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ACN 122 347 746**

Trustee

DATED *26th MARCH* **2012**

SUPERANNUATION FUND DEED

GREEN MILLS SUPER FUND

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**SUPERANNUATION FUND DEED
GREEN MILLS SUPER FUND**

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**GREEN MILLS SUPER FUND
 SUPERANNUATION FUND DEED**

THIS TRUST DEED is made the 26TH day of MARCH 2012

BY:-

TWENTY THREE 04 PTY LTD ACN 122 347 746 of 14 Brussels Street, Broadview SA 5083 [Trustee]

RECITALS:

- A. The Trustee has agreed to establish and maintain an indefinitely continuing superannuation fund (hereinafter called "the Fund") for the purpose of providing superannuation benefits for those persons who being eligible for membership, become Members of the Fund and their Dependants.
- B. The Trustee has agreed to act as the first Trustee of the Fund.

NOW THIS DEED WITNESSES THAT the Trustee hereby establishes an indefinitely continuing superannuation fund to be known as the "GREEN MILLS SUPER FUND" which shall vest in and be controlled and administered by the Trustee upon the trusts of this Deed (which includes this preamble and all of the following Parts hereof) and which shall come into operation on the 26TH day of MARCH 2012 [Commencement Date].

PART A - GENERAL PROVISIONS

1 DEFINITIONS

- 1.1 In the Deed, unless the contrary intention appears or the context requires otherwise:
 - (a) "Actuary" has the meaning given to that term in the Relevant Law.
 - (b) "Allocated Pension" (which includes an annuity) means payments made by the Trustee to a Beneficiary in accordance with this Deed which comply with the requirements in regard to the provision of such a pension in Clause 22.7.

- (c) **“Approved Benefit Arrangement”** means a fund or benefit arrangement, other than the Fund, including without limitation another superannuation fund, an approved deposit fund and a deferred annuity arrangement to which a payment may be made from the Fund, or from which a payment may be accepted into the Fund, without causing the Fund to be in breach of or fail to comply with any applicable requirements of the Relevant Law.
- (d) **“Auditor”** means the person appointed for the time being as Auditor of the Fund pursuant to Clause 7.1 being a registered auditor within the meaning of the Relevant Law.
- (e) **“Balance Date”** means 30th June in each year or such other date or dates in any year as may be determined by the Trustee from time to time.
- (f) **“Benefit Accounts”** means in relation to a Member the accounts maintained in respect of the Member for benefit purposes pursuant to Part B of the Deed.
- (g) **“Beneficiary”** means a person (including any Member) who is beneficially entitled to receive a benefit from the Fund in accordance with the Deed.
- (h) **“Child”** has the meaning given to that term in the Relevant Law.
- (i) **“Child Contributions”** means contributions made by persons who are permitted to make such contributions for a child pursuant to the Relevant Law.
- (j) **“Child Member”** means a Member for whom the only contributions made are Child Contributions.
- (k) **“Commissioner”** means the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987* or a person for the time being acting in that position or capacity under that Act.
- (l) **“Complying Pension”** (which includes an annuity) means payments made by the Trustee to a Beneficiary which comply with the requirements in regard to the provision of such a pension as described in Clause 22.6, the amount and terms of which have been determined by an Actuary and notified in writing by the Actuary to the Trustee prior to the commencement of the payment of the pension.
- (m) **“Contributions”** means contributions to the Fund by or in respect of a Member in accordance with clause 19.1 and includes in respect of a Member:
 - (i) a transfer of an asset or assets by way of contributions in specie to the Fund;
 - (ii) contributions arising from structured settlements and orders for personal injuries in accordance with the Relevant Law;
 - (iii) certain non-assessable capital gains in accordance with the Relevant Law;

(iv) co-contributions made by the Government in accordance with the *Superannuation (Government Co-Contribution For Low Income Earners) Act 2003*; and

any other Contribution authorised by the Relevant Law;

- (n) **"Date of Disablement"** means in relation to a Member and any statement of disablement giving rise to a benefit under the Deed the later of:
- (i) the date determined by the Trustee to be that on which the Member last ceased to be actively employed; and
 - (ii) the date determined by the Trustee to be that on which the illness or injury which (in the opinion of the Trustee after considering evidence satisfactory to the Trustee) was the primary cause of such disablement commenced or occurred, or, in any case, such other date (if any) as the Trustee may declare to be the Member's Date of Disablement for the purposes of the whole or any particular provision of the Deed.
- (o) **"Declared Rate"** means such rate of interest (which may be positive or negative) as may be determined in accordance with any applicable requirement of the Relevant Law by the Trustee in respect of any period and, without limiting the generality of the foregoing, the Trustee may prospectively determine a Declared Rate on an interim basis in respect of a particular period and may subsequently and retrospectively determine a Declared Rate on a final or declared basis in respect of that period.
- (p) **"Deed"** means this Trust Deed, including all of the Parts hereof, as amended, added to, deleted from or replaced from time to time.
- (q) **"Dependant"** means in relation to a person any one or more of the following:
- (i) the Spouse of that person;
 - (ii) any child of that person including any step-child, any child recognised by the Trustee as an adopted child or any child born after the death of that person but not including any child thereof who in the opinion of the Trustee has been adopted by another person; and
 - (iii) any other natural person who in the opinion of the Trustee is at the relevant date (or in the case of a deceased person was at the time of death) wholly or partially dependent on the first mentioned person.
- (r) **"Eligible Person"** means a person who is approved for membership of the Fund by the Trustee and may include a Non-Member Spouse whose interest arises pursuant to the *Family Law Act 1975*.
- (s) **"Eligible Rollover Fund"** means a fund which satisfies the conditions of the Relevant Law.
- (t) **"Eligible Spouse Contributions"** has the meaning given by section 159TC of the *Income Tax Assessment Act 1936* and also any Split Contributions made by the Spouse of the Eligible Spouse Member.

- (u) **"Eligible Spouse Member"** means a Member for whom the only contributions made are Eligible Spouse Contributions or Split Contributions.
- (v) **"Fund"** means the superannuation fund established under the Deed and comprising the moneys and property held by and for the Trustee upon the trusts of the Deed.
- (w) **"Fund Expenses"** means the costs and expenses of and incidental to the establishment, operation, management, administration and investment of the Fund and including any Tax imposed on the Fund or payable by or with respect of the Fund.
- (x) **"Group Life Insurance"** means any type or form of term or temporary insurance, whether on a group or individual basis, taken out by the Trustee for the provision of death and Total and Permanent Disablement benefits by the Fund.
- (y) **"Insurer"** means an insurer from whom insurance is sought or with whom insurance is effected by the Trustee pursuant to the Deed.
- (z) **"Member"** means an Eligible Person who has been admitted to membership of the Fund as provided in the Deed including a Child Member **PROVIDED THAT** a person shall cease to be a Member in the event of that person's death or when all benefits to which that person could become entitled under the Deed have been paid from the Fund or have otherwise ceased or been terminated as provided in the Deed, whichever first occurs.
- (aa) **"Non-Member Spouse"** means the spouse of a Member whose interest in the Fund arises pursuant to the *Family Law Act 1975*.
- (bb) **"Normal Retirement Date"** means in relation to a Member the 65th anniversary of the Member's date of birth or such other date as may be agreed between the Trustee and the Member from time to time (which may be later than the 65th anniversary of the Member's date of birth) provided that any other date is consistent with the provisions of the Relevant Law regarding the provision of Old-Age Pensions.
- (cc) **"Old-Age Pensions"** has the meaning given to that term in the Relevant Law.
- (dd) **"Part"** means a Part of the Deed.
- (ee) **"Qualified Adviser"** means an accountant, barrister, solicitor, Actuary, medical practitioner or other professional person, an Insurer, and any other person considered by the Trustee in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise howsoever.
- (ff) **"Relevant Law"** means the requirements set out in:
 - (i) the *Superannuation Industry (Supervision) Act 1993*;
 - (ii) the *Income Tax Assessment Act 1936*;
 - (iii) the *Income Tax Assessment Act 1997*;

- (iv) the *Occupational Superannuation Standards Act 1987* known as the *Superannuation Entities Taxation Act 1987*;
 - (v) the *Superannuation (Resolution of Complaints) Act 1993*;
 - (vi) any regulations made under any of those Acts; and
 - (vii) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which the Trustee may determine to be a Relevant Law for the purposes of the Deed.
- (gg) "**Reserve Account**" means the account of that name maintained in respect of the Fund in accordance with Part 2 of the Deed.
- (hh) "**Responsible Authority**" means the Commissioner, the Taxation Commissioner or any other governmental authority responsible for administering the laws, regulations or any other rules applying to or governing the operation of superannuation and similar funds.
- (ii) "**Secretary**" means the person appointed by the Trustee as Secretary of the Fund pursuant to Clause 7.3 and includes any deputy or acting Secretary appointed thereunder.
- (jj) "**Self Managed Superannuation Fund**" has the meaning given by Section 17A of the *Superannuation Industry (Supervision) Act 1993*.
- (kk) "**Split Contributions**" means any contributions made by or on behalf of a Member and which the Member applies to the Trustee in writing and in compliance with the Relevant Law to be classified as a split contribution and to the extent possible under the Relevant Law the contribution is credited to the Benefits Account of their Eligible Spouse Member and which complies with Clause 19.2.
- (ll) "**Spouse**" has the same meaning as in Section 6(1) of the *Income Tax Assessment Act 1936*.
- (mm) "**Tax**" includes all income tax, contributions tax, capital gains tax, withholding tax, stamp duty, financial institutions duty and other duties, bank accounts debits tax and, without being limited by the preceding taxes, all other taxes, levies, imposts, deductions and charges whatsoever, together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof.
- (nn) "**Taxation Commissioner**" means the Commissioner of Taxation appointed for the purposes of the Act and includes a Deputy Commissioner of Taxation.
- (oo) "**Total Account Balance**" means in relation to a Member at any particular date the total amount standing to the credit of the Member's Benefit Accounts as at that date, after all appropriate debits and credits have been made to such Accounts.
- (pp) "**Total and Permanent Disablement**" in relation to a Member shall have the same meaning as is given to those words or what the Trustee may consider to

be the corresponding word or words for the purposes of any policy of insurance effected or acquired by the Trustee pursuant to the Deed and under which insurance is or may become payable in the event of the disablement of any Member or group of Members (or, where there is more than one policy in force, the policy specified by the Trustee for this purpose), and (unless otherwise decided by the Trustee in any particular case) any determination by the relevant Insurer as to whether or not a Member is so disabled in terms of such policy shall be final and binding on all interested persons for the purposes of the Deed **PROVIDED THAT**, if at the relevant time there is no such policy in force or in any other circumstances decided by the Trustee, Total and Permanent Disablement shall mean disablement due to an illness or injury as a result of which:

- (i) the Member has been continuously absent from active employment for a period of at least six months or such lesser period, if any, as may be decided by the Trustee from time to time either generally or in any particular case; and
 - (ii) in the opinion of the Trustee after consideration of information and advice satisfactory to the Trustee, has not been inflicted, incurred or aggravated for the purpose of obtaining a benefit, and "Totally and Permanently Disabled" shall have a corresponding meaning.
- (qq) "**Trustee**" or "**Trustees**" means the Trustee or Trustees for the time being of the Fund as the case may be whether original, additional or substituted.

2 INTERPRETATION

2.1 Unless the contrary intention appears:

- (a) a reference to the Deed or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the following particular words are given the meanings:
 - (i) "insurance" includes assurance and vice versa and any type of annuity;
 - (ii) "person" includes a firm, a body corporate, an unincorporated association or an authority.

3 CLAUSE PARAMOUNT

3.1 Compliance with Relevant Law

- (a) The primary purpose of the Fund is to provide Old Age Pensions;

- (b) The Trustee shall comply with the Relevant Law and is empowered to do and procure to be done such acts matters and things as are necessary in order to comply with the Relevant Law;
- (c) Any provision or requirement of the Relevant Law which is expressly required by the Relevant Law to be included in the Deed in order to comply with or satisfy the Relevant Law shall be deemed to be included in the Deed from the date when compliance is required;
- (d) If in the event that there is a conflict between a provision of the Relevant Law and any provision of the Deed, the Relevant Law shall prevail to the extent of the conflict;
- (e) The Trustee shall obtain all actuarial certificates which are required by the Relevant Law to support the payment of Complying or Allocated Pensions in accordance with this Deed.
- (f) If any doubt or dispute arises as to the existence, meaning, application or effect of any requirement of a Relevant Law, or if there is a conflict between the requirements of a Relevant Law the decision of the Trustee shall be final and binding on all interested persons.

3.2 Severance

Without limiting the application of Clause 3.1 if any provision of the Deed shall be in conflict with any requirement of a Relevant Law causing the provision of the Deed to be invalid the provision of the Deed shall be severed to the extent of the invalidity but the remainder of the provision shall continue in full force and effect.

4 MANAGEMENT OF FUND

4.1 Trustee

Notwithstanding any other provision of this Deed but subject to Clause 3.1:

- (a) the Trustee of the Fund must be a constitutional corporation as that term is defined in the Relevant Law; or
- (b) if the sole or primary purpose of the Fund is to provide Old Age Pensions or the Deed is amended so that the sole or primary purpose of the Fund is to provide Old Age Pensions, natural persons may be appointed as Trustees of the Fund,

PROVIDED THAT the relationship between the Members and the directors of the board of the Trustee or the individual Trustees must at all times adhere to the requirements of the Relevant Law in regard to a Self Managed Superannuation Fund.

4.2 Natural Persons as Trustees

(a) Appointment of Trustees

- (i) Where natural persons act as the Trustees the Trustees shall be such persons appointed for such period so as to comply with the Relevant Law.
- (ii) A change from natural persons as Trustees to a body corporate as sole Trustee shall not take place without the consent of the Trustees in office immediately before the effective date of that change.

(b) Term of Office

Each Trustee shall cease to hold office when the Trustee:

- (i) retires from office by notice in writing given to the other Trustees;
- (ii) becomes a bankrupt or makes an assignment to or composition with creditors;
- (iii) dies; or
- (iv) is disqualified from acting as a Trustee by the Relevant Law.

(c) Meetings of Trustees

- (i) Trustees may meet and adjourn and regulate their meetings as the Trustees shall see fit and may appoint a chairman for each meeting.
- (ii) All questions arising at a meeting of Trustees shall be determined by resolution and no such resolution shall be effective unless carried by a majority comprising at least 2/3rds of the Trustees in office for the time being.
- (iii) A resolution in writing signed by all Trustees is effective as if it had been passed at a meeting of Trustees duly convened and held.
- (iv) A meeting of Trustees may be constituted by means of a telephone or similar means if all Trustees have been given notice of the meeting and at least 2/3rds of the Trustees take part in the meeting and all persons participating in the meeting can hear each other.
- (v) Minutes of all meetings of Trustees shall be kept and entered in a book provided for the purpose. Minutes are evidence of the matters recorded if they are confirmed by the next meeting and signed by the chairman.

4.3 Sole Corporate Trustee

(a) Appointment of Trustee

Subject to Clause 4.1 and the succeeding provisions of this Clause, the Members may appoint a body corporate to be the sole Trustee of the Fund.

(b) Compliance with Relevant Law

The Members and the body corporate concerned shall take such action as they each consider necessary and appropriate to ensure that such a body corporate is constituted in a manner which complies with any applicable requirement of a Relevant Law regarding the trusteeship of superannuation funds, including without limitation appropriate action in respect of the memorandum and articles of association of the body corporate and the appointment and composition of the directors thereof.

(c) Term of Office

A body corporate appointed as sole Trustee shall hold office until the earliest of:

- (i) its removal from that office by the Members;
- (ii) its retirement from that office by written notice given to the Members;
- (iii) the appointment of a receiver, receiver and manager or liquidator in respect of it or the whole or any part of its property or the approval by a court of a scheme of arrangement providing for its dissolution other than for the purpose of reconstruction; and
- (iv) its disqualification from that office by operation of law,

and, upon a body corporate so ceasing to hold office, another body corporate shall be appointed to such office as hereinbefore provided.

(d) Minutes

The board of directors or the like of a body corporate acting as sole Trustee shall keep or cause to be kept proper minutes in relation to matters arising at any meeting thereof concerning its role as Trustee of the Fund. The minutes if signed by the chairman of such meeting or by the chairman of the next succeeding meeting thereof shall be receivable as prima facie evidence of the matters stated therein.

5 POWERS OF TRUSTEES

5.1 General Powers

Except to the extent otherwise expressly provided in the Deed, the Trustee shall have the complete management and control of all proceedings matters and things in connection with the Fund and may do all acts and things which the Trustee may consider necessary desirable or expedient for the proper administration maintenance and preservation of the Fund or any part thereof and in the exercise and performance of the powers and obligations of the Trustee under the Deed.

5.2 Specific Powers

Except to the extent otherwise expressly provided in the Deed, the Trustee shall have the following specific powers:

- (a) to engage remove or suspend nominees, custodians and managers (including nominees, custodians and investment managers in respect of all or any of the moneys and assets of the Fund), administrators, clerks, agents, representatives and other servants and delegates; engage them for permanent, temporary or special services, determine their powers and duties and fix and pay from the Fund their salaries, fees, emoluments and charges; and require security from any such person in such instances and to such amount as the Trustee may think fit;
- (b) to institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund or the Deed generally and also to compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;
- (c) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (d) to determine who shall be entitled to give and sign in respect of the Fund or any part thereof receipts, acceptances, endorsements, releases, contracts and other documents (and the receipt of the Trustee or a duly authorised delegate of the Trustee is a sufficient discharge to the person to whom it is given);
- (e) to open bank accounts and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (f) to act on the advice or opinion of any Qualified Adviser (whether or not such advice or opinion was obtained by the Trustee) in relation to any relevant matter or question without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on such advice or opinion;
- (g) to give such undertakings and indemnities, enter into such contracts and incur all such obligations relating to the Fund or any part thereof as the Trustee may think fit, including without limitation giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee or a delegate thereof in connection with the Fund;
- (h) without limiting the generality of the foregoing and to such extent only as the Relevant Law permits, the Trustee may borrow or raise money up to such amount as the trustee thinks proper and may secure the payment or repayment thereof by charge or mortgage over all or any of the assets of the Fund or in such manner as the Trustee shall think fit; and
- (i) to make rules and adopt procedures in relation to the calculation and rounding-off of contributions, benefits and interest, to the determination of periods of time or to such other matters as shall be appropriate for the convenient administration of the Fund.

5.3 Confidentiality

Except to the extent reasonably necessary in the operation and administration of the Fund and the proper application of the Deed, the Trustee, the Secretary and each delegate of the Trustee shall treat as confidential all information regarding Members and Beneficiaries which becomes known thereto in connection with the operation and administration of the Fund.

5.4 Delegation by Trustee

The Trustee may delegate any power exercisable by the Trustee (including a power which the Trustee may have a duty to exercise or perform and the power of delegation) and any duty of the Trustee to any person in any manner and upon any terms and conditions. The Trustee may vary or revoke any delegation and may exercise any power in conjunction with or to the temporary or permanent exclusion of a delegate.

5.5 Action Notwithstanding Interest

A person may be a Trustee or the Secretary or an officer, servant or delegate of the Trustee, and may exercise any power exercisable by virtue of such office or position, notwithstanding that that person is a Member or a Beneficiary.

6 INDEMNITY OF TRUSTEE

6.1 Indemnity

- (a) No officer or director of the Trustee, or any other person authorised to act on behalf of the Trustee or Trustee shall be liable for or in respect of, and shall be indemnified out of the Fund against, any claim, liability, cost, loss, damage or expense whatsoever incurred or arising in connection with any act, omission or mistake in connection with the Deed or the Fund or the exercise or performance of that person's powers and duties generally, including without limitation any matter falling within Clause 6.1(b) except to the extent that such claim, liability, cost, loss, damage or expense is a result of an act, omission or mistake involving that person's own personal fraud or willful misconduct, willful neglect or willful default.
- (b) Subject to Clause 6.1(a), an officer or director of the Trustee or any other person authorised to act on behalf of the Trustee or Trustee shall not be liable or responsible for and shall be indemnified out of the Fund in respect of any claim, liability, cost, loss, damage or expense incurred arising in connection with:
 - (i) the insufficiency of or deficiency in any manner or form of investment in which moneys of the Fund may be invested pursuant hereto;
 - (ii) the bankruptcy or insolvency of or any fraudulent or negligent act by any servant or delegate of the Trustee or any person with whom any investment may be deposited;
 - (iii) the payment of an amount or benefit to a person reasonably believed to be entitled thereto but who is in fact not so entitled; or

- (iv) any action taken or thing suffered in reliance upon any document, record, authority, representation, statement or evidence reasonably believed by the Trustee or a servant or delegate in good faith to be genuine, accurate and effective.
- (c) Notwithstanding the provisions of Clause 6.1(a) and 6.1(b) any provision of the Deed which indemnifies or purports to indemnify the Trustee or a officer or director of the Trustee or any other person authorised to act on behalf of the Trustee shall be limited to the extent required in order to be valid under the Relevant Law.

6.2 Fund Expenses

All of the Fund Expenses which are not paid by a Member shall, subject to Clause 6.1 be paid out of the Fund.

7 ACCOUNTING AND SECRETARIAL MATTERS

7.1 Appointment of Auditor

The Trustee shall appoint an Auditor of the Fund. The appointment of the Auditor shall be on such terms as the Trustee may think fit and the Trustee may remove the Auditor at any time and appoint another person as Auditor.

7.2 Accounts and Audit

The Trustee shall maintain or cause to be maintained such records and accounts as are required under and for the purposes of the Deed and such other records and accounts as the Trustee may consider to be necessary or expedient. The records and accounts of the Fund shall be audited by the Auditor annually and at such other intervals as the Trustee may determine. The Auditor shall certify to the Trustee the result of each such audit in writing.

7.3 Appointment of Secretary

The Trustee may appoint the Secretary of the Fund (or acting or deputy Secretary). Any such appointment shall be on such terms as the Trustee may think fit and the Trustee may remove any such person from office and may appoint another Secretary. The Secretary shall perform such duties and have such powers as are provided by the Deed together with such other duties and powers as the Trustee may determine.

8 INVESTMENT OF FUND

8.1 Authorised Investments

The Trustee may invest all money which is not immediately required for any other purpose under the Deed in any manner in which it could invest if it were personally entitled to the money and not acting in a fiduciary capacity including but not limited to:

- (a) in investments authorised by law relating to investment of trust funds;
- (b) in policies of life insurance;

- (c) in trusts or common funds;
- (d) on deposit or loan, with or without security;
- (e) in real property;
- (f) in shares, notes, options or other securities;
- (g) in options, futures and other financial instruments.

8.2 Appointment of Investment Custodians and Investment Managers

The Trustee shall have power to:

- (a) appoint one or more persons firms or companies as it may think fit to act either as investment custodian or investment manager or both for such period and subject to such conditions as the Trustee may from time to time determine;
- (b) delegate to and confer upon each such investment custodian and investment manager such powers discretions and authorities relating to the holding of legal title and custody of title deeds and documents of any nature whatsoever as the Trustee shall think fit.

PROVIDED THAT any appointment of or delegation to an investment manager or custodian by the Trustee shall be in accordance with the Relevant Law and shall be in writing and shall incorporate any provisions required in order to satisfy the requirements of the Relevant Law.

9 INSURANCE ARRANGEMENTS

9.1 Effecting Insurance

The Trustee may (and shall to the extent, if any, specified in the Deed) enter into or otherwise acquire any type of insurance policy or like arrangement (including any reinsurance arrangement with any person or fund) or any right or interest in respect thereof and with or subject to any option, right, benefit, term, condition or provision. The Trustee may pay out of the Fund all premiums and other outgoings in respect of such policy or arrangement and vary, surrender, terminate, assign or otherwise howsoever deal with the same as the Trustee may think fit.

9.2 Restrictions and Adjustments

- (a) If insurance is effected or sought to be effected by the Trustee with an Insurer in respect of any benefit which might become payable from the Fund in respect of a person or group of persons and:
 - (i) that Insurer refused to provide or increase insurance in respect of a person on its standard terms; or
 - (ii) that Insurer for any reason whatever fails to provide increase or maintain or reduces terminates or withholds insurance or does not admit or refuses to consider or defers a claim in whole or in part,

then, unless otherwise determined by the Trustee, the benefits in respect of which insurance has been or would have otherwise been effected shall be reduced to the extent to which insurance has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated or withheld or such a claim is deferred or not admitted, and the Trustee may adjust any affected benefit in such manner as the Trustee may consider appropriate in effecting such a reduction.

- (b) If any event provided for in Clause 9.2(a) occurs in relation to insurance sought or effected, the Trustee shall not be bound to seek alternative insurance with the same or another Insurer or, if the Trustee may decide to seek alternative insurance, the Trustee may limit that search to such Insurer or Insurers as the Trustee may see fit.
- (c) In any case, the Trustee may adjust the amount, time for and basis of payment of all or part of a benefit in respect of which insurance has been effected in such manner as the Trustee may consider appropriate to take account of the terms and conditions upon which the proceeds of such insurance are payable by the relevant Insurer and the amount thereof.
- (d) Any adjusted benefits provided pursuant to this Clause 9.2 shall be in lieu of and in full satisfaction of the benefits which would or might have been or become payable but for the operation of this Clause 9.2.

10 TERMINATION OF FUND

10.1 Notice of Termination

The Fund may be terminated by the Trustee giving three (3) months written notice to the Members.

10.2 Consequences of Termination

If the Trustee has given notice in accordance with Clause 10.1, the Trustee shall continue to administer the Fund in accordance with the provisions of this Deed except that no further contributions shall be accepted by the Fund for the Members and when all of the Members' benefits have been paid or applied in accordance with this Deed the Fund shall be deemed to be dissolved and this Deed shall cease to have effect.

11 MEMBERSHIP OF FUND

11.1 Admission of Members

Application to become a Member shall be made to the Trustee by an Eligible Person in a form acceptable to the Trustee and an applicant whose application is accepted by the Trustee shall become a Member on the date of acceptance or such earlier or later date as the Trustee may determine.

11.2 Special Conditions and Restrictions

The Trustee may:

- (a) admit an Eligible Person as a Member subject to limitations and restrictions in relation to benefits; and
- (b) remove or reduce the effect of any such limitations and restrictions,

and the rights and interests of such a Member (and the rights and interests of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstance affecting the Member) shall be subject to such limitations and restrictions.

11.3 Provision of Information by Applicants and Members

- (a) Each Eligible Person and each Member shall provide such information and evidence, sign such documents, undergo such medical examinations and tests, and generally satisfy such standards and requirements as and when the Trustee may consider necessary or desirable.
- (b) If:
 - (i) an Eligible Person or a Member fails to comply with Clause 11.3(a) or to satisfy any test, standard or requirement laid down thereunder to the satisfaction of the Trustee; or
 - (ii) any statement made or evidence provided by or in respect of an Eligible Person or a Member (whether in connection with an application to become a Member or otherwise howsoever) is found to contain any mis-statement, error, mistake, inaccuracy or suppression, the Trustee may:
 - A in the case of an Eligible Person, admit that person as a Member subject to special terms, conditions and restrictions as to benefits or otherwise; or
 - B in the case of a Member, impose special terms, conditions and restrictions in respect of membership of and benefits under the Fund.

11.4 Deed Binding on Members

Every Member shall be bound by the Deed.

12 INFORMATION REGARDING FUND

12.1 Information for Members and Beneficiaries

The Trustee may provide to Members and Beneficiaries such information, in such manner and at such times as shall be necessary in order to comply with the Relevant Law.

12.2 Copy of the Deed

A copy of the Deed shall be kept at the principal office of the Trustee and at such other places as the Trustee may determine. A Member may inspect a copy of the Deed during normal business hours upon reasonable notice.

13 OVERRIDING RESTRICTIONS ON CONTRIBUTIONS

13.1 Trustee May Refuse to Accept Contributions

Notwithstanding anything expressed or implied to the contrary in the Deed, the Trustee shall refuse to accept all or part of any contributions or other payments from any particular person or person if it considers that to do so is necessary in order to ensure compliance with any applicable requirement under the Relevant Law. Subject to the Deed, after such refusal the Trustee may adjust all or any of the benefits payable or to be provided from the Fund for or in respect of any person whom the Trustee consider to be affected by such by such refusal in such manner and to such extent as the Trustee considers appropriate and equitable and the adjusted benefits shall be substituted for the benefits otherwise provided for under the Deed.

13.2 Refund of Contributions by Trustee

If any moneys paid to the Fund will or will be likely to jeopardise the status of the Fund as a complying superannuation fund or is found by the Trustee to have been paid by mistake (whether of law or of fact), then, subject to the Relevant Law, the Trustee may refund those moneys to the person who paid them to the Fund but the Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those moneys in any way and a person shall not be deemed to have become a Member or person who is entitled under the Relevant Law to make a contribution to the Fund in respect of a Member merely by reason of the receipt by the Trustee of those moneys.

14 PAYMENT OF BENEFITS

14.1 Payment of Benefits by Trustee

Subject to Clauses 14.2 and 14.3, a benefit payable from the Fund shall be payable at such place and in such manner (including payment in specie or in kind) as the Trustee shall determine or approve and every person to whom a benefit is payable (whether in that person's own right or for and on behalf of another person) shall upon request by the Trustee provide such information and do such acts and things as the Trustee may consider necessary, desirable or expedient.

14.2 Alternative Forms of Benefits

- (a) Subject to the agreement of the Trustee and to Clauses 22.6 and 22.7:
 - (i) a Member or Beneficiary may elect that (in lieu of the normal or specified terms and conditions of payment) all or part of a benefit to which that person is or may otherwise become entitled shall be replaced by a benefit payable in other circumstances or in another manner and form or shall be paid upon other terms and conditions

including but not limited to the commutation of any pension benefit either wholly or partly to a lump sum benefit; and

- (ii) any such election shall be final and binding on all interested persons (including without limitation all persons who may be or become contingently entitled to receive a benefit in respect of the Member or Beneficiary making such election); and
 - (iii) in giving effect to and taking account of such an election, the Trustee may adjust the benefits which are or would or might otherwise become payable to or in respect of that Member or Beneficiary or any other person then or thereafter claiming under or in respect of the Member or Beneficiary in such manner and to such extent as the Trustee may think fit.
- (b) The Trustee, after obtaining the advice of an Actuary may unilaterally commute to a lump sum any pension or installment benefit which is or would otherwise become payable from the Fund if, in the opinion of the Trustee, the amount of that benefit is or would be trivial.

14.3 Payment of Death Benefits

- (a) Notwithstanding anything in this Deed to the contrary, the Trustee must, subject to complying with any conditions contained in the Relevant Law concerning the provision of notice by a member to the trustee of a superannuation entity in relation to the provision of death benefits of the member, provide any benefit payable from the Fund on or after the death of a Member and which under this Deed is not expressed to be payable to or for the benefit of some other specified person or persons, to a person or persons being the legal personal representative or a Dependant or Dependents of the Member, in such proportions, mentioned in a notice given to the Trustee by the Member which complies with the Relevant Law.
- (b) If the Trustee is unable to comply with Clause 14.3(a), then any benefit payable from the Fund on or after the death of a Member and which under the Deed is not expressed to be payable to or for the benefit of some other specified person or persons shall be paid or applied by the Trustee to or for the benefit of such one or more of:
 - (i) the Member's Dependents;
 - (ii) the Member's legal personal representative; and
 - (iii) if a surviving Dependant of the Member subsequently dies, the Dependents and legal personal representative of the deceased Dependant,

to the exclusion of the other or others of them and in such form, manner, proportions and subject to such conditions as the Trustee may determine.

- (c) Without prejudice to the foregoing, if a Beneficiary dies before the whole of a benefit which is payable to that Beneficiary has been paid, the amount of the unpaid benefit shall be paid or applied in accordance with Clause 14.3 as if the Beneficiary was a Member at the time of death.
- (d) Despite any other provision of this clause if the Trustee after reasonable enquiry decides that the deceased Member left no Dependants and if after reasonable further enquiry the Trustee is unable to locate any legal personal representative of the Member or any person who is entitled to become such legal personal representative then the Trustee shall apply the benefit in accordance with the Relevant Law.

14.4 Beneficiary Under Disability

If it appears to the Trustee that a Beneficiary is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with an amount otherwise payable to the Beneficiary from the Fund, the Trustee may pay or apply the whole or part of any benefit payable to the Beneficiary in such one or more of the following ways as the Trustee may think fit, namely:

- (a) to any Dependant of the Beneficiary;
- (b) for or towards the maintenance education advancement or otherwise howsoever for the benefit of the Beneficiary or of any Dependant of the Beneficiary in such form and manner and subject to such terms and conditions as the Trustee may think fit; and
- (c) without limiting the generality of Clause 14.4(b), to a person who appears to the Trustee to be a trustee for (including a trustee appointed by the Trustee under a separate trust established by the Trustee, which trust may be subject to such trusts and powers as the Trustee may think fit) or a representative, spouse, child, parent or guardian of or to have for the time being the care or custody of the Beneficiary or any Dependant of the Beneficiary or to have the financial expense of the care or custody of the Beneficiary or of any Dependant of the Beneficiary.

14.5 Deductions from Benefit Entitlements

- (a) The Trustee may deduct from a benefit otherwise payable to a Member or Beneficiary the following amounts:
 - (i) any amount owed by the Member to the Trustee;
 - (ii) any loss or damage incurred by the Trustee as a result of the Member's dishonesty, fraud or gross negligence; and
 - (iii) any interest and costs incurred by the Trustee in attempting to recover the amounts referred to in Clause 14.5(a)(i) and 14.5(a)(ii).
- (b) For the purposes of this clause 14.5 a written statement from the Trustee shall constitute evidence of the existence and amount of any debt, loss, damage or cost.

- (c) The operation of this Clause 14.5 shall at all times be subject to the Relevant Law.

14.6 Forfeiture of Benefit Entitlements

- (a) A Member is not entitled to benefits from the Fund if:
 - (i) the Member has attempted to assign the benefit or his interest in the Fund; or
 - (ii) the Member is declared mentally ill or becomes liable to have his affairs dealt with under the laws relating to mental health.
- (b) The Trustee may apply the benefit forfeited pursuant to Clause 14.6(a) for the benefit of one or more of the Members and the Members' Dependants as the Trustee shall think fit.
- (c)
 - (i) A Member of the Fund may, by notice in writing to the Trustee, forfeit his or her benefits in the Fund. Such notice must state the amount to be forfeited.
 - (ii) Upon receipt of the notice in Clause 14.6(c)(i), the Trustee must allocate in accordance with Clause 14.6(b) either:
 - A The amount contained in the notice of the Member under Clause 14.6(c)(i); or
 - B Such lesser amount as the Trustee determines having regard to the minimum benefit standards contained in the Relevant Law.
- (d) The operation of this Clause 14.6 shall at all times be subject to the Relevant Law.

15 AMENDMENTS

15.1 Power of Amendment

- (a) The Trustee by deed or by oral or written resolution may amend, add to, delete or replace all or any of the provisions of the Deed including this Clause 15.
- (b) Notwithstanding the provisions of Clause 15.1(a) no amendment is permitted to:
 - (i) reduce the amount of a benefit calculated on the basis of contributions to the fund and earnings on those contributions that have accrued or become payable to a Member before the date when the amendment is made; or

- (ii) reduce the amount of any other benefit that is or may become payable to a Member in relation to a period before the date when the amendment is made

unless the Member or the Commissioner consents in writing to the reduction or the reduction is permitted pursuant to the Relevant Law.

- (c) Notwithstanding the provisions of Clause 15.1(a) and 15.1(b) no amendment shall be made other than in accordance with the Relevant Law.

15.2 Notification of Amendment to Members

The Trustee shall notify all Members of the nature, purpose and effect on the entitlements of Members of any amendments pursuant to Clause 15.1 by way of written notice as soon as practicable after the date when the amendment is made **PROVIDED THAT** the failure by the Trustee to so notify the Members does not invalidate the amendment.

16 PORTABILITY OF BENEFITS

16.1 Transfers from Approved Benefit Arrangements

- (a) Where a Member is a member of an Approved Benefit Arrangement the Trustee may agree with the trustee or person responsible for the Approved Benefit Arrangement as to the transfer into the Fund from that Approved Benefit Arrangement of an agreed sum or agreed assets in respect of the member.
- (b) The Member shall have such rights to benefits transferred from the Approved Benefit Arrangement as may be determined by the Trustee.

16.2 Transfers to Approved Benefit Arrangements

With the consent of the Member the Trustee may transfer to an Approved Benefit Arrangement from the Fund an agreed sum or agreed assets of such amount as determined by the Trustee but which shall not exceed the Member's Total Account Balance.

16.3 Transfer

Where a Member or Beneficiary is entitled to a benefit then in lieu of providing the benefit the Trustee may with the consent of the Member or the Beneficiary pay or transfer to an Approved Benefit Arrangement the benefit which shall not exceed the total amount standing to the credit of the Member or the Beneficiary in the Fund.

16.4 Transfer to Eligible Rollover Funds

Notwithstanding any other provision of this Clause but subject always to Clause 3.1 the Trustee:

- (a) shall transfer a Member's or Beneficiary's benefits out of the Fund to an Eligible Rollover Fund as required by the Relevant Law; and

- (b) may transfer a Member's or Beneficiary's benefits out of the fund to an Eligible Rollover Fund as permitted by the Relevant Law

and shall not be required to obtain the consent of the Member or Beneficiary to effect such transfers.

16.5 Method and Effect of Transfers Out

- (a) The Trustee may effect a payment or transfer under this Clause 16.5 by way of payment of money and/or transfer of assets. The receipt of the trustees of, or of any other person responsible for, an Approved Benefit Arrangement (including in the case of an annuity effected in respect of a Member, the body providing that annuity) shall be a sufficient discharge to the Trustee and the Trustee shall not be in any way responsible for the application or disposal by such other trustees or responsible person of money or assets so transferred.
- (b) Unless otherwise determined by the Trustee upon the completion of a payment or transfer in respect of a Member or Beneficiary under Clause 16.5(a) all of the rights and interests of that Member or Beneficiary under the Deed (and all of the rights and interests of any person otherwise entitled to claim in respect of the Member or Beneficiary or on the occurrence of any event or circumstance affecting the Member or Beneficiary) shall be entirely extinguished.

17 MISCELLANEOUS

17.1 Australian Currency

Except as otherwise expressly provided in the Deed or as otherwise determined by the Trustee either generally or in any particular case, all monetary liabilities and obligations imposed on the Fund, the Trustee, a Member or any other person under the Deed (including contributions and benefits payable under the Deed) shall be calculated and expressed in Australian currency using such basis of conversion into Australian currency as the Trustee may consider appropriate having regard to applicable exchange rates from time to time.

17.2 Proper Law of Deed

Without limiting Clause 17.3, the Deed shall be governed and construed and shall take effect in accordance with the laws of the State of South Australia.

17.3 Other Relevant Laws

Notwithstanding Clause 17.2, the Trustee may adjust the powers, entitlements and obligations of any Member or Beneficiary or any other person under the Deed to such extent and in such manner as the Trustee may consider strictly necessary in order to comply with any law or governmental requirement of any jurisdiction and not just the jurisdiction the laws of which apply for the time being under Clause 17.2.

17.4 Taxation

The Trustee may take such actions as the Trustee considers appropriate in taking account of any tax or other governmental impost which is or may become payable in

connection with the Fund or the payment or transfer of any money or property to or from the Fund, including without limitation:

- (a) debiting individual Benefit Accounts on a basis considered reasonable by the Trustee;
- (b) adjusting the amount of and conditions governing any benefit or other amount payable into or out of the Fund; and
- (c) making provisions in the accounts of the Fund and payments from the Fund to relevant governmental authorities.

Any action taken in accordance herewith shall be effective without the need to formally amend the Deed.

17.5 NOTICES

(a) **Normal Procedures**

A notice, cheque or other written matter (all of which are in this Clause 17.5(a) collectively referred to as "notice") may be given to a Trustee, a Member, a Beneficiary or any person claiming or entitled to claim a benefit from the Fund by handing it to that person personally or by leaving it at that person's address last known to the person giving such notice or by sending it to that address by ordinary prepaid post (including, in the case of a Trustee which is a body corporate, the registered office thereof).

(b) **Other Procedures**

Without limiting Clause 17.5(a), notification of any matter may also be given to a Member or a Beneficiary or any other interested person, by way of a notice placed in a newspaper circulating in such place or places as the Trustee may consider appropriate in the circumstances.

(c) **Receipt**

A notice shall be deemed to have been received:

- (i) in the case of a notice given or served by hand, at the time of delivery;
- (ii) in the case of a notice given or served by post, at the expiration of two days after posting;
- (iii) in the case of a notice published in a newspaper as provided in Clause 17.5(b), two days after the date such newspaper is published,

or, in any case, at such later date (if any) as the Trustee may determine to be appropriate in the circumstances.

18 COMPLIANCE WITH FAMILY LAW ACT 1975

18.1 Subject to the Relevant Law, the Trustee shall:

- (a) comply with any order from any court pursuant to the *Family Law Act 1975* in relation to the benefits of a Member and the rights of a Non-Member Spouse,
- (b) give effect to the provisions of any agreement made between the Member and the Non-Member Spouse pursuant to the *Family Law Act 1975* concerning the superannuation benefits of the Member,
- (c) give effect to any request by a Non-Member Spouse for information in respect of the Member's benefits or pay a benefit to or in respect of any Non-Member Spouse or create an interest in the Fund for the Non-Member Spouse.

18.2 In relation to the obligations of the Trustee pursuant to Clause 18.1, the Trustee may:

- (a) determine whether a Non-Member Spouse is to become a member of the Fund for purposes other than for the purposes of the *Family Law Act 1975*, and
- (b) obtain the advice of a Qualified Adviser in respect of any matter associated with compliance with the *Family Law Act 1975* or any related issue.

18.3 Subject to the Relevant Law, the Trustee shall be entitled to charge reasonable fees in relation to the provision of information and the processing of transactions arising from its obligations under the *Family Law Act 1975* pursuant to Clause 18.1 and may determine in its absolute discretion whether or not such fees should be debited to the accounts of Members and/or to the account of or interest of a Non-Member Spouse and whether or not interest should be levied on any unpaid fees.

PART B CONTRIBUTIONS, ACCOUNTS AND BENEFIT PROVISIONS

19 CONTRIBUTIONS

19.1 General Contributions

- (a) Contributions by the Member shall be of such amount or at such rates as shall be agreed upon by the Member and the Trustee from time to time.
- (b) The Trustee may accept Contributions by any person able to make contributions to a Member pursuant to the Relevant Law in respect of a Member at such times and in such manner as the Trustee deems appropriate from time to time;
- (c) The Trustee may accept Eligible Spouse Contributions in respect of a Member at such times and in such manner as the Trustee determines;
- (d) The Trustee may accept payment in respect of a Member which is the whole or part of a shortfall component within the meaning of the *Superannuation Guarantee (Administration) Act 1992* and shall credit the same to the account of the Member.
- (e) The Trust may accept Contributions in respect of a Member from the Government whether by way of Government co-contributions or otherwise.

- (f) The Trustee may accept by way of Contribution in respect of the Member any other amount or amounts authorised by the Relevant Law including (but not in any way limited to) Contributions in connection with structured settlements and orders for personal injuries and in connection with certain non-assessable capital gains.
- (g) The Trustee may in its absolute discretion accept any Contribution in respect of a Member by way of a transfer of an asset in specie which Contribution shall be credited to the Member's members account in accordance with clauses 20.2(b) and 21.4.
- (h) Notwithstanding any other provision of this Deed the Trustee shall not accept Contributions by or in respect of a Member unless the Contributions are authorised by the Relevant Law.

19.2 Split Contributions

The Trustee is authorised to accept Split Contributions from a Member and credit the amount of the Split Contribution to the Benefit Account of the Eligible Spouse Member subject to the following:-

- (a) the Member and the Eligible Spouse Member make an application to the Trustee which complies with Regulation 6.44 of the *Superannuation Industry (Supervision) Regulations* or other applicable provisions of the Relevant Law;
- (b) the Trustee has no reason to believe that the statements in the application made pursuant to Clause 19.2(a) are untrue;

The Trustee must comply with the applicable provisions of the Relevant Law in respect of the crediting of the Split Contribution to the Benefit Account of the Eligible Spouse Member.

20 ACCOUNTS

20.1 Accounts to be Maintained

For the purpose of determining the benefits which may become payable to or in respect of a Member, the Trustee shall establish and maintain in respect of each Member accounts as provided in this Clause 20. Nothing in this Clause shall entitle any Member to any specific asset of the Fund and the Trustee shall have an absolute discretion as to which part of the Fund is applied to provide funds to enable the payment of any benefit which becomes payable from the Fund.

20.2 Benefit Accounts

There shall be credited to the Member's Benefit Accounts in respect of a Member:

- (a) Contributions made by the Member including Eligible Spouse Contributions and Split Contributions or such other persons who under the Relevant Law are entitled to contribute to the Fund which the Trustee may determine to credit to such Account.

- (b) Contributions of a Member by way of in specie contributions of assets to the Fund;
- (c) any surplus allocated to such Account pursuant to Clause 21.2;
- (d) any amounts which the Trustee may determine to credit to such Account as a consequence of a transfer into the Fund from an Approved Benefit Arrangement pursuant to the Deed; and
- (e) any other amounts which the Deed may require to be credited thereto or the Trustee may consider it appropriate and equitable to credit thereto;

and there shall be debited to such Account:

- (f) any deficiency allocated to such Account pursuant to Clause 21.2;
- (g) any amounts which the Trustee may determine to debit to such Account as a consequence of a transfer out of the Fund to an Approved Benefit Arrangement pursuant to the Deed;
- (h) any benefit payable from such Account pursuant to the Deed; and
- (i) any other amounts which the Deed may require to be debited thereto or the Trustee may consider it appropriate and equitable to debit thereto.

20.3 Insurance Costs and Fund Expenses

- (a) Subject to this Clause 20.3, the cost of Group Life Insurance effected under the Deed and the Fund Expenses may be:
 - (i) debited to Member's Benefit Accounts; or
 - (ii) dealt with in such way or in any manner determined by the Trustee from time to time either generally or in any particular case,

and amounts so debited shall be credited to the Reserve Account.

- (b) The Trustee may make debits or deductions in respect of Group Life Insurance or some or all of the Fund Expenses on the basis of a common amount or percentage per Member.
- (c) Any deduction or debit for the purposes of this Clause 20.3 may be made on an estimated basis, with appropriate subsequent adjustments to take account of any difference between estimated and actual amounts.

20.4 Reserve Account

- (a) The Trustee may establish and maintain as provided in this Clause 20.4 and sub-clauses 20.3(a) and 21.1(a) an account to be known as the Reserve Account.
- (b) There shall be credited to the Reserve Account:

- (i) any balance remaining in any account of a Member after all benefits which could become payable out of the Fund to or in respect of the Member have been paid, including without limitation any amount forfeited or deducted therefrom pursuant to Clauses 14.5, 14.6 or 17.3 and which has not been otherwise applied in accordance therewith;
- (ii) any amounts paid to the Fund by an Insurer in respect of any insurance effected by the Trustee under the Deed, whether resulting from a claim under such insurance or from a rebate of premiums or bonus or otherwise;
- (iii) any surplus or other amount allocated or credited thereto pursuant to Clauses 20.3 or 21.1 or 20.4(d); or
- (iv) any other amount which the Deed may require to be credited thereto or the Trustee may consider it appropriate and equitable to credit thereto;

and there shall be debited to such account -

- (v) amounts applied therefrom pursuant to Clause 20.4(c);
- (vi) any deficiency allocated thereto pursuant to Clause 21.1(a);
- (vii) any premiums and other outgoings in respect of Group Life Insurance effected by the Trustee under the Deed;
- (viii) any part of a benefit payable as a result of the death or Total and Permanent Disablement of a Member and which is in excess of the Member's Total Account Balance; or
- (ix) any other amount which the Deed may require to be debited thereto or the Trustee may consider it appropriate and equitable to debit thereto.

(c) Without limiting Clause 20.4(b) or Clause 17.3, the Trustee may apply any amount standing to the credit of the Reserve Account in such one or more of the following ways and subject to such conditions as the Trustee thinks fit -

- (i) in augmenting any benefit actually or prospectively payable to or in respect of a Member or former Member or any Dependant thereof pursuant to the Deed;
- (ii) in paying any expense payable from the Fund under Clause 6.2; and
- (iii) in any other manner and for any other purpose which will not prejudice the concessions granted to the Fund under the Act or cause the Fund to be in breach of what the Trustee believes to be the Relevant Law, or a relevant requirement of a Responsible Authority, regarding the Fund.

(d) If at any Balance Date or other date determined by the Trustee there is a debit balance in the Reserve Account, the Trustee may, to the extent that such action does not eliminate such debit balance reduce the Benefit Accounts of the Members proportionately by the debit balance with a corresponding credit being made to the Reserve Account **PROVIDED THAT** the aggregate reduction in the Members' Benefit Accounts shall not exceed that required to

eliminate the debit balance in the Reserve Account **PROVIDED ALWAYS THAT** nothing in the Deed shall preclude the Trustee from allowing the Reserve Account or any other Account to remain in debit for any period which the Trustee considers reasonable.

21 DETERMINATION OF FUND EARNINGS

21.1 Determination of Surplus or Deficiency

- (a) As at each Balance Date and at any other date at which the Trustee may consider it appropriate to do so, the Trustee shall make a valuation of all the assets of the Fund at that date and shall determine the amount of the surplus or deficiency which, in the opinion of the Trustee, it is appropriate and equitable to allocate among the Member's Benefit Accounts and the Reserve Account and such surplus or deficiency shall be so allocated in such manner and in such proportions as the Trustee may consider to be appropriate and equitable.
- (b) When a benefit is required to be determined for or in respect of a Member and at such times other than those selected pursuant to Clause 21.1(a) as the Trustee may consider appropriate, the Trustee shall allocate surplus or deficiency (as determined by the Trustee on an interim basis) to that Member's Benefit Accounts in such manner and proportions as the Trustee may consider to be appropriate and equitable.

21.2 Determination and Allocation Procedures

A surplus or deficiency in respect of any period and the basis and method of allocation thereof shall be determined by the Trustee in such manner and having regard to such matters and to such advice as the Trustee may consider appropriate, including without limitation income received, taxes payable, expenses incurred, profits and losses on the realisation of investments, and appreciation or depreciation in the value of investments, with the value of any particular investment being determined on such basis and at such times as the Trustee may consider appropriate. Without limiting the generality of the foregoing, a surplus or deficiency may be allocated to Members' Benefit Accounts by way of a fund earning rate (positive or negative, as the case may require) determined by the Trustee including, for the purposes of Clause 21.1(b), by way of an interim interest rate determined by the Trustee as at the preceding Balance Date or any date thereafter.

21.3 Accounts in Debit

Nothing in the Deed shall preclude the Trustee from allowing any account including any Member's Benefit Account to remain in debit for any period which the Trustee may consider reasonable.

21.4 Maintenance of Sub-Accounts

- (a) The Trustee may maintain sub accounts within each Members Member Account on such basis as it may consider appropriate including for the purposes of:

- (i) differentiating between benefits funded by the Member and any person who is eligible to make Contributions;
 - (ii) differentiating between preserved and non-preserved benefits within the meaning of the Relevant Law;
 - (iii) identifying minimum benefits within the meaning of the Relevant Law;
 - (iv) identifying those assets or amounts in respect of the Member which are funding Current Pension Liabilities;
 - (v) enabling more than one pension to be arranged in respect of a Member;
 - (vi) creating an interest in the Fund in favour of the Member which may be evidenced by the Trustee setting aside assets or fractions of assets as being referable to any one or more Members and so as to evidence the interest of such Member or Members in the Fund,
- (b) If the Trustee commences to pay a pension, the Trustee may segregate the assets of the Fund as between those assets that are set aside to fund the Fund's current pension liabilities and those assets that have not been set aside for that purpose. Upon assuming a liability to pay a pension and determining to segregate assets for that purpose, the Trustee shall ensure that the amount applied to fund the pension is equivalent to the value of the assets which are segregated and the Trustee may determine to desegregate assets which have been segregated subject to segregating non-segregated assets of equivalent value. Where the Trustee has already commenced to pay a pension, the Trustee may determine in its discretion to commence or cease (as the case may be) the segregation of assets provided that such action shall be authorised by the Relevant Law and the income tax legislation.
- (c) If the Trustee is in receipt of a contribution in specie in respect of a Member in accordance with clause 19.1(g) then the asset or assets contributed to create an interest in the Fund in favour of the Member in the asset or assets shall be segregated in favour of the Member unless otherwise agreed between the Trustee and the Member.

22 BENEFITS

22.1 Retirement Benefit

In circumstances other than are provided for in Clause 22.2, if a Member has attained the Normal Retirement Date (which subject to the applicable provisions of the Relevant Law may be later than the Member attaining the age of 65) then there shall be payable to the Member from the Fund a lump sum, benefit equal to the Member's Total Account Balance subject always to compliance with the Relevant Law **PROVIDED THAT** in the event that either a Complying Pension or an Allocated Pension is payable the benefit shall be determined in compliance with Clause 22.6 or 22.7.

22.2 Death or Total and Permanent Disablement

If a Member:

- (a) dies; or
- (b) becomes Totally and Permanently Disabled;

there shall be payable to or in respect of the Member from the Fund a lump sum benefit equal to the Member's Total Account Balance subject always to compliance with the Relevant Law **PROVIDED THAT** in the event that either a Complying Pension or an Allocated Pension is payable the benefit shall be determined in compliance with Clause 22.6 or 22.7.

22.3 Cessation of Membership in Other Circumstances

Subject to the Relevant Law if a Member ceases to be a Member other than in the circumstances provided for in Clause 22.1 or in Clause 22.2 a lump sum benefit equal to the Member's Total Account Balance shall be payable to the Member as at the date the Member ceases to be a Member.

22.4 Minimum Benefits

Notwithstanding any of the provisions of this Deed the amount payable to a Member or Beneficiary from the Fund shall not be less than any minimum benefit amount as prescribed by the Relevant Law.

22.5 Date for Payment of Benefits

Notwithstanding Clauses 22.1, 22.2, 22.3 or 22.4 and any other provisions of this Deed no benefit in whole or part shall be payable to a Member or Beneficiary other than in accordance with the Relevant Law.

22.6 Payment of Complying Pension Benefits

Notwithstanding any of the provisions of this Deed, the payment of a Complying Pension shall be in accordance with Regulation 1.05(2) or (9) or Regulation 1.06(2) or (7) of the *Superannuation Industry (Supervision) Regulations* or other applicable provisions of the Relevant Law and subject to the provisions of the Relevant Law the Complying Pension may be continued to be paid to the Member's legal personal representative on the Member's death.

22.7 Payment of Allocated Pension Benefits

Notwithstanding any of the provisions of this Deed, the payment of an Allocated Pension shall be in accordance with Regulation 1.05(4) or Regulation 1.06(4) of the *Superannuation Industry (Supervision) Regulations* or other applicable provisions of the Relevant Law and subject to the provisions of the Relevant Law the Allocated Pension may be continued to be paid to the Member's legal personal representative on the Member's death.

22.8 Payment of Transition to Retirement Benefits

Notwithstanding any of the provisions of this Deed, the Trustee may pay an Allocated Pension or Complying Pension to a Member notwithstanding that the Member has not attained the age of 65 if the payment of the Allocated Pension or the Complying Pension is authorised by the Relevant Law and then the payment shall be in accordance with Clauses 22.6 or 22.7 as applicable.

EXECUTED as a Deed on the date on page 1

SIGNED and delivered as a deed for and on behalf of **TWENTY THREE 04 PTY LTD** in accordance with Section 127(1) of the *Corporations Act 2001* (Commonwealth) by:



Director (Signature)

BRIAN RICHARD MILLS

Name of Director



Director/Secretary (Signature)

Julie Lorraine Green

Name of Director/Secretary

If only one person has signed, that person must be, and states that he or she is, the sole director and sole secretary of the company.