

**Wilbernie
Superannuation Fund**

Trust Deed

ADVISOR INVESTMENT SERVICES LIMITED
A.C.N. 009 585 255

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NO DUTY PAYABLE

Harlow 2.10.97.

Commissioner of Stamp Duties,
Queensland

THIS TRUST DEED is made on the Execution Date specified in Schedule A.

PARTIES:

1. The person named as the Founder in Schedule A
("the Founder")
2. The person named as the Trustee in Schedule A
("the Trustee")
3. If applicable, the person named as the Participating Employer in Schedule A
("the Participating Employer")

RECITALS:

- A. This Deed contains the governing rules of an indefinitely continuing superannuation fund ("the Fund") known by the name specified in Schedule A.
- B. This Deed provides that:
 - (I) the Fund shall have the sole or primary purpose of providing old-age pensions and shall have the ancillary purpose of providing other benefits in the manner and form as provided in this Deed; and, or in the alternative,
 - (ii) the Fund shall have a Corporate Trustee as the Trustee of the Fund.
- C. The Founder has requested the Trustee to act as the Trustee of the Fund and the Trustee has consented to act as the Trustee of the Fund.
- D. This Deed reflects the intention of the Founder and the Trustee that the Fund shall be a regulated superannuation fund and shall at all times comply with the Act in order that the Fund shall be eligible for concessional Taxation treatment.

THIS DEED WITNESSES:

PART A
DEFINITIONS AND INTERPRETATION

1 **DEFINITIONS**

In this Deed unless the context requires a contrary meaning:-

"Accumulation Account" means an account established and maintained for and on behalf of a Member as described in clause 36.

"Act" means the Income Tax Act, the Superannuation Industry (Supervision) Act, all Regulations made pursuant to the Superannuation Industry (Supervision) Act and any other law of the Commonwealth of Australia (including, where applicable, any determination, ruling or guideline made or laid down by any Responsible Authority pursuant to any powers vested in that Responsible Authority) with which the Fund or the Trustee must comply in order to obtain and maintain concessional Taxation treatment or any other concession in respect of the Fund.

"Actuary" means a person who is approved under the Act to provide actuarial services to the Trustee in respect of the Fund.

"Annuity" means an eligible annuity as defined in the Act.

"Approved Deposit Fund" means an Approved Deposit Fund as defined in the Act.

"Approved Superannuation Entity" means any superannuation entity or annuity as defined in the Act (other than the Fund) into which or from which assets can be transferred into or from the Fund without contravening the Act.

"Auditor" means a person who is approved to act as an auditor of the Fund without contravening the Act, and who is appointed from time to time by the Trustee as the auditor of the Fund.

"Balance Date" means 30 June in each year or such other date as the Trustee shall determine to be the balance date of the Fund for accounting purposes in any particular year.

"Beneficiary" means any person, including but without limitation, a Member, Dependant or Pensioner:

- (a) who is presently and absolutely entitled to receive a Benefit; or
- (b) who has a contingent right or mere expectancy to the payment of a Benefit Entitlement subject to the happening of a Prescribed Event;

as provided in this Deed.

"Benefit" means any amount which is payable by the Trustee to a Beneficiary out of the Fund pursuant to this Deed.

"Benefit Entitlement" means any amount which is held in the Fund for and on behalf of a Beneficiary and which may become payable to that Beneficiary upon the happening of a Prescribed Event described in this Deed but which amount has not become absolutely and indefeasibly vested in that Beneficiary.

"Commencement Date" means the date of commencement of the Fund as specified in Schedule A.

"Contributions" means gross payments to the Fund (inclusive of any Taxation payable in respect of those payments) made by Members or by Employers in accordance with this Deed.

"Corporate Trustee" means a Trustee of the Fund which is a company incorporated pursuant to the Corporations Law and which company complies with any relevant requirement of the Act.

"Corporations Law" means the Corporations Law set out in the Corporations Act 1989 (Cth).

"Deed" means this Trust Deed as may be amended from time to time and includes any schedule, annexure or appendix to this Trust Deed.

"Dependant" means in relation to a Member or any deceased Member any person who satisfies the description of any one or more of the following categories of persons:-

- (a) the spouse widow or widower of the Member;
- (b) any child of the Member including any child of the Member born after the death of the Member;
- (c) any person who in the opinion of the Trustee is at the relevant time (or in the case of a deceased Member, was at the time of death of that Member) wholly or partially dependent on the Member for that person's maintenance and support or who has or had at the relevant time a legal right to maintenance and support from that Member; and
- (d) any other person who is a dependant as defined by the Act.

"Determined Interest Rate" means a rate of interest which the Trustee determines from time to time to be a fair rate to be applied for the purposes of the Fund, having regard to the returns achieved on the investments of the Fund and to such other matters as the Trustee considers in the Trustee's discretion to be relevant for the purposes of such determination.

"Directors" means the Directors for the time being of any Corporate Trustee or of any Employer, as the case requires, and **"Director"** means one of them.

"Eligible Person" means a natural person who is for the time being Gainfully Employed or is otherwise authorised by the Act to be a Member or to have Contributions made on behalf of that person.

"Eligible Termination Payment" has the same meaning as defined in the Act.

"Employee" means a Eligible Person who is Gainfully Employed with an Employer.

"Employer" means any employer in whose service an Eligible Person is for the time being Gainfully Employed including but without limitation a Participating Employer and any Associate as defined in the Act of that employer or Participating Employer.

"Employer Representative" means a person nominated by an Employer or an organisation representing the interests of the Employer.

"Equalisation Account" means the account established pursuant to clause 38.

"Execution Date" means the date on which this Deed is executed as specified in Schedule A.

"Financial Year" means a period of twelve months ending on the Balance Date or such other period of twelve months as the Trustee shall determine.

"Founder" means the party named as such in this Deed or any person who subsequently assumes the capacity of Founder pursuant to this Deed.

"Gainfully Employed" means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and which may be:

- (a) "full time" if gainfully employed for at least 30 hours each week; or
- (b) "part time" if gainfully employed for at least 10 hours and less than 30 hours each week;

and includes any other meaning given by the Act to the expression "Gainfully Employed".

"Income Tax Act" means the Income Tax Assessment Act 1936 (Cth).

"Income Account" means the account established pursuant to clause 37.

"Independent Director" means a Director of a Corporate Trustee who:

- (a) is not a Member;
- (b) is neither an Employer, an Associate of an Employer or an employee of same;
- (c) is not, in any capacity, representing the interests of either an Employer or a Member.

"Independent Trustee" means an Individual Trustee who:

- (a) is not a Member;
- (b) is neither an Employer, an Associate of an Employer or an employee of same;
- (c) is not, in any capacity, representing the interests of either an Employer or a Member.

"Individual Trustee" means a natural person who is the Trustee, and if more than one natural persons is the Trustee, each of those natural persons.

"Insurer" means any insurer or assurer with whom the Trustee has effected or will effect a Policy of Insurance in accordance with this Deed.

"Investment Manager" means a person who may be appointed as an investment manager by the Trustee to manage the investments of the Fund in accordance with clause 27.

"Member" means any Eligible Person (including an Employee) who has been admitted to membership of the Fund in accordance with this Deed and who has not ceased to be a Member, and **"Membership"** shall mean Membership of the Fund.

"Member's Contributions" means the amounts contributed by or designated as having been contributed by a Member under clause 45.

"Member Representative" means a person nominated by the Members or a trade union or other organisation representing the interests of the Members.

"Normal Retirement Age" means the age of 65 years or such other age permitted by the Act, as the Member (with the consent of the Trustee and the Employer of that Member (if any)) shall determine to be the age of retirement of the Member for the purposes of this Deed.

"Old-Age Pension" means a Retirement Benefit as described in clause 50 which is payable as a Pension and may be an allocated pension or a pension for life.

"Participating Employer" means an Employer who is admitted by the Trustee as a participating employer of the Fund pursuant to clause 40, and includes if applicable the Participating Employer named in Schedule A.

"Pension" means a Benefit provided by the Fund which is a pension, as described in this Deed or as deemed by the Act, and is payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and includes without limitation an Old-Age Pension.

"Pensioner" means a Member who is in receipt of a Pension from the Fund and includes a Dependant or Reversionary Beneficiary of that Member who is in receipt of a Pension.

"Pension Account" means the Account established in respect of a Pensioner in accordance with clause 54.

"Policy of Insurance" means any policy of insurance or assurance effected on behalf of a Member for the life, endowment, term, disablement, accident or sickness of a Member, whether effected as an individual policy or as a group policy, and includes a policy under which the proceeds will be payable to the Trustee.

"Prescribed Event" means an event described in this Deed upon which a Benefit becomes payable to or on behalf of a Beneficiary.

"Preserved Payment" means a payment made to the Fund by an Employer or by a Member or by transfer to the Fund from an Approved Superannuation Entity which payment must be preserved by the Act.

"Preserved Payment Benefit" means a Benefit arising from a Preserved Payment.

"Qualified Adviser" means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person who is considered by the Trustee to be capable of giving advice in relation to any matter, issue or question that arises in connection with, and requires determination under or pursuant to, the Fund or this Deed.

"Responsible Authority" means the Insurance and Superannuation Commission, the Commissioner of that Commission and any other government or statutory authority or office which is responsible for administering or regulating all or part of the Act.

"Responsible Officer" means a director, secretary or other executive officer as defined by the Corporations Law of a Corporate Trustee.

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

"Rollover Payment" means any payment made at the request of a Member by the Trustee to any Approved Superannuation Entity or received by the Trustee from any Approved Superannuation Entity by way of rollover, and shall include the rollover of all or any part of an Eligible Termination Payment.

"Taxation" means any tax or duty paid or payable or allowable taxation deduction by the Trustee on behalf of the Fund or by any Beneficiary in respect of any Benefit or Contribution including, but without limitation, income tax, capital gains tax, payroll tax, land tax, tax on Eligible Termination Payments, and stamp duty.

"Total and Permanent Disablement" in relation to a Member:

- (a) has the same meaning as contained in any Policy of Insurance effected in respect of the Member and in force at the time of the total and permanent disablement; or
- (b) if there is no Policy of Insurance which defines "total and permanent disablement", the physical or mental incapacity of a Member which is of such a degree that the Trustee is of the opinion after consideration of medical evidence from two registered Medical Practitioners that the Member is incapable from continuing to engage in any 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 party named as such in this Deed or any person who subsequently assumes the office of the Trustee for the time being of the Fund under this Deed.

"Vested Benefit" means any part of the Benefit of a Member which is required by the Act to be vested in and payable to a Member on cessation of employment by that Member.

2 INTERPRETATION

In this Deed, unless the context otherwise requires:-

- 2.1 Headings and underlinings are for convenience only and do not affect the interpretation of this Deed;
- 2.2 Words importing the singular include the plural and vice versa;

- 2.3 Words importing a gender include any gender;
- 2.4 An expression importing a natural person includes any company, partnership, joint venture, association, trust or other body corporate;
- 2.5 A reference to any thing includes a part of that thing;
- 2.6 A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed;
- 2.7 A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 2.8 A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- 2.9 A reference to a party to any document includes that party's successors and permitted assigns;
- 2.10 A covenant or agreement on the part of two or more persons binds them jointly and individually;
- 2.11 A reference to "\$" or "Dollars" means the lawful currency of the Commonwealth of Australia;

3 **FUND SUBJECT TO REQUIREMENTS OF THE ACT**

- 3.1 Notwithstanding anything expressed or implied in this Deed to the contrary, this Deed shall be read and construed on the basis that all relevant requirements of the Act (including any relevant standards prescribed in the Act from time to time) with which the Fund must comply in order for the Fund to obtain and maintain the status of a regulated superannuation fund and to qualify for concessional Taxation treatment or any other relevant benefit or concession and to ensure that neither the Fund nor the Trustee becomes liable for any penalty or obligation for which they would not otherwise be liable are incorporated into this Deed.
- 3.2 To the extent that the requirements of the Act impose obligations upon the Trustee, the Trustee must comply with those obligations.
- 3.3 Where there is any inconsistency between a provision of this Deed and a requirement of the Act, the latter shall prevail.

4

GOVERNING LAW

This Deed shall be governed by and construed in accordance with the laws of the State or Territory of Australia in which this Deed is executed and all interested persons accept the jurisdiction of the Courts of that State or Territory.

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**PART B
THE FUND**

5 **FUND VESTED IN TRUSTEE**

The Fund shall be vested in the Trustee and held by the Trustee upon trust for the Beneficiaries subject to the trusts, powers, authorities, discretions and obligations contained in this Deed.

6 **COMPOSITION OF THE FUND**

The Fund shall consist of all cash, investments and other property held by or on account of the Trustee pursuant to this Deed including, but without limitation:

- 6.1 contributions made to the Fund by any Member pursuant to this Deed;
- 6.2 contributions made to the Fund by any Employer pursuant to this Deed;
- 6.3 any other moneys or assets (including Rollover Payments) paid or transferred to the Trustee pursuant to this Deed;
- 6.4 income arising from investments of the Fund;
- 6.5 any accretions to or profits arising from investments of the Fund;
- 6.6 the proceeds (including bonuses) of any Policy of Insurance held by the Fund; and
- 6.7 any other moneys property or investments which are or become held by or on account of the Trustee subject to the trusts of this Deed.

7 **ELECTION TO BE REGULATED SUPERANNUATION FUND**

7.1 **Trustee to give Notice of Election**

The Trustee shall on or before the Execution Date or as soon as practicable after the Execution Date (but not later than any relevant date required by the Act) give to the Responsible Authority a written notice in the form approved by, and signed by the Trustee in accordance with, the Act irrevocably electing that the Act is to apply to the Fund.

7.2 **Pension Fund and/or Corporate Trustee**

At all times on and from the Execution Date, the Fund shall have:

- 7.2.1 the sole or primary purpose of providing Old-Age Pensions (notwithstanding that the Fund may also provide ancillary benefits to Members specified in this Deed); and, or in the alternative,
- 7.2.2 a Corporate Trustee which is defined in this Deed as a Trustee of the Fund which is a company incorporated pursuant to the Corporations Law and which company complies with any relevant requirement of the Act.

7.3 No Amendment to Change Purpose

Notwithstanding any other provision in this Deed to the contrary, no amendment shall be made to this Deed which amendment would have the effect, whether expressly or by implication, that the Fund no longer has or will not continue to have:

- 7.3.1 the sole or primary purpose of providing Old-Age Pensions; and, or in the alternative,
- 7.3.2 a Corporate Trustee as defined in this Deed.

**PART C
THE TRUSTEE**

8 APPOINTMENT AND REMOVAL OF TRUSTEE

8.1 Structure of the Office of Trustee

Subject to this clause and clause 7, the office of the Trustee shall be held by:-

8.1.1 an Individual Trustee; or

8.1.2 a group of two or more Individual Trustees; or

8.1.3 a Corporate Trustee; or

8.1.4 a combination of one or more Individual Trustees and a Corporate Trustee.

8.2 Additional Independent Trustee / Additional Independent Director

Subject to clause 8.4 the Trustee may with the consent of the Founder, and shall if requested by the Founder, appoint:

8.2.1 where the Trustee comprises two or more Individual Trustees - an additional Independent Trustee; or

8.2.2 where the Trustee comprises a Corporate Trustee - an additional Independent Director.

8.3 Equal Employer Representatives and Member Representatives

If at any time the Trustee does not comprise an additional Independent Trustee or an additional Independent Director, as the case may be, and if so required by the Act:

8.3.1 where the Trustee comprises a group of two or more Individual Trustees, the group shall consist of equal numbers of Employer Representatives and Member Representatives; or

8.3.2 where the Trustee comprises a Corporate Trustee, the Board of Directors of the Corporate Trustee shall consist of equal numbers of Employer Representatives and Member Representatives.

8.4 **Compliance with the Act**

The appointment or removal of any person or combination of persons to or from the office of the Trustee shall comply with the Act.

8.5 **Founder may appoint and remove**

Subject to compliance with the Act, the Founder may take such action as the Founder considers necessary or expedient to appoint or remove any Individual Trustee or any person as a Director of any Corporate Trustee. The Founder shall ensure that any vacancy in the office of the Trustee shall be filled in a manner and within the time (not being more than 90 days) required by the Act. Any action by the Founder pursuant to this clause shall be subject to the approval of the Members.

8.6 **Cessation and Removal from Office of Individual Trustees / Responsible Officers**

A person shall cease to hold the office of a Individual Trustee or to hold the office of a Responsible Officer of a Corporate Trustee upon:-

- 8.6.1 the resignation of that person by notice in writing given to the Founder and all other Individual Trustees or Directors of a Corporate Trustee, as the case may be;
- 8.6.2 the removal of that person by the Founder by notice in writing given to that person;
- 8.6.3 the date on which the appointment of that person is disqualified by reason of any relevant requirement of the Act.
- 8.6.4 the death of that person;
- 8.6.5 that person committing an act of bankruptcy or being declared a bankrupt or entering into any arrangement or composition with that person's creditors or becoming an insolvent under administration under or pursuant to the Bankruptcy Act 1966 (Cth) or any other law of the Commonwealth of Australia relating to insolvency;
- 8.6.6 that person being convicted of a criminal offence in respect of dishonest conduct; or
- 8.6.7 a civil penalty order as defined by the Act is made in relation to the person.

8.7 **Cessation and Removal of Corporate Trustee from Office**

A company shall cease to hold the office of a Corporate Trustee:

- 8.7.1 upon the resignation of the company as Corporate Trustee by notice in writing given to the Founder, and if there are any Individual Trustees, to each of those Individual Trustees;
- 8.7.2 upon the removal by the Founder of that company as Corporate Trustee by notice in writing given to the company;
- 8.7.3 upon the company being disqualified from holding office as Corporate Trustee by reason of any relevant requirement of the Act;
- 8.7.4 upon the appointment of a receiver, receiver and manager, official manager, administrator, agent for a mortgagee, provisional liquidator or liquidator in respect of its property or the approval by a court of a scheme of arrangement providing for its dissolution, or it entering into any other form of insolvency administration; or
- 8.7.5 where a Responsible Officer of the company has been disqualified from holding office pursuant to clause 8.6 or pursuant to any requirement of the Act at all times during the immediately preceding period of 28 days.

8.8 **Founder to appoint if no Trustee**

If at any time there is no Individual Trustee or Corporate Trustee, the Founder shall forthwith and subject to the approval of the Members appoint a person to the office of Individual Trustee or a company to the office of Corporate Trustee pursuant to this Deed.

8.9 **Trustee may be a Member**

A Individual Trustee or Responsible Officer of a Corporate Trustee shall not be disqualified from being a Member or from exercising rights or deriving any benefits as a Member.

8.10 **Consent to Appointment**

A person shall not be eligible for appointment as a Individual Trustee or as a Director of a Corporate Trustee unless the person has consented in writing to the appointment.

9 PROCEEDINGS OF TRUSTEE**9.1 Meetings**

The Trustee may meet, adjourn and regulate its meetings as the Trustee sees fit.

9.2 Quorum for Meeting of Trustee

9.2.1 A meeting of the Trustee shall only be competent to exercise any of the powers or discretions exercisable by the Trustee pursuant to this Deed if a Quorum is present.

9.2.2 The Quorum shall be such number of persons representing two-thirds in number of:

- (a) in the case of a Corporate Trustee, the total number of Directors of the Corporate Trustee; and
- (b) in the case of Individual Trustees, the total number of Individual Trustees.

9.3 Questions

Except as provided in this Deed all matters affecting the Fund arising at a meeting of the Trustee shall be determined by resolution and no resolution shall be effective unless carried by a simple majority, or if the Act requires a particular majority, that majority.

9.4 Resolutions

9.4.1 A written resolution signed by a Chairman of the Trustee shall be prima facie evidence of an effective resolution passed at a meeting of the Trustee duly convened and held.

9.4.2 A copy of such written resolution shall be given to each Individual Trustee or Director of a Corporate Trustee, as the case may be, who was not present at the Meeting at which that resolution was passed as soon as reasonably practicable after such resolution is made.

9.5 Deemed Attendances when not present in Person

9.5.1 An Individual Trustee or a Director of a Corporate Trustee may participate in a meeting of the Trustee without attending such meeting in person by means of any suitable and appropriate communications equipment provided that all persons

participating in the meeting can hear each other and such participation shall be deemed to constitute presence in person at such meeting.

- 9.5.2 A written resolution signed by all Individual Trustees or all Directors of a Corporate Trustee shall be deemed to be a resolution duly made by the Trustee on the date that the resolution is signed by the last of the Individual Trustees or the last of the Directors of the Corporate Trustee, as the case may be.

9.6 **Appointment of Chairman**

- 9.6.1 The Trustee may by resolution appoint a person holding office as an Individual Trustee or as a Director of a Corporate Trustee, as the case may be, to be the Chairman of the Trustee.

- 9.6.2 The Chairman shall hold office as Chairman until:

- 9.6.2.1 he retires as Chairman by written notice given to the Trustee;
- 9.6.2.2 he ceases to be an Individual Trustee or a Director of a Corporate Trustee; or
- 9.6.2.3 he is removed as Chairman by a written notice given to him pursuant to a resolution passed by the Trustee.

9.7 **Chairman's Duty**

The Chairman shall act as Chairman of each meeting of the Trustee at which the Chairman is present. If the Chairman is not present in person at a meeting of the Trustee or if at the time of a meeting there is no Chairman a person shall be appointed by a resolution of the Trustee to act as Chairman of that meeting.

9.8 **Voting Entitlement**

- 9.8.1 Each person holding office as an Individual Trustee or as a Director of a Corporate Trustee shall have one deliberative vote on any question.
- 9.8.2 The Chairman and any Additional Independent Trustee or any Additional Independent Director, shall not have a casting vote on any question.

9.9 Minutes of Meeting

- 9.9.1 The Trustee shall keep or cause to be kept proper minutes of meetings of the Trustee which shall be entered in a book maintained for that purpose.
- 9.9.2 The minutes of any meeting if signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting shall be prima facie evidence of the matters stated therein.
- 9.9.3 The Trustee shall retain the Minutes of Meeting for at least 10 years.

10 TRUSTEE'S DISCRETION

10.1 No Requirement to give Reasons

Unless otherwise expressly provided in this Deed or by the Act the Trustee shall in the exercise or non-exercise or partial exercise of each and every power exercisable by the Trustee not be bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any such power.

10.2 Unfettered Discretion

The Trustee shall have in the exercise or non-exercise or partial exercise of each and every power exercisable by the Trustee an absolute and unfettered discretion and is not bound to act subject to the direction of any other person unless otherwise expressly provided by the Act.

10.3 Trustee's Decision Final

If any dispute arises as to the interpretation of any provision of the Deed or as to the rights or obligations of a Member or the Trustee or any other person under this Deed, then (except as expressly provided to the contrary in this Deed and subject to any rights conferred on a Member by the Act) the decision of the Trustee in relation to such dispute shall be final and binding on all interested persons.

10.4 Exercise of Discretion by person other than Trustee

To the extent that this Deed allows a discretion conferred upon the Trustee to be exercised by the Founder or any other person, if so required by the Act, that discretion shall not be exercised without the consent of the Trustee.

11 PROTECTION AND INDEMNITY OF THE TRUSTEE

11.1 Limitation of Liability - General

Subject to clause 11.2 the Trustee shall not be liable for or in respect of any claim, liability, cost, loss, damage or expense whatsoever or howsoever incurred or arising out of any act or omission in connection with the Deed or the Fund or the exercise or performance of the Trustee's powers, discretions and duties.

11.2 Liability for Certain Conduct

Clause 11.1 shall not exempt the Trustee from, and the Trustee shall be liable for, any claim, liability, cost, loss, damage or expense which is a result of an act or omission by the Trustee involving:

11.2.1 the Trustee failing to act honestly in any matter concerning the Fund;

11.2.2 the Trustee intentionally or recklessly failing to exercise, in relation to any matter affecting the Fund, the degree or care and diligence that the Trustee was required to exercise;

11.2.3 the Trustee incurring liability for a monetary penalty under a civil penalty order.

11.3 Indemnity of Trustee

11.3.1 The Trustee shall be indemnified out of the Fund for and in respect of all liabilities whatsoever or howsoever arising incurred by the Trustee in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in the Trustee pursuant to this Deed or by the Act.

11.3.2 This indemnity shall not extend to any liability of the Trustee arising in circumstances described in clause 11.2.

11.4 Indemnity of Director

If a Director of a Corporate Trustee incurs a liability in acting as a Director of the Trustee in respect of conduct or circumstances for which the Trustee is entitled to be indemnified out of the Fund, the Director shall also be indemnified out of the Fund in respect of such liability.

11.5 Lien on Fund to Satisfy Indemnity

The Trustee shall have a lien on and may use any assets of the Fund for the purposes of satisfying the indemnity given to the Trustee provided that the exercise of any lien shall not contravene the Act.

12 COVENANTS BY TRUSTEE

The Trustee covenants:

- 12.1 to act honestly in all matters concerning the Fund;
- 12.2 to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- 12.3 to ensure that the Trustee's duties and powers are performed and exercised in the best interest of the Beneficiaries;
- 12.4 to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - 12.4.1 that are held by the Trustee personally; or
 - 12.4.2 that are money or assets, as the case may be, of an Employer or an Associate of an Employer;
- 12.5 not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- 12.6 to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
 - 12.6.1 the risk involved in making, holding, and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
 - 12.6.2 the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - 12.6.3 the liquidity of the Fund's investments having regard to its expected cash flow requirements;

- 12.6.4 the ability of the Fund to discharge its existing and prospective liabilities;
- 12.7 if there are any moneys in the Reserve Account of the Fund - to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and the Fund's capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- 12.8 to allow a Beneficiary access to any information or any documents which are prescribed by the Act;
- 12.9 to comply with any other covenant that may from time to time be prescribed by the Act.

13 COVENANTS BY DIRECTORS OF A CORPORATE TRUSTEE

- 13.1 If the Fund has a Corporate Trustee each of the Directors of the Corporate Trustee covenants to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the covenants described in clause 12.
- 13.2 On the basis that the Directors have participated in the passing of a resolution authorising the Trustee to execute this Deed, this clause shall be deemed to operate as if the Directors were parties to this Deed.
- 13.3 The reference in this clause to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of a Director of the Trustee would exercise in the Trustee's circumstances.

14 RECORDS OF CHANGES OF TRUSTEE / REPORTS TO MEMBERS

14.1 Changes of Trustee

The Trustee must keep, and retain for at least ten years up to date records of all changes of the Trustee, and changes of any Directors of any Corporate Trustee, of the Fund and of all consents given by the Individual Trustees or the Directors, as the case may be.

14.2 Reports to Members

The Trustee shall keep, and retain so long as they are relevant and in any event for at least 10 years, copies of reports that were given to all Members if the reports were given under the Act or under this Deed and the Trustee shall, upon request, make those copies available for inspection by the Responsible Authority.

**PART D
THE MEMBERS**

15 ADMISSION OF MEMBERS

15.1 Eligible Person to Apply

The Trustee may in its absolute discretion invite an Eligible Person to become a Member of the Fund and upon such invitation, the Eligible Person may apply to the Trustee to become a Member of the Fund.

15.2 Application Form

An application for membership shall be made by completing a written application in such form as the Trustee shall from time to time determine.

15.3 Acceptance of Application

Upon the written acceptance by the Trustee of an application for membership from the proposed Member, that Member shall become a Member of the Fund on a date determined by the Trustee or, if the Trustee makes no such determination, on the date the application for membership is received by the Trustee.

15.4 Deemed Application

Notwithstanding clause 15.3, if a completed application for membership is not provided by an Employee, the payment of a contribution by a Employer in respect of that Employee shall be deemed to constitute an application for membership in respect of that Employee and the acceptance by the Trustee of that contribution shall be deemed to be acceptance of that Employee as a Member on the date the contribution is received and accepted by the Trustee.

15.5 Members Bound by Deed

Every Member shall by virtue of the Member's application for membership be deemed to have consented to be bound by this Deed and shall be so bound from the date of admission as a Member.

15.6 Trustee to Notify Members of their Rights

The Trustee shall ensure that each Member is notified in writing of that Member's rights to receive benefits from the Fund and of such further matters or information and in such form and at such times as may be necessary to satisfy the Act.

15.7 Trustee May Impose Conditions on Members

Subject to this Deed, the Trustee may impose, remove or vary such conditions on the rights and duties of a Member as the Trustee shall determine at any time.

15.8 Classification of different classes of Members

15.8.1 The Trustee may classify the Members into different classes of membership with such rights and entitlements pertaining to each class as the Trustee shall determine from time to time. The Trustee shall advise a Member of any class of membership to which that Member belongs and the rights and entitlements of that class and of any subsequent change to that class.

15.8.2 If the Trustee does not designate different classes of membership, there shall be one class of membership and the members shall be classified as ordinary members.

16 MEETINGS OF MEMBERS

16.1 Members May Convene Meeting

For the purposes of calling a meeting of Members a notice signed by at least one-half of the number of Members or ten Members, whichever is the lesser, shall be served on the Trustee which notice shall request a meeting of Members.

16.2 Trustee Convening Meeting

The Trustee may at any time convene a meeting of Members and shall convene a meeting of Members upon receiving a notice of request for a meeting from the Members pursuant to clause 16.1.

16.3 Notice of Meeting

Where a meeting of Members is to be convened, the Trustee shall send a notice of meeting to each Member specifying:

16.3.1 the date, place and time of the meeting;

16.3.2 details of all matters including the proposed resolutions to be considered at the meeting;

16.3.3 advising that a proxy may be appointed to vote on behalf of the Member at the meeting provided that the Member lodges the

form of proxy with the Trustee not later than 24 hours before the scheduled starting time of the meeting; and

16.3.4 be accompanied by a form of proxy approved by the Trustee.

16.4 **Service of Notice**

The Trustee shall cause the notice of meeting to be served on each Member at least ten days before the date of the meeting. Service may be effected personally or by prepaid ordinary mail, and if by mail, notice shall be deemed to have been given 3 days after the date of posting.

16.5 **Chairperson**

The Members shall at the commencement of the meeting appoint a Chairperson of that meeting.

16.6 **Quorum of Members**

A quorum for a meeting of Members shall be ten Members present in person or at least 25% of the Members of the Fund, whichever is the lesser. If a quorum is not present within thirty minutes of the time appointed for the commencement of the meeting, the Chairperson of the meeting shall adjourn the meeting to the same time and place the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting.

16.7 **Voting**

Each Member shall be entitled to one deliberative vote and in the event of an equality of votes the Chairperson shall have a casting vote in addition to any vote of the Chairperson as a Member.

16.8 **Trustee to Oversee Meeting**

The Trustee shall as is necessary oversee the conduct of the meeting of Members and shall record and keep minutes of the meetings of Members.

17 **CESSATION OF MEMBERSHIP**

17.1 A Member shall cease to be a Member of the Fund upon the first to occur of the following:

17.1.1 the date upon which payment of all benefits or benefit entitlements in respect of that Member is made or dealt with by the Trustee to or on behalf of the Member;

- 17.1.2 the death of the Member;
 - 17.1.3 such other date as the Trustee shall reasonably determine in accordance with any requirement of the Act.
- 17.2 The cessation of Membership of a Member shall not affect, exclude or restrict:
- 17.2.1 any rights or obligations of that Member which accrued prior to the date of cessation; and
 - 17.2.2 any rights or obligations of that Member as a former Member on and from the date of cessation.

18 MEMBERS TO PROVIDE INFORMATION TO TRUSTEE

- 18.1 Each Member shall upon request by the Trustee provide such information to the Trustee as the Trustee shall consider necessary or desirable for the purposes of any investigation or otherwise in connection with the Fund, including but not limited to, undergoing medical examination by a medical practitioner acceptable to the Trustee.
- 18.2 Where a Member fails to comply with the request by the Trustee pursuant to this clause, the Trustee may suspend the acceptance of any contributions in respect of that Member or withhold any benefits payable in respect of that Member or impose such other conditions on the continued membership of that Member as the Trustee shall consider appropriate.
- 18.3 Where a Member provides information to the Trustee which information affects or is likely to affect the benefits payable to or in respect of the Member and the information supplied is incorrect or misleading or any relevant information is in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the benefits in respect of that Member in such manner as is deemed necessary or appropriate by the Trustee.

19 DISCLOSURE AND REPORTING TO MEMBERS

19.1 General Requirement

The Trustee shall from time to time provide to Members information in writing in relation to the conduct of the Fund, the benefit entitlements of Members, contributions made or owing to the Fund, or such other matters as the Trustee may determine and as shall be required by the Act.

19.2 **Specific Requirements**

Without limiting the generality of clause 19.1, the obligations of the Trustee to provide information shall include:

19.2.1 **To Prospective Members**

The Trustee shall give to each person who becomes a Member all information that the Trustee reasonably believes that the Member would reasonably need for the purpose of understanding the main features of the Fund, the management and financial condition of the Fund and the investment performance of the Fund. The Trustee shall give such information as soon as practicable, and in any event within three months after the person becomes a Member.

19.2.2 **For each Financial Year**

The Trustee shall give to each Member all information that the Trustee reasonably believes a Member reasonably needs for the purpose of understanding the benefit entitlements of the Member, the management and financial condition of the Fund and the investment performance of the Fund. Such information shall be given in respect of each Financial Year and as soon as practicable, and in any event within six months, after the end of the relevant Financial Year.

19.2.3 **Significant Events**

The Trustee shall give information to each Member concerning any event in relation to the Fund that the Trustee reasonably believes the Members would reasonably expect to be informed of. Such information shall be given before the expected occurrence, or as soon as practicable after the occurrence, of the event, and in any case, within three months after the occurrence of the event. Such information shall be accompanied by a statement containing details by which the Members may contact the Trustee.

19.2.4 **Information on request**

The Trustee shall give to a Beneficiary (including a Member) on request by the Beneficiary information that the Beneficiary reasonably requires for the purposes of:

- (a) understanding any benefit entitlements that the Beneficiary may have, has or used to have;

- 19.3.2 No Member or Dependant of a Member shall be entitled to obtain information pursuant to this clause which information would in the opinion of the Trustee be inappropriate to disclose.
- 19.3.3 As soon as practicable after a Member ceases to be a Member of the Fund, the Trustee shall give to such former Member or the legal personal representatives of the former Member a written statement containing such information and details relating to the benefits of the former Member as is required to be provided by any relevant requirement of the Act.

**PART E
ADMINISTRATION OF THE FUND**

20 **GENERAL POWERS OF THE TRUSTEE**

- 20.1 The Trustee shall have complete management and control of all proceedings, matters and things in connection with the Fund subject to this Deed and the requirements of the Act.
- 20.2 Without limiting any other provision of this Deed, the Trustee may do all acts and things which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's powers and obligations under the Deed.
- 20.3 The powers conferred on or exercisable by the Trustee under this Deed are additional to and not in substitution for any and all powers conferred on or exercisable by the Trustee under the Act.

21 **SPECIFIC MANAGEMENT POWERS OF THE TRUSTEE**

Without limiting the generality of any other provisions of the Deed, the Trustee shall have the following powers:-

- 21.1 **appoint and pay managers and others:** to appoint remove or suspend custodians, investment managers, administrators, clerks, agents, representatives, nominees and other servants and delegates, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, emoluments and charges;
- 21.2 **legal proceedings:** to institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund, the Members or the Deed;
- 21.3 **compound debts:** 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;
- 21.4 **arbitration:** to refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator;
- 21.5 **receipts and discharges:** to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

- 21.6 **bank accounts:** to open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- 21.7 **seek advice:** to act on the advice of any Qualified Adviser (whether or not such advice or opinion was obtained by the Trustee) in relation to any matter concerning the Fund 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;
- 21.8 **give indemnity and security:** to give undertakings and indemnities, enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit, including but without limitation, borrowing money, giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund and to secure such obligation by charge or mortgage or any other form of encumbrance over all or part of the Fund;
- 21.9 **make rules:** to make rules and adopt procedures in relation to the calculation of contributions, benefits, and interest including where applicable determining the basis upon which interest will be compounded;
- 21.10 **maintain property:** to repair, paint, alter, rebuild, improve and generally maintain any property real or personal and whether freehold or leasehold or premises for the time being comprising part of the Fund;
- 21.11 **to pay rates and taxes:** to pay all rates taxes costs charges insurance premiums expenses and outgoings of whatever nature payable in connection with the maintenance upkeep and management of the property or premises comprising the Fund;
- 21.12 **lease property:** to lease or sub-lease any property (whether real or personal) forming part of the Fund for such period and at such rent and subject to such terms and conditions as the Trustee may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases;
- 21.13 **sell property:** to sell or otherwise dispose of any property forming part of the Fund at such price and upon such terms and conditions and in such manner as the Trustee may consider desirable;
- 21.14 **undertaking and contracts:** to give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit;

- 21.15 **insurance and premiums:** to effect Policies of Insurance or assurance to provide for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender vary or assign or otherwise deal with any such policy as the Trustee thinks fit; or
- 21.16 **proxies and powers of attorney:** to give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any property comprising part of the Fund;
- 21.17 **purchase annuity:** to purchase an Annuity to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;
- 21.18 **insurance of Trustee and Directors:** to insure and keep insured any liability of the Trustee or any Directors of a Corporate Trustee or the liability of the Fund to indemnify or reimburse the Trustee or Directors, as the case may be.

22

INVESTMENT OF THE FUND22.1 **General Investment Powers of the Trustee**

Subject to clause 23, the Trustee may from time to time and in the name of the Trustee or in the name of any nominee selected by the Trustee invest the whole or any part of the Fund in any investment or manner of investment (whether in Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment or manner of investment for the Fund.

22.2 **Specific Investment Powers of the Trustee**

Without limiting the generality of the foregoing the Trustee may invest the Fund in any one or more of the following:-

- 22.2.1 **authorised Trustee investments:** any investment from time to time authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust moneys;
- 22.2.2 **on deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other person approved by the Responsible Authority or any Employer in any type of account either with or

without security at such rate of interest and on such terms as the Trustee shall determine;

- 22.2.3 **acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, options, debentures bonds, notes or other securities or obligations howsoever called in any company (including any Employer);
- 22.2.4 **acquisition of units:** in the acquisition of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible) or other scheme in the nature of a unit trust;
- 22.2.5 **acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased;
- 22.2.6 **acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise.

22.3 **Dealing with Investments as Beneficial Owner**

The Trustee may vary or transpose or convert or otherwise deal with any investment of the Fund as authorised by the Deed as fully and effectively as a person absolutely and beneficially entitled dealing with his own property may do so.

22.4 **The Trustee may have interest in Investments**

- 22.4.1 The Trustee shall have the power and is authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee (including an Individual Trustee or Director of a Corporate Trustee) may directly or indirectly have an interest in or may benefit from the investment.
- 22.4.2 The Trustee and any Directors shall disclose details of any such interest in any investment in the manner which may be prescribed under the Corporations Law and the Act.

22.5 **Policies of Insurance**

22.5.1 The Trustee may obtain Policies of Insurance on behalf of a Member to secure the Benefit of a Member.

22.5.2 A Member may request the Trustee to effect a Policy of Insurance and may specify the type of Policy of Insurance to be effected. The Trustee shall have no responsibility to the Member or the Dependents of the Member to effect such a Policy of Insurance.

22.5.3 The Trustee may debit the premiums for any Policy of Insurance to:

- (a) the Income Account; and/or
- (b) the Accumulation Account of the Member for whom the policy is effected;

in such proportion as the Trustee sees fit.

23

COMPLIANCE WITH THE ACT - INVESTMENTS

23.1 **General Requirement**

The Fund shall only be invested in a manner and form which will not cause the Fund to be in breach of any relevant requirement of the Act.

23.2 **Borrowing by the Trustee**

The Trustee shall not borrow money or maintain an existing borrowing of money, regardless of whether or not such borrowing is secured against or in any way encumbers any part of the Fund, except in a manner which is approved under the Act.

23.3 **Lending to Members**

The Trustee shall not allow any money of the Fund to be lent, or any financial assistance using the resources of the Fund to be given, to a Member or a relative of a Member except in the manner and circumstances permitted by the Act.

23.4 **Acquisition of Certain Assets from Members**

The Trustee must not intentionally acquire or allow to be acquired on behalf of the Fund an asset from a Member or a relative of a Member except in the manner and circumstances permitted by the Act.

23.5 Investments to be made at Arm's Length

The Trustee must not invest or allow to be invested any money or other part of the Fund unless:

- 23.5.1 all parties to the relevant transaction are dealing at arm's length in respect of the transaction; or
- 23.5.2 if the parties are dealing with each other otherwise than at arm's length, the terms and conditions of the transaction are no more favourable than those which it would be reasonable to expect would apply if the parties were dealing with each other at arm's length.

23.6 Statement of Investment Strategy

The Trustee shall if required by the Act formulate and prepare a statement of investment strategy which shall set out the investment objectives of the Fund and the policy to achieve those objectives and shall incorporate such other matters which are necessary for the Fund to comply with the Act.

24 SPECIFIC INVESTMENTS OF A MEMBER

- 24.1 At the request of or with the approval of a Member, the Trustee may in its discretion invest all or any part of the amount standing to the credit of the Member's Accumulation Account by acquiring or entering into any investment separately and on behalf of the Member provided that such investment is undertaken within the investment strategy of the Fund.
- 24.2 In such event, the Trustee shall record the investments attributable to the Member and all revenue and expenses in respect of such investment shall be credited or debited as the case may be directly to the relevant Member's Accumulation Account.
- 24.3 The Trustee may accept or reject a proposal from a Member to vary any specific investment of that Member.

25 VALUATION OF FUND

Following each Balance Date and any other date which the Trustee considers appropriate or as may be required by any relevant requirement of the Act, the Trustee shall obtain a valuation of the Fund. The value so determined shall be reflected in the accounts of the Fund.

26 DELEGATION BY TRUSTEE

- 26.1 Subject to clause 26.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person ("the Delegate") in such manner and upon such terms as the Trustee thinks fit.
- 26.2 The Trustee may vary or revoke any such delegation as the Trustee thinks fit and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.
- 26.3 The Trustee shall not make any delegation or allow any delegation to remain where such delegation contravenes the Act.
- 26.4 The Delegate shall perform such duties and shall have such powers as the Trustee may from time to time determine and delegate to the Delegate.

27 APPOINTMENT OF ACTUARY, AUDITOR, MANAGERS AND ADVISORS

- 27.1 The Trustee shall if necessary appoint an Actuary to provide information or advice from time to time pursuant to this Deed.
- 27.2 The Trustee shall appoint an Auditor to perform an audit of the Fund pursuant to this Deed.
- 27.3 The Trustee may appoint in writing on such terms as the Trustee sees fit an Administration Manager to carry out all or part of the administration of the Fund subject to the compliance with the Act.
- 27.4 The Trustee may appoint in writing an Investment Manager to carry out the management functions of the investments of the Fund provided that such appointment is made and is fulfilled in accordance with the Act. Without limiting the generality of the foregoing, if the Trustee enters into an agreement with an Investment Manager under which all or part of the Fund will be placed under the control of the Investment Manager, the Trustee must ensure that the agreement contains adequate provision to enable the Trustee to require the Investment Manager from time to time to provide appropriate information as to the making of, and return on, the investments and to provide such information as is necessary to enable the Trustee to assess the capability of the Investment Manager to manage the investments of the Fund and, whenever it is necessary or desirable to do, require the Investment Manager to provide the information.
- 27.5 The Trustee may from time to time appoint such Qualified Advisors as the Trustee considers desirable for the proper management and administration of the Fund.

27.6 The Trustee may remove from office any person appointed to any position pursuant to this clause.

28 **REMUNERATION OF TRUSTEE AND OTHER ADMINISTRATION EXPENSES**

28.1 The Trustee shall be entitled to charge professional fees or other remuneration in acting as the Trustee of the Fund or in connection with the management and administration of the Fund only if and provided that:

- (a) the Act does not prohibit the Trustee receiving such remuneration; and
- (b) such remuneration would not have the effect of classing the Fund as a public offer fund as defined in the Act.

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

- 28.2.1 all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;
- 28.2.2 all fees, wages and expenses of any Auditor, Actuary, Qualified Advisor, Investment Manager or other custodian from time to time engaged by the Trustee pursuant to this Deed;
- 28.2.3 all and any Taxation paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- 28.2.4 all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund;
- 28.2.5 any other costs, charges and expenses incurred or to be incurred in relation to the management or administration of the Fund.

29 **ACCOUNTING RECORDS**

29.1 The Trustee shall establish and maintain accounting records in such form as shall:

- 29.1.1 correctly record and explain the transactions and financial position of the Fund;

- 29.1.2 enable the annual accounting statements to be prepared in accordance with clause 30;
 - 29.1.3 enable the annual returns of the Fund to be prepared and lodged in accordance with the Act;
 - 29.1.4 enable those accounting records to be conveniently and properly audited in accordance with this Deed and the Act.
- 29.2 The Trustee shall retain the accounting records for at least five years after the end of the Financial Year to which the accounting records relate.

30 **ACCOUNTING STATEMENTS**

- 30.1 The Trustee shall in respect of each Financial Year prepare the following accounting statements in respect of the Fund:
- 30.1.1 a statement of financial position;
 - 30.1.2 an operating statement;
 - 30.1.3 such other accounting statements as may be specified by the Act.
- 30.2 The accounting statements shall be signed by or on behalf of the Trustee in such manner as may be specified by the Act.
- 30.3 The Trustee shall retain the accounting statements for a period of five years after the end of the Financial Year to which the accounting statements relate.

31 **AUDIT OF THE FUND**

- 31.1 The accounting statements of the Fund prepared in respect of each Financial Year shall be audited by an Auditor duly appointed by the Trustee.
- 31.2 The Auditor shall on request be given access to the accounting records and accounting statements and such other documents connected with the Fund as may be necessary to enable the audit of those accounts.

32 ANNUAL RETURNS

- 32.1 The Trustee shall in respect of each Financial Year and within the time prescribed by the Act give to the Responsible Authority:
- 32.1.1 a annual return in a form prescribed by the Act;
 - 32.1.2 a trustee certificate in a form prescribed by the Act;
 - 32.1.3 the audit certificate given to the Trustee by the Auditor; and
 - 32.1.4 any other documents or information which may be required by the Act, or requested by the Responsible Authority, to be given to the Responsible Authority.

33 COMPLAINTS PROCEDURE

The Trustee shall, if required by the Act, take all reasonable steps to ensure that there are at all times in force arrangements under which:

- 33.1 Beneficiaries have the right to make inquiries into, or complaints about, the operation or management of the Fund in relation to the Beneficiary making the inquiry or complaint; and
- 33.2 inquiries or complaints so made will be properly considered and dealt with within 90 days after they were made.

34 NOTICE TO RESPONSIBLE AUTHORITY OF SIGNIFICANT ADVERSE EVENTS

- 34.1 If the Trustee becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, the Trustee must give written notice to the Responsible Authority setting out particulars of the event. The Trustee must do this no later than the third business day after becoming aware of the event.
- 34.2 For the purpose of this clause, an event has a significant adverse effect on the financial position of the Fund if, as a result of the event, the Trustee will not, or may not be able at a time before the next annual report by the Trustee to the Members, to make payments to the Members as and when the obligation to make those payments arises.

35 TRUSTEE TO DEAL WITH UNCLAIMED MONEY**35.1 Meaning of "Unclaimed Money"**

If:

- 35.1.1 a Member has reached Normal Retirement Age;
- 35.1.2 the Trustee determines that a Benefit (other than a Pension) is payable in respect of the Member in accordance with this Deed;
- 35.1.3 the Member has not applied to the Trustee to have the amount of the Benefit paid to that Member; and
- 35.1.4 the Trustee is unable to pay the Benefit to the Member because the Trustee, after making reasonable efforts to find the Member, is unable to do so,

the amount payable to the Member is taken to be unclaimed money.

35.2 Statement of Unclaimed Money

The Trustee shall, within the period specified in the Act, give to the Responsible Authority a Statement in the approved form of all unclaimed money in the Fund as at the end of 30 June or 31 December in each Financial Year.

35.3 Payment of Unclaimed Money to Responsible Authority

The Trustee shall pay to the Responsible Authority, at the same time that the statement is given, the total amount of unclaimed money shown in the statement.

**PART F
ACCOUNTS**

36 ACCUMULATION ACCOUNTS

36.1 Separate Member Accumulation Accounts

The Trustee shall establish and maintain an Accumulation Account in respect of each Member.

36.2 Credits to Accumulation Accounts

The following amounts shall be credited to the appropriate Accumulation Account in respect of a Member to which they relate:

- 36.2.1 contributions made to the Fund by an Employer in respect of the Member;
- 36.2.2 contributions made to the Fund by the Member;
- 36.2.3 the proceeds of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee;
- 36.2.4 any amount transferred to the Fund from another Approved Superannuation Entity in respect of the Member;
- 36.2.5 any amount paid into the Fund as a Roll Over Payment;
- 36.2.6 such income as determined by the Trustee and transferred from the Income Account;
- 36.2.7 any amounts transferred from a Pension Account in respect of a Member;
- 36.2.8 such other amounts as are determined by the Trustee in respect of the income of the Fund; and
- 36.2.9 such other amounts as the Trustee shall from time to time determine.

36.3 Debits to Accumulation Accounts

The following amounts shall be debited to the appropriate Accumulation Account of a Member to which they relate:

- 36.3.1 any Benefit paid to a Member or a Beneficiary in respect of the Member;
- 36.3.2 any amount paid out of the Fund in respect of the Member and transferred to another Approved Superannuation Entity;
- 36.3.3 the costs of any Policy of Insurance or Annuity effected in respect of the Member;
- 36.3.4 such proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Roll Over Payment to or from another Approved Superannuation Entity as the Trustee may determine;
- 36.3.5 such amount representing the reimbursement to the Trustee of such costs, charges, or expenses incurred by the Trustee pursuant to this Deed or a proportion thereof as the Trustee may determine;
- 36.3.6 any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- 36.3.7 such other amounts as the Trustee shall from time to time determine.

37 INCOME ACCOUNT

37.1 Establishment

The Trustees shall establish and maintain an Income Account for the Fund.

37.2 Credits

The Income Account shall be credited with the following:

- 37.2.1 all income and profits of the Fund in each Financial Year;
- 37.2.2 any credits arising out of any adjustment made by the Trustee pursuant to the Deed;
- 37.2.3 the proceeds of any Policy of Insurance where the Trustee determines that such proceeds should not be credited to a Member Accumulation Account;
- 37.2.4 such other amounts as the Trustee may from time to time determine.

37.3 Debits

The Trustee shall debit the Income Account with the following amounts:

- 37.3.1 any loss arising from the disposal or dealing with any investment of the Fund;
- 37.3.2 any debits arising from an adjustment made by the Trustee pursuant to this Deed;
- 37.3.3 the cost of any Policy of Insurance where the Trustee determines that such costs should not be debited to the Member Account;
- 37.3.4 any amount representing the reimbursement to the Trustee of any costs or charges incurred by the Trustee pursuant to this Deed which amount is not otherwise debited to a Member Accumulation Account;
- 37.3.5 any amount which is payable or may become payable by way of Taxation in respect of the Contributions or income of the Fund which are not otherwise debited to a Member Accumulation Account;
- 37.3.6 any income transferred to the Equalisation Account; and
- 37.3.7 such other amount as the Trustee shall from time to time determine.

38 EQUALISATION ACCOUNT

- 38.1 The Trustee may at any time establish an Equalisation Account.
- 38.2 The Trustee may transfer to the credit of the Equalisation Account an amount from the Income Account.
- 38.3 Any amount held in the Equalisation Account shall not form part of any Accumulation Account or Pension Account and any income derived by the Fund on the monies held in the Equalisation Account shall be credited to the Equalisation Account from the Income Account.
- 38.4 The Equalisation Account shall be used by the Trustee to stabilise investment earnings of the Fund in accordance with the Fund's investment strategy and shall provide for such future contingencies as the Trustee shall determine in its discretion.

39 **CALCULATION OF DETERMINED INTEREST RATE**

- 39.1 As soon as practicable following each Balance Date the Trustee shall determine the Determined Interest Rate in respect of each Financial Year.
- 39.2 The amount determined by the Trustee as the earnings of the Fund shall be allocated from the Income Account to each Accumulation Account and Pension Account in proportion to the amount standing to the credit of the respective Account at the beginning of the Financial Year in respect of which a distribution is being made and after making an appropriate adjustment for any amounts credited or debited to the respective Account since that date.
- 39.3 Any amount remaining in the Income Account after distribution of the earnings of the Fund shall be transferred to the Equalisation Account.
- 39.4 In determining the amount standing to the credit of a Member Accumulation Account or Pension Account at the time that a Benefit is calculated or becomes payable, the Trustee may make such adjustment up to the date of payment as the Trustee in its discretion considers equitable and in accordance with any relevant requirement of the Act.
- 39.5 If the Trustee makes an adjustment pursuant to this clause, the Income Account shall be debited or credited as may be appropriate.
- 39.6 The adjustment shall reflect the Determined Interest Rate.

**PART G
THE EMPLOYER**

40 **PARTICIPATION OF PERSONS AS EMPLOYERS**

40.1 **Application to Participate**

Any person in whose service an Eligible Person is for the time being Gainfully Employed may make application to the Trustee to be admitted as a Participating Employer for the purposes of participating in the Fund.

40.2 **Approval by Trustee**

An application by an Employer to participate shall be in such form as the Trustee shall from time to time determine and the acceptance or rejection of the application shall be at the discretion of the Trustee.

40.3 **Execution of Form of Admission**

Upon the acceptance by the Trustee of an Employer's application to participate in the Fund, the Trustee and the Employer shall execute a Form of Admission in such form as shall be determined by the Trustee from time to time. Upon execution the Employer shall be admitted as a Participating Employer to the Fund subject to the terms and conditions of this Deed and the Form of Admission.

40.4 **Participating Employer named in Schedule**

If a person who is eligible to be a Participating Employer is named as a Participating Employer in Schedule A, the execution of this Deed by that Participating Employer shall be conclusive evidence of the due admission of the Participating Employer to the Fund and the agreement of the Participating Employer to observe and perform such of the provisions of the Deed and the Act as are required to be observed by the Participating Employer thereunder.

40.5 **Participating Employer May Contribute**

The Participating Employer may make contributions to the Fund on behalf of such of the Employees of the Participating Employer who become Members.

41 RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER

In the event that a Employer is reconstructed or merges or amalgamates with another Employer:

41.1 Form of Admission

The Trustee may enter into a Form of Admission with the new Employer as the successor to the former Employer with the object of that new Employer participating in the Fund as a Participating Employer pursuant to this Deed on terms and conditions as determined by the Trustee which protect the interests of the Members.

41.2 Deemed Continuation of Service

The transfer of service by a Member as an Employee of the former Employer to the service of a new Participating Employer as a result of the reconstruction, merger or amalgamation shall be deemed to be a continuation of service by that Member for the purposes of that Member's entitlement to receive any benefit from the Fund.

41.3 Trustee to Continue Fund

Subject to this Deed the Trustee shall continue to operate the Fund for the benefit of any Members whose service is not continued with the new Participating Employer.

42 RELEASE OF PARTICIPATING EMPLOYER

42.1 The Trustee may subject to the approval of the Founder, and shall at the request of the Founder, release a Participating Employer and its Employees who are Members from participation in the Fund upon such terms as the Trustee shall determine.

42.2 Upon the release of a Participating Employer, the Trustee shall ascertain and deal with the Benefit Entitlements and Benefits of the Employees of the Participating Employer who are Members in such manner as the Trustee and the Participating Employer shall consider equitable and subject to compliance with the Act.

43 APPOINTMENT OF RECEIVER

If at any time a Receiver, Receiver and Manager, Official Manager, or an Administrator (hereafter "the Receiver") is appointed to assume control over all or part of the assets of an Employer, then notwithstanding anything express or implied to the contrary in this Deed or in the instrument pursuant to which the Receiver has been appointed, all authorities, powers and discretions which are by this Deed vested in or

exercisable by the Employer shall not vest in or be exercisable by the Receiver. For the duration of the appointment of a Receiver to the Employer, the authorities, powers and discretions of the Employer under this Deed shall be vested in and exercisable by the Trustee on behalf of that Employer and not by the Receiver.

44 LIQUIDATION OF EMPLOYER

If an Employer shall for any cause whatsoever cease to carry on business or an order is made or an effective resolution is passed for the winding of the Employer (unless such winding up is for the purpose of reconstruction or amalgamation) the interest in the Fund of the Employer and such of its Employees who are Members and their Dependents shall be determined by the Trustee and dealt with by the Trustee in such manner as the Trustee shall consider equitable for the benefit for the Members of the Fund.

47.4 Refund of Ineligible Contributions

If the Trustee shall determine that contributions have been accepted by the Trustee on behalf of a Member in breach of this clause, the Trustee shall refund such contributions and adjust any benefits held for the Member to take account of the refunded contributions in such manner as the Trustee considers appropriate.

47.5 Employer to remit Contributions Promptly

If an Employer is authorised to make a contribution on behalf of a Member by deducting an amount from the salary or wages payable to the Member and the Employer makes such a deduction, the Employer must pay to the Trustee the amount of the deduction within the period of 28 days beginning immediately after the end of the month in which the deduction was made.

48 TERMINATION OR VARIATION OF EMPLOYER CONTRIBUTIONS**48.1 Cessation of Employer Contributions**

A Employer shall cease to make contributions to the Fund on behalf of any Member as and from the date that:

48.1.1 the Employer, if a Participating Employer, ceases to be a Participating Employer in the Fund; or

48.1.2 the Employer determines to terminate contributions to the Fund in respect of any Member and gives notice of such termination to the Trustee.

48.2 Effect on Members

The cessation or variation of contributions by a Employer to the Fund in respect of a Member pursuant to this clause shall not effect the interests of the Member under this Deed.

**PART I
BENEFITS**

49 **FUND TO PROVIDE BENEFITS**

The Trustee shall ensure that the Fund is maintained solely for the purpose of providing the Benefits described in this Part of this Deed.

50 **BENEFITS ON RETIREMENT**

50.1 **Entitlement**

Upon a Member:

50.1.1 retiring from Gainful Employment at or after a Member's Normal Retirement Age; or

50.1.2 reaching the age of 65 years; or

50.1.3 fulfilling the relevant requirements of the Act for the payment of benefits upon retirement notwithstanding that the Member may otherwise continue in Gainful Employment;

the Member shall be entitled to be paid from the Fund a retirement benefit equivalent to the amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made and as advised to the Member by the Trustee.

50.2 **Manner of Payment - Lump Sum or Pension**

Where a Member is eligible to receive a retirement benefit, the Member may elect whether such benefit shall be payable either as a lump sum or as a Pension or partly as a lump sum and partly as a Pension. If the Member does not make such an election, then the benefit shall be payable as a Pension.

51 **BENEFITS ON EARLY RESIGNATION / TERMINATION OF EMPLOYMENT**

51.1 **Entitlement**

Upon a Member ceasing to be in Gainful Employment with an Employer (who has made contributions to the Fund in relation to that Member) before the Member's Normal Retirement Age and the Member is not otherwise entitled to any other benefit from the Fund, the Member shall be entitled to

receive from the Fund, subject to the conditions of preservation as required by the Act, a benefit equal to:

- 51.1.1 the amount standing to the credit of the Member's Accumulation Account which amount represents the Member Contributions (if any) made by the Member accumulated with interest compounded at the Determined Interest Rate up to the date on which the Member ceased to be in Gainful Employment with that Employer; and
- 51.1.2 such additional amount (if any) as the Fund shall be required to provide for the Member such that the total benefit to which that Member is entitled is not less than the minimum benefit requirements specified in the Act; and
- 51.1.3 such additional amount as the Trustee may determine having regard to the circumstances of the Member's cessation of Gainful Employment **PROVIDED THAT** the total benefit payable pursuant to this clause shall not exceed the amount then standing to the credit of the Member's Accumulation Account.

51.2 **Manner of Payment - Lump Sum or Pension**

Where a Member is entitled to receive a benefit pursuant to this clause, the Member may elect whether such benefit shall be payable either as a lump sum or as a Pension or partly as a lump sum and partly as a Pension. If the Member does not make such an election, then the benefit shall be payable as a Pension.

52 **BENEFITS ON DEATH**

52.1 **Entitlement**

Upon the death of a Member the Trustee shall pay a death benefit of an amount equal to the aggregate of:

- 52.1.1 the amount standing to the credit of that Member's Accumulation Account as at the date upon which payment is made; and
- 52.1.2 the proceeds of any Policy of Insurance effected under this Deed on behalf of the Member; and

PROVIDED THAT:

- 52.1.3 if, prior to the death of a Member, the Trustee and that Member have agreed in writing that the death benefit which becomes payable upon the death of that Member shall be an amount other

than the aggregate of the amount standing to the credit of that Member's Accumulation Account as at the date upon which payment is made and the proceeds of any Policy of Insurance effected under this Deed on behalf that Member ("the Other Amount"), then the death benefit payable by the Trustee upon the death of that Member shall be the Other Amount.

52.2 **Manner of Payment - Trustee's Discretion**

A death benefit shall be paid in such manner as the Trustee may determine in its discretion by way of Pensions, Annuities or other periodical payment or lump sum payment or any combination of the foregoing.

52.3 **Persons to Receive Death Benefits**

Where a death benefit is payable pursuant to this clause, the Trustee may pay or apply the death benefit to or for the benefit of:

- 52.3.1 a person nominated in writing by the former Member; or
- 52.3.2 such one or more of the Dependants of the former Member;
- 52.3.3 the legal personal representatives of the former Member;

in such proportions between all or any of the above persons or categories of persons as the Trustee shall determine in its discretion. If after reasonable inquiry the Trustee determines that the deceased member left no Dependants or that there are no Dependants whose existence, identity and whereabouts are satisfactorily known to the Trustee and the Trustee is unable to locate any legal personal representative of the deceased Member, the Trustee shall determine that the Benefit or any part thereof shall cease to be payable and shall be retained in the Fund for the general purposes of the Fund.

53 **BENEFIT ON TOTAL AND PERMANENT DISABLEMENT**

53.1 **Entitlement**

If in the opinion of the Trustee a Member shall become Totally and Permanently Disabled before the Member's Normal Retirement Age, the Member shall be entitled to receive from the Fund a permanent disability benefit of an amount equal to the aggregate of:

- 53.1.1 the amount standing to the credit of the Member's Accumulation Account at the date upon which payment is made; and

53.1.2 the proceeds of any Policy of Insurance effected under this Deed on behalf of the Member; and

PROVIDED THAT:

53.1.3 if, prior to the Total and Permanent Disablement of a Member, the Trustee and that Member have agreed in writing that the permanent disability benefit which becomes payable upon the Total and Permanent Disablement of the Member shall be an amount other than the aggregate of the amount standing to the credit of the Member's Accumulation Account at the date upon which payment is made and the proceeds of any Policy of Insurance effected under this Deed on behalf of that Member ("the Other Amount"), then the permanent disability benefit payable by the Trustee upon the Total and Permanent Disablement of that Member shall be the Other Amount.

53.2 Manner of Payment - Lump Sum or Pension

Where a Member is entitled to receive a permanent disability benefit pursuant to this clause, the Member may elect whether the benefit is to be payable as a lump sum or as a Pension or partly as a lump sum and partly as a Pension. If the Member does not make such an election, then the benefit shall be payable as a Pension.

54 BENEFITS PAYABLE AS A PENSION

54.1 Payment of Pension

Where a Benefit is payable as a Pension the Trustee shall pay the Benefit to the Pensioner as a Pension in accordance with this clause and subject to the requirement of the Act.

54.2 Amount of Pension

The amount of any Pension payable pursuant to this clause shall be determined by the Trustee.

54.3 Pension Account

Where the Trustee determines to pay all or any part of a Benefit to or in respect of a Member as a Pension, the Trustee shall establish a Pension Account in respect of the Pensioner which account shall be operated by the Trustee in such manner as the Trustee considers necessary in order to provide the Pension in accordance with this Deed.

54.4 Segregation of Pension Assets

The Trustee shall in relation to each Pension payable pursuant to this Deed:-

54.4.1 segregate and set apart the assets of each Pensioner or Reversionary Beneficiary for the sole purpose of enabling the Fund to discharge the whole or part of any current or non-current liability in relation to the payment of the Pension as those liabilities fall due for payment;

54.4.2 obtain such certificates in relation to the adequacy of the segregated assets to meet the current and non-current liabilities as the Trustee considers necessary in accordance with any requirement of the Act.

54.5 Method of Payment of Pension

The following conditions shall apply to the payment of any Pension from the Fund:

54.5.1 the Pension shall be paid from the amount standing to the credit of the Pension Account of the Pensioner;

54.5.2 the amount of the Pension shall not be greater than or lesser than the amounts calculated as the maximum and minimum limit specified by the requirements of the Act for the payment of a Pension;

54.5.3 the Pension shall not be transferred to any person other than in accordance with this Deed or the requirements of the Act;

54.5.4 the capital value of the Pension and the income from the Pension shall not be used as security for any borrowing.

54.6 Variation to Pension Amount

If required by the Act or if determined by the Trustee subject to the compliance with the Act, any Pension shall be increased by the Trustee from time to time by such amount as the Trustee considers appropriate to compensate the Pensioner for increases in the cost of living.

54.7 Limitation on Pension Amount

The total instalments of a Pension payable in respect of a Pensioner shall not exceed the amount standing to the credit of the Pensioner in his Pension Account at the relevant time.

54.8 Death of Pensioner

In the event of the death of a Pensioner and at the time of death an amount is standing to the credit of the Pension Account of the Pensioner:

- 54.8.1 where a Reversionary Beneficiary has been nominated by the Pensioner, the Trustee shall, unless otherwise requested to the contrary by the Reversionary Beneficiary, pay to the Reversionary Beneficiary the balance of the Pension Account (either as a Pension or commuted to a lump sum) provided that such amount shall not exceed an amount calculated in accordance with the requirements of the Act; or
- 54.8.2 where no reversionary beneficiary has been nominated, the balance of the Pension Account shall be paid to such one or more of the Dependants of the Pensioner as the Trustee may determine or if there are no Dependants, to the legal personal representative of the Pensioner.

54.9 Application to Convert Lump Sum to Pension

A Member may on written application to the Trustee elect to have the whole or any part of a lump sum benefit which is payable pursuant to this Deed converted to a Pension.

54.10 Commutation of Pension to a Lump Sum

- 54.10.1 On the written application of a Pensioner or Reversionary Beneficiary, the Trustee shall commute to a lump sum benefit the whole or any part of a Pension payable from the Fund to such Pensioner or reversionary Beneficiary provided that such commutation would not cause the Trustee or the Fund to be in breach of any relevant requirement of the Act.
- 54.10.2 The Trustee shall pay the amount of the lump sum benefit in respect of the commuted Pension in the same manner as a lump sum benefit which is payable upon retirement in accordance with the provisions of this Deed.
- 54.10.3 Where part of a Pension is commuted to a lump sum, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Pensioner by such amount as the Trustee considers appropriate subject to the compliance with the minimum and maximum benefit requirements specified in the Act.

54.11 **Purchase of Pension or Annuity from Third Party**

If a Benefit is payable to a Member, upon request by the Member, the Trustee may apply the Benefit to purchase a pension or Annuity for or in respect of the Member from a third party.

55 **PAYMENT OF BENEFIT BY TRANSFER IN SPECIE**

55.1 **Transfer of Investments**

The Trustee may with the written consent of a Beneficiary to whom a Benefit is payable pursuant to this Deed transfer any investment of the Fund to that Beneficiary in satisfaction of the payment of the whole or such part of the amount of the Benefit otherwise payable **PROVIDED THAT**:

- 55.1.1 the amount of the Benefit which is satisfied is equivalent to the value of the investment so transferred;
- 55.1.2 the Trustee is satisfied that such transfer is permitted by the Act; and
- 55.1.3 the value of any investments to be transferred shall (unless the Trustee otherwise determines) be the same as the value attributed to those investments when the Trustee last valued the assets of the Fund.

55.2 **Transfer of Policy of Insurance**

Where a Benefit is payable to a Member or a Beneficiary and the Benefit includes any interest in a Policy of Insurance the Trustee may in its absolute discretion and in lieu of surrendering such Policy of Insurance assign the Policy of Insurance to such Member or Beneficiary or to such one or more of them. The value of the Policy of Insurance as at the date of assignment shall be debited as a payment to the Member or Beneficiary in the relevant Accumulation Account or Pension Account. Neither the Trustee nor an Employer shall be responsible for payment of any further premiums which become payable under the Policy of Insurance as and from the date of assignment.

56 **RESTRICTIONS ON PAYMENT OR DEALINGS WITH BENEFITS**

56.1 **Compliance with the Act**

Notwithstanding any other provision of this Deed, the Trustee shall not pay or deal with any Benefit or other amount from the Fund to or in respect of any Beneficiary in any circumstances which would cause the Trustee or the Fund to be in breach of any relevant requirement of the Act.

56.2 **Trustee May Act**

The Trustee may do all things necessary as the Trustee sees fit including, but without limitation, adjusting the amount or terms of payment of Benefits in such manner and to such extent as the Trustee considers appropriate in order to comply with any relevant requirements of the Act.

57 **CONDITIONS FOR PAYMENT OF PRESERVED BENEFITS**

57.1 **No Entitlement to Preserved Benefit**

No Member or Beneficiary shall be entitled to receive any Benefit payable under the Fund which is required to be preserved in accordance with a relevant requirement of the Act.

57.2 **Member May Direct Trustee**

A Member may direct the Trustee to:

57.2.1 transfer the Preserved Benefit to another Approved Superannuation Entity selected by the Member and in which the Member is a participant or eligible to participate; or

57.2.2 retain the Preserved Benefit in the Fund.

57.3 **Trustee may transfer Preserved Benefit**

If the Trustee does not receive such a direction from the Member and the Trustee is satisfied that there exists a Approved Superannuation Entity in which the Member is a participant or eligible to participate and the trustees thereof are empowered and willing to accept a transfer of the Preserved Benefit, then the Trustee may transfer that Preserved Benefit to that other Approved Superannuation Entity without the Member's direction or consent.

57.4 **Power of Attorney**

The Member shall be deemed to have irrevocably appointed the Trustee as the attorney for that Member for the purpose of securing that Member's participation in the Approved Superannuation Entity to which the transfer is to be effected and the Trustee may act unilaterally in the name of the Member for that purpose.

57.5 Retention of Preserved Benefit

If a Preserved Benefit is not transferred to another Approved Superannuation Entity as provided in this clause, the Preserved Benefit shall be retained in the Fund to the credit of the Member's Accumulation Account and accumulated with interest at the Determined Interest Rate until:

- (a) **Death:** the death of the Member in which event the Preserved Benefit shall be paid as a death benefit in accordance with this Deed;
- (b) **Retirement:** the Member satisfies the Trustee that he has retired from Remunerative Employment;
- (c) **Request:** the Member requests that the Preserved Benefit be paid to that Member;
- (d) **Responsible Authority:** the payment of the Preserved Benefit is approved by a Responsible Authority; or
- (e) **Discretion:** the Trustee elects in its discretion to pay the Preserved Benefit to the Member or Beneficiary;

whichever is the first to occur **PROVIDED THAT** no payment shall be made unless at the date of payment the Preserved Benefit is paid in accordance with the Act.

58 FORFEITURE OF BENEFIT ENTITLEMENTS

58.1 Events of Forfeiture

A Member or Beneficiary of that Member who at a relevant time has any entitlement to a Benefit Entitlement and:

- 58.1.1 who assigns or charges or attempts to assign or charge that Benefit Entitlement;
- 58.1.2 whose interest in the Benefit Entitlement, whether by the Member's or Beneficiary's own act, operation of law, order of any Court or otherwise becomes payable to or vested in any other person, company, government or statutory or other public authority;
- 58.1.3 who is insolvent or who commits or has committed an act of bankruptcy;

58.1.4 who for any reason is unable personally to receive or enjoy the whole or any portion of a Benefit Entitlement or, in the opinion of the Trustee, is incapable of managing his or her own affairs; or

58.1.5 who in the opinion of the Trustee commits any fraud or is guilty of dishonesty, defalcation or serious misconduct;

shall forfeit the entitlement to that Benefit Entitlement held in the Fund at that time.

58.2 **Forfeited Entitlement to Equalisation Account**

58.2.1 Any Benefit Entitlement which is forfeited pursuant to this Deed shall be credited to the Equalisation Account and shall be held and applied by the Trustee in accordance with this Deed.

58.2.2 Any income derived by the Fund on the forfeited Benefit Entitlement held in the Equalisation Account shall be credited to the Equalisation Account.

58.3 **Application of Forfeited Benefit Entitlements**

The Trustee shall apply any amount representing a Member's forfeited Benefit Entitlement standing to the credit of the Equalisation Account in respect of a Member or Beneficiary in any of the following ways:

58.3.1 in providing for the benefit of the Member or Beneficiary or the Dependants of that Member or any one or more of them in such proportions and on such terms as the Trustee may from time to time determine in its discretion;

58.3.2 in providing assistance to that Member or Beneficiary or the Dependants of that Member in the case of hardship, sickness, accident or other misfortune causing hardship;

58.3.3 in augmenting the Benefits payable to or in respect of any other Member;

58.3.4 in paying any expenses payable out of the Fund; or

58.3.5 in such other manner which in the opinion of the Trustee will not breach any relevant requirement of the Act.

58.4 Severability

If any part of this clause is construed as or held to be illegal or invalid, that part or parts shall be deemed to be deleted from this clause and the legality and validity of the remaining parts of this clause shall not be affected by such deletion.

59 POSTPONEMENT OF BENEFIT PAYMENTS

59.1 Subject to the compliance with the Act, the Trustee may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any Benefit for any period not exceeding six months or, with the approval of the Member to which the Benefit is payable, a longer period after the happening of the event upon which the Benefit becomes payable.

59.2 Subject to the compliance with the Act, the Trustee may at the request in writing of any person entitled to receive the payment of a Benefit withhold payment of that Benefit for such a period of time, subject to the Act, as shall be agreed between the Trustee and the person so entitled to that Benefit.

60 TRANSFERS FROM APPROVED SUPERANNUATION ENTITIES**60.1 Trustee May Take Interest**

If a person is or was a member of or is or was the beneficiary under any other Approved Superannuation Entity, the Trustee may at the direction of that person acquire by transfer from the trustee of the other Approved Superannuation Entity the whole or any part of the interest of that person in the Approved Superannuation Entity.

60.2 Trustee To Hold Subject to this Deed

Any interest transferred to the Trustee pursuant to this clause shall be held by the Trustee as part of the Fund in an Accumulation Account for that Member which shall reflect the equivalent rights, entitlement and interest of the Member as existed in the other Approved Superannuation Entity.

60.3 Payment of Special Unpreserved Benefits

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a Preserved Benefit in the Approved Superannuation Entity, then subject to the compliance with the Act and any other terms or conditions pertaining to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of that Beneficiary.

60.4 Member Subject to Fund

A person whose interest is transferred to the Fund pursuant to this clause shall become a Member and be subject to the rights and obligations of this Deed and if the Trustee so determines the Member shall be deemed to have become a Member of the Fund on the date on which the Member's interest was so transferred to the Fund.

61 TRANSFERS TO APPROVED SUPERANNUATION ENTITIES**61.1 Trustee May Transfer**

The Trustee may at the written request of a Member and subject to such conditions as the Trustee determines transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate any Benefit or Benefit Entitlement in respect of that Member which reflects the entitlement of the Member in the Fund as at the date of transfer ("the Transferred Amount").

61.2 Receipt of Transferred Amount

The receipt by the proper officer of the other Approved Superannuation Entity of the Transferred Amount shall be a sufficient discharge to the Trustee. Neither the Trustee nor any Employer shall be responsible for the payment or disposal by the trustees of the other Approved Superannuation Entity of the Transferred Amount.

61.3 Extinguishment of Rights

Upon the completion of the transfer of the Transferred Amount in respect of a Member all of the rights and interests of that Member under this Deed (and all rights and interests of any Beneficiary entitled to claim in respect of the Member) in respect of the Transferred Amount shall be extinguished.

61.4 Adjustment of Other Benefits upon Transfer

In respect of any transfer pursuant to this clause the Trustee may make such adjustments to the Benefits of the other Members of the Fund as the Trustee considers appropriate in the circumstances and such adjusted Benefits shall be substituted for the Benefits otherwise provided under this Deed and this Deed shall apply on the same terms to those adjusted Benefits.

61.5 Compliance with the Act

No Benefit or Benefit Entitlement shall be made to another Approved Superannuation Entity pursuant to this clause in circumstances where the

Trustee or the Fund would be in breach of a relevant requirement of the Act.

62

MEMBER MAY REQUEST ROLLOVER PAYMENT

If a Member wishes to effect a Rollover Payment of all or any of the Benefit Entitlement of the Member, the Member shall complete and provide to the Trustee such documentation required by the Income Tax Act to enable the Rollover Payment to be effected in accordance with the requirements of the Act.

**PART J
MISCELLANEOUS PROVISIONS**

63 TERMINATION OF THE FUND

63.1 Grounds for Termination

The Fund shall be terminated and thereafter wound up:

- 63.1.1 if the Founder with the consent of the Members determines to terminate the Fund and gives notice in writing of such determination to the Trustee;
- 63.1.2 if it shall appear to the Trustee that the Fund is insolvent and the Trustee resolves to terminate the Fund;
- 63.1.3 if there are no further Members remaining in the Fund; or
- 63.1.4 if for any reason the Trustee considers it appropriate to terminate the Fund and, subject to the approval of the Founder, the Trustee resolves to terminate the Fund.

63.2 Notice of Termination

Upon the termination of the Fund the Trustee shall give notice in writing to each Employer and each of the Members that the Fund has or is to be terminated as from a specified date ("the Termination Date").

63.3 Winding up of the Fund

On and from the Termination Date:

- 63.3.1 no further contributions shall be made by the Employer or any Member, other than arrears of contributions due to the Termination Date;
- 63.3.2 the Trustee shall call up and collect any arrears of contributions;
- 63.3.3 the Trustee shall pay out of the Fund any expenses incurred by or on behalf of the Fund;
- 63.3.4 the Trustee shall distribute the balance of the Fund in such manner as the Trustee shall consider appropriate in accordance with the Deed until all Benefits which are payable or Benefit Entitlements which could become payable to Members or their Dependants have been paid;

63.3.5 the Trustee shall otherwise continue to administer the Fund in accordance with the Deed; and

63.3.6 if a surplus in the Fund remains after the payment of all Benefits and Benefit Entitlements to Members or their Dependants, the Trustee shall distribute such surplus to or for the benefit of any Members or former Members, any Dependants of such Members or former Members, or the legal personal representatives of any such Members, former Members, or Dependants, as the Trustee determines in its absolute discretion.

64 **DISSOLUTION OF THE FUND**

Upon the satisfactory winding up of the Fund by the Trustee pursuant to this clause, the Fund shall be deemed to be dissolved.

65 **AVAILABILITY OF DEED**

A copy of this Deed shall be kept by the Trustee and shall be available for inspection by any Member during normal business hours.

66 **AMENDMENT OF DEED**

66.1 **Who may amend**

The Founder or the Trustee subject to the approval of the Founder may at any time amend, add to, vary or rescind any of the provisions of the Deed (including this clause)("the Amendment") subject to the provisions of this clause and the compliance with the Act.

66.2 **How Amendment effected**

The Amendment shall be made by:

66.2.1 a deed executed by the Trustee; or

66.2.2 a oral declaration or written resolution of the Trustee which is evidenced by a Minute of Meeting of the Trustee confirming such oral declaration or written resolution.

66.3 **Date of Amendment**

The Amendment shall be effective from the date on which the Amendment is made or from such earlier or later date as is specified for that purpose in the Deed or Minutes of Meeting effecting the Amendment.

66.4 Consent by Members

In the event that a proposed Amendment would in the opinion of the Trustee substantially prejudice the value of the Fund or the Benefits or Benefit Entitlements of the Members, the Amendment shall not be effective unless the Members have by resolution passed by a simple majority consented to the Amendment.

66.5 Notice to Members

As soon as practicable after the Deed has been amended pursuant to this clause, the Trustee shall give to each Member a written statement explaining the nature and purpose of the Amendment and the effect of the Amendment on the entitlement of the Members.

66.6 Notice to Responsible Authority

If required by the Act a copy of the Deed or Minutes of Meeting effecting the Amendment shall be lodged with the Responsible Authority.

66.7 Amendments concerning taxation concessions or compliance with the Act

If the proposed Amendment is to be made for the purpose of securing or better securing exemption or concession from Taxation in relation to the Fund or to enable the Fund to comply with any relevant requirement of the Act, the Amendment shall be deemed not to substantially prejudice the value of the Fund or the Benefits or Benefit Entitlements of the Members.

66.8 Restriction on Amendments

Notwithstanding any provision in this clause to the contrary, no Amendment shall be made to this Deed (including an Amendment to this clause) which would have the effect or result that the Fund does not have or will not continue to have:

66.8.1 the sole or primary purpose of providing old age pensions as provided in this Deed; and or in the alternative,

66.8.2 a company as the Corporate Trustee of the Fund.

66.9 Fund has five or more Members

If the Fund has five or more Members as at the date of the proposed Amendment, the Amendment shall not be made, or if purported to be made, shall not be effective unless the Trustee has consented to the Amendment.

67 **REPLACEMENT OF THE FOUNDER**

- 67.1 The person holding the office of Founder may at any time by written instrument appoint another person to hold the office of Founder and to exercise all rights, powers and discretions conferred upon the Founder under this Deed.
- 67.2 If at any time there is no Founder or the Founder ceases to be willing to act as Founder or, in the opinion of the Trustee, the Founder (if a natural person) is incapacitated to such an extent as to render him unable to properly discharge the functions of the Founder, the Trustee may with the consent of the Members appoint a person to be the Founder.
- 67.3 If in the opinion of the Members the Founder is not properly discharging the functions of the Founder, the Members may resolve that:
- (a) the Founder is removed from the office of Founder and replaced by a person nominated by the Members who has consented to so act as Founder; or
 - (b) one or more persons nominated by the Members who have consented to so act shall be appointed as Founder jointly with the current Founder.

Any removal or appointment pursuant to this clause shall be effective upon giving notice of the removal or appointment, as the case may be, to the current Founder.

68 **TAXATION**

68.1 **Taxation of Benefits**

If any Taxation is payable in respect of any Benefit payable to any Member or Beneficiary, then the Trustee shall deduct or arrange to have deducted the amount of such Taxation (including any interest payable thereon) from the Benefit. The Trustee shall account for such Taxation to the proper Responsible Authority and pay the net Benefit to the person so entitled.

68.2 **Taxation on Contributions**

If any Taxation is payable in respect of any Contribution made by or on behalf of a Member, the Trustee shall deduct or arrange to have deducted the amount of such Taxation (including any interest payable thereon) prior to the Contribution being credited to the relevant Member's Accumulation Account and the Trustee shall account for such Taxation to the proper Responsible Authority.

69 PROOFS OF ENTITLEMENT BY BENEFICIARIES

Any person appearing purporting or claiming to be qualified or entitled to any Benefit or Benefit Entitlement shall on request by the Trustee produce to the Trustee such evidence and do such acts and execute such documents as the Trustee may reasonably require.

70 NO PERSONAL CLAIM OF MEMBERS OR DEPENDANTS FOR INTEREST

No Member or Beneficiary claiming through or on behalf of a Member shall be entitled to claim any payment of any interest in the Fund except as provided in this Deed.

71 COMPENSATION RIGHTS OF MEMBERS NOT LIMITED

This Deed shall not affect any rights of a Member or the personal representative of a Member arising under any statutory enactment or at common law in circumstances where the Member is injured or dies as a result of an event arising in the course of the employment of the Member.

SCHEDULE A

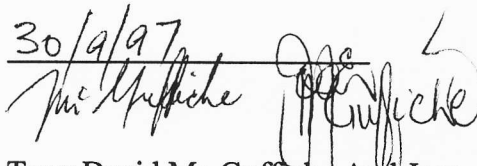
NAME OF FUND:

Wilbernie
Superannuation Fund

COMMENCING DATE OF THIS FUND:

18/9/97

EXECUTION DATE OF THIS DEED:

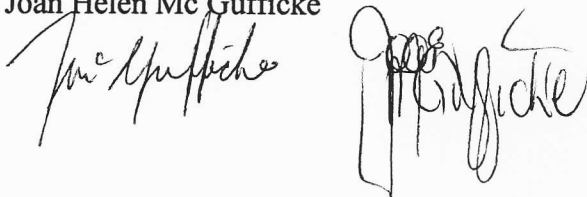
30/9/97


FOUNDER:

Tony David Mc Gufficke And Joan
Helen Mc Gufficke

TRUSTEE(S):

Tony David Mc Gufficke
Joan Helen Mc Gufficke



PARTICIPATING EMPLOYER:
(if applicable)

NOTE:

The Fund Reference Number is: 915147319552

The drafting of this document as at September 1996 has been undertaken and finalized by Kenny & McAlister, Solicitors, 14 Kinane Street, Brighton 3186.

EXECUTED by the Parties as a Deed on the Execution Date.

BY THE FOUNDER
- INDIVIDUALS

SIGNED SEALED and DELIVERED)
by the said)
Tony David McGufficke)
in the presence of:)
_____ *Witness*)

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_____)

SIGNED SEALED and DELIVERED)
by the said)
Joan Helen McGufficke)
in the presence of:)
_____ *Witness*)

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BY THE TRUSTEE
- INDIVIDUALS

SIGNED SEALED and DELIVERED)
by the said)
Tony David McGufficke)
in the presence of:)
_____ *Witness*)

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_____)

SIGNED SEALED and DELIVERED)
by the said)
Joan Helen McGufficke)
in the presence of:)
_____ *Witness*)

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