



BARRISTERS AND SOLICITORS

JON WARREN GITSHAM

Principal

- and -

LANGUEDOC INVESTMENTS PTY LTD

Trustee

TRUST DEED

- establishing the -

LANGUEDOC SUPER FUND

Fund

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THIS DEED is made on the date specified in Schedule A as the Date of Deed

BETWEEN the person named and described in Schedule A as the Principal (the "Principal") AND the person named and described in Schedule A as the Trustee (the "Trustee")

WHEREAS:

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

NOW THIS DEED WITNESSES:

1. ESTABLISHMENT

The Principal establishes a fund (the "Fund") which is known by the name described in

Schedule A and which commences on the Date of Deed specified in Schedule A.

2. **STRUCTURE AND PURPOSE**

(a) **Divisions of Deed**

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

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

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

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

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

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

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

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

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

(e) **Notification of Members following election**

The Trustee shall notify Members of a change in the application of sub-divisions C1 or C2 of Division C in accordance with this Clause as soon as practicable after the change occurs.

(f) **Purpose of Fund**

The purpose of the Fund is the provision of superannuation benefits in accordance with the Relevant Law PROVIDED HOWEVER that where the Trustee is constituted by Individual Trustees and sub-division C2 of Division C applies, the sole or primary purpose of the Fund shall be the provision of old-age pensions within the meaning of the Relevant Law.

3. **COVENANTS**

(a) **Covenants of Trustee**

The Trustee for itself, its successors and assigns covenants with the Principal to perform and observe the covenants, trusts and conditions of this Deed and the covenants and obligations imposed under the Relevant Law so far as the same are or ought to be observed by the Trustee.

(b) **Covenants of Principal**

The Principal covenants with the Trustee, to perform and observe the covenants, trusts, and conditions of this Deed so far as the same are or ought to be observed by the Principal.

- DIVISION A -
MANAGEMENT AND ADMINISTRATION

4. **INTERPRETATION - DEFINITIONS**

In this Deed unless the context otherwise requires:

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

"Account" means Accumulation Account or Pension Account;

"Accumulation Account" means the account established on behalf of each Member or Beneficiary as described in Clause 12;

"Actuary" means the actuary (if any) for the time being appointed pursuant to this Deed;

"Administration Manager" means a person appointed as Administration Manager of the Fund in accordance with sub-clause 20(b);

"Annuity" means an annuity as defined for the purposes of the Relevant Law.

"Approved Benefit Arrangement" means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit Fund and an Annuity arrangement into which or from which assets of the Fund can be transferred without causing the Fund to be in breach of or to fail to comply with the Relevant Law and includes an Eligible Rollover Fund;

"Approved Deposit Fund" in relation to a year of income means a fund which is a complying ADF pursuant to the Tax Act;

"Auditor" means the auditor for the time being appointed under sub-clause 20(a) of this Deed;

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

"Beneficiary" means a person presently and absolutely entitled to receive a Benefit at the relevant time which shall include a Pensioner but which shall not include a person who is a Member at that time;

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

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

"Class" means Membership Class;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Financial Year" means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee shall determine;

"Forfeiture Account" means the account established pursuant to sub-clause 26(c).

"Full-Time Gainful Employment" in relation to a Member means a Member who is Gainfully Employed on a full-time basis within the meaning of the Relevant Law;

"Fund" means the Fund established by this Deed the name of which is set out in Schedule A;

"Fund Earning Rate" means the earning rate for the Fund (which may be negative) determined under to paragraph (iii) of sub-clause 12(d) after taking into account such provisions or reserves for future contingencies as the Trustee shall consider reasonable;

"Fund Year" means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee from time to time may determine;

"Gainful Employment" in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for gain to the extent required by the Relevant Law;

"Guarantee Act" means the Superannuation Guarantee (Administration) Act 1992 and any regulations made under that Act;

"Individual Trustee" means an individual who is appointed to be a Trustee of the Fund;

"Insurer" means any insurer with whom the Trustee effects a Policy or Policies;

"Investment Manager" means a person appointed as an Investment Manager of the Fund in accordance with sub-clause 20(c);

"Levy" includes a levy payable by the Fund to the Commissioner in accordance with the Superannuation Supervisory Levy Act 1991, the Superannuation (Financial Assistance Levy) Act 1993 and any other legislation or regulations which impose a levy or levies on the Fund;

"Lifetime Pension" means a Benefit paid in the form of a pension which is acceptable to the Commissioner or is in accordance with the requirements of the Relevant Law for the purposes of the provision of Benefits as old-age pensions;

"Member" means an Eligible Person that has been accepted as a Member of the Fund pursuant to Clause 8 of this Deed (which expression shall where appropriate, include the Principal) and who has not ceased to be a Member pursuant to sub-clause 8(f) and "Membership" shall mean Membership of the Fund;

"Membership Class" means the Class or Classes of Membership of a Member as determined pursuant to Clause 42;

"Nominated Dependant" means a person nominated by a Member as the Nominated Dependant;

"Non-Preserved Amount" means an amount including a Roll Over Payment payable to or in respect of a Member or Beneficiary which is not subject to any cashing restrictions at the time of payment under the Relevant Law;

"Normal Retirement Age" means the age of 65 years or such other age being not less than 55 years as is acceptable to or required by the Relevant Law and as the Trustee shall determine PROVIDED HOWEVER that where Benefits are determined under sub-division C2. "Normal Retirement Age" shall not be less than 60 years;

"Participating Employer" means any person, firm or corporation that by agreement with the Trustee is admitted to participation in the Fund under Clause 35;

"Part-Time Gainful Employment" in relation to a Member means a Member who is employed for at least 520 hours per annum or a Member who fulfils any other requirements specified in the Relevant Law;

"Pension" includes a Benefit payable by instalments out of the Accumulation Account or the Pension Account of a Member or Beneficiary whether such instalments be equal or unequal;

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

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

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

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

"Principal" means the Principal named in Schedule A;

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

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

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

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

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

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

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

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

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

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

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

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

- (i) a person legally married to a Member at any time; or
- (ii) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of

the Member and in relation to a deceased Member the term "widow" or "widower" includes such a person,

PROVIDED THAT where there is more than one such person the Trustee shall determine which one or more of them shall be deemed to be the Spouse, and, if more than one person is so deemed to be the Spouse, the Trustee shall determine the proportions in which a Benefit payable to the Spouse is to be divided between them;

"Tax Act" means the Income Tax Assessment Act 1936 and any regulations issued under that Act;

"Taxation" includes income tax, capital gains tax, tax on Eligible Termination Payments, payroll tax, land tax, stamp duty and any other taxes or duties paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member, Dependant or Beneficiary;

"Temporary Total Disablement":

- (i) has the same meaning as contained in any Policy effected by the Trustee with an Insurer for this purpose in respect of the Member and in force at the time of the Temporary Total Disablement of the Member; or
- (ii) if there is no Policy effected in respect of the Member for this purpose then such physical or mental incapacity of a temporary nature (whether due to ill-health accident or injury or other cause) that renders the Member incapable of continuing to be employed in the position or Gainful Employment in which the Member was employed immediately prior to the date of becoming incapacitated but shall not include Total and Permanent Disablement and "Temporarily Totally Disabled" shall have a corresponding meaning. All questions regarding whether or not the Member is Temporarily Totally Disabled and the payment of any income Benefit upon the Member becoming Temporarily Totally Disabled shall be determined by the Trustee and without limiting the generality of any of the foregoing the Trustee may determine not to provide any Temporary Total Disablement Benefits in respect of all Members or Members of a designated Class;

"Total and Permanent Disablement":

- (i) has the same meaning as contained in any Policy effected by the Trustee with an Insurer in respect of the Member and in force at the time of the Total and Permanent Disablement of the Member; or
- (ii) if there is no Policy containing such a term effected in respect of a Member then Total and Permanent Disablement in relation to a Member means ill-health (whether physical or mental) where the Trustee is reasonably satisfied after considering medical and

other evidence that the Member is unlikely, because of ill-health, ever again to engage in the Member's current employment with that Member's Employer, or in respect of a Member who is not an Employee, is unlikely to engage in the Member's current Gainful Employment, or such other equivalent definition applicable under Part 6 of the Superannuation Industry (Supervision) Regulations in relation to the release of Preserved Payments on the ground of permanent incapacity,

and the expression "Totally and Permanently Disabled" has a corresponding meaning;

"Tribunal" means the Superannuation Complaints Tribunal established under the Superannuation (Resolution of Complaints) Act 1993;

"Trustee" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted appointed in accordance with Clause 14 of this Deed;

"Unclaimed Benefits" means those Benefits described as "unclaimed money" under Part 22 of the Superannuation Industry (Supervision) Act 1993;

"Withdrawal Benefit" means the minimum Benefit which must be paid to a Member on the Member's withdrawal from the Fund as prescribed by the Relevant Law.

5. INTERPRETATION - GENERAL

(a) **Plural and gender of words**

In this Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender and words importing the singular number shall include the plural number and vice versa.

(b) **Headings to Clauses**

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

(c) **Defined words**

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

(d) **Statutory enactments**

References to any statutory enactment shall be construed as references to that enactment as amended, modified or re-enacted from time to time and shall include any

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

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

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

(i) **Inconsistency**

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

(ii) **Decision of Trustee Final**

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

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

(f) **Requirements of Commissioner**

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

(g) **Superannuation Guarantee Legislation**

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

6. **GENERAL PROVISIONS**

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

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

(b) **Exercise of Employer's and Trustee's rights**

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on an Employer or 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 an Employer or Trustee:

- (i) where an Employer or Trustee is a company, then by resolution of its Directors in accordance with its articles of association or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (ii) where the Trustee consists of Individual Trustees, then by unanimous resolution of those persons or at a meeting of such persons where decisions are to be made by a majority of such persons holding the office of Trustee or by such greater number as shall be required by the Relevant Law; or
- (iii) where an Employer consists of individuals, then by a majority of such individuals,

PROVIDED THAT any requirements of the Relevant Law are met.

(c) **Rights of Members**

The provisions of this Deed shall not in any way affect the right of a Member or the personal representative of a Member or any other person to claim compensation or damages under any Act of Parliament or at common law or in circumstances where the Member is injured or dies as a result of an event arising out of or in the course of the employment of the Member.

(d) **Inquiries, Complaints and Disputes**

- (i) If required by the Relevant Law, the Trustee shall ensure that there are in force arrangements to deal with inquiries or complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Relevant Law.
- (ii) Subject to the Trustee's right to determine in its discretion to appeal against any decision of a Court or the Tribunal, the Trustee shall ensure that it implements any decision of a Court or Tribunal as required by that Court or Tribunal.

(e) **Benefits Secured**

The rights of the Members and their Dependants to receive Benefits payable under this Deed shall be fully secured within the meaning of the Relevant Law.

7. **PROPER LAW**

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia which is specified in Schedule A. The Trustee, Members, Beneficiaries and Employers shall accept the jurisdiction of the Courts of that State or Territory. The provisions of Section 35b of the Trustee Act of South Australia shall not apply to this Deed.

8. **MEMBERSHIP OF FUND**

(a) **Application for Membership**

- (i) The Trustee shall invite such Eligible Persons as it shall in its absolute discretion determine to become Members of the Fund. The Trustee shall require such persons to complete an application for Membership in the form of Schedule B annexed to this Deed or in such other form as the Trustee shall from time to time determine.
- (ii) Notwithstanding the provisions of paragraph (i) above, where a completed application for Membership is not provided by an Eligible Person who is an Employee, the payment of a Contribution by an Employer in respect of that Employee or the acceptance of a Shortfall Component in respect of an Employee shall be deemed to constitute an application for Membership of the Fund in respect of that Employee.

(b) **Admission to Membership**

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

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

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

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

(d) **Incorrect or Misleading Information**

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

(e) **Information re Age**

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

(f) **Cessation of Membership**

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

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

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

9. **MEMBERSHIP NOTIFICATION REQUIREMENTS**

(a) **Notice to New Members**

As soon as practicable before the admission of a person as a Member of the Fund, the Trustee shall arrange for such Member to be given a written statement containing information and details relating to the Fund as is required to be provided by the Relevant Law.

(b) **Disclosure and Reporting Requirements**

The Trustee shall arrange for Members, former Members and Beneficiaries to be provided with information in writing or copies of accounts, records or documents of the Fund as required by the Relevant Law on an annual basis and on other occasions and in such manner as shall be required by the Relevant Law.

(c) **Notice to Former Member**

As soon as practicable after a person ceases to be a Member of the Fund, the Trustee shall arrange for such former Member or the legal personal representative of the former Member to be given a written statement containing such information and details relating to the Benefits of the former Member as is required to be provided by the Relevant Law

(d) **Disclosure Limitation**

No Member or Dependant of a Member shall be entitled to obtain information in respect of any details of 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 is provided for by this Clause.

(e) **Inspection of Trust Deed and other Documents**

A copy of this Deed and any other documents as required by the Relevant Law shall be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary and unless otherwise required by the Relevant Law, it shall be sufficient for the purposes of this sub-clause to make a copy of this Deed or such 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.

10. **MEETINGS OF MEMBERS**

The following provisions shall apply in relation to meetings of Members of the Fund:

(a) **Notice**

to call a meeting of Members shall require a notice to be served on the Trustee signed by 20 Members or at least one-half of the number of Members in the Fund whichever is the lesser which notice shall request a meeting of Members;

(b) **Meeting Date**

the Trustee may convene a meeting of Members within 14 days of receiving the request and shall send a notice of meeting to each Member specifying that a meeting will be held within 14 days of that notice being issued;

(c) **Trustee Convening Meeting**

the Trustee may at any time convene a meeting of Members by notice in writing.

(d) **Contents of Notice**

every notice of meeting shall:

- (i) be posted or given at least 10 days before the meeting;
- (ii) advise the place and time of the meeting;
- (iii) advise the Member that a proxy may be appointed to vote on behalf of the Member at the meeting PROVIDED THAT the Member lodges the form of proxy with the Trustee not later than 24 hours before the meeting;
- (iv) be accompanied by a form of proxy approved by the Trustee;
- (v) set out the matters including any resolutions to be considered at the meeting;

(e) **Deemed Service**

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

(f) **Chairperson**

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

(g) **Quorum**

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

(h) **Voting**

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

11. THE FUND

(a) Fund vested in Trustee

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

(b) Fund Assets

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

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

12. FUND ACCOUNTS

(a) Accumulation Accounts

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

(b) Credits to Accumulation Accounts

The following amounts shall be credited to the appropriate Accumulation Account:

- (i) any amount paid into the Fund in respect of the Member as a transfer or a Roll Over Payment which the Trustee considers it appropriate to credit;
- (ii) any Contributions made by the Member;
- (iii) any Contributions made in respect of the Member or Beneficiary by the Employer;
- (iv) the proceeds of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiary and paid to the Trustee which the Trustee considers it appropriate to credit;
- (v) such positive earnings as are determined by the Trustee and transferred from the Income Account;
- (vi) such forfeited amounts as are allocated to but not paid directly to the Member or Beneficiary pursuant to sub-clause 26(d);
- (vii) any amounts transferred from the Pension Account of a Beneficiary;
- (viii) any Shortfall Component paid in respect of the Member;
- (ix) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (x) such other amounts as the Trustee shall from time to time determine.

(c) Debits to Accumulation Accounts

The following amounts shall be debited to the appropriate Accumulation Account:

- (i) any amount paid out of the Fund in respect of the Member or Beneficiary as a transfer or a Roll Over Payment which the Trustee considers it appropriate to debit;
- (ii) any other Benefit payments made to or in respect of the Member or Beneficiary other than payments from a Pension Account;
- (iii) the costs of any Policy or Annuity effected by the Trustee in respect of the Member or Beneficiary subject to paragraph (d)(ii)D below;

- (iv) such proportion of any amount payable by way of Taxation in respect of Contributions or any Shortfall Component paid to the Fund or earnings of the Fund credited to the Accumulation Account or arising as a result of a Roll Over Payment as the Trustee may determine;
- (v) such of the costs, charges and expenses incurred in accordance with Clause 19 or an appropriate portion thereof as the Trustee may determine;
- (vi) the amount of any lien exercised pursuant to Clauses 18 or 25;
- (vii) such amount as is forfeited pursuant to sub-clauses 26(a), 26(b) or 31(b);
- (viii) such negative earnings as shall be determined by the Trustee in accordance with sub-clauses 12(d), 12(f) or paragraph 15(e)(v);
- (ix) any moneys paid in respect of the Trustee indemnity set out in Clause 18;
- (x) any amount credited to the Pension Account of a Beneficiary;
- (xi) any amount of Levy determined by the Trustee to be appropriate to debit;
- (xii) such other amounts as the Trustee shall from time to time determine.

(d) **Income Account**

- (i) The Trustee shall establish an Income Account for the Fund to which shall, subject to paragraph 15(e)(v), be credited the following:
 - A. all income and profits of the Fund each year;
 - B. credits arising out of adjustments pursuant to sub-clause (f) below;
 - C. any amount transferred from the Equalisation Account pursuant to sub-clause (e) below;
 - D. the proceeds of any Policy effected by the Trustee where the Trustee determines that it should not be credited to an Account;
 - E. any Financial Assistance received by the Fund and not credited to an Account;

and profits of the Fund shall include any surplus arising from a valuation undertaken at any time during the year in accordance with sub-clause (g) below.

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

Law on a basis which the Trustee considers to be equitable. The Trustee shall when required by the Commissioner or the Relevant Law notify the Members of the basis of the calculation of the interim Fund Earning Rate.

(e) **Equalisation Account**

- (i) The Trustee shall have power at any time to establish an Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any amount remaining in the Income Account under sub-clause (d) above.
- (ii) Whilst any moneys are held in the Equalisation Account, they shall not form part of any Accumulation Account or Pension Account and any income earned by the Fund on the moneys held in the Equalisation Account shall be credited to the Equalisation Account.
- (iii) The Equalisation Account shall at the discretion of the Trustee be used for the following purposes :
 - A. to generally give effect to the reserving strategy established by the Trustee to stabilise the investment earnings of the Fund;
 - B. to provide for such contingencies as the Trustee shall determine;
 - C. to augment the Fund Earning Rate;
 - D. to meet any Taxation payments payable by the Fund;
 - E. to pay any expenses or charges payable by the Fund;
 - F. to or for the benefit of a Member, Pensioner, Beneficiary or former Member including augmentation of the Accumulation Account or Pension Account on a basis that does not breach the Relevant Law; or
 - G. for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law

(f) **Adjustment of Accumulation Account or Pension Account**

In determining the amount standing to the credit of an Accumulation Account or Pension Account at the time a Benefit is calculated or becomes payable, the Trustee shall make such adjustment (up to the date of payment) reflecting the Fund Earning Rate then applying as it shall in its discretion consider equitable and in accordance with the Relevant Law and the Income Account shall be debited or credited accordingly.

(g) Valuation of the Fund

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Relevant Law shall require the Trustee shall make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date and shall determine whether there is a surplus or deficiency which it is equitable to transfer to the Income Account or the relevant sub-account referred to in sub-clause 15(e)(iv) and the value so determined in respect of each asset shall then be reflected in the balance sheet and other accounts of the Fund.

13. FUND RECORDS, DISCLOSURE AND INVESTIGATION

(a) Receipt and payment of moneys

All moneys of the Fund shall be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a bank, friendly society, building society or similar body as determined from time to time by the Trustee or to the credit of an Insurer for the payment of premiums or into the trust account of a Solicitor, Accountant or Investment Manager appointed in accordance with this Deed.

(b) Issue of receipts

A receipt given on behalf of the Fund by the Trustee or by the secretary (if any) of the Fund or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund shall be a sufficient discharge to the person by whom the moneys are paid.

(c) Records and accounts to be kept

The Trustee shall arrange for:

- (i) the keeping of accounts of all moneys received into and disbursed from the Fund and of all dealings in connection with such moneys;
- (ii) the collection, and prompt payment into an authorised account of the Fund or the otherwise appropriate dealing with all moneys due to the Fund;
- (iii) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law; and

- (iv) the preparation of an annual balance sheet of the Fund, a statement of financial position, an operating statement or such accounts and statements in respect of each Fund Year as are required by the Relevant Law
- (v) the preparation and lodgement of an annual return to the Commissioner and of such other certificates, statements, forms, documents and information in such manner and within such time as is required by the Relevant Law

(d) **Audit**

The Trustee shall:

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

(e) **Information for Trustee**

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

(f) **Disclosure and Reporting Requirements**

The Trustee shall arrange to provide to:

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

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

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

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

(h) **Directions of Commissioner**

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

(i) **Information and Documents for Tribunal**

The Trustee shall arrange to provide to the Tribunal any information or documents relevant to a complaint before the Tribunal in such manner and within such time as required by the Superannuation (Resolution of Complaints) Act 1993 and may make submissions to or attend a conference of the Tribunal as the Trustee sees fit .

14. **FUND TRUSTEE - APPOINTMENT, VACANCY AND REMOVAL**

(a) **Trustee to be Constitutional Corporation**

The Trustee of the Fund shall at all times be a Constitutional Corporation unless:

- (i) sub-division C2 of Division C operates for the purpose of the determination and payment of Benefits in respect of Members; or
- (ii) the Relevant Law otherwise provides.

(b) **Eligibility for Appointment as Trustee**

Subject to Clause 14(a), the following persons or bodies shall be eligible to be the Trustee of the Fund:

- (i) the Trustee specified in this Deed;
- (ii) Individual Trustees;
- (iii) a Constitutional Corporation;
- (iv) such other persons or bodies as shall satisfy the Relevant Law or as shall be appointed by the Commissioner under the Relevant Law

(c) **Appointment of Trustee**

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

(d) **Change of Trustee**

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

- (i) if being a corporation, it is placed in receivership or in liquidation;
- (ii) if the Trustee is disqualified from holding office as Trustee by operation of the Relevant Law or is removed or suspended under the Relevant Law;
- (iii) if the Trustee resigns as a Trustee of the Fund by notice in writing to the Members or the Principal;
- (iv) if being an Individual Trustee, the person dies or becomes mentally or physically incapacitated; or
- (v) subject to the Relevant Law, 7 days after the person is removed from office by notice in writing given by a majority of Members.

(e) **Continuity of Office**

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

(f) **Office of Trustee**

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

(g) Numbers of Individual Trustees

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

(h) Member may be Trustee

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

(i) Equal Representation Requirement

In the event that the Relevant Law requires the Fund to meet any requirements for representation of Members and Employers as Trustees of the Fund at any time, the Trustee and the Members shall forthwith take such steps as shall be necessary to ensure that the Trustee meets the representation requirements of the Relevant Law.

15. TRUSTEE'S INVESTMENT POWERS

(a) Investment Strategy

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

(b) Authorised Investments

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

- (i) any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (ii) the purchase or acquisition in any way of shares, stocks, debentures, notes, bonds, mortgages, options or other like security in any company incorporated in any part of the world whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and whether secured or

unsecured, registered or unregistered;

- (iii) on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution in any type of account, whether secured or unsecured and on such terms as the Trustee shall determine;
- (iv) on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly from it;
- (v) any Policy or Annuity with an Insurer whether by proposal, purchase or otherwise, and any choses in action, interests for life or any lesser term or in reversion or otherwise arising;
- (vi) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (vii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (viii) the acquisition of any futures, options or other synthetic investment and participation in any hedging, swapping or other like arrangement irrespective of whether such dealing is related to any other property forming part of the Fund;
- (ix) any other investments which the Trustee considers appropriate and which satisfy the Relevant Law,

and the Trustee shall have all the powers and authorities necessary to enable it to make each such investment PROVIDED THAT the Trustee must not make a loan to or give any financial assistance to a Member or a relative of a Member of the Fund and PROVIDED FURTHER THAT the Trustee shall ensure that all investments shall be in accordance with the Relevant Law

(c) **Power to Sell and Vary Investments**

The Trustee shall have power to sell any investments, to vary and transpose any investments into other investments authorised by this Deed and to otherwise deal with and manage the investments of the Fund as the Trustee in its discretion sees fit.

(d) Interest of Trustee in Investment

- (i) Subject to paragraph (ii) below, the Trustee and any Director shall have the power and are authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee or Director may have a direct or indirect interest in the investment or may benefit directly or indirectly from it.
- (ii) The Trustee and any Director shall disclose details of any interest in an investment to which paragraph (i) applies in the manner prescribed under the Corporations Law and the Relevant Law.

(e) Provision of Investment Choice

- (i) The Trustee shall not be obliged to provide investment choice to Members or Beneficiaries of the Fund. The Trustee may however in its absolute discretion determine to provide investment choice either generally or only in respect of certain Members or Beneficiaries or certain classes of Members or Beneficiaries of the Fund.
- (ii) Where the Trustee determines to provide investment choice, it shall establish an investment strategy for each of the investment choices available to Members and Beneficiaries under the Fund and where appropriate shall allocate or designate particular assets of the Fund to be held within that strategy and shall advise Members and Beneficiaries of the investment objectives of each of those strategies and provide any other information required for this purpose by the Relevant Law to enable Members and Beneficiaries to make an informed decision regarding the effect of, and risks associated with, each of those investment strategies. The advice provided shall include the various directions that a Member or a Beneficiary can give to the Trustee under paragraph (vi) below and the circumstances in which any such directions can be given or altered.
- (iii) The Trustee shall continually monitor each of the investment strategies established under paragraph (ii) above and the assets held within each strategy in order to ensure that each of those investment strategies is appropriate at all times in respect of Members or Beneficiaries or classes of Members or Beneficiaries to whom each of those strategies is available.
- (iv) The Trustee shall establish a sub-account within the Income Account established under Clause 12(d) in respect of each strategy and shall debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee shall determine.

- (v) The Trustee shall determine a Fund Earning Rate in respect of the sub-accounts established under paragraph (iv) above and shall allocate the earnings of the Fund to each Account in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the Member's or Beneficiary's Account at the beginning of the Fund Year in respect of which the allocation is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Member's or Beneficiary's Account during that Fund Year.
- (vi) Upon admission of a person to Membership of the Fund or at any time whilst a person remains a Member or Beneficiary of the Fund, that person may, where the Trustee has determined to offer investment choice in accordance with paragraph (i) above, select one or, where the Trustee has determined to permit Members to select multiple strategies, more than one of the investment strategies formulated by the Trustee under paragraph (ii) above and direct the Trustee to invest part or the whole of the monies held in respect of that person under the Fund in accordance with the investment strategy or strategies selected by that person under this paragraph PROVIDED THAT any such directions by the Member or Beneficiary shall only be given in the circumstances permitted by, and in accordance with, the Relevant Law and without limiting any of the foregoing the Trustee shall ensure that the Member or Beneficiary is provided with such information as shall be required by the Relevant Law in order to enable the Member or Beneficiary to make an informed decision.
- (vii) A Member or Beneficiary who wishes to select one or more investment strategies pursuant to paragraph (vi) above shall complete a request or any other documentation provided by the Trustee for this purpose which must clearly set out details of the investment strategy or strategies selected by the Member or Beneficiary. The Trustee shall not be bound to act on the request or other documentation unless that request or other documentation is completed in accordance with any instructions issued by or on behalf of the Trustee and does not breach any of the requirements of the Relevant Law.
- (viii) Except to the extent permitted by the Relevant Law, a Member or Beneficiary or any other person shall not direct the Trustee to make a particular investment in respect of a Member or Beneficiary of the Fund. Where a Member or Beneficiary wishes to select particular investments, (whether those investments comprise one or more assets), a request to the Trustee shall be made for an additional investment strategy or strategies for those particular investments ("asset specific investment strategy") to be formulated by the Trustee and for that strategy or those strategies to be made available to that Member or Beneficiary in accordance with paragraph (ii) above. The Trustee may in its absolute discretion approve or reject any requests made under this

paragraph. If the Trustee approves a request made under this paragraph, the Member or Beneficiary who made the request shall be informed accordingly by the Trustee and the provisions of paragraphs (ii), (iii), (iv), (v), (vi) and (vii) above shall, with any necessary modifications thereof, apply to any request approved by the Trustee under this paragraph.

- (ix) The Trustee shall advise Members and Beneficiaries of the investment strategy or strategies which will be adopted by the Trustee in respect of those Members or Beneficiaries or classes of Members or Beneficiaries who decline, or otherwise are unable to select an investment strategy under paragraph (vi) or (viii) above.
- (x) Where an Employer contributes to the Fund in respect of a Member or Beneficiary or classes of Members or Beneficiaries, that Employer may, to the extent and in the circumstances permitted under the Relevant Law, give directions to the Trustee regarding the investment strategy or strategies that may be pursued in relation to the Member or Beneficiary or classes of Members or Beneficiaries in respect of whom that Employer contributes.

16. TRUSTEE'S POWERS OF MANAGEMENT

(a) Additional Powers

In addition to the powers which it might have by law and which are otherwise granted to it by this Deed, the Trustee shall have the following powers:

- (i) to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- (ii) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or 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, omission, breach of duty or breach of the terms of this Deed and the Trustee may abandon, settle, compromise or release any such legal proceedings as it may consider desirable;
- (iii) to borrow money and to secure the repayment of it in any manner and upon any terms (including with or without security) which the Trustee may deem advisable PROVIDED THAT such borrowing shall not breach the Relevant Law;

- (iv) to insure or reinsure any risks, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company, reinsurance company or superannuation fund;
- (v) to underwrite or sub-underwrite any risks, contingencies or liabilities under any superannuation arrangement conducted by any Employer where there is an agreement for a transfer of Employees to the Fund;
- (vi) 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 shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;
- (vii) to retain the services of and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any person so retained and to pay the fee or remuneration for any professional or other advisers so appointed;
- (viii) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund and to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (ix) to indemnify or undertake to indemnify any person, company, government or institution in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund PROVIDED that an indemnity shall only be provided to the extent that it is not limited by or would be inappropriate under the Relevant Law;
- (x) to provide a full or partial release to any person, company, government or institution in respect of any matters which have arisen or may arise as a result of an association, involvement or Membership of the Fund by that person;
- (xi) to appoint a person who shall be responsible for the chairing of meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, to pay a fee or remuneration to such person in respect of such position;
- (xii) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify or reimburse the Trustee or its Directors or officers pursuant to Clause 18;
- (xiii) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times

as a Complying Superannuation Fund;

- (xiv) to seek modifications of or exemptions from the application of the Relevant Law to the Fund PROVIDED THAT the Trustee shall be relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted; and
- (xv) generally to do all acts and things as the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

(b) **Exercise of Trustee Powers**

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

(c) **Trustee Discretion**

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

(d) **Trustee Delegation**

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

(e) **Trustee Direction**

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

17. **LIMITATION OF LIABILITY**

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

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

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

(b) **Loss, Default, Bona Fide Acts, Mistake**

Without limiting the generality of the exemption from liability under sub-clause 17(a), the Trustee shall not incur any liability for:

- (i) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (ii) any act or default of any former Trustee or any Director or officer of a former Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (iii) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee;
- (iv) any mistake or determination or erroneous decision that potentially exposes the Trustee to any claim, action, suit or demand at the instance of any Member or of any person having an interest in the Fund at any time.

(c) **Limitation of Exemption from Liability**

This Clause shall only operate to exempt a person from liability to the extent that the

provision of such an exemption is not limited by or would be inoperative under the Relevant Law.

18. **INDEMNITY OF TRUSTEE**

(a) **Indemnity and Lien**

The Trustee and where applicable its Directors and officers shall be indemnified out of the Fund against all liabilities incurred by it or them in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in it or them under this Deed or at law except if that person:

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

and the Trustee shall have a lien on and may use the moneys representing the assets of the Fund for the purposes of this indemnity.

(b) **Payments in Good Faith**

This indemnity shall extend to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

(c) **Opinion or Advice**

This indemnity shall extend to the circumstances where the Trustee acts upon the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.

(d) **Failure to Carry Out Agreement**

This indemnity shall extend to the circumstances of the failure of any person or corporation to carry out any agreement made with the Trustee and to the circumstances of any act or omission on the part of such person or corporation.

(e) **Agents and Servants of Trustee**

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

(f) **Limitation of Indemnity**

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

19. **REMUNERATION OF TRUSTEE**

(a) **Costs and Disbursements**

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

(b) **Fees Determined Annually**

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

(c) **Reimbursement**

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

- (i) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax but excluding any incidental expenses which are not out-of-pocket expenses or

- disbursements incurred by deduction or otherwise) by or on behalf of the Trustee;
- (ii) such fees and expenses of the Auditor as the Trustee shall consider reasonable;
 - (iii) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
 - (iv) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, Administration Manager, Investment Manager, agent, consultant, expert or investigator from time to time employed by the Trustee in the discharge of its duties under this Deed;
 - (v) all costs, charges and expenses incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund or the making available of any books or documents of the Fund;
 - (vi) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;
 - (vii) all and any costs incurred in relation to an investigation of the Fund, the resolution of disputes or the preparation of information and submissions and the attendance of the Trustee before the Tribunal;
 - (viii) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices.

20. APPOINTMENT OF ACTUARY, AUDITOR AND MANAGERS

(a) Actuary and Auditor

The Trustee shall if necessary appoint a person or firm to the following offices on such conditions as it shall determine:

- (i) an Actuary who is 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;
- (ii) an Auditor who is both appropriately qualified and is independent according to any criteria specified by the Relevant Law.

(b) **Administration Manager**

The Trustee may appoint in writing on such terms as it sees fit, including the granting of any indemnity reasonably required, one or more companies, persons or organisations to act as the Administration Manager of the Fund to carry out some or all of the administration of the Fund which appointment shall be made on such terms and conditions as the Trustee considers appropriate.

(c) **Investment Manager**

- (i) The Trustee shall have power to appoint in writing one or more persons or companies to act as Investment Manager for the Fund for such period and on such terms and conditions as the Trustee shall determine PROVIDED THAT the person or company is qualified to act and the terms and conditions of appointment are in accordance with and comprise all the requirements of the Relevant Law;
- (ii) The Trustee may delegate to each Investment Manager such powers, discretions and authorities relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to such Investment Manager as the Trustee shall determine and may reallocate the assets of the Fund being invested by that Investment Manager.

(d) **Custodian**

The Trustee shall have power to appoint one or more persons or companies to act as a custodian for the Fund for such period and on such terms and conditions as the Trustee shall determine and may delegate and confer upon such custodian such powers, discretions and authorities relating to the holding of legal title, the custody of title deeds and documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund as the Trustee shall determine PROVIDED THAT the person or company appointed to act as custodian is not prohibited from so acting under the Relevant Law.

(e) **Consultants and Officers**

In addition, the Trustee from time to time may appoint such other consultants and officers as it considers desirable for the proper management and administration of the Fund.

(f) **Removal**

The Trustee may remove from office any person or company appointed to any

position under this Clause and shall remove any such person or company where so required by the Relevant Law.

(g) **Full Time Officer**

Any person appointed as a full-time officer under this Clause may, if the Trustee so recommends and the Principal agrees, be deemed, for the purposes of this Deed, to be employed by the Principal.

21. **ACTUARIAL INVESTIGATIONS**

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

22. **CONTRIBUTIONS TO FUND**

(a) **Determination of Contributions**

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

(b) **Designation of Class Entitlements**

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

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

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

(d) **No Obligation to Contribute**

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

(e) **Limitation on Commencing Contributions**

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

(f) **Two Year Period**

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

(i) if the Member:

A. has ceased for a continuous period of two years to be in Full-Time Gainful Employment or Part-Time Gainful Employment; but

B. has not retired from the workforce,

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

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

(g) **Level of Contributions**

The Trustee shall not accept any Contribution or any Shortfall Component:

(i) if the acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund; or

(ii) if the Commissioner directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component in accordance with the Relevant Law

(h) **Ineligible Contributions**

If the Trustee shall at any time ascertain that any Contribution or Shortfall Component

has been accepted in breach of the provisions of this Clause, the Trustee shall refund such Contribution or Shortfall Component within any time period which may be required by the Relevant Law, less any:

- (i) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Component; and
- (ii) reasonable administration charges,

and reduce the Benefits held for the Member in the Fund to those which would have been held if such Contribution or Shortfall Component had not been received.

23. TRANSFERS TO APPROVED BENEFIT ARRANGEMENTS

(a) Transfers to Approved Benefit Arrangements

Where a Member joins or is eligible to join any Approved Benefit Arrangement and requests the transfer of the whole or part of his or her entitlement in the Fund, or if the Trustee wishes to transfer the whole or part of the entitlement held on behalf of a Member to an Approved Benefit Arrangement where the Member is not at the time of the transfer a participant in that Approved Benefit Arrangement, and the Relevant Law enables such a transfer to take place, then the Trustee may transfer the whole or any part of the amount in the Fund representing the Member's Benefit or Benefit Entitlement to the trustee of the Approved Benefit Arrangement PROVIDED THAT a transfer may only be made pursuant to this sub-clause where the Trustee is satisfied that :

- (i) the transfer is permitted under, and is made in accordance with, the Relevant Law; and
- (ii) the rights of the Member or the Beneficiaries of the Member to receive the Benefits arising from the amount transferred are fully secured.

(b) Effect and Method of Transfer Out

- (i) The receipt of the transferred amount by the proper officer of the Approved Benefit Arrangement shall be a complete discharge to the Trustee of all liabilities in respect of the transferred amount and the Trustee shall have no responsibility to see to the application of the transferred amount.
- (ii) Upon the completion of a payment or transfer in respect of a Member or Beneficiary under this Clause all the rights and interest of that Member or Beneficiary under this Deed (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the

occurrence of any event or circumstances affecting the Member or Beneficiary) in respect of the transferred amount shall be entirely extinguished.

(c) **Roll Over**

Where a Member or former Member wishes to effect a Roll Over Payment in respect of all or any of the entitlement of the Member in the Fund, the Member shall:

- (i) make a request to the Trustee in writing nominating the Approved Benefit Arrangement to which the Roll Over Payment is to be made and the amount to be applied as the Roll Over Payment or the percentage of the Member's Accumulation Account or Pension Account to be applied as the Roll Over Payment; and
- (ii) complete and execute a notification of the Roll Over Payment or such other documentation as shall be required by the Tax Act to enable the Roll Over Payment to be effected to the Approved Benefit Arrangement in accordance with the Relevant Law.

(d) **Eligible Rollover Funds**

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

(e) **Preserved Payment Transfers**

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

24. **TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS**

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

Where a Member is or was a member of or is or was the beneficiary under any other Approved Benefit Arrangement the Trustee may by resolution take over or acquire by transfer from the trustee of the other Approved Benefit Arrangement the whole or any part of the assets of such Approved Benefit Arrangement or the interest of any

person who is a participant or former participant of that Approved Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Approved Benefit Arrangement at the time of transfer.

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

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

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

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

(a) **Fund**

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

(b) **Employer**

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

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

26. **FORFEITURE OF BENEFIT ENTITLEMENTS**

(a) **Conditions of Forfeiture**

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

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

Entitlement;

- (ii) whose interest in any Benefit Entitlement, whether by the Member's or Beneficiary's own act, operation of law, an order of any Court or otherwise becomes payable to or vested in any other person, company, government or other public authority;
- (iii) who is insolvent or who commits or has committed an act of bankruptcy;
- (iv) who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or who, in the opinion of the Trustee is incapable of managing the person's affairs; or
- (v) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

shall forfeit entitlement to any Benefit Entitlement held in the Fund at that time by that person PROVIDED HOWEVER that this sub-clause shall only apply to the extent that it is not limited by or inoperative under the Relevant Law or the Bankruptcy Act 1966 (Cth) PROVIDED FURTHER that the Trustee shall only recognise an assignment or charge of a Benefit Entitlement where it is acceptable under the Relevant Law.

(b) **Accumulation Account Residue**

Any Member, former Member or Beneficiary who has been paid all Benefits which the Trustee considers should be paid pursuant to the provisions of this Deed and who still has a residual amount standing to the credit of their Accumulation Account shall forfeit such amount and such amount shall be dealt with as a forfeited Benefit Entitlement.

(c) **Forfeiture Account**

The Trustee shall have power at any time to establish a Forfeiture Account of the Fund and shall transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the provisions of sub-clauses (a) and (b) above or otherwise forfeited in accordance with this Deed.

Whilst any moneys are held in the Forfeiture Account they shall not form part of any Accumulation Account and any income derived by the Fund on the moneys held in the Forfeiture Account shall be credited back to the Forfeiture Account.

The Forfeiture Account shall be applied in accordance with the remaining provisions of this Clause.

(d) **Application of Forfeited Benefit Entitlements**

Subject to Clause 25, the Trustee shall hold upon trust and pay or apply any amounts which have been forfeited and are held in the Forfeiture Account in any one or more of the following ways:

- (i) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine;
- (ii) to the trustee of the estate of the former Member;
- (iii) to or for the benefit of the Member or Beneficiary (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (iv) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (v) for the provision to other Members of the Fund or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- (vi) for crediting to the Equalisation Account to be applied in accordance with sub-clause 12(e);
- (vii) for payment to such of the Employers of the Member or former Member (if any) as the Trustee in its absolute discretion considers appropriate;
- (viii) for any other purpose approved in writing by the Commissioner.

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

(e) **Readjustment of Member Interest**

Where a forfeiture of a Benefit Entitlement occurs under this Clause in respect of a Member, and the Trustee is of the opinion that the event giving rise to the forfeiture has ceased to affect that Member, then the Trustee may, readjust any rights, entitlements or interests of the Member in the Fund and may provide the Member with

such rights or entitlements as the Trustee considers appropriate PROVIDED THAT the rights or entitlements shall not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

(f) **Severability**

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

27. **PENSION PAYMENT AND PENSION ACCOUNT**

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

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary under the terms of this Deed in accordance with the Relevant Law the Trustee may at the request of the Member or Beneficiary but otherwise in its absolute discretion determine to pay a Pension or Pensions from the Fund to the Member or Beneficiary (as the case might be) on the conditions set out in Clause 28:

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

(b) **Establishment of Pension Account**

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

(c) **Operation of Pension Account**

- (i) The following amounts shall be credited to the Pension Account of a Pensioner:
 - A. any amount transferred under sub-clause (b) above,
 - B. any amount paid into the Fund in respect of a Pensioner as a transfer or a Roll Over Payment which the Trustee considers it appropriate to

credit;

- C. the proceeds of any Policy effected by the Trustee in respect of the Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - D. such earnings of the Fund ascertained in accordance with sub-clause 12(d) and paragraph 15(e)(v) as the Trustee shall determine to be equitable;
 - E. any credit arising out of any adjustments made in accordance with sub-clause 12(f);
 - F. any Shortfall Component paid in respect of the Pensioner;
 - G. any amount of Financial Assistance determined by the Trustee to be appropriate to credit.
- (ii) The following amounts are to be debited to the Pension Account of a Pensioner:
- A. any amount transferred out of the Fund in respect of a Pensioner as a transfer of a Roll Over Payment which the Trustee considers it appropriate to debit;
 - B. any payments made to or in respect of the Pensioner or a Reversionary Beneficiary pursuant to the provisions of this Deed;
 - C. the costs of any Policy effected by the Trustee in respect of the Pensioner which are not debited to an Accumulation Account in accordance with sub-clause 12(c);
 - D. such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a Roll Over Payment as the Trustee shall determine;
 - E. such of the costs, charges and expenses incurred in accordance with Clause 19 as the Trustee shall determine to be equitable;
 - F. such of the amount paid in respect of the Trustee indemnity set out in Clause 18 as the Trustee shall determine to be equitable;
 - G. a proportion of any loss sustained on the disposal of any investments

of the Fund as the Trustee shall determine to be equitable;

- H. such negative earnings of the Fund ascertained in accordance with sub-clause 12(d) and paragraph 15(e)(v) as the Trustee shall determine to be equitable;
- I. any amount transferred to the Accumulation Account of a Beneficiary;
- J. any amount of Levy determined by the Trustee to be appropriate to debit;
- K. such other amounts as the Trustee shall from time to time determine.

(d) Segregation of Pension Assets

In relation to each Pension payable to a Member or a Beneficiary, the Trustee may:

- (i) segregate or set apart the assets which represent the Pension Account of the Member or Beneficiary for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- (ii) constitute the segregated assets as segregated current and non-current pension assets within the meaning of Section 273A and Section 273B of the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Law shall require.

28. PENSION PAYMENT CONDITIONS

(a) Method of Payment and Security

Where a Pension is payable from the Fund, the following conditions shall apply to the payment of the Pension:

- (i) the Pension shall be paid from the amount standing to the credit of the Pension Account of the Pensioner;
- (ii) the Pension shall be paid at least annually;
- (iii) the amount of the Pension in any year shall be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time PROVIDED THAT the amount shall not be greater than or lesser than the

amounts calculated as the maximum and minimum limits specified by the Relevant Law for the payment of a Pension;

- (iv) the Pension shall not be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner or on the death of a Reversionary Beneficiary or shall only be transferred upon such other terms as shall be acceptable under the Relevant Law;
- (v) the capital value of the Pension and the income from the Pension cannot be used by a person as security for a borrowing.

(b) Pension Account Limitation

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

(c) Pension Increase

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

(d) Reversionary Beneficiary

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

(e) Death of Pensioner

In the event of the death of a Pensioner whilst there is still an amount standing to the credit of the Pension Account of the Pensioner and where no Reversionary Beneficiary has been nominated the balance of such Pension Account shall be dealt with in accordance with the provisions of Clause 31 hereof PROVIDED HOWEVER that in the event that such an application is not in accordance with the Relevant Law the balance of such Pension Account shall be dealt with in accordance with sub-clause

26(c) and (d) as though it were a forfeited Benefit or otherwise as permitted by the Relevant Law.

29. **COMMUTATION OF PENSION**

(a) **Conditions of Commutation**

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

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

(b) **Payment of Lump Sum Benefit**

The Trustee shall pay the amount of the lump sum Benefit in respect of the Pension being commuted to the Pensioner or the Reversionary Beneficiary who applied for the commutation but subject to any other applicable provisions of this Deed.

(c) **Adjustment of Pension following the Commutation**

Following the commutation of a part of a Pension, the Trustee shall reduce the total amount of the instalments of any Pension payable to the Pensioner by such amount as it considers appropriate.

30. **TRANSFER IN SPECIE**

(a) **Transfer of Policy**

Where a Member or a Beneficiary is entitled to be paid a Benefit or the Trustee in its discretion determines to pay a Benefit to a Member, a Beneficiary or the Dependents of the Member and the same includes any interest in a Policy of any kind on the life

of the Member or Beneficiary the Trustee may in its absolute discretion and in lieu of surrendering such Policy assign the same to such Member or Beneficiary or to the Dependants or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of such Policy as at the date of assignment shall be debited as a payment to the Member or Beneficiary in the assessment of any entitlement as reflected by the Member's or Beneficiary's Accumulation Account or Pension Account and neither the Trustee nor an Employer shall be liable to pay any further premiums which may become due and payable under the Policy as from the date of such assignment.

(b) **Transfer of Investments**

The Trustee may with the consent of a Member or a Beneficiary to whom a Benefit is payable transfer investments of the Fund of equivalent value to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed PROVIDED HOWEVER that the Trustee is satisfied that such transfer is permitted by the Relevant Law.

(c) **No Beneficial Interest**

With the exception of the provisions of this Clause and sub-clause 15(e), no Member or Beneficiary shall have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole whilst such asset or assets remain subject to the provisions of this Deed.

31. **PAYMENT OF BENEFITS ON DEATH**

(a) **Payments to Dependants or Legal Personal Representatives**

Upon the death of a Member or Beneficiary who had Dependants, the Trustee may pay or apply the Benefit to or for the benefit of one or more of the Member's or Beneficiary's Dependants (including any Nominated Dependants) and legal personal representative in such proportions, form, manner and at such times as the Trustee shall from time to time in its discretion determine PROVIDED THAT the payment of the Benefit shall comply with the Relevant Law.

(b) **Payments to Other Persons**

Upon the death of a Member or Beneficiary who had no Dependants, the Trustee shall pay the Benefit to the legal personal representative of the Member or Beneficiary, or if there is no legal personal representative may pay or apply the Benefit for the benefit of such Relatives of the Member or Beneficiary or other persons as shall appear to the Trustee to be entitled to share in the estate of the Member or Beneficiary in such proportions, form, manner and at such times as the Trustee shall from time to time in

its discretion determine PROVIDED THAT if there are no such Relatives or other persons the Trustee shall subject to compliance with the Relevant Law forfeit the Benefit and deal with it in accordance with Clause 26 as if it was a Benefit Entitlement PROVIDED FURTHER THAT the payment of the Benefit to such Relatives or other persons shall in all cases comply with the Relevant Law.

(c) **Discharge of Trustee**

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

32. **PAYMENT OF BENEFITS**

(a) **Address for Benefits**

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

(b) **Notification of Address**

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

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

(c) **Receipt for Benefits**

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

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

Where a Benefit is payable to or in respect of a Member, prior to payment of the

Benefit the Trustee shall notify:

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

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

(e) Notification Outside Time Limit

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

(f) No Personal Claim

No Member or person claiming through a Member or on behalf of a Member or as the Dependant of a Member shall be entitled to require payment of that Member's interest in the Fund except as may be provided in this Deed.

(g) Payment to Others on Behalf of Beneficiaries

When any Beneficiary is under the age of 18 years or is under any legal disability or when in the opinion of the Trustee it would be in the best interests of the Beneficiary, the Trustee may pay all or part of any Benefit in such one or more of the following ways as the Trustee shall determine:

- (i) to or towards the maintenance, education, advancement, support or benefit of the Beneficiary in such manner and on such terms and conditions as the

Trustee shall determine; or

- (ii) to any other person who appears to the Trustee to be a trustee for the Beneficiary or Spouse, child, parent or guardian or a person having custody of the Beneficiary for application on behalf of the Beneficiary,

and the receipt of the person to whom the Benefit is paid shall be a complete discharge of the Trustee for the payment in respect of the Beneficiary and the Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

(h) **Preservation Conditions**

Notwithstanding any other provision of this Deed which may be construed to the contrary:

- (i) no Member or Dependant of a Member shall be entitled to receive any Benefit which is a Preserved Payment Benefit prior to the Member retiring from Gainful Employment at or after reaching the age of 55 years otherwise than in the event of Total and Permanent Disablement or death of the Member or in other circumstances permitted by the Relevant Law;
- (ii) any Pension or Annuity that a Member or the Dependents of a Member have a right to receive from the Fund must commence to be paid, and any other Benefits that a Member or the Dependents of a Member have a right to receive from the Fund are to be paid, not later than the 65th birthday of the Member or at such other time as is permitted or required by the Relevant Law;
- (iii) any Preserved Payment Benefits held by the Trustee which are unable to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with Clause 23, or be retained in the Fund subject to Clause 46.

(i) **Unclaimed Benefits**

The Trustee shall give to the Commissioner a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Commissioner at such time and in such manner as required by the Relevant Law.

(j) **Death of Former Member Prior to Benefit Payment**

Where a Member or Former Member has become entitled to payment of a Benefit as a Lump Sum and before payment has been made by the Trustee, the Member or Former Member dies, the Trustee may pay that Benefit in accordance with the provisions of Clause 31.

(k) **Limitation on Benefits**

Notwithstanding any other provision of this Deed the Trustee shall not pay out any Benefits to Members, Dependants or Beneficiaries where such payment would cause the Fund to breach the Relevant Law.

33. **PAYMENT OF TAXATION AND LEVIES**

(a) **Tax on Benefits**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation, shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted (or such Taxation as the Trustee shall consider is required to be deducted) from it.

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

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

(c) **Tax on Income**

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

(d) **Payment to Relevant Authority**

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

34. **POLICIES OF ASSURANCE**

(a) **Trustee to effect Policy**

The Trustee may effect separate Policies with an Insurer and may secure the Benefit

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

(b) Trustee required to effect Policy

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

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

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

(c) Premiums for Policy

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

(d) Limitations on Policy

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member or Beneficiary then notwithstanding the Benefits which may be payable pursuant to this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member or Beneficiary as it shall determine.

(e) **Endowment or Whole of Life Policy**

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life Policy, then the Member's Withdrawal Benefit shall mean in relation to those Contributions and any net earnings which would but for this sub-clause be applicable to them, the surrender value of such endowment or whole of life Policy.

35. **PARTICIPATING EMPLOYERS**

(a) **Application for Admission**

In the event that any person, firm or corporation:

(i) **Application**

makes application to the Trustee to be admitted in its capacity as an Employer to make Contributions to the Fund as a Participating Employer on behalf of Members or persons who wish to become Members; and

(ii) **Consent**

the Trustee consents to the admission of the Participating Employer; and

(iii) **Execution**

the person, firm or corporation making such application executes this Deed in the space provided in Schedule C or, if required, executes a deed on terms which are acceptable to the Trustee in respect of such application.

then such person, firm or corporation shall become a Participating Employer subject to the terms, conditions and provisions of this Deed and the entry of the details of the Participating Employer by the Trustee in Schedule C shall be conclusive of the due admission of the Participating Employer to the Fund.

(b) **Deemed Application**

Notwithstanding the provisions of sub-clause (a), the payment to the Fund by a person, firm or corporation of a contribution in respect of a Member shall be deemed to constitute an application to be admitted as a Participating Employer and upon acceptance of that contribution by the Trustee, that person, firm or corporation shall become a Participating Employer subject to the terms, conditions and provisions of this Deed and the entry of the details of the Participating Employer by the Trustee in Schedule C shall be conclusive of the due admission of the Participating Employer to

the Fund.

36. OTHER SUPERANNUATION OBLIGATION

Subject to Clause 39, where at any time an obligation, whether compulsory or otherwise, is imposed upon an Employer to make contributions to a superannuation fund providing retirement, death or disablement benefits in respect of Members of the Fund then the Employer may, with the consent of the Trustee, reduce its Contributions to the Fund by the amount of the contribution being made to the other fund in respect of those Members (who are members of the other fund) and the Employer may consult the Actuary in respect of the amount of the reduction in Contributions to be made to the Fund.

37. TERMINATION OF EMPLOYER'S CONTRIBUTIONS

(a) Circumstances of Cessation

Subject to Clause 39, where an Employer has been admitted to make Contributions to the Fund, its Contributions to the Fund shall terminate and the Employer shall cease to be an Employer for the purposes of the Fund on the date that:

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

(b) Contributions by Members

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

(c) Benefits Held for Members

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

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

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

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

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

(a) **Deed of Adoption**

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

(b) **Transfer Assets**

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

(c) **Continue Fund**

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

(d) **Terminate Fund**

terminate the Fund in accordance with Clause 41

40. **VARIATION OF TRUST DEED**

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

basis:

(a) **Resolution or Deed**

The Variation shall be:

- (i) by oral declaration or written resolution of the Trustee and a certified copy of minutes of a meeting of the Trustee confirming any such oral declaration or a certified copy of any such written resolution shall be furnished to the Commissioner if required by the Relevant Law; or
- (ii) by Deed executed by the Trustee and a copy of such Deed shall be forwarded to the Commissioner if required by the Relevant Law.

(b) **Notice**

On any Variation being effected, the Trustee shall if so required by the Relevant Law advise the Members and Beneficiaries in writing of the nature and purpose of the Variation and the effect on their entitlements or rights in accordance with and in the manner and time required under the Relevant Law.

(c) **Limitation on Variation**

No Variation shall have the effect of:

- (i) reducing or adversely affecting the rights or claims of a Member to accrued entitlements under the Fund which has arisen prior to the Variation being effected; or
- (ii) reducing the amount of an entitlement other than an entitlement referred to in paragraph (i) above that is or may become payable in relation to a period before the date of the Variation.

unless:

- A. the reduction is required to enable the Fund to comply with the Relevant Law; or
- B. the Member so affected consents in writing to the reduction; or
- C. the Commissioner consents in writing to the reduction.

PROVIDED THAT each Variation shall comply with the Relevant Law.

(d) **Further limitation on Variation**

No Variation to this Deed shall:

- (i) have the effect of providing that the sole or primary purpose of the Fund is other than the provision of old-age pensions within the meaning of the Relevant Law, unless the Trustee of the Fund is a Constitutional Corporation or the Relevant Law otherwise permits; or
- (ii) permit a person or body other than a Constitutional Corporation to be appointed as Trustee, unless the Deed provides that the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Relevant Law or the Relevant Law otherwise permits.

41. **WINDING UP OF FUND**

(a) **Election to Terminate**

The Trustee may elect to wind up the Fund at a certain date (the "Termination Date") in the following circumstances:

- (i) in the circumstances set out in sub-clause 37(a) above;
- (ii) if there are no further Members remaining in the Fund;
- (iii) if the Trustee determines for any reason that the Fund should be wound up; or
- (iv) if it is required by the Commissioner.

(b) **Procedure on Winding Up of Fund**

Where the Fund is to be wound up the Trustee shall:

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

(c) **Exhaustion of Fund**

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

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

- DIVISION B -

MEMBERSHIP CLASSIFICATION AND CONTRIBUTIONS

42. **MEMBERSHIP CLASSIFICATION**

(a) **Classes of Membership**

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

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

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

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

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

(c) **Other Employer Nominated Classes**

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

(d) **Reclassification**

A Member shall be capable of reclassification to any other Class at any time PROVIDED THAT any Withdrawal Benefit forming part of the Member's Accumulation Account which has accumulated during such time as that Member was a Member of another Class shall be retained as an entitlement of the Member to the extent that the entitlement was a Withdrawal Benefit at the time the Member became a Member of the other Membership Class when such reclassification took place.

(e) **Transfer of Accumulation Account**

Upon the reclassification of a Member as a Member of another Class the Trustee may, with the consent of the Member and, where applicable the Employer, transfer all or any of the Member's other Accumulation Accounts to the new Membership Class subject to the proviso contained in sub-clause (d) above.

(f) **Designation of Class**

If a Member is reclassified to another Membership Class and that Member remains a Member of more than one Class then, at the time at which any Contribution to the Fund is made by the Member or the Employer, the Member or the Employer making the Contribution shall designate the Class to which the Contribution is attributable and may further designate that all future Contributions shall be credited to that Class PROVIDED THAT in the event that the Member or the Employer makes no such designation the Trustee at its discretion shall make such designation.

(g) **Nomination at Discretion of Trustee**

The Trustee shall have absolute and unfettered discretion as to the making of a nomination and the granting of a consent to a Member to become a Member of a different Class or more than one Class, and the Trustee shall not be required to give any reasons for its decision.

43. **CONTRIBUTIONS**

(a) **Member Contributions**

A Member may, with the agreement of the Trustee, contribute to the Fund such amount as the Member shall determine subject to the provisions of Clause 22.

(b) **Employer Contributions**

An Employer shall, with the agreement of the Trustee, contribute to the Fund in respect of a Member such amount determined from time to time by the Employer subject to the provisions of Clause 22.

- DIVISION C -

DETERMINATION AND PAYMENTS OF BENEFITS

44. **PAYMENT OF NON-PRESERVED AMOUNTS**

Notwithstanding any other provisions of this Deed which may be construed to the contrary and subject to the Relevant Law:

(a) **Member Election**

a Member may elect at any time to withdraw the whole or any part of the Non-Preserved Amount of that Member by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time;

(b) **Minimum Payment**

the minimum Non-Preserved Amount which may be withdrawn by a Member pursuant to paragraph (a) shall be determined by the Trustee and notified to Members of the Fund.

45. **INCREASES TO BENEFITS**

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

46. **RETENTION OF BENEFIT IN FUND**

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

(a) **Request**

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

(b) **Death**

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

(c) **Payment otherwise Required**

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

(d) **Discretion**

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

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

-SUB-DIVISION C1-

DETERMINATION OF BENEFITS (LUMP SUM)

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

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

48. **RETIREMENT BENEFITS**

(a) **Lump Sum Payment**

Where a Member:

- (i) who is a self-employed person Retires from Gainful Employment; or
- (ii) Retires from an arrangement under which the Member was Gainfully Employed having attained the age of 60 years or such other age prescribed for this purpose under the Relevant Law and the Member requests that the Benefit be paid; or;
- (iii) Retires from Employment with an Employer and the Trustee determines to pay a Benefit at that time; or
- (iv) satisfies the Relevant Law for the payment of Benefits under this Clause notwithstanding that the Member continues in employment,

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

(b) **Pension Payment**

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

49. **DISABLEMENT**

(a) **Total and Permanent Disablement**

In the event that a Member of any Class shall become in the opinion of the Trustee Totally and Permanently Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee:

(i) **Lump Sum Payment**

a lump sum Benefit equal to the full amount standing to the credit of the Accumulation Accounts of the Member as at the date upon which payment is made; or

(ii) **Pension Payment**

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

(b) **Temporary Total Disablement**

(i) In the event that a Member of any Class shall become in the opinion of the Trustee Temporarily Totally Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee a non-commutable income stream equal to the following amount:

- A. in the case of a Member in respect of whom the Trustee receives an income Benefit under a Policy effected in relation to Temporary Total Disablement - the amount payable to the Trustee as a result of the Temporary Total Disablement of the Member under the Policy;
- B. in respect of any other Member - an income Benefit determined by the Trustee PROVIDED THAT the total income Benefit received by the Member may not reduce the Member's Withdrawal Benefit and any payment of an income Benefit under this sub-clause shall be subject to the limitations contained in the Relevant Law.

(ii) A Member shall cease to be Temporarily Totally Disabled in the event that the Member:

- A. ceases to satisfy the definition of Temporary Total Disablement;
- B. attains the Normal Retirement Age; or
- C. becomes entitled to another Benefit payable under this Deed.

(iii) An income Benefit under this Clause shall:

- A. in the case of a Benefit payable under a Policy be paid in accordance with, and shall cease in the circumstances set out in the Policy;
- B. in any other case shall be paid in the manner and in the circumstances determined by the Trustee for this purpose from time to time; and
- C. in all cases comply with the requirements of the Relevant Law which

are prescribed for this purpose from time to time.

- (iv) Payment of Contributions to the Fund by the Member (if any) may be suspended during such period in which any income Benefit is payable under this Clause.
- (v) The Member will continue to be a Member of the Fund during the period in which the Member is Temporarily Totally Disabled and for the eligibility period as is specified in the Policy in respect of the Temporary Total Disablement and the aggregate of those periods will for the purpose of the Fund be deemed to be included in the Member's period of Membership of the Fund.

50. **EARLY RETIREMENT FROM EMPLOYMENT**

In the event that a Member of any Class:

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

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

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

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

- A. the Member's Withdrawal Benefit;
- B. such further portion of the balance of the Member's "A" Class Accumulation Account as the Trustee shall determine PROVIDED THAT if the Member is an Employee of a Participating Employer the Trustee's determination under this sub-clause shall not be made without the consent of the Employer.

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

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

(iii) **Pension Payments**

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

51. **PAYMENT ON DEATH**

(a) **Lump Sum Benefits**

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

(b) **Pension Payments**

Where a Benefit becomes payable upon the death of a Member in accordance with sub-claus. (a) above and the Trustee determines to pay the Benefit as a Pension, such pension shall be paid in accordance with the provisions of Clauses 27 and 28.

-SUB-DIVISION C2-

DETERMINATION OF BENEFITS (OLD-AGE PENSION)

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

This sub-division shall apply to the determination and payment of Benefits in respect of Members where the Trustee of the Fund includes any Individual Trustees or where the Trustee has elected in writing under sub-clause 2(d) of the Deed that sub-division C2 shall operate and has not altered or rescinded its election.

53. **RETIREMENT BENEFITS**

(a) **Lifetime Pension Benefit**

Where a Member:

- (i) who is a self-employed person Retires from Gainful Employment at or after Normal Retirement Age; or
- (ii) Retires from an arrangement under which the Member was Gainfully Employed having attained the age of 60 years or such other age prescribed for this purpose under the Relevant Law and the Member requests that the

Benefit be paid; or:

- (iii) Retires from Employment with an Employer at or after Normal Retirement Age and the Trustee determines to pay the Benefit at that time, or
- (iv) satisfies the Relevant Law for the payment of Benefits notwithstanding that the Member continues in Gainful Employment,

then such Member shall be paid a Lifetime Pension.

(b) Trustee may acquire Annuity

The Trustee may determine to acquire an Annuity in the name of the Member in order to provide a Lifetime Pension to the Member under sub-clause 53(a) in which case the total amount applied for the purchase of such Annuity shall not exceed the amount standing to the credit of the Member's Accumulation Account as at the date upon which the Annuity is purchased.

(c) Member election to commute Lifetime Pension

Where a Member becomes entitled under sub-clause 53(a) to the payment of a Lifetime Pension, the Member may, by written notice to the Trustee, elect to commute part or all of that Pension to a lump sum Benefit, and may nominate:

- (i) that the Benefit be paid as a lump sum Benefit; or
- (ii) that the Benefit be paid as a Pension in accordance with Clauses 27, 28 and 29,

in which case, the total amount of the lump sum Benefit or of the amount transferred to the Member's Pension Account established under Clause 27 shall not exceed the amount standing to the credit of the Member's Accumulation Account as at the date upon which the lump sum Benefit is paid or the transfer is made.

54. DISABLEMENT

(a) Total and Permanent Disablement

In the event that a Member shall become in the opinion of the Trustee Totally and Permanently Disabled, then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee:

(i) **Lump Sum Payment**

a lump sum Benefit equal to the full amount standing to the credit of the Accumulation Accounts of the Member as at the date upon which payment is made; or

(ii) **Pension Payment**

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

(b) **Temporary Total Disablement**

(i) In the event that a Member of any Class shall become in the opinion of the Trustee Temporarily Totally Disabled then such Member upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid by the Trustee a non-commutable income stream equal to the following amount:

A. in the case of a Member in respect of whom the Trustee receives an income Benefit under a Policy effected in relation to Temporary Total Disablement - the amount payable to the Trustee as a result of the Temporary Total Disablement of the Member under the Policy;

B. in respect of any other Member - an income Benefit determined by the Trustee PROVIDED THAT the total income Benefit received by the Member may not reduce the Member's Withdrawal Benefit and any payment of an income Benefit under this sub-clause shall be subject to the limitations contained in the Relevant Law.

(ii) A Member shall cease to be Temporarily Totally Disabled in the event that the Member:

A. ceases to satisfy the definition of Temporary Total Disablement;

B. attains the Normal Retirement Age; or

C. becomes entitled to another Benefit payable under this Deed.

(iii) An income Benefit under this Clause shall:

A. in the case of a Benefit payable under a Policy be paid in accordance

with, and shall cease in the circumstances set out in the Policy;

- B. in any other case shall be paid in the manner and in the circumstances determined by the Trustee for this purpose from time to time, and
 - C. in all cases comply with the requirements of the Relevant Law which are prescribed for this purpose from time to time.
- (iv) Payment of Contributions to the Fund by the Member (if any) may be suspended during such period in which any income Benefit is payable under this Clause.
 - (v) The Member will continue to be a Member of the Fund during the period in which the Member is Temporarily Totally Disabled and for the eligibility period as is specified in the Policy in respect of the Temporary Total Disablement and the aggregate of those periods will for the purpose of the Fund be deemed to be included in the Member's period of Membership of the Fund.

55. **EARLY RETIREMENT FROM EMPLOYMENT**

In the event that a Member of any Class:

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

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

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

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

- A. the Member's Withdrawal Benefit;
- B. such further portion of the balance of the Member's "A" Class Accumulation Account as the Trustee shall determine PROVIDED THAT if the Member is an Employee of a Participating Employer the Trustee's determination under this sub-clause shall not be made without the consent of the Employer.

(ii) "B" Class Membership

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

(iii) Pension Payments

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

56. PAYMENT ON DEATH

(a) Lump Sum Benefits

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

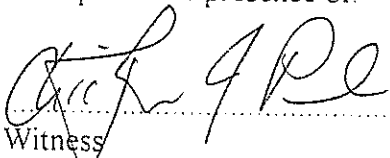
(b) Pension Payments

Where a Benefit becomes payable upon the death of a Member in accordance with sub-clause (a) above and the Trustee determines to pay the Benefit as a Pension, such pension shall be paid in accordance with the provisions of Clauses 27 and 28.

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

Signed by JON WARREN)
GITSHAM in his capacity as)
Principal in the presence of:)


.....
JON WARREN GITSHAM


.....
Witness

CHRISTIAN JOHN PAECH
.....
Full Name of Witness

The Common Seal of LANGUEDOC)
INVESTMENTS PTY LTD was)
affixed in its capacity as Trustee in)
accordance with its Articles of)
Association in the presence of)



[Handwritten Signature]
Signature

JOHN WARREN GISHAM
Print Name

who states that he/she has witnessed the sealing in the capacity of sole director and sole secretary of the company

SCHEDULE A

DATE OF DEED The 26th day of JUNE 19 97

PRINCIPAL: JON WARREN GITSHAM
 PO Box 617
 McLaren Vale 5171

TRUSTEE: LANGUEDOC INVESTMENTS PTY LTD
 ACN 079 026 627
 PO Box 612
 McLaren Vale SA 5171

NAME OF FUND: LANGUEDOC SUPER FUND

PROPER LAW
GOVERNING FUND: South Australia

SCHEDULE C

PARTICIPATING EMPLOYERS ADMITTED TO FUND

UNDER CLAUSE 35

NAME OF PARTICIPATING EMPLOYERS	DATE OF ADMISSION	EXECUTION OF PARTICIPATING EMPLOYERS OR OF TRUSTEE CONFIRMING ADMISSION
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