these Rules.
- 14.3 Any benefit required by the Relevant Law to be preserved will be credited to the Member's Preserved Contribution Account or applied by the Trustee pursuant to these Rules.
- 14.4 If a member who is self-employed ceases to be gainfully employed before the Normal Retirement Date otherwise than in the circumstances referred to in Rules 12 and 13, the Trustee must, subject to the other provisions of these Rules, apply the amount standing to the credit of that Member's IMA in payment of benefit to the Member or as he directs in writing.

### PAYMENT RESTRICTIONS

- 15.1 Subject to these Rules and the Relevant Law, benefits to which a Member is entitled shall be retained in the Fund until:
- (a) those benefits are transferred directly for preservation on behalf of that Member in:
    - (i) Another superannuation fund nominated by that Member, being a fund of which the Member is, or intends to become, a Member and that is required to preserve any benefits transferred in accordance with the standards set out in the Relevant Law;
    - (ii) An Approved Deposit Fund nominated by the Member, being a fund that is required to preserve any benefits transferred in accordance with the standards set out in the Relevant Law; or
    - (iii) A deferred annuity or Permitted Pension nominated by the Member, being a deferred annuity or Permitted Pension that cannot be surrendered or assigned before the Member attains the Preservation Age and that does not pay benefits except in the circumstances specified in the Relevant Law.
  - (b) The Member has retired from the workforce and attained the Preservation Age, or such other age as is specified by the Relevant Law or otherwise complies with the provisions of the relevant Law regarding the commencement of the taking of benefits;
  - (c) The Member has retired from the workforce before attaining the Preservation Age on the ground of permanent incapacity or permanent invalidity;
  - (d) The Member has died;
  - (e) The Member has permanently departed from Australia prior to 1st July 1998, or is suffering severe financial hardship; or
  - (f) Such other circumstances occur as the Regulator approves or as the Relevant Law permits.
- 15.2 This Rule does not apply where the total amount of benefits to which a Member is entitled is less than \$500.00 or such other amount as is specified from time to time by the Relevant Law.

THE U & J SCHARF SUPERANNUATION FUND

- 15.3 Subject to Rule 15.1, where the benefit payable to a Member includes the value of a policy of life insurance, the Trustee may, instead of collecting the proceeds of the policy, transfer it to the Member.
- 15.4 Where any benefit is payable in cash and is not required to be preserved, the Trustee may pay it in cash or by cheque or with the agreement of the Member or other person to whom such benefit is payable, by way of a transfer of assets of the Fund in specie to that Member or person where those assets are equivalent in value to the benefit payable provided that the Trustee has complied with the provisions of the Relevant Law.
- 15.6 Unless it otherwise decides, the Trustee shall not pay benefits to a person otherwise entitled to payment unless and until:
- (a) The Trustee has notified him of the benefit payable and of any payment alternatives available to him; and
  - (b) That person has provided an authority in a form approved of by the Trustee relating to payment of the benefit.
- 15.6 The Trustee may deduct from a benefit payable the amount of tax that is calculated by the Trustee to be payable on it and shall remit that amount to the Commissioner of Taxation. The Trustee shall also be entitled to deduct and pay to the Employer any moneys owing to the Employer by the Member but no deduction shall be made from any benefit which is vested by law in the Member.
- 15.7 Where a Member is entitled to receive a benefit from the Fund, the Trustee shall subject to the Relevant Law have the discretion, if requested by that Member, to permit the amount of that benefit to remain in the Fund for an agreed period.

During that period, the Trustee shall be entitled, subject to these Rules and the Relevant Law, to receive contributions by or on behalf of that Member and his individual Member's Account shall continue to be credited or debited with amounts in accordance with these Rules.

FORFEITURE AND ROLLOVER OF BENEFITS

- 16.1 Benefits payable out of the Fund which are not vested in or preserved for the benefit of a Member in pursuance of the Relevant Law and these Rules shall be forfeited if the person otherwise entitled:
- (a) assigns, alienates or charges or attempts to assign alienate or charge those benefits or part thereof; or
  - (b) owing to mental illness requires care, treatment or control for his own good or in the public interest and is, in the opinion of the Trustee, for the time being incapable of managing himself or his affairs.

The whole or part of the benefits so forfeited may, at the discretion of the Trustee be applied by it in whole or in part to or for the benefit of that Member and his Dependants or any of them as appropriate, but while he remains in the employment of the Employer the Trustee shall not make any payment to or for the benefit of him or his Dependants other than for personal maintenance and support in case of hardship.

- 16.2 If a benefit is immediately payable to a member or the trustee of another fund on behalf of a member, or to another person in respect of a member and payment has not been made within 90 days of the benefit becoming payable, the Trustee may pay that benefit to an eligible rollover fund as defined in the Relevant Law.
- 16.3 If a benefit mentioned in Rule 16.2 remains unpaid for 90 days after it becomes payable and the Trustee is satisfied that at least two consecutive reports prescribed by the Relevant Law have not been received by the Member, the Trustee shall pay the

## THE U & J SCHARF SUPERANNUATION FUND

benefit to an eligible rollover fund.

- 16.4 When paying a benefit pursuant to Rules 16.2 or 16.3, the Trustee will comply with all requirements of the Relevant Law.
- 16.5 Benefits in respect of a person which are payable upon the exercise of a discretion of the Trustee, shall only be forfeited if the Trustee has determined in the proper exercise of its discretion that there is no person to whom the benefit may properly be paid pursuant to Rule 15.1.

### APPLICATION OF FORFEITED BENEFITS

- 17.1 Any benefits which are forfeited shall be debited to the account from which they are forfeited and shall be credited to the Reserve Account.

### DISCLOSURE AND REPORTING

- 18.1 So long as the Fund is a SMF the Trustee shall give to each person who becomes a member of the Fund, a statement in the following terms:

"This fund is not subject to detailed prudential supervision."

- 18.2 The Trustee shall give to each person who becomes a member of the Fund all information that he or she reasonably needs for the purpose of understanding:

- (a) any benefit entitlements of the Member in the Fund;
- (b) any benefits that the Member may become entitled to receive; and
- (c) the main features and performance of the Fund.

- 18.3 If the Fund ceases to be a SMF, the Trustee must give to each person who subsequently becomes a member of the Fund the information concerning the Fund specified from time to time by the Relevant Law.

- 18.4 If the Fund ceases to be a SMF, the Trustee must give to each person who subsequently becomes a member of the Fund the information and documents concerning that person's membership of the Fund specified from time to time by the Relevant Law.

- 18.5 Within six months after the end of each financial year of the Fund the Trustee must give to each Member all information that he or she reasonably needs for the purpose of understanding his or her benefit entitlements in the Fund as specified from time to time by the Relevant Law.

- 18.6 The Trustee must give to each Member all information that he or she reasonably needs for the purpose of making an informed judgement about the management, performance and financial condition of the Fund. So long as the Fund is a SMF, this information need only be supplied if and to the extent that a Member requests the Trustee to do so.

- 18.7 In compliance with the last preceding sub-rule, the Trustee must give to each Member the information specified from time to time by the Relevant Law.

- 18.8 The Trustee shall inform the Regulator immediately of any change in the Fund's name or in any contact details relating to it.

- 18.9 The Trustee shall inform the Regulator as and when required of such information concerning Members as the Relevant Law may prescribe.

- 18.10 The Trustee must comply with the provisions of the Corporations Act 2001 and the Corporations Regulations dealing with the provision to members and others of Product Disclosure Statements.

THE U & J SCHARF SUPERANNUATION FUND

TRUSTEE - APPOINTMENT AND REMOVAL:

- 19.1 Subject to the Relevant Law, so long as the Fund is a SMF with more than one but fewer than five Members, the following persons shall be Trustees of the Fund:
- (a) if the Trustees are individuals, each individual trustee must be a member and each Member must be a Trustee;
  - (b) if the Trustee is a body corporate, each director of the body corporate must be a Member and each member must be a director of the body corporate;
- 19.2 If the Fund has only one member either:
- (a) the Trustee must be a body corporate of which the member is the sole director or one of two directors, the other of whom is a Relative of the Member. If the other director is not a Relative, then the Member must not be an Employee of the other director; or
  - (b) two individuals must be Trustees, one of whom is the Member and the other of whom is a Relative of the Member. If the other Trustee is not a Relative then the Member must not be an Employee of the other Trustee.
- 19.3 So long as the Fund is a SMF, appointment and removal of any Trustee shall be by way of written resolution or deed.
- 19.4 If the Fund ceases at any time to be a SMF but continues with less than five members, the Trustee of the Fund must be an Approved Trustee in accordance with the Relevant Law.
- 19.5 If and so long as the Fund is a Standard Employer-Sponsored Fund which has five or more Members:
- (a) The Trustee shall be a constitutional corporation the board of directors of which must consist of equal numbers of employer representatives and member representatives.
  - (b) Rule 19.4(a) is complied with if the board of directors of the corporate trustee contains an additional independent director appointed at the request of the employer representatives or the member representatives. That additional director shall not have a second or casting vote in any proceedings of the Trustee.
  - (c) The provisions of Rule 19.4(a) shall apply so long as the Fund has less than 200 members. Alternatively, a constitutional corporation approved of by the Commissioner and which is not an associate of a Standard Employer-Sponsor may be appointed as trustee following nomination by agreement between the members of the Fund or a trade union or other organisation representing their interests and the Employer or an organisation representing its interests.
  - (d) A resolution of the Board of Directors of the Trustee shall not be of any force and effect unless at least two thirds of the individual trustees or two thirds of the directors as the case may be cast an affirmative vote.
  - (e) Where, for any reason, a vacancy occurs on the board of directors of the Trustee, that vacancy shall be filled within 90 days by the Employer where that person vacating office represented the Employer, or by the Members where that person represented them.
  - (f) The Trustee of the Fund may be removed by the affirmative vote of two thirds of the Members and a new Trustee appointed by the same method.
- 19.6 If the primary purpose of the Fund becomes other than the provision of old-age

pensions, then the Trustee shall be a constitutional corporation.

#### TRUSTEE'S MEETINGS

- 20.1 The Trustee may meet for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Where the Trustee comprises individuals the quorum must be the number equal to two-thirds of the Trustees or the nearest number above two-thirds.
- 20.2 A resolution in writing signed by all the trustees shall have the same effect and validity as a resolution of the Trustee passed at a duly convened meeting.
- 20.3 Questions arising at any meeting shall be decided by a majority of votes and in the case of an equality of votes the chairman shall have a second or casting vote. Questions arising at meetings of directors of a corporate trustee shall be decided by a majority of votes and in the case of an equality of votes, the chairman shall have a second or casting vote.
- 20.4 The Trustee shall keep and retain for at least ten years minutes of its resolutions and proceedings in a book provided for that purpose.
- 20.5 The Trustee must keep and retain for at least ten years up to date records of all changes of trustee and changes of directors of a trustee and of all consents given pursuant to Section 118 of the Superannuation Industry (Supervision) Act.
- 20.6 Any two of the Trustees where there are more than two individual trustees, are hereby authorised on behalf of the Trustee to sign all documents relating to the Fund as validly and effectually as all persons constituting the Trustee could do.

If the Trustee is a body corporate, documents relating to the Fund must be executed or signed in accordance with its Constitution.

#### TRUSTEE'S OBLIGATIONS

- 21.1 In the exercise of its powers and the discharge of its duties and responsibilities as trustee of the Fund the Trustee has the following obligations and shall perform and observe the following covenants:
- (a) to act honestly in all matters concerning the Fund;
  - (b) in relation to all matters affecting the Fund to exercise the same degree of care, skill and diligence as an ordinarily prudent person would exercise in dealing with property of another for whom that person felt morally bound to provide;
  - (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
  - (d) to keep the money and other assets of the Fund separate from any money and assets that are held by the Trustee personally or that are money or assets of an employer which contributes to the Fund.
  - (e) not to enter into any contract or do anything else which would prevent or hinder the Trustee from properly performing or exercising its functions and powers;
  - (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund, including but not limited to:
    - (i) the risk involved in making, holding and realising and the likely return from the Fund's investments, having regard to its objectives and its expected cashflow requirements;
    - (ii) the composition of the Fund's investments as a whole, including the extent

## THE U & J SCHARF SUPERANNUATION FUND

to which they are diverse or involve the Fund in being exposed to risks from inadequate diversification;

- (iii) the liquidity of the Fund's investments, having regard to its expected cashflow requirements; and
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities.
- (g) to formulate and give effect to a strategy for the prudential management of any reserves of the Fund consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (h) to allow a member access to any prescribed information or any prescribed documents.

21.2 The covenant referred to in Rule 21.1(e) does not prevent the Trustee from engaging or authorising persons to do acts or things on its behalf.

21.3 An investment strategy shall be taken to be in accordance with Rule 21.1(f), even if it provides for a specified beneficiary or specified class of beneficiaries to give directions to the Trustee where:

- (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
- (b) the directions are given in circumstances covered by the Relevant Law.

### BORROWING BY TRUSTEE

22.1 (a) The Trustee may borrow money if:

- (i) the purpose of the borrowing is to enable the Trustee to make a payment to a beneficiary which is required to be made by law or by these Rules and which, apart from the borrowing, the Trustee would not be able to make;
- (ii) the period of the borrowing does not exceed 90 days; and
- (iii) the total amount borrowed by the Trustee does not exceed 10% of the value of the assets of the Fund.

(b) The Trustee shall also be entitled to borrow money if:

- (i) the purpose of the borrowing is to enable the Trustee to pay for the acquisition of bonds, debentures, stock, bills of exchange or other securities, shares in a company, units in a unit trust, futures contracts, forward contracts, interest rate swap contracts, currency swap contracts, forward exchange rate contracts, forward interest rate contracts, a right or option in respect of such a security, share, unit, contract or policy, any similar financial instrument, and foreign currency;
- (ii) at the time when the relevant investment decision was made, it was likely that the borrowing would not be needed;
- (iii) the borrowing is not taken, under a written determination from the Regulator, to be exempt from this paragraph;
- (iv) the period of the borrowing does not exceed seven days; and
- (v) the total amount borrowed by the Trustee does not exceed 10% of the value of the assets of the Fund.

EXERCISING TRUSTEE'S DISCRETIONS

- 23.1 Subject to the Relevant Law, in administering the Fund and in exercising the trusts, powers and authorities vested in it under these Rules, the Trustee shall have an absolute and uncontrolled discretion at all times to exercise or refrain from exercising those trusts, powers and authorities.
- 23.2 Unless the Fund is a SMF, a discretion which under these Rules is exercisable by a person other than the Trustee shall not be exercised unless:
- (a) the Trustee has consented to the exercise of that discretion; or
  - (b) if the Fund is employer-sponsored:
    - (i) the exercise of discretion relates to the amount of contributions payable by the employer-sponsor; or
    - (ii) the exercise of discretion relates solely to termination of the Fund; or
    - (iii) the circumstances in which the discretion is exercisable are otherwise covered by the Relevant Law.

INDEMNITY OF TRUSTEE

- 24.1 Neither the Trustee nor any director of a corporate trustee shall be liable for any act or default done or omitted in good faith in the administration of the Fund or for any loss or expense incurred by the Fund and shall be fully indemnified by the Fund for any act done or omitted in good faith in administering the Fund unless:
- (a) the Trustee or director fails to act honestly; or
  - (b) intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or director is required by law to exercise; or
  - (c) the liability is for a monetary penalty under a civil penalty order made pursuant to the Relevant Law.
- 24.2 Neither the Trustee nor any director of a corporate Trustee shall in any circumstances be entitled to indemnity reimbursement or recompense from the Members or any of them or any other person entitled to benefits herein and the Members shall not be liable for the debts of the Fund.

TRUSTEE'S DISCLOSURE OF INTEREST

- 25.1 Subject to the provisions of the Relevant Law, no director of a company, (in this clause called a "Director") shall be disqualified by his office from contracting with the Trustee on behalf of the Fund, nor shall any such contract or any contract entered into by or on behalf of the Fund in which any Director shall be in any way interested be avoided, nor shall any Director so contracting or being so interested be liable to account to the Fund for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established, provided that the nature of his interest must be disclosed by him at the meeting of the Trustee at which the contract is discussed or concluded if his interest then exists or in any other case at the first meeting of the Trustee after the acquisition of his interest.

A Director may vote in respect of any contract or arrangement in which he is interested, and may be counted for the purpose of any resolution regarding that contract or arrangement in the quorum present at the meeting and may notwithstanding his interest and whether or not he votes, participate in the execution of any instrument by or on behalf of the Trustee and whether signing or sealing it or otherwise.

AUDIT: TRUSTEE'S ACCOUNTS AND RECORDS

26.1 Together with the duties and obligations contained in Rule 8, the Trustee shall keep a complete record of all matters essential to the administration and working of the Fund and shall also keep such accounts as it may (subject to the Relevant Law) decide.

Such accounts shall be produced by the Trustee as required by the Relevant Law.

26.2 (a) All accounts established and maintained in connection with the Fund and the balance sheet of the Fund as at 30 June in each year shall be audited by an auditor from time to time appointed by the Trustee.

The auditor shall have access to all books papers vouchers accounts and documents connected with the Fund and shall report and certify in writing as to the truth and fairness of the balance sheet and accounts and any other matters (including compliance with all relevant prudential standards) set down by the Commissioner or required by law (statutory or otherwise);

(b) The audited accounts, balance sheet and audit certificate shall be submitted to the Trustee, and any Employer Sponsor who has nominated a Member of the Fund (provided that such a person is a Member at the date of the audit) as soon as practicable after the audit;

(c) Following their submission as set out in paragraph (b) copies of the audited accounts, balance sheet and audit certificate shall be made available to a Member by the Trustee within a reasonable time following a written request to that effect from the Member; and

(d) The auditor above referred to shall be an Approved Auditor. The audit shall be carried out and completed in compliance with the Relevant Law.

26.3 In compliance with the Relevant Law the Trustee shall furnish to the Commissioner each year a report, trustee's certificate and audit certificate in the form prescribed containing such information as may be prescribed from time to time.

26.4 The Trustee shall keep and retain so long as they are relevant, and in any event for at least ten years, copies of reports given to all members of the Fund or to all members included in a particular class of members and must make those copies available for inspection by a member of the staff of the Commissioner if requested to do so by a member of that staff.

TRUSTEE'S REMUNERATION

27.1 For as long as the Fund is a SMF, the Trustee shall not be entitled to be paid for its services as trustee, but is entitled to be reimbursed by the Fund for out of pocket expenses properly incurred.

REMUNERATION OF PROFESSIONAL PERSONS

28.1 Any person who is an accountant, solicitor, barrister, or other professional person and is also a director of the Trustee who is called upon to perform any service in relation to the Fund, shall be entitled to make the same professional charges for that service as he would have made had he not been a director of the Trustee.

AMENDMENT OF RULES

29.1 The Trustee of the Fund may at any time by resolution or by supplemental deed amend the provisions of the Trust Deed or the Rules, but no amendment shall be made which reduces or detrimentally affects any benefit which is or has become vested in any Member PROVIDED THAT:



## THE U & J SCHARF SUPERANNUATION FUND

- (a) any amendments which are approved of by the Regulator or in respect of which all Members whose benefits would be reduced or detrimentally affected have given their written consent to the Trustee shall be deemed not to reduce or detrimentally affect the benefits in respect of those Members; and
- (b) no amendment relating to Employer contributions shall be made without the Employer's consent.

### TRUST DEED AVAILABLE FOR INSPECTION

30.1 A copy of the Trust Deed and these Rules shall be kept by the Trustee at its principal place of business and be available for inspection by any Member at all reasonable times upon reasonable notice.

### EMPLOYER CONTRIBUTIONS

31.1 An Employer may make contributions on behalf of its employees in accordance with Rule 4.

31.2 An Employer shall cease to be a contributor to in the Fund upon:

- (a) The date specified in a written notice to the Trustee of its intention to cease to be a Contributor from that date;
- (b) Becoming bankrupt or being placed in liquidation or receivership or on ceasing to carry on business.

31.3 Members who are Employees of an Employer that has ceased to contribute to the Fund shall continue to be Members until they notify the Trustee that they wish to terminate their membership or the provisions of the relevant Law regarding cessation of Membership are met.

No benefit comprising a preserved benefit or a restricted non-preserved benefit as defined in the Relevant Law shall be paid to those Members during the period that their employment with the former Employer continues.

An unrestricted non-preserved benefit may be paid from the Fund at any time.

### TERMINATION OF FUND

32.1 The Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) the expiry of one month's notice to the Trustee and each Member by each Employer that it has decided to cease permanently contributing to the Fund and each of the Members does not request the Trustee in writing during the period of notice to continue the Fund;
- (b) if there is no person to whom a benefit is or may be payable pursuant to these Rules;
- (c) if the liabilities of the Fund at any time exceed its assets; or
- (d) If there is no Employer each of the members requests in writing that the Fund be wound up.

32.2 In the event of a winding-up of the Fund the liability of any person to make contributions pursuant to the Rules shall cease and the Trustee shall distribute amongst the Members or former Members or their Dependants the assets of the Fund in accordance with the other provisions of these Rules either as a death benefit, a withdrawal benefit or a permanent disablement benefit as appropriate provided that the

## THE U & J SCHARF SUPERANNUATION FUND

Trustee may vary such benefits in such circumstances on a basis that the Trustee considers reasonable having regard to the circumstances.

### ENQUIRIES COMPLAINTS AND DISPUTES

- 33.1 The Trustee must take all reasonable steps to ensure that there are at all times in force arrangements under which:
- (a) members have the right to make enquiries about the operation or management of the Fund; and
  - (b) enquiries so made will be fairly and properly considered and dealt with within 90 days after they were made.
- 33.2 The Trustee shall take all reasonable steps to ensure that all members of the Fund are aware of their right to complain about the management or operation of the Fund and of the following complaint/dispute resolution principles:
- a) All members of the Fund have the right to complain about the management or operation of the Fund where they have a reasonable concern.
  - b) Such complaint shall be made to the Trustee/s and may be oral or in writing.
  - c) Such complaint shall be dealt with fairly and efficiently by the Trustee/s, confidentially if possible, with recourse to external professional advice if necessary and with a view to resolving the problem to the satisfaction of all parties.
  - d) The complaint must be resolved within a reasonable time and within 90 days in any event.
  - e) If the complaint cannot be resolved within 90 days, then any party shall have the right to:
    - \* approach a recognised mediator
    - \* approach the court.and in this event, all parties shall provide the selected dispute resolution venue with the information reasonably required to resolve the dispute.
- 33.3 While no charge shall be made on a member for the making of a complaint, all parties recognise that, while ever the Fund is an SMF, the longer a dispute continues, the more expensive it will be in real terms for the members of the Fund. Further, the parties recognise that, given the legal requirements of an SMF, it will not always be possible to resolve a problem without involvement of all members of the Fund.
- 33.4 The Trustee shall review the enquiry complaint and dispute management process at regular intervals. The Trustee shall utilise the following guidelines in relation to dealing with enquiries complaints and disputes.
- a) early and fair resolution of all disputes/complaints.
  - b) accurate information provision to all parties.
  - c) use of the least interventionist approach possible to effect resolution.
  - d) stated time limits to be followed.
  - e) simplicity of process.
  - f) easy access for all parties to the system.

THE U & J SCHARF SUPERANNUATION FUND

- g) cost effectiveness bearing in mind the size and nature of the Fund.

OTHER/MISCELLANEOUS RULES

- 34 Other rules and miscellaneous provisions, if any, are set out in Schedule 3 to these Rules.

DEFINITIONS AND INTERPRETATION

- 35 In the foregoing Deed and in these Rules unless there is something inconsistent in the subject or context:
- 35.1 "Allocated Pension Account" and "Retirement Investment Account" each mean an account into which a Member's Eligible Termination Payment is rolled over and from which pension payments are made.
- 35.2 "Allocated Pension" means a pension paid from a Member's Allocated Pension Account.
- 35.3 "Approved Deposit Fund" means a Fund established and maintained in accordance with the Relevant Law.
- 35.4 "Approved Auditor" has the meaning given to it in the Relevant Law.
- 35.5 "Child" includes an adopted child, a step-child or an ex-nuptial child.
- 35.6 "Defined Benefit Pension" means a pension paid in accordance with subregulation 1.06(7) of the SIS Regulations.
- 35.7 "Dependant" in relation to a Member means the spouse, widow, widower and any child of the Member, any person with whom the Member is in an interdependency relationship as defined in the Relevant Law, and any other person who in the opinion of the Trustee is at the relevant date wholly or partially dependant on the Member.
- 35.8 "Eligible Termination Payment" has the same meaning as in Subdivision AA of Division 2 of Part III of the Tax Act.
- 35.9 "Employee" means a person in the employ of an Employer and includes any person who is a director of an Employer which is a corporation. "Employee" also has the extended meaning given to it by the Superannuation Industry (Supervision) Act 1993.
- 35.10 "Employer" in relation to a particular Member means an Employer of that person which the Trustee has admitted to make contributions to the Fund.
- 35.11 "Employer's Contribution Account" means an account established in accordance with these Rules into which the Employer's contributions in relation to a particular Member are made.
- 35.12 "Full time employment" means gainful employment for 30 hours or more weekly or otherwise as defined from time to time in the Relevant Law.
- 35.13 "Fund" means the superannuation fund established by the Trust Deed.
- 35.14 "Gainful employment" means an activity for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages and "gainfully employed" shall have a corresponding meaning.
- 35.15 "General Fund Account" means the account established in accordance with these Rules.
- 35.16 "In House Assets" has the meaning set out in the Relevant Law.

THE U & J SCHARF SUPERANNUATION FUND

- 35.17 "Individual Member's Account" or "IMA" means an account as described in Rule 8.5.
- 35.18 "Linked" has the meaning set out in the Relevant Law.
- 35.19 "Loan" includes the provision of credit or any other form of financial accommodation, whether or not legally enforceable or intended so to be.
- 35.20 "Market Linked Pension" means a pension paid in accordance with Subregulation 1.06(8) of the SIS Regulations.
- 35.21 "Member" means a person who is a member of the Fund and includes a person who is receiving or is entitled to receive benefits from the Fund.
- 35.22 "Member's Contribution Account" means an account established to accept a Member's contributions and other amounts as specified in these Rules and the Relevant Law. It includes where relevant, a Member's Preserved Contribution Account.
- 35.23 "Member's Preserved Contribution Account" means an account established to preserve benefits in compliance with the provisions of the Relevant Law.
- 35.24 "Normal Retirement Date" means a Member's sixty-fifth birthday or any other date upon which the Member and the Trustee may agree upon in any particular case or which is specified as such in the Relevant Law.
- 35.25 "Part time employment" means gainful employment for 10 hours or more weekly but less than 30 hours weekly or otherwise as defined from time to time in the Relevant Law.
- 35.26 "Permanent Disablement" means either:
- (a) disablement which has rendered the Member incapable of full-time work for six months and in the opinion of the Trustee likely to be permanently and continuously incapable of engaging in any full-time work or duty on behalf of the Employer; or
  - (b) where any part of the benefit payable in the event of permanent disablement is insured with an insurance company or office, the definition of permanent disablement contained in the policy document evidencing the contract of insurance,
- PROVIDED THAT the Trustee shall subject to the Relevant Law have the discretion as to which of the above paragraphs shall apply in any circumstances in which the meaning of "Permanent Disablement" is relevant.
- 35.27 "Person" includes a body corporate.
- 35.28 "Permitted Pension" means any form of pension permitted to be paid by the Relevant Law and includes without limitation, an Allocated Pension, a Defined Benefit Pension a Market Linked Pension, a Non-Commutable Allocated Pension, and a Non-Commutable Pension.
- 35.29 "Preservation Age" has the meaning set out in the Relevant Law.
- 35.30 "Regulator" means the Australian Prudential Regulation Authority or the Commissioner of Taxation or The Australian Securities and Investments Commission. as appropriate.
- 35.31 "Relative" in relation to an individual, means the following:
- (a) a parent, child, grandparent, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first or second cousin of the individual or of his/her spouse or former spouse; or

THE U & J SCHARF SUPERANNUATION FUND

- (b) another individual having such a relationship to the individual or to his/her spouse or former spouse because of adoption or remarriage; or
- (c) the spouse of that individual or of any other individual specified in paragraph (a) or (b).
- 35.32 "Relevant Law" includes the Occupational Superannuation Standards Act, the Income Tax Assessment Acts 1936 and 1997, the Superannuation Industry (Supervision) Act, the Superannuation (Administration) Act, the Superannuation Guarantee Charge Act, each as amended from time to time, regulations from time to time promulgated under any of those Acts, any other legislation which from time to time has application to superannuation funds and any direction or rule issued by the Regulator.
- 35.33 "Reversionary Beneficiary" is a person/s named as such by the Member.
- 35.34 "Self Managed Superannuation Fund" has the meaning set out in the Relevant Law and "Self Managed Fund" or "SMF" means a Self Managed Superannuation Fund.
- 35.34 "Spouse" includes a person who, though not legally married to the member, lives with that Member on a genuine domestic basis as the husband or wife and also includes any other relationship allowed from time to time by the Relevant Law.
- 35.35 "Standard Employer-Sponsor" means an employer who contributes to the Fund pursuant to an arrangement between the Employer and the Trustee for the benefit of a Member (or his dependants) who is an employee of the Employer or of an associate of the Employer.
- 35.36 "Standard Employer-Sponsored Fund" is a regulated fund which has at least one Standard Employer-Sponsor.
- 35.37 "Superannuation Guarantee Act" means the Superannuation (Administration) Act, 1992 and the Superannuation Guarantee Charge Act 1992 as amended from time to time.
- 35.38 "Tax Act" means the Income Tax Assessment Act 1936 as amended from time to time.
- 35.39 "Trust Deed" means the Deed of which these Rules form part and any amendments to it.
- 35.40 "Trustee" means the Trustee or Trustees for the time being of the Fund whether original, substituted or additional.
- 35.41 Words importing the singular number include the plural and vice versa and words importing any gender include each other gender as the case may require.
- 35.42 The headings and notes in brackets in these Rules are for convenience of reference only and shall not affect their interpretation. Schedules to the Rules form part of the Rules.
- 35.43 Where there is an inconsistency between any of the above definitions and a definition contained in the Relevant Law, the latter definition shall prevail.
- 35.44 Where any word or phrase not defined in these Rules is defined in the Relevant Law, it shall bear the same meaning for the purpose of these Rules.
- 35.45 Where the laws applicable to this Deed are the laws of the State of South Australia the provisions of Section 35(b) of the Trustees Act 1936-1953 of that State are hereby expressly excluded from application to this Deed.
- 35.46 To the extent that they are not incorporated in these Rules, the requirements contained in the Relevant Law from time to time shall be deemed to be incorporated in these Rules.

These Rules shall be read and construed on the basis that the provisions of the Relevant Law to the extent that they impose requirements in relation to the trust deeds and rules

THE U & J SCHARF SUPERANNUATION FUND

of superannuation funds in order for the Fund to qualify for income tax concessions are deemed to be incorporated in these Rules.

35.47 Where in these Rules the Trustee is expressed to have a power or discretion it shall be exercised at all times having regard to the provisions of the Relevant Law.

35.48 Notwithstanding the provisions of these Rules, if there is any inconsistency between them and the Relevant Law, the latter provisions shall prevail.

SUPERANNUATION FUND RULES - SCHEDULES

SCHEDULE 1 : OTHER INVESTMENT POWERS

None specified.

SCHEDULE 2 : OTHER POWERS OF TRUSTEE(S)

None specified.

SCHEDULE 3 : OTHER RULES

None specified.