

DEED OF VARIATION

- varying the -

LANGUEDOC SUPER FUND

**AUGHTERSONS
SOLICITORS**

IN CONJUNCTION WITH

TAG FINANCIAL SERVICES PTY LTD ABN 67 075 374 686

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DEED OF VARIATION

THIS DEED OF VARIATION is made on the 7 day of June, 2007.

PARTIES:

Languedoc Investments Pty Ltd

ACN: 079 026 627

of Level 1, 190 Henley Beach Road, Torrensville SA 5031 ('Trustee')

Jonathon Warren Gitsham

of Unit 31, 21-37 Jeffcott Street, North Adelaide SA 5006 ('Principal Sponsor')

RECITALS:

- A. By a Declaration of Trust dated 26 June 1997 (as amended from time to time) (**Trust Deed**), the Languedoc Super Fund was established for the benefit of certain present and future persons as will become members of the Fund and their dependants.
- B. The Trustee has decided to vary the Trust Deed to ensure that it is consistent with the current self managed superannuation fund provisions of the Superannuation Industry (Supervision) Act 1993 and to update the Trust Deed with developments in the superannuation laws since the Fund was established and the Trust Deed last varied.
- C. Clause 40 of the Trust Deed allows the Trust Deed to be amended, altered or modified from time to time by the Trustee by Deed of Variation (**Deed of Variation**) executed by the Trustee and the Principal Sponsor.
- D. By its execution of this Deed of Variation, the Trustee and the Principal Sponsor consent to the variations made by this deed.
- E. The variations affected by this Deed of Variation do not vary the main purpose of the Trust Deed, reduce any benefits accrued by members or affect the basis for calculating the amount of retirement benefits of any member in a way that reduces the amount with respect to the period of membership before the commencement date of this Deed of Variation and will not take effect without written notice to all members and beneficiaries under the Trust Deed.

OPERATIVE PROVISIONS:

In accordance with Clause 40 of the Trust Deed:

1. **Amendments**

The operative provisions of the Trust Deed are amended by being deleted and replaced by clauses 1 to 50 and Schedules A, B and C attached as Annexure 'A' to this Deed of Variation.

2. **Effective Date**

This Deed of Variation takes effect on the later of the date set out at the beginning of this Deed of Variation and the date of notice to each of the members and beneficiaries outlining the changes made by this Deed of Variation.

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1 CONFIRMATION

The Principal and the Trustee agree to maintain the Fund which was established by deed on the date specified in Schedule A.

2 STRUCTURE AND PURPOSE

2.1 Divisions of Deed

This Deed is divided into two divisions. Division A governs the management and administration of the Fund and Division B governs the determination and payment of Benefits.

2.2 Purpose of Fund

The purpose of the Fund is the provision of superannuation benefits in accordance with the Relevant Law as a Self Managed Superannuation Fund, provided however that where the Trustee includes any Individual Trustees, the sole or primary purpose of the Fund will be the provision of old-age pensions within the meaning of the Relevant Law.

3 COVENANTS

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

DIVISION A MANAGEMENT AND ADMINISTRATION

4 INTERPRETATION - DEFINITIONS

In this Deed, unless the context otherwise requires:

Account means Accumulation Account or Pension Account;

Account-Based Pension means a Pension which complies with clause 31;

Accumulation Account means an account established in respect of a Member or Beneficiary under clause 12.1;

Actuary means a person so appointed (if any) under clause 20.1;

Administration Manager means a person so appointed (if any) under clause 20.2;

Complying Superannuation Fund has the meaning given to it in the Relevant Law;

Constitutional Corporation has the meaning given to it in the Relevant Law;

Contribution Split means the splitting of Contributions by a person in whole or in part in favour of the person's Spouse as permitted under the Relevant Law;

Contribution Splitting Application means an application lodged by a Member with the Trustee requesting the Trustee to give effect to a Contribution Split;

Contributions means gross payments to the Fund by Members, Spouses of Members, Employers, and other persons in respect of Members in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those contributions and includes a Co-Contribution and a payment made to the Fund in consequence of a Contribution Split by the Spouse of a Member in favour of the Member;

Deed means this document and any authorised alterations, additions, amendments, modifications or variations to it;

Dependant in relation to a Member, Beneficiary or former Member (in this definition referred to as the primary person) means:

- (a) the Spouse, Widow or Widower of the primary person; or
- (b) a child of the primary person including a person who, in the opinion of the Trustee, is or was actually maintained by the primary person as the child of the primary person; or
- (c) any person with whom the primary person has or had an interdependency relationship within the meaning given to it in the Relevant Law at the relevant time; or
- (d) any other person who, in the opinion of the Trustee, was substantially dependent on the primary person at the relevant time;

Directors means the directors or board of management for the time being of the Trustee or an Employer and Director has a corresponding meaning;

Eligible Rollover Fund has the meaning given to it in Part 24 of the Superannuation Industry (Supervision) Act 1993;

Eligible Termination Payment has in respect of any period prior to 1 July 2007, the meaning given to it in section 27A of the Tax Act (as in force at that time);

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 determines for the purposes of the Employer making

Employment Termination Payment has the meaning given to it in section 82-130 of the Tax Act;

Equalisation Account means an account established under clause 12.5;

Financial Assistance means financial assistance granted to the Fund under Part 23 of the Superannuation Industry (Supervision) Act 1993 or under any other arrangement administered by a Regulator;

Forfeiture Account means an account established under clause 26.3;

Full-Time Gainful Employment in relation to a Member means Gainful Employment for at least 30 hours each week or as defined in the Relevant Law;

Fund means the fund established by this Deed, the name of which is specified in Schedule A;

Fund Earning Rate means the earning rate for the Fund (which may be negative) determined under clause 12.4(c), after taking into account such provisions or reserves for future contingencies as the Trustee considers reasonable and, where the context requires, includes an interim Fund Earning Rate determined under clause 12.4(f);

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

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

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

Income Stream means a Pension or an Annuity within the meaning of clause 27.1;

Individual Trustee means an individual who is appointed to be a Trustee;

Insurer means an insurer (if any) with whom the Trustee effects a Policy or Policies;

Investment Manager means a person so appointed (if any) under clause 20.3;

Levy includes a levy payable by the Fund to the Regulator 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;

Market Linked Pension means a Pension that complies with clause 29;

Pensioner means a Member or a Reversionary Beneficiary in receipt of a Pension from the Fund;

Pension Account means an account established in respect of a Pensioner under clause 27.3;

Policy means a 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, a policy covering any two or more of the foregoing risks and a policy which provides that Benefits are payable to the Trustee on the death or disablement of a Member;

Preservation Age in relation to a Member has the meaning given to it in the Relevant Law;

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 person so described in Schedule A;

Regulator means, as the case requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body with responsibility for administration of superannuation and the Fund;

Relative in relation to a person means:

- (a) for the purposes of the definition of Employment Relationship and clauses 8, 10 and 14 any of the following:
 - (i) the parent, child, grandparent, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin, or second cousin of the person or of his or her Spouse or former Spouse;
 - (ii) another person having such a relationship to the person or to his or her Spouse or former Spouse because of adoption or re-marriage; and
 - (iii) the Spouse or former Spouse of the person or a person referred to in sub-paragraphs (a)(i) or (a)(ii);
- (b) for any other purpose in this Deed, including clauses 15 and 34 any of the following:

Reversionary Beneficiary means a Dependant nominated by a Pensioner as the person who is to receive the Pension upon the death of the Pensioner;

Roll-Over Payment means an Eligible Termination Payment made or received by the Trustee at the request of a Member or former Member or in other circumstances in accordance with the Relevant Law to or from any Approved Benefit Arrangement including:

- (a) an Eligible Termination Payment made or received by the Trustee on or prior to 30 June 2007 at the request of a Member or former Member or in other circumstances in accordance with the Relevant Law to or from any Approved Benefit Arrangement including:
 - (i) an Eligible Termination Payment made by an Employer in consequence of the termination of the employment of a Member; and
 - (ii) either a capital gains tax exempt amount or a deemed Eligible Termination Payment in relation to such an amount in relation to a Member within the meaning of the Relevant Law; and
- (b) on and from 1 July 2007, a Roll-Over Superannuation Benefit;

Roll-Over Superannuation Benefit has the meaning given to it in section 306-10 of the Tax Act;

Self Managed Superannuation Fund has the meaning given to it in Part 1 of the Superannuation Industry (Supervision) Act 1993;

Shortfall Component has the meaning given to it in section 64 of the Guarantee Act;

Spouse means in the definitions of Contribution Split, Dependant, Relative and clause 22:

- (a) a person legally married to a Member or other relevant person (in this definition referred to as the **relevant person**) at any time; or
- (b) a person who, although not legally married to the Member or relevant person, in the opinion of the Trustee, lives with a Member or relevant person on a bona fide domestic basis as the husband or wife of the Member or relevant person and in relation to a deceased Member or relevant person the term Widow or Widower includes such a person,

provided that where there is more than one such person the Trustee must determine which one or more of them will be deemed to be the spouse and, if more than one

Total and Permanent Disablement:

- (a) has the meaning given to it in any Policy effected by the Trustee with an Insurer in respect of a Member and in force at the time of the disablement of the Member; or
- (b) means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience,

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

Trustee means the trustee or trustees for the time being of the Fund whether original, additional or substituted appointed under clause 14;

Unclaimed Benefits means Benefits described as unclaimed money in the Relevant Law;

5 INTERPRETATION - GENERAL

5.1 Plural and Gender of Words

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

5.2 Headings to Clauses

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

5.3 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 does not alone imply that the word or phrase is used with a meaning different from that given by its definition.

5.4 Statutory Enactments

References to any statutory enactment must be construed as references to that enactment as amended, modified or re-enacted from time to time and include any enactment in substitution or replacement for such statutory enactment. Any

6.2 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 the Employer or Trustee:

- (a) where the Employer or Trustee is a company, then by resolution of its Directors in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (b) where the Trustee consists of Individual Trustees, then 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 required by the Relevant Law; or
- (c) where an Employer consists of individuals, then by a majority of such individuals,

provided that any requirements of the Relevant Law are satisfied.

6.3 Equality of Votes

Where:

- (a) the Trustee is a company, but any decision making procedure detailed in its constitution does not address the resolution of an equality of votes; or
- (b) the Trustee consists of Individual Trustees;

and there is an equality of votes on any resolution tabled for consideration, the Director or Individual Trustee with the highest Account balance will have a second or casting vote.

6.4 Rights of Members

The provisions of this Deed do 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.

6.5 Inquiries, Complaints and Disputes

- (a) If required by the Relevant Law, the Trustee must ensure that there are in force arrangements to deal with inquiries or complaints from Members,

8.2 Other Members

Subject to the following provisions of this clause 8.2, the Trustee may invite such persons (other than an Initial Member) to become Members as the Trustee in its absolute discretion determines. The Trustee may only accept a person as a Member where:

- (a) on acceptance, the total number of Members will not exceed 4 persons;
- (b) the person is not disqualified under the Relevant Law from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee;
- (c) if the person is in an Employment Relationship with any other person who is a Member, the person and the other person are Relatives; and
- (d) the Trustee is satisfied that the person will, at the time of being accepted as a Member, also become an Individual Trustee or a Director of the Trustee under clause 14 or will satisfy the conditions of clause 14.8.

The Trustee must require such persons to complete an application for Membership in the form of Schedule B or in such other form as the Trustee determines from time to time.

8.3 Admission to Membership

- (a) On receipt of an application for Membership under clause 8.2, the Trustee may determine to admit the applicant to Membership of the Fund.
- (b) The Member will 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.
- (c) Subject to any other conditions which may be applied under this Deed, the Trustee may:
 - (i) impose such conditions on an applicant's admission and the rights and duties of the applicant as a Member as it determines;
 - (ii) limit and impose such conditions on Benefits as it determines; and
 - (iii) remove or vary all or any such conditions at any time.
- (d) On admission to Membership, a Member is bound by this Deed in all respects as if the Member were an original party to the Deed.

8.7 Anticipated Change of Status

A Member must inform the Trustee as soon as practicable of any event which has or may have effect that:

- (a) the Member may enter into an Employment Relationship with any other Member and the Member is not a Relative of the other Member; or
- (b) the Member may become disqualified under the Relevant Law from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

8.8 Status as Self Managed Superannuation Fund

- (a) If at any time, a Member ceases to satisfy clauses 8.1(b), 8.2(b) or 8.2(c), the Trustee and the Members must complete such arrangements as are necessary to ensure that the Membership of the Fund as a whole satisfies those requirements by no later than 6 months after the Member ceased to satisfy those requirements.
- (b) For the purposes of clause 8.8(a):
 - (i) a Member may request that all the Member's Benefits or Benefit Entitlement be paid in accordance with Division B of this Deed or be transferred or rolled over to an Approved Benefit Arrangement under clause 23; or
 - (ii) the Trustee may transfer a Member's Benefit Entitlement or roll-over a Member's Benefit to an Eligible Rollover Fund under clause 24.2.

9 MEMBERSHIP NOTIFICATION REQUIREMENTS

9.1 Notice to New Members

Before or, where the Relevant Law permits, as soon as practicable after the admission of a person as a Member, the Trustee must arrange for the person to be given a written statement containing information and details relating to the Fund as required by the Relevant Law.

9.2 Disclosure and Reporting Requirements

The Trustee must 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 required by the Relevant Law.

10.2 Anticipated Change of Status

A Member must, in conjunction with the Trustee, ensure that the Member ceases to be a Member prior to, or as soon as practicable after the occurrence of any event which would have effect that:

- (a) the Member enters into an Employment Relationship with any other Member where the Member is not a Relative of the other Member; or
- (b) the Member becomes disqualified under the Relevant Law from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation which is the Trustee.

11 THE FUND

11.1 Fund Vested in Trustee

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

11.2 Fund Assets

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

- (a) the amount, if any, standing or transferred to the credit of the Fund at or after the date on which this Deed comes into effect;
- (b) such Contributions as the Members make to the Fund at any time;
- (c) such Contributions as an Employer makes to the Fund at any time;
- (d) such Co-Contributions as are made to the Fund at any time;
- (e) such Contributions resulting from a Contribution Split by a Spouse of a Member in favour of the Member as are received by the Fund at any time from another Complying Superannuation Fund;
- (f) interest, dividends and distributions of income arising from any investment and the accumulation of that income;
- (g) profits and other benefits arising from any investment and the accumulation of those profits;
- (h) the proceeds (including bonuses) of any Policy held by the Fund;

- (j) any Shortfall Component paid in respect of the Member;
- (k) any amount of Financial Assistance determined by the Trustee to be appropriate to credit;
- (l) any other Contributions made in respect of the Member and permitted under this Deed and the Relevant Law;
- (m) such part of the proceeds from the commutation of a Pension as the Trustee has determined to transfer to the Accumulation Account under clause 28.7(b), clause 29.4(b) or clause 31.7(b);
- (n) any amounts transferred from the Equalisation Account; and
- (o) such other amounts as the Trustee may from time to time determine.

12.3 Debits to Accumulation Accounts

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

- (a) any amount paid out of the Fund in respect of a Member or Beneficiary as a transfer or Roll-Over Payment which the Trustee considers it appropriate to debit;
- (b) any other Benefit payments made to or in respect of a Member or Beneficiary, other than payments from a Pension Account;
- (c) the costs of any Policy or Annuity effected by the Trustee in respect of the relevant Member or Beneficiary, subject to clause 12.4(b)(iv);
- (d) 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;
- (e) such of the costs, charges and expenses incurred under clause 19 or an appropriate portion thereof as the Trustee may determine;
- (f) the amount of any lien exercised under clause 18 or an appropriate portion thereof as the Trustee may determine;
- (g) any amount forfeited under clauses 26.1, 26.2 or 34.1(c);
- (h) such negative earnings as may be determined by the Trustee in accordance with clauses 12.4, 12.6 or 15.5(e);
- (i) any amount paid in respect of the Trustee indemnity under clause 18 or an appropriate portion thereof as the Trustee may determine;

- (iii) any debits arising out of adjustments under clause 12.6;
 - (iv) the cost of any Policy effected by the Trustee where the Trustee determines that it should not be debited to an Account;
 - (v) any deficiency arising from a valuation undertaken under clause 12.8;
 - (vi) 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;
 - (vii) any amount of Levy payable by the Fund and not debited to an Account; and
 - (viii) any income transferred from the Income Account to the Equalisation Account.
- (c) Following the debiting of the Income Account under clause 12.4(b) at the end of each Fund Year the Trustee must determine the Fund Earning Rate.
 - (d) Subject to clause 15.5(e), an amount determined by application of the Fund Earning Rate must 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.
 - (e) Any amount remaining in the Income Account after distribution of earnings under clause 12.4(d) must be transferred to the Equalisation Account established under clause 12.5.
 - (f) 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 will be determined by the Trustee in accordance with the Relevant Law on a basis which the Trustee considers to be equitable. The Trustee must, when required by the Regulator or the Relevant Law, notify the Members of the basis of the calculation of the interim Fund Earning Rate.

12.5 Equalisation Account

- (a) The Trustee has power at any time to establish an Equalisation Account of the Fund. The Equalisation Account may be credited with the following:

12.7 Other Accounts

The Trustee may from time to time establish such other accounts as it considers necessary or convenient for the proper administration of the Fund or as required by the Relevant Law.

12.8 Valuation of the Fund

- (a) At the end of each Fund Year or at such other time as the Trustee considers appropriate, or as the Relevant Law requires, the Trustee must:
 - (i) make a valuation of all assets of the Fund (including the value of any Policy held by the Fund) at that date; and
 - (ii) 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 clause 15.5(d).
- (b) The value so determined in respect of each asset must then be reflected in the balance sheet and other accounts of the Fund.

13 FUND RECORDS, DISCLOSURE AND INVESTIGATION**13.1 Receipt and Payment of Money**

All money of the Fund must be lodged as soon as practicable to the credit of:

- (a) an account in the name of the Fund kept with a bank or other authorised deposit-taking institution as determined from time to time by the Trustee;
- (b) an Insurer for the payment of premiums; or
- (c) the trust account of a solicitor, accountant or Investment Manager appointed under this Deed.

13.2 Issue of Receipts

A receipt given on behalf of the Fund by the Trustee or any other person who may from time to time be authorised by the Trustee in writing to receive any money of the Fund is a sufficient discharge of the person by whom the money is paid in respect of the amount paid.

13.3 Records and Accounts to be Kept

The Trustee must arrange for:

- (c) the Regulator;
- (d) any court;
- (e) any Actuary;
- (f) any Auditor; and
- (g) any other persons specified in the Relevant Law,

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

14 FUND TRUSTEE - APPOINTMENT AND REMOVAL

14.1 Trustee to be Constitutional Corporation

The Trustee must at all times be a person, persons or body which is or are eligible to be the Trustee under clause 14.2, provided that at all times while the Trustee is not a Constitutional Corporation, the sole or primary purpose of the Fund is the provision of old-age pensions within the meaning of the Relevant Law.

14.2 Eligibility for Appointment as Trustee

The following persons or bodies are eligible to be the Trustee:

- (a) Individual Trustees;
- (b) a Constitutional Corporation; and
- (c) such other persons or bodies as satisfy the Relevant Law or are appointed by the Regulator under the Relevant Law.

14.3 Corporate Trustee

Subject to clause 14.8, where the Trustee is a Constitutional Corporation, it must be at all times:

- (a) while there is only one Member:
 - (i) a Constitutional Corporation, the Director of which is the Member; or
 - (ii) a Constitutional Corporation, the Directors of which are the Member and another person who is a Relative of the Member; or

14.7 Continuity of Office

Any person who acts as an Individual Trustee must, on any other person becoming or ceasing to be a Trustee, under this clause 14, do everything necessary to vest the Fund in the new or remaining Trustees and must deliver all records and other books to the new or remaining Trustees.

14.8 Other Persons as Trustees or Directors

The Principal and the Members may, and must if such action is required in order to prevent the Trustee or Constitutional Corporation from ceasing to meet the requirements under the Relevant Law which relate to the nature and composition of the trustees of Self Managed Superannuation Fund take such steps as are necessary to appoint and remove the following persons as an Individual Trustee or a Director of a Constitutional Corporation which is the Trustee:

- (a) the legal personal representative of a deceased former Member in place of the deceased former Member, during the period:
 - (i) beginning when the deceased former Member died; and
 - (ii) ending when death Benefits commence to be payable in respect of the deceased former Member; or
- (b) the legal personal representative of a Member in place of the Member, during any period when:
 - (i) the Member is under a legal disability; or
 - (ii) the legal personal representative has an enduring power of attorney in respect of the Member; or
- (c) the legal personal representative or the parent or guardian of a Member who is under a legal disability because of age in place of the Member; or
- (d) an acting trustee of the Fund appointed under the Superannuation Industry (Supervision) Act 1993.

Any other person may also be a Trustee, or a Director of a Constitutional Corporation which is the Trustee, if the Relevant Law permits that the person may be a Trustee or Director of a Constitutional Corporation which is the Trustee and the Fund would remain a Self Managed Superannuation Fund.

14.9 Appointment of Trustee

- (a) Subject to clause 14.9(b), the Trustee will comprise the Constitutional Corporation or individual Trustees which comprised the Trustee

15.2 Authorised Investments

Money forming part of the Fund from time to time which is not required immediately for the payment of Benefits and other amounts authorised by this Deed must be invested in accordance with the investment strategies of the Fund as determined under clause 15.1 in any one or more of the following investments:

- (a) 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;
- (b) 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;
- (c) on deposit with any bank or other authorised deposit-taking institution in any type of account, whether secured or unsecured and on such terms as the Trustee may determine;
- (d) 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 on 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;
- (e) 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;
- (f) the purchase or acquisition of any real or personal property and the improvement or extension of that property;
- (g) 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;
- (h) 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; and
- (i) any other investments which the Trustee considers appropriate and which are permitted under the Relevant Law,

- (c) Where a Member is provided with an opportunity to have an amount in an Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee must invest the amount in the Member's Account in such manner as, in its absolute discretion, it may consider appropriate.
- (d) Where the Trustee establishes more than one investment strategy under clause 15.5(a), it must:
 - (i) establish a sub-account within the Income Account established under clause 12.4 in respect of each strategy; and
 - (ii) debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee determines.
- (e) Where the Trustee establishes a sub-account under clause 15.5(d), it must:
 - (i) determine a Fund Earning Rate in respect of each sub-account;
 - (ii) allocate an amount determined by the application of the Fund Earning Rate in respect of each sub-account to each sub-account within a Member's or Beneficiary's Accounts in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the relevant sub-account within the Member's or Beneficiary's Account at the beginning of the Fund Year in respect of which the allocation is being made; and
 - (iii) make an appropriate adjustment for amounts (if any) credited or debited to the sub-account during that Fund Year.
- (f) Where an Employer contributes to the Fund in respect of a Member or Beneficiary or classes of Members or Beneficiaries, it 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 it contributes.

16 TRUSTEE'S POWERS OF MANAGEMENT

16.1 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 has the following powers:

- (j) 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;
- (k) to appoint a person to chair the meetings of the Trustee and any other obligations which the Trustee vests in the person and, if required, may pay a fee or remuneration to such person in respect of such position;
- (l) to insure and keep insured as it sees fit any liability of:
 - (i) the Trustee;
 - (ii) any Directors or officers of a Constitutional Corporation which is the Trustee; or
 - (iii) the Fund to indemnify or reimburse the Trustee or its Directors or officers of a Constitutional Corporation which is the Trustee under clauses 18 and clause 19;
- (m) to enter into any agreement, provide any notice, 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;
- (n) to seek modifications of or exemptions from the application of the Relevant Law to the Fund and the Trustee is relieved from complying with any provision of the Relevant Law in respect of which an exemption or a modification has been granted; and
- (o) generally to do all acts and things that 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.

16.2 Exercise of Trustee Powers

All the powers and discretions conferred on the Trustee or any Director by this Deed or by law may be exercised notwithstanding that the Trustee or any Director of a Constitutional Corporation which is the Trustee may:

- (a) 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
- (b) may benefit directly or indirectly as a result of the exercise of any such power or discretion,

17 LIMITATION OF LIABILITY

17.1 Liability of Trustees, Directors and Officers

Neither the Trustee nor the Directors or officers of a Constitutional Corporation which is the Trustee is 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:

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

17.2 Loss, Default, Bona Fide Acts, Mistake

Without limiting the generality of the exemption from liability under clause 17.1, the Trustee will not incur any liability for:

- (a) any loss suffered by the Fund or suffered by any Member or any person having at any time an interest in the Fund;
- (b) any act or default of any former Trustee or any Director or officer of a former corporate Trustee, of any Member or of any agent employed in good faith by the Trustee;
- (c) any acts done or omitted to be done which any person reasonably believed to be in conformity with any decision of the Trustee; or
- (d) 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.

17.3 Limitation of Exemption from Liability

This clause 17 operates only to exempt a person from liability to the extent that the provision of such an exemption is not limited by or inoperative under the Relevant Law.

18.6 Limitation of Indemnity

The indemnity provided under this clause 18 in respect of the Trustee or any Directors or officers of the Trustee does not apply to the extent that the provision of such an indemnity would be limited by or inoperative under the Relevant Law.

19 REMUNERATION AND REIMBURSEMENT

19.1 Remuneration

The Trustee is not entitled to receive any remuneration from the Fund or any person in relation to the performance of the normal activities of a trustee provided in relation to the Fund.

19.2 Reimbursement

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

- (a) 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) 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;
- (b) such fees and expenses of the Auditor as the Trustee considers reasonable;
- (c) any Taxation and any Levy paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (d) 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;
- (e) 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;
- (f) all and any administrative costs in respect of postage, telephone and like disbursements charged or to be charged in relation to the Fund;

- (b) The Trustee may delegate to any 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 determines and may reallocate assets of the Fund being invested by that Investment Manager.

20.4 Custodian

The Trustee has 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 determines and may delegate and confer on 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 determines provided that the person or company appointed to act as custodian is not prohibited from so acting under the Relevant Law.

20.5 Consultants and Officers

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.

20.6 Removal

The Trustee may remove from office any person or company appointed to any position under this clause 20 and must remove any such person or company where so required by the Relevant Law.

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 is under no obligation to be bound by or to act on the advice so provided except in circumstances required by the Relevant Law.

22 CONTRIBUTIONS TO FUND

22.1 Member and Employer Contributions

A Member or (if applicable) an Employer may, subject to any contributions cap under the Relevant Law which applies so as to prohibit or restrict the contribution of an amount, contribute to the Fund in respect of a Member such amount and in such

- (a) if at any time an obligation is imposed on a Participating Employer to make Contributions to another Complying Superannuation Fund providing retirement, death or disablement benefits in respect of Members then the Participating Employer may 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);
- (b) the Contributions of a Participating Employer to the Fund terminate and the Employer ceases to be a Participating Employer for the purposes of the Fund on the date that:
 - (i) a deed of appointment placing the Participating 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 Participating Employer in liquidation; or
 - (iii) the Participating Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

22.6 Acceptance of Contributions

Subject to this clause 22, the Trustee may accept any Contribution or Shortfall Component made by or in respect of a Member that is permitted by the Relevant Law, but must not accept any Contribution or any Shortfall Component:

- (a) if the Regulator so directs;
- (b) if the Contributions are not employer contributions made in respect of the Member, if the Member's Tax File Number has not been quoted to the Trustee as required under the Relevant Law; or
- (c) to the extent that the Contributions exceed a contributions cap applying under the Relevant Law, which contributions cap applies so as to prohibit or restrict the acceptance of any Contributions or part thereof by the Trustee.

22.7 Ineligible Contributions

If the Trustee ascertains at any time that any Contribution or Shortfall Component or part thereof has been accepted in breach of the provisions of this clause 22, the Trustee must refund such Contribution or Shortfall Component (in whole or in part as the case requires) within any time period which may be required by the Relevant Law, less any:

23.2 Amount of Transfer

The amount of a Member's Benefit Entitlement to be transferred under clause 23.1 must not, subject to clause 46, exceed the amount standing to the credit of the Member's Accumulation Account.

23.3 Effect, Method and Timing of Transfer or Roll-Over

- (a) The Member or Beneficiary must complete and execute any documentation required by the Relevant Law or otherwise notified to the Member or Beneficiary by the Trustee as being necessary or desirable to enable the Trustee to complete the transfer or a Roll-Over Payment to the Approved Benefit Arrangement in accordance with the Relevant Law.
- (b) Upon receipt of a Member's request for a transfer or roll-over under clause 23.1, the Trustee must transfer or roll-over the relevant amount as soon as practicable and in any case within 30 days or such other period as is required by the Relevant Law.
- (c) The receipt of a transfer or Roll-Over Payment by the proper officer of the Approved Benefit Arrangement will constitute a complete discharge of the Trustee of all liabilities in respect of the transferred or rolled over amount and the Trustee has no responsibility to see to the application of the transferred or rolled over amount.
- (d) On the completion of a transfer or Roll-Over Payment in respect of a Member or Beneficiary under this clause 23, 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 amount paid are entirely extinguished.

23.4 Contribution Split

The Trustee must give effect to a Contribution Splitting Application lodged by a Member if such application specifies the matters required under the Relevant Law to be specified in such an application and is not an invalid application for the purposes of the Relevant Law.

over was effected and, if the Trustee so determines, the Member or Beneficiary may be deemed to have become a Member or Beneficiary on the date the Member became a member of the Approved Benefit Arrangement from which the Benefit Entitlement or Benefit was transferred or rolled over.

26 FORFEITURE OF BENEFIT ENTITLEMENTS

26.1 Conditions of Forfeiture

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

- (a) who assigns or charges or attempts to assign or charge any Benefit Entitlement other than as permitted under the Relevant Law;
- (b) 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;
- (c) 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
- (d) who in the opinion of the Trustee commits any fraud or is guilty of dishonesty or defalcation,

forfeits entitlement to any Benefit Entitlement held in the Fund at that time by that person provided however that this clause 26.1 only applies to the extent that it is not limited by or inoperative under the Relevant Law or the Bankruptcy Act 1966. The Trustee must not recognise an assignment or charge of a Benefit Entitlement which is prohibited under the Relevant Law, and may in its absolute discretion recognise or decline to recognise an assignment or charge of a Benefit Entitlement which is permitted under the Relevant Law.

26.2 Accumulation Account Residue

Any Member, former Member or Beneficiary:

- (a) who has been paid all Benefits which the Trustee considers should be paid under the provisions of this Deed; and
- (b) who still has a residual amount standing to the credit of their Accumulation Account,

- (g) for payment to such of the Employers of the Member or Beneficiary (if any) as the Trustee in its absolute discretion considers appropriate;
- (h) for any other purpose approved in writing by the Regulator,

provided that the Trustee may 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. For the purposes of this clause 26.4, Member and Beneficiary includes former Member or former Beneficiary.

26.5 Readjustment of Member Interest

Where a forfeiture of a Benefit Entitlement occurs under this clause 26 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:

- (a) readjust any rights, entitlements or interests of the Member in the Fund; and
- (b) provide the Member with such rights or entitlements as the Trustee considers appropriate,

provided that the rights or entitlements must not exceed the rights or entitlements held by the Member prior to the occurrence of the forfeiture.

26.6 Severability

If any part of this clause 26 is determined to be illegal, invalid or void, the legality and validity of the remaining parts of it will not be affected and the illegal, invalid or void part is deemed to be deleted.

27 INCOME STREAMS - PENSIONS AND ANNUITIES

27.1 Determination to Pay Pension or Annuity

At such time as a Benefit or part of a Benefit becomes payable to a Member or Beneficiary in accordance with the terms of this Deed or in accordance with the Relevant Law, the Trustee may at the request of the Member or Beneficiary and on such terms as the Trustee and Member or Beneficiary may agree but otherwise on such terms as the Trustee determines if the Member or Beneficiary is under a legal disability:

(a) Pension

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 this Deed:

- (iii) any other type of Pension in accordance with the conditions set out in clause 30.
- (c) A Member or Beneficiary may at any time request the Trustee to pay and the Trustee may pay a Pension or Pensions of any type permitted under clause 27.2(a) or clause 27.2(b) where the Superannuation Lump Sum to be applied in the purchase of such Pension results from the commutation of a Pension previously in payment and the Relevant Law so permits.

27.3 Establishment of Pension Account

- (a) Where the Trustee determines to pay all or any part of the Benefit to the Member or the Beneficiary as a Pension or Pensions the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which Accounts the Trustee must transfer amounts determined in accordance with this Deed which the Trustee believes are necessary in order to provide the Benefits as a Pension.
- (b) The Trustee must not permit a Pension Account to be added to by way of contribution or by way of credit of a Roll-Over Payment or in any other manner prohibited under the Relevant Law after payment of a Pension has commenced from the Pension Account.
- (c) For the purposes of financing a Pension to be paid from the Fund under clause 27.2, the Trustee may purchase or acquire an Annuity in respect of the Member payable to the Trustee.

27.4 Operation of Pension Account

- (a) The following amounts must be credited to the Pension Account of a Pensioner:
 - (i) any amount transferred under clause 27.3;
 - (ii) 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;
 - (iii) the proceeds of any Policy or Annuity effected by the Trustee in respect of a Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
 - (iv) such earnings of the Fund ascertained in accordance with clauses 12.4 and 15.5(e) as the Trustee may determine to be equitable;

- (x) any amount paid in respect of the Trustee indemnity under clause 18 or an appropriate portion thereof as the Trustee may determine;
- (xi) any amount transferred to the Accumulation Account of a Pensioner;
- (xii) the amount of any Levy determined by the Trustee to be appropriate to debit;
- (xiii) the amount of any Taxation attributable to the Pensioner;
- (xiv) such amount as is referred to in a Release Authority given by a Pensioner to the Trustee and which is paid by the Trustee to the Pensioner or to the Commissioner in accordance with such Release Authority; and
- (xv) such other amounts as the Trustee may determine from time to time.

27.5 Segregation of Pension Assets

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

- (a) may 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 liabilities in relation to the payment of Superannuation Income Stream Benefits as those liabilities fall due for payment and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current pension liabilities as the Trustee considers appropriate for the purposes of the Tax Act or as the Relevant Law may require; and
- (b) where the Trustee segregates assets for the purposes of clause 27.5(a), the Trustee must annually, and at such other times as the Trustee determines, review the value of the assets so segregated for the purposes of ensuring the value of the assets is sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits. Where the value of the segregated assets is not sufficient or is more than sufficient to discharge the Fund's current liabilities in relation to the payment of Superannuation Income Stream Benefits, the Trustee may take such action in relation to those assets as is permitted by the Relevant Law and must take such action as is required by the Relevant Law.

28.2 Pension Account Limitation

Where an Allocated Pension is payable to or in respect of a Member or Beneficiary, or where the Trustee purchases an Annuity on behalf of a Member or Beneficiary, the total instalments of such Allocated Pension or the total purchase price of such Annuity must not exceed the amount standing to the credit of a Member or Pensioner in the relevant Account of the Member or Pensioner at the relevant time.

28.3 Pension Increase

Any Allocated Pension payable in accordance with the provisions of this Deed may be increased in the course of payment from time to time, if the Relevant Law permits the increase and it is so determined by the Trustee.

28.4 Reversionary Beneficiary

If a Pensioner dies while still in receipt of an Allocated Pension under this Deed, the Trustee must commence to pay the Allocated Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of the death of the Pensioner and who is a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.

28.5 Death of Pensioner

In the event of the death of a Pensioner in respect of an Allocated Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:

- (a) no Reversionary Beneficiary has been nominated; or
- (b) the Reversionary Beneficiary is not a Dependant of the Pensioner at the time of death of the Pensioner; or
- (c) the Reversionary Beneficiary is not a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law,

the balance of such Pension Account must be dealt with in accordance with the provisions of clause 34.

28.6 Commutation of Allocated Pension

- (a) The Trustee:
 - (i) may commute the whole or any part of an Allocated Pension that is payable from the Fund to the Pensioner where:

payments otherwise due to be made in the financial year in which the commutation occurred; or

- (iv) the minimum amount as specified in the Relevant Law that must be paid in the financial year during which the Allocated Pension is being commuted has actually been paid; or
 - (v) the Relevant Law otherwise permits the Allocated Pension to be commuted.
- (d) Where any amount remains in the relevant Pension Account after the Trustee has paid the entitlements of all the relevant Pensioners then that remaining amount must be dealt with as though it were a forfeited Benefit in accordance with clauses 26.3 and 26.4.

28.7 Application of Commuted Amount

- (a) Subject to this clause 28.7, and any other applicable provisions of this Deed, the Trustee must pay the proceeds of the commutation in respect of the Allocated Pension being commuted to the relevant Pensioner or to the legal personal representative of the relevant Pensioner.
- (b) As an alternative to clause 28.7(a) the Trustee may at the request of the Pensioner retain the proceeds of that commutation in the Fund and apply them to the credit of an Accumulation Account on behalf of the Pensioner.

28.8 Adjustment of Allocated Pension following the Commutation

Following the commutation of a part of an Allocated Pension, the Trustee must reduce the total amount of the instalments of any Allocated Pension payable to the Pensioner. This reduction is to be of such an amount as the Trustee considers appropriate.

28.9 Non-Commutable Allocated Pension

- (a) Upon a Member or Beneficiary attaining their Preservation Age, the Trustee may, at the request of a Member pay from the Fund a Non-Commutable Allocated Pension on the conditions set out in clause 28.9, and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member or Beneficiary may agree.
- (b) The Trustee may only pay a Non-Commutable Allocated Pension to a Member or Beneficiary in accordance with the Relevant Law.

- (a) the Market Linked Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Market Linked Pension must be paid at least annually to the Pensioner throughout a period permitted by the Relevant Law;
- (c) the amount of the Market Linked Pension in any year must be determined in accordance with the Relevant Law for the payment of a Market Linked Pension;
- (d) the Pensioner may elect to receive in any year an amount of the Market Linked Pension in the range between 90%-110% of the amount determined in accordance with the Relevant Law;
- (e) the Market Linked Pension does not and will not have a residual capital value;
- (f) if the Market Linked Pension reverts, it will not have a reversionary component greater than 100% of the Benefit payable before the reversion;
- (g) the Market Linked Pension cannot be transferred to any person other than on the death of the Pensioner to one of his or her Dependants or to the legal personal representative of the Pensioner; and:
- (h) the capital value of the Market Linked Pension and the income from it cannot be used as security for a borrowing.

29.2 Market Linked Pension Account Residue

In the event of the death of a Pensioner in receipt of a Market Linked Pension while there is still an amount standing to the credit of the Pension Account of the Pensioner, and where:

- (a) no Reversionary Beneficiary has been nominated, or
- (b) the Reversionary Beneficiary is not a Dependant of the Pensioner at the time of death of the Pensioner, or the Reversionary Beneficiary is not a person who is eligible to be paid a benefit in the form of a pension under the Relevant Law.

the Trustee must, if the Pension is neither commuted under clause 29.3 nor transferred under clause 29.1, ensure that the amount standing to the credit of the Pension Account is:

- (c) transferred to the Equalisation Account; or

- (B) the commutation is made on the death of the Pensioner to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to one or more Dependants of the Pensioner or to the estate of the Pensioner; or
- (C) the commutation is made on the death of a Reversionary Beneficiary to the benefit of another Reversionary Beneficiary or, if there is no other Reversionary Beneficiary, to one or more Dependants of the Reversionary Beneficiary or to the legal personal representative of the Reversionary Beneficiary; or
- (D) the commutation is made on the death of the Pensioner as a lump sum to an individual where the Trustee has made reasonable enquiries but been unable to locate a person mentioned in either clause 29.3(b)(iii)(B) or 29.3(b)(iii)(C); or
- (E) the commutation is only made on the death of both the Pensioner and the Pensioner's Spouse where required by the Relevant Law; or
- (F) the Superannuation Lump Sum resulting from the commutation is transferred directly to the purchase of another Market Linked Pension or another income stream of a type permitted under the Relevant Law; or
- (G) the commutation is made to pay a Superannuation Contributions Surcharge; or
- (H) the commutation is made to provide for an entitlement of a non-member spouse where that entitlement is created by a Payment Split; or
- (I) the sole purpose of the commutation is to meet the rights of a Member to receive their Benefit Entitlement or Benefit under the Corporations Act 2001; or
- (J) in the case of a partial commutation, the Pension Account balance immediately after the commutation would be equal to or would exceed the remaining amount of the Market Linked Pension payments otherwise due to be made in the financial year in which the commutation occurred; or
- (K) the minimum amount specified in the Relevant Law that must be paid in the financial year during which the Market

- (i) the purpose of the commutation is to cash an unrestricted non-preserved benefit; or
- (ii) before the commutation, the Pensioner has satisfied a condition of release in respect of which the cashing restriction is nil; or
- (iii) the purpose of the commutation is to pay such amount as is referred to in a Release Authority given by a Pensioner to the Trustee; or
- (iv) the commutation is otherwise permitted under the Relevant Law.

30 OTHER PENSION PAYMENT CONDITIONS

If the Relevant Law permits, the Trustee may, at the request of a Member or Beneficiary, pay from the Fund or purchase on behalf of the Member or Beneficiary any type of Pension other than those types of Pension referred to elsewhere in this Deed, which type of Pension is acceptable to the Regulator and is permitted under the Relevant Law, on such terms required under the Relevant Law, or on such terms as are permitted under the Relevant Law and as the Trustee and Member or Beneficiary may agree.

31 ACCOUNT-BASED PENSION PAYMENT CONDITIONS

31.1 Method of Payment and Security of Account-Based Pension

Where an Account-Based Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (a) the Account-Based Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (b) the Account-Based Pension must be paid at least annually;
- (c) the amount of the Account-Based Pension in any year will be such amount as is nominated by the Pensioner and notified to the Trustee in writing from time to time, provided that the amount must be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of an Account-Based Pensions;
- (d) the Account-Based Pension cannot 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 on such other terms as are permitted by the Relevant Law;

the balance of such Pension Account must be dealt with in accordance with clause 34.

31.6 Commutation of Account-Based Pension

- (a) The Trustee:
- (i) May commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where:
 - (A) the Relevant Law permits the commutation of that Account-Based Pension;
 and either:
 - (B) the Pensioner makes a written application to the Trustee for the commutation of that Account-Based Pension; or
 - (C) the Trustee chooses to commute that Account-Based Pension on its own initiative; and
 - (ii) must commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where the Relevant Law so requires.
- (b) An Account-Based Pension will only be commuted, subject to clause 31.6(a)(ii), where:
- (i) the commutation would not disadvantage the Fund itself, or the Employers sponsoring the Fund, or the remaining Members or Pensioners; and
 - (ii) the proceeds of the commutation do not exceed the amount standing to the credit of the Pension Account immediately before the commutation.
- (c) The Trustee may only commute the whole or part of the Account-Based Pension, subject to clause 31.6(a)(ii), where one of the following applies:
- (i) the commutation results from the death of the Pensioner; or
 - (ii) the sole purpose of the commutation is:
 - (A) to pay a Superannuation Contributions Surcharge; or
 - (B) to provide for an entitlement of a non-member spouse where that entitlement is created by a Payment Split; or

32 NON-COMMUTABLE ACCOUNT-BASED PENSIONS

32.1 Request to pay Non-Commutable Account-Based Pension

Upon a Member or Beneficiary attaining their Preservation Age, the Trustee may, at the request of a Member, pay from the Fund a Non-Commutable Account-Based Pension on the conditions set out in clauses 32.2 and 32.3 and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member or Beneficiary may agree.

32.2 Compliance with Relevant Law

The Trustee may only pay a Non-Commutable Account-Based Pension to a Member or Beneficiary in accordance with the Relevant Law.

32.3 Method of Payment and Security of Non-Commutable Account-Based Pension

Where a Non-Commutable Account-Based Pension is payable from the Fund, the conditions set out in clause 31 and the following additional conditions will apply in relation to its payment:

- (a) the total payments (including under a Payment Split) made in respect of the Non-Commutable Account-Based Pension in a financial year shall amount to no more than 10% of the Pensioner's Pension Account balance as it stands on:
 - (i) 1 July in the financial year in which the payment is made; or
 - (ii) if the financial year in which the payment is made is the year in which the Non-Commutable Account-Based Pension commences on the commencement date of the pension, and
- (b) where the Non-Commutable Account-Based Pension is commuted in accordance with this Deed and the Relevant Law, the resulting Superannuation Lump Sum must not be cashed unless:
 - (i) the purpose of the commutation is:
 - (A) to cash an unrestricted non-preserved benefit; or
 - (B) to pay a Superannuation Contributions Surcharge; or
 - (C) to give effect to an entitlement of a non-member spouse under a Payment Split; or
 - (D) to pay such amount as is referred to in a Release Authority given by a Pensioner to the Trustee; or

33.3 No Beneficial Interest

With the exception of the provisions of this clause 33 and clause 15.5, no Member or Beneficiary may have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to the provisions of this Deed.

34 PAYMENT OF BENEFITS ON DEATH

34.1 Payments to Dependants, Legal Personal Representatives or Other Persons

On the death of a Member or Beneficiary the Trustee must:

- (a) if required by a Binding Death Benefit Notice given by the Member or Beneficiary to the Trustee, pay or apply the Benefit in accordance with that Binding Death Benefit Notice; and
- (b) otherwise, pay or apply the Benefit to or for the benefit of one or more of the Member's or Beneficiary's Dependants and legal personal representative (including any Nominated Recipients) in such proportions, form, manner and at such times as the Trustee, in its discretion, determines from time to time; and
- (c) if there are no Dependants and there is no legal personal representative, may:
 - (i) pay or apply the Benefit for the benefit of such Relatives of the Member or Beneficiary or other persons as the Trustee determines, in such proportions, form, manner and at such times as the Trustee determines; or
 - (ii) if there are no such Relatives or other persons, deal with the Benefit as though it were a forfeited benefit in accordance with clauses 26.3 and 26.4, or as otherwise required under the Relevant Law.

34.2 Discharge of Trustee

The receipt by a Dependant, the legal personal representative, Relative or other person of a Benefit paid under this clause 34 is a complete discharge of the Trustee in respect of any amount paid to that person and the Trustee is not bound to see to the application thereof.

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 must pay such Benefit provided that the Trustee must also notify in writing any person mentioned in clause 35.4 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.

35.5 Notification Outside Time Limit

Where a person has failed to notify the Trustee of a claim or of their intention to make a claim within the period determined by the Trustee under the proviso in clause 35.4, no payment may 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.

35.6 No Personal Claim

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

35.7 Payment to Others on Behalf of Beneficiaries

When any Beneficiary is under the age of 18 years or is under any legal disability or 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 may determine:

- (a) 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 determines; or
- (b) 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 by the person to whom the Benefit is paid is a complete discharge of the Trustee for the payment in respect of the Beneficiary and the Trustee is not bound or concerned to see to the application of the Benefit so paid.

35.8 Unclaimed Benefits

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

36.5 Payment to Relevant Authority

The Trustee must 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.

37 POLICIES OF ASSURANCE**37.1 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 is not 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.

37.2 Trustee Required to Effect Policy

Notwithstanding anything in clause 37.1, where:

- (a) 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 unless the Member requests the Trustee in writing not to effect such Policy; or
- (b) 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 unless the Member by written notice to the Trustee withdraws, cancels or alters the Member's original request,

provided always that the Trustee is able to obtain such Policy or Policies in respect of the Member.

37.3 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 among Members as the Trustee considers to be equitable.

39.2 Notice

On any Variation being effected, the Trustee must, 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 by the Relevant Law.

39.3 Limitation on Variation

No Variation may have the effect of:

- (a) reducing or adversely affecting the rights or claims of a Member to accrued entitlements from the Fund which have arisen prior to the Variation being effected; or
- (b) reducing the amount of an entitlement other than an entitlement referred to in clause 39.3(a) that is or may become payable in relation to a period before the date of the Variation, unless:
 - (i) the reduction is required to enable the Fund to comply with the Relevant Law;
 - (ii) the Member so affected consents in writing to the reduction; or
 - (iii) the Regulator consents in writing to the reduction.

39.4 Further limitation on Variation

No Variation to this Deed may:

- (a) 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 is a Constitutional Corporation or the Relevant Law otherwise permits; or
- (b) 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.

40 WINDING UP OF FUND

40.1 Election to Terminate

The Trustee may elect to wind up the Fund at a certain date (in this clause referred to as the **Termination Date**) in the following circumstances:

41.3 Transfer of Accumulation Account

On the reclassification of a Member as a Member of another class the Trustee may, with the consent of the Member, transfer all or any of the Member's Accumulation Accounts to the new membership class subject to the proviso contained in clause 41.2.

DIVISION B - DETERMINATION AND PAYMENT OF BENEFITS**42 TREATMENT OF PRESERVED BENEFITS**

Notwithstanding any other provision of this Deed which may be construed to the contrary, any Preserved Payment Benefits held by the Trustee which under the Relevant Law are not permitted to be paid out to the Member may, at the discretion of the Trustee, be dealt with in accordance with clause 23, or retained in the Fund subject to clauses 43 and 45.

43 PAYMENT OF PRESERVED AMOUNTS

Notwithstanding any other provision of this Deed which may be construed to the contrary, the Trustee may determine to pay a Member or Dependant of a Member any Benefit which is a Preserved Payment Benefit on the Member retiring from Gainful Employment at or after attaining the Preservation Age in respect of the Member, in the event of Total and Permanent Disablement, the death of the Member or in other circumstances permitted by the Relevant Law.

44 PAYMENT OF NON-PRESERVED AMOUNTS

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

(a) Member Election

a Member may elect at any time to withdraw the whole or any part of their Non-Preserved Amount 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 under clause 44(a) must be determined by the Trustee and notified to Members.

(b) Death

the Member dies, in which case it must be paid in accordance with clause 34;

(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 in its absolute discretion to pay the Benefit to the Member or Beneficiary,

whichever first occurs, and the amount then payable is 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 required by the Relevant Law.

48 RETIREMENT

Where a Member:

- (a) who is a self-employed person Retires from Gainful Employment at or after Normal Retirement Age;
- (b) Retires from Employment with an Employer at or after Normal Retirement Age; or
- (c) satisfies the Relevant Law for the payment of Benefits at or after Normal Retirement Age,

and the Member requests that a Benefit be paid, then such Member must be paid the amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made.

49 DISABLEMENT**49.1 Total and Permanent Disablement**

In the event that a Member becomes, in the opinion of the Trustee, Totally and Permanently Disabled, then such Member, on being notified by the Trustee of the fact that the Trustee has formed such an opinion, must be paid by the Trustee a Benefit equal to the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made.

- (b) Retires from Employment with an Employer prior to Normal Retirement Age and the Member has attained the Member's Preservation Age; or
- (c) Retires from an arrangement under which the Member was in Gainful Employment having attained the age of 60 years or such other age prescribed for this purpose under the Relevant Law,

and the Member requests that a Benefit be paid, then the Trustee must pay to the Member the full amount standing to the credit of the Member's Accumulation Account as at the date of payment.

51 OTHER TERMINATION OF EMPLOYMENT

In the event that a Member terminates Gainful Employment with an Employer prior to the Member's Preservation Age in circumstances where no Benefit is payable under any other provision of this Division B, and the Member requests that a Benefit be paid, then the Trustee, may pay to the Member a Benefit drawn from the Member's Accumulation Account as the Trustee may in its discretion determine.

52 PAYMENT ON DEATH

52.1 Benefits

On the death of a Member while still a Member the Trustee must pay the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made in accordance with the provisions of clause 34.

52.2 Interim Benefit Payment

Where the Dependants or the legal personal representative of a Member or Beneficiary are to receive from the Fund any Benefit the Trustee, instead of paying the Benefit as a single lump sum, may pay the Benefit in the form of one or more interim lump sum payments.

SCHEDULE B
LANGUEDOC SUPER FUND
APPLICATION FOR MEMBERSHIP
CONFIDENTIAL

TO: THE TRUSTEES OF Languedoc Super Fund

AGREEMENT AND UNDERTAKING

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

- (a) if I am in an Employment Relationship with any other Member, I am also a Relative of the other Member(s);
- (b) I am not disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- (c) I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time;
- (d) I will, on request, make full disclosure in writing of any information required by the Trustee in respect of my medical condition or my membership of the Fund including any circumstance which may have the effect that:
 - (i) I may enter into an Employment Relationship with any other Member or Members where I will not also be a Relative of the other Member(s); or
 - (ii) I may become disqualified under the Relevant Law from holding the office of a Trustee or as a Director of the Trustee;
- (e) I understand the terms and conditions of the Trust Deed including my obligations as a Trustee and I agree to sign and deliver to the Australian Taxation Office such form or declaration in connection with my accepting the office of a Trustee or as a Director of the Trustee as may be required under the Relevant Law within such period as the Relevant Law requires;
- (f) I understand the terms and conditions of Division B of the Deed concerning Benefits payable;
- (g) I have read and understand the prescribed information relating to the collection of Tax File Numbers by trustees of superannuation funds and attach a completed Australian Taxation Office Individual Tax File Number Notification Form; and
- (h) I agree to act as a Trustee for the Fund or to act as a Director of the trustee.

Name:	
Address:	
Date of Birth:	

Signature of Member

_____/_____/_____
Date (Please ensure that you date this part of the form)