

**KARIBA SUPERANNUATION FUND**  
**TRUST DEED**

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**NORTON & SMAILES**  
**LAWYERS**

Ground Floor, 38 Colin Street, West Perth WA 6005. Telephone (08) 9481 8311 Facsimile (08) 9481 8322  
taxlaw@norton-smiles.com.au www.norton-smiles.com.au

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▲ Income Tax ▲ Capital Gains Tax ▲ Goods & Services Tax ▲ Objections and Appeals ▲ Tax Audit and Litigation  
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DEED made at 0730 pm on the 13<sup>th</sup> day of September 2012

BY DE BROEKERT NOMINEES PTY LTD ACN 159 758 040 of 1<sup>st</sup> Floor, 160 Stirling Highway, Nedlands in the State of Western Australia

**WHEREAS**

- A. The Trustee wishes to establish a superannuation trust fund to provide superannuation benefits for those persons who are or who become members of the Fund.
- B. The Trustee has agreed to act as the first trustee(s) of the Fund constituted by this Trust Deed.
- C. The Trustee intends that the Fund should be an SMSF and a Complying Superannuation Fund.

**THIS DEED WITNESSES AS FOLLOWS:**

**PART A - DEFINITIONS AND INTERPRETATION**

**1. DEFINITIONS**

“**Account**” means a Reserve Account, a Member Account, a Forfeiture Account or any other account created by the Trustee under Rule 10.5;

“**Account-Based Pension**” has the same meaning as in Regulation 6.01 of the SIS Regulations;

“**Actuary**” has the same meaning as in the SIS Act;

“**Allot**” has the same meaning as in the SIS Regulations;

“**Annexure**” means the annexures to this Trust Deed;

“**Annuity**” means an annuity that meets the requirements of Regulation 1.05 of the SIS Regulations;

“**Approved Auditor**” has the same meaning as in the SIS Act;

“**Approved Trustee**” means a Trustee approved by the Regulator;

“**Beneficiary**” includes:

- (a) Members and any person entitled at the relevant time to receive a payment of a Member’s Benefit from the Fund; and
- (b) any other person who is a beneficiary for the purposes of the Superannuation Law;

“**Binding Nomination**” means a nomination made by a Member under Rule 17.2 which is binding on the Trustee;

**“Cashing Restriction”** has the same meaning as in the SIS Regulations;

**“Commencement Date”** means the date in the item 3 of the Schedule, or if unspecified, the date of execution of this Trust Deed;

**“Complying Superannuation Fund”** has the same meaning as in the SIS Act;

**“Condition of Release”** has the same meaning as in the SIS Act;

**“Contribution”** has the same meaning as in Regulation 1.03 of the SIS Regulations;

**Contribution Splitting Application** means an application by a Member under Rule 14.10(a);

**“Contributions Tax Acts”** means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, *Superannuation Contributions Tax Imposition Act 1997*, *Termination Payments Tax (Assessment and Collection) Act 1997*, *Termination Payments Tax Imposition Act 1997*, *Superannuation Contributions Tax (Consequential Amendments) Act 1997*, *Superannuation Contributions Tax (Application to the Commonwealth) Act 1997* and the *Superannuation Contributions Tax (Application to the Commonwealth-Reduction of Benefits) Act 1997*, and any amendments to or legislation related to those Acts;

**“Corporate Trustee”** means a Trustee that is a constitutional corporation within the meaning of the Superannuation Law;

**“Covenants”** includes the covenants of the Trustee under the Superannuation Law and any other covenants under this Trust Deed;

**“Custodian”** has the same meaning as in the SIS Act;

**“Dependant”** has the same meaning as in the SIS Act;

**“Employee”** has the same meaning as in the SIS Act, and includes a person in the employ of an Employer, any person who is a director of an Employer which is a company and any person in respect of whom an Employer wishes to make a contribution to the Fund in lieu of the Employer paying the superannuation guarantee charge under the Guarantee Act;

**“Employer”**, when used in respect of a Member, has the same meaning as in the SIS Act, and otherwise means an employer of a Member who makes Contributions to the Fund on behalf of the Member;

**“Employer-Sponsored Member”** means a Member whose Employer is making Contributions to the Fund at the relevant time;

**“Entity”** means any fund, organisation, or entity that is allowed under the SIS Act to receive Contributions or amounts arising from such Contributions and includes without limitation a superannuation fund, approved deposit fund, retirement savings account, superannuation holdings account reserve and eligible roll-over fund as those terms are defined in the Superannuation Law;

**“Family Law Act”** means the *Family Law Act 1975* (Cth);

**“Fund”** means the superannuation fund established in accordance with this Trust Deed and referred to by the name set out in item 1 of the Schedule and as amended by the Trustee from time to time;

**“Gainful Employment”** means employment or self-employment for gain or reward in any business, trade, profession, vocation, calling or occupation, and **“Gainfully Employed”** has a corresponding meaning;

**“GST”** means the tax imposed by any of *A New Tax System (Goods and Services Tax Imposition – General) Act 1999* (Cth), *A New Tax System (Goods and Services Tax Imposition – Customs) Act 1999* (Cth) and *A New Tax System (Goods and Services Tax Imposition – Excise) Act 1999* (Cth);

**“Guarantee Act”** means the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth);

**“In-House Asset”** has the same meaning as in the SIS Act;

**“In-Specie Contribution”** means a Contribution by way of transfer of an asset in-specie to the Fund;

**“Investment Earnings”** means all of the income and gains of the Fund that are from or in respect of any investments of the Fund for the period from the latter of

- (a) when the Investment Earnings of the Fund were last calculated; or
- (b) from the Commencement Date of the Fund,

to the point in time determined under Rule 7.1;

**“Investment Manager”** has the same meaning as in the SIS Act;

**“Legal Personal Representative”** has the same meaning as in the SIS Act;

**“Lost Member”** has the same meaning as in the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth);

**“Member”** means a person who has been admitted as a member of the Fund in accordance with Rule 12;

**“Member Account”** means a Member Accumulation Account and/or a Member Pension Account;

**“Member Accumulation Account”** means an Account established by the Trustee in respect of a Member in accordance with Rule 10.2;

**“Member Pension Account”** means an Account established by the Trustee in respect of a Member in accordance with Rule 10.3;



**“Member’s Benefit”** is the net benefit standing to the credit of all of the Member Accounts in respect of a Member;

**“Net Loss”** means, at the point in time determined in accordance with Rule 11.1, the Investment Earnings after deduction of any losses of the Fund and any amount for Tax, expenses or liabilities of the Fund in accordance with Rule 11.3, where that amount is less than zero;

**“Net Profit”** means, at the point in time determined in accordance with Rule 11.1, the Investment Earnings after deduction of any losses of the Fund and any amount for Tax, expenses or liabilities of the Fund in accordance with Rule 11.3, where that amount is greater than zero;

**“Net Value Decrease”** means:

- (a) the total value of the Fund at a point in time determined according to Rule 11.2(a);
- (b) minus the total value of the Fund:
  - (i) at the immediately previous time the Fund was valued in accordance with Rule 11.2(a); or
  - (ii) if the Fund has not been previously valued, zero,

where that amount is less than zero;

**“Net Value Increase”** means:

- (a) the total value of the Fund at a point in time determined according to Rule 11.2(a);
- (b) minus the total value of the Fund:
  - (i) at the immediately previous time the Fund was valued in accordance with Rule 11.2(a); or
  - (ii) if the Fund has not been previously valued, zero,

where that amount is greater than zero;

**“Non Binding Nomination”** means a nomination made by a Member under Rule 17.1 which is not binding on the Trustee;

**“Non-Employer Sponsored Member”** means a Member who is not, at the relevant time, an Employee, or whose Employer is not making Contributions to the Fund;

**“Old-Age Pensions”** has the same meaning as in the SIS Act;

**“Pension”** means a pension that meets the requirements of Regulation 1.06 of the SIS Regulations;

**“Payment Split”** has the same meaning as under the Family Law Act;

**“Permanent Incapacity”** means, in relation to a Member who has ceased to be Gainfully Employed, ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;

**“Policy”** means any policy of assurance, including a policy on the life of a Member for one or more of endowment, term, disability, accident or sickness insurance and any policy which provides that the benefits under that policy are payable to the Trustee in its capacity as trustee of the Fund, but not any policy which is prohibited to be acquired or held in accordance with the Superannuation Law;

**“Preservation Age”** means such age for a Member as set out below:

<i>Date of Birth</i>	<i>Preservation age</i>
Before 1 July 1960	55
Between 1 July 1960 and 30 June 1961	56
Between 1 July 1961 and 30 June 1962	57
Between 1 July 1962 and 30 June 1963	58
Between 1 July 1963 and 30 June 1964	59
After 30 June 1964	60

or such other age as prescribed in the Superannuation Law;

**“Preserved Benefit”** means all or part of any Member’s Benefit which is required by the Superannuation Law to be preserved for the Member in the Fund or in another Entity until the Member has reached Retirement Age or in such other circumstances as are permitted by the Superannuation Law;

**“Receiving Spouse”** has the same meaning as in Division 6.7 of the SIS Regulations;

**“Regulated Superannuation Fund”** has the same meaning as in the SIS Act;

**“Regulator”** means, as the case requires, the Commission of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or such other regulatory body or person that has responsibility for administering the laws governing superannuation funds or their ability to obtain income tax concessions;

**“Related Party”** has the same meaning as in the SIS Act;

**“Relative”** has the same meaning as in the SIS Act;

**“Reserve Account”** means an Account established by the Trustee under Rule 10.4;

**“Responsible Officer”**, in relation to a Corporate Trustee, has the same meaning as in the SIS Act;

**“Retirement Age”** means where a Member:

- (a) reaches 65 years of age;

- (b) terminates Gainful Employment on or after age 60;
- (c) retires on or after attaining the Preservation Age and where the Trustee is reasonably satisfied that the member intends never to become Gainfully Employed on at least a Part-Time basis; or
- (d) as otherwise prescribed in the Superannuation Law;

**“Reversionary Pension”** means a Pension that:

- (a) was being paid to a Member prior to that Member’s death; and
- (b) which is continued to be paid to a Dependant or Legal Personal Representative of that Member after his or her death;

**“Rule”** means a provision of this Trust Deed and any alteration to, addition to, variation or incorporation of this Trust Deed made from time to time;

**“Schedule”** means the Schedule to this Trust Deed;

**“Severe Financial Hardship”** has the same meaning as in Regulation 6.01 of the SIS Regulations;

**“SIS Act”** means the *Superannuation Industry (Supervision) Act 1993* (Cth);

**“SIS Regulations”** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth);

**“Specific Investment”** means that portion of a particular asset or investment that is held by the Trustee for specific Beneficiaries, classes of Beneficiaries or Pensions in accordance with Rule 8.4;

**“Superannuation Complaints Tribunal”** means the superannuation complaints tribunal established under the *Superannuation (Resolution of Complaints) Act 1993* (Cth);

**“Superannuation Guarantee Charge”** has the same meaning as under the *Superannuation Guarantee (Administration) Act 1992* (Cth);

**“Superannuation Law”** means

- (a) the SIS Act and SIS Regulations, and includes any regulations, instruments, declarations, orders, or rulings made under the SIS Act or SIS Regulations, or regulations, and any replacements of any of those; and
- (b) any other present or future legislation, regulations, declarations or orders in respect of the regulation or taxation of superannuation funds or contributions paid to or benefits paid from a superannuation fund, including but not limited to:
  - (i) the Tax Act;

- (ii) the Family Law Act;
- (iii) the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth);
- (iv) the *Superannuation (Resolution of Complaints) Act 1993* (Cth);
- (v) the *Corporations Act 2001* (Cth);
- (vi) the Contributions Tax Acts; and
- (vii) the Guarantee Act.

**SMSF** means a self managed superannuation fund as defined in section 17A of the SIS Act;

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), and all regulations, declarations, rulings or orders made or issued under those Acts;

**“Tax”** means any tax or charge, including GST, any tax assessed pursuant to or under any one or more of the Contributions Tax Acts, income tax levied under the Tax Act or any other State or Federal taxes, charges, duties, levies or imposts;

**“Temporary Incapacity”** means, in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), ill-health (whether physical or mental) that causes the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;

**“Transition to Retirement Income Stream”** has the same meaning as in Regulation 6.01 of the SIS Regulations;

**“Transferred Amount”** means an amount or asset that, in accordance with Rule 15, is:

- (a) transferred or rolled over to the Fund from an Account or Entity; or
- (b) transferred or rolled over from the Fund to an Account or Entity;

**“Termination Date”** means the earliest of:

- (a) the date an event in Rule 24.2 first occurs; and
- (b) the expiry of the period in Rule 24.1;

**“Trust Deed”** means this Trust Deed including the Schedule and Annexures and any alteration to, addition to or variation of this Trust Deed made from time to time;

**“Trustee”** means the person set out in item 2 of the Schedule, or such other trustee or trustees of the Fund appointed in accordance with Rule 4.2;

**“Trustee Acts”** includes, as the context requires, the *Trustee Act 1958* (Vic), *Trustee Act 1925* (NSW), *Trusts Act 1973* (Qld), *Trustee Act 1936* (SA), *Trustees Act 1962* (WA) and the *Trustee Act 1898* (Tas);

**“Unclaimed Money”** has the same meaning as under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth);

**“Unrestricted Non Preserved Benefit”** has the same meaning as under the SIS Act;

**“WA Property”** means an estate or interest in real property situated in Western Australia.

## 2. INTERPRETATION

### 2.1 Superannuation Law is paramount

With paramount effect, this Trust Deed shall be read and construed to ensure that this Trust Deed complies with the Superannuation Law, qualifies or remains as a Regulated Superannuation Fund, SMSF and a Complying Superannuation Fund and/or qualifies the Fund for the maximum Tax concessions available as follows:

- (a) to the extent that the Superannuation Law contains provisions that:
  - (i) empower the Trustee to do or not to do something that the Trustee would not otherwise have power to do;
  - (ii) require the Rules to contain a provision that is not contained in the Rules, or require the Rules to not contain a provision which the Rules do contain;
  - (iii) require compliance by the Trustee with the minimum requirements of the Superannuation Law; or
  - (iv) impose a less onerous requirement than one contained in these Rules;

those provisions shall, having regard to the Fund’s status at the relevant time, be incorporated or shall be deemed to be incorporated into these Rules to that extent as if they were set out in these Rules, and shall, to the extent of any inconsistency, prevail over the express provisions of these Rules;
- (b) if a provision of the Superannuation Law incorporated by Rule 2.1(a) is no longer required to be incorporated by Rule 2.1(a), then that provision shall cease to have effect from the time the provision is no longer required to be incorporated;
- (c) the Trustee is not to be taken to be in breach of these Rules if:
  - (i) the Trustee is in breach of a provision of the Superannuation Law incorporated by Rule 2.1(a); and
  - (ii) the Regulator waives or does not enforce a contravention of that provision;

- (d) notwithstanding Rule 2.1(a), the Trustee may by resolution declare that any provision of the Superannuation Law which would otherwise be so incorporated by Rule 2.1(a) shall not be so incorporated into these Rules.

## 2.2 Interpretation

- (a) In this deed and unless the context otherwise requires:
- (i) headings are for convenience only and shall not affect the interpretation of this Trust Deed;
  - (ii) words denoting one gender include other genders;
  - (iii) words denoting the singular number include the plural number and vice versa;
  - (iv) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (v) the meaning of general words is not limited by specific examples introduced by "includes", "including", "for example", "such as" or similar expressions;
  - (vi) a reference to a document or instrument, including this Trust Deed, includes all of its Rules, clauses, paragraphs, recitals, schedules and annexures and includes the document or instrument as amended, varied, novated, supplemented or replaced from time to time;
  - (vii) a reference to a statute, code, law, regulations or similar instrument includes a reference to any regulations or other instruments made under it, and any consolidations, amendments, re-enactments or replacements of any of them;
  - (viii) a reference to a person includes an individual, body corporate, partnership, entity, firm, trust, organisation or group;
  - (ix) a reference to powers includes any rights, trusts, decisions, discretions, appointments, obligations or authorities as appropriate to the context;
  - (x) a reference to exercised includes made, done, performed, approved or concurred as appropriate to the context;
  - (xi) all monetary amounts are in Australian dollars, unless otherwise stated, and a reference to payment means payment in Australian dollars; and
  - (xii) terms used in these Rules that have not been defined but are used in the Superannuation Law, shall take the same meaning as in the Superannuation Law.
- (b) Subject to Rule 2.1, if any dispute arises as to the interpretation of any of the Rules or provisions of this Trust Deed or as to the rights or obligations of a

Member or any other person, the decision of the Trustee as to the interpretation is final and binding.

### 2.3 Severability

If any Rule or part thereof is judged to be invalid for any reason, such invalidity shall not affect the validity or operation of the remainder of this Trust Deed and such invalid Rule or part thereof shall be deemed to have been deleted from this Trust Deed.

### 2.4 Governing law and jurisdiction

- (a) This Trust Deed shall in all respects be governed and construed in accordance with the laws of the State or Territory in which it is executed.
- (b) The Trustee, Members, Beneficiaries, Employers and any other person in respect of whom this Trust Deed applies submit to the exclusive jurisdiction of the courts or tribunals of the State or Territory in which this Trust Deed is executed.

## PART B - THE FUND

### 3. STRUCTURE AND PURPOSE OF THE FUND

#### 3.1 Commencement of the Fund

The Fund was constituted on the Commencement Date.

#### 3.2 Fund vested in the Trustee

The Fund is at all times to be vested in the Trustee and must be held on trust for the objects and the purposes of the Fund and subject to the Rules, Covenants and powers contained in this Trust Deed.

#### 3.3 Purpose of the Fund

From the date on which the Fund becomes a Regulated Superannuation Fund, the primary purpose of the Fund shall be:

- (a) if the Trustee is a Corporate Trustee – the payment of superannuation benefits to Members and their Dependants; or
- (b) if the Trustee is not a Corporate Trustee – the payment of Old-Age Pensions to Members and their Dependants,

in accordance with the requirements of these Rules.

#### 3.4 Objects of the Fund

The Fund shall consist of all cash, investments and other property (including Contributions and Transferred Amounts) held from time to time by or on behalf of the Trustee pursuant to this Trust Deed.

## PART C - THE TRUSTEE

### 4. APPOINTMENT AND REMOVAL OF THE TRUSTEE

#### 4.1 Trustee requirements

- (a) Unless otherwise permitted by the Superannuation Law, where the Fund is a SMSF with only one Member, the Trustee must either be:
- (i) a Corporate Trustee where:
    - (A) the Member is the sole director of the Corporate Trustee; or
    - (B) the Member is one of only two directors of the Corporate Trustee and the other member is either a Relative of the Member or an individual who is not an Employer of the Member; or
  - (ii) two individuals comprising:
    - (A) the Member; and
    - (B) either a Relative of the Member or an individual who is not an Employer of the Member.
- (b) Unless otherwise permitted by the Superannuation Law, where the Fund is a SMSF with two to four members, the Trustee must either be:
- (i) a Corporate Trustee where:
    - (A) each Member is a director of the Corporate Trustee;
    - (B) each director of the Corporate Trustee is a Member; and
    - (C) no Member is an Employee of another Member; or
  - (ii) comprised of individuals so that:
    - (A) each Member is a Trustee;
    - (B) every individual who is a Trustee is a Member; and
    - (C) no Member is an Employee of another Member, unless the Members are Relatives.
- (c) Unless otherwise permitted by the Superannuation Law, where the Fund is not a SMSF the Trustee must be:
- (i) an Approved Trustee; or
  - (ii) such persons that comply with the equal representation rules contained in Part 9 of the SIS Act.



- (d) Notwithstanding this Rule 4.1, the Legal Personal Representative of a Member, or for a Member aged under 18 without a Legal Personal Representative, a parent or guardian of the Member, can be appointed as Trustee, or as a director of the Corporate Trustee, in accordance with Rule 4.2 in replacement for the Member in circumstances where if such person was so appointed, the Fund would remain a SMSF under the Superannuation Law.

#### 4.2 Appointment and removal of a Trustee

- (a) Subject to the requirements of the Superannuation Law and the Rules, a majority of the Members may, by resolution or in writing:
- (i) remove any Trustee;
  - (ii) appoint any replacement Trustee; or
  - (iii) where the Trustee is comprised of individuals, appoint any additional individual as Trustee.
- (b) The Legal Personal Representative of a Member who has died, lost legal capacity, or appointed that Legal Personal Representative as an attorney under an enduring power of attorney, or in the case of a Member aged under 18 without a Legal Personal Representative, a parent or guardian of the Member, may exercise that Member's power under Rule 4.2(a) on behalf of the Member.
- (c) A person cannot be appointed as a Trustee, or as the director of a Corporate Trustee, if they are disqualified under Rule 4.5.
- (d) Any vacancy in the office of a Trustee, or a director of a Corporate Trustee, shall be filled as soon as practicable after such vacancy arises.

#### 4.3 Consent to appointment as Trustee or as director of the Corporate Trustee

A person shall only be appointed as a Trustee or as a director of the Corporate Trustee if:

- (a) that person consents in writing to the appointment and agrees to be bound by the provisions of these Rules; and
- (b) that person executes any declaration or other document required under the Superannuation Law.

#### 4.4 Ceasing to act as a Trustee or as a director of the Corporate Trustee

A person shall immediately cease to be a Trustee of the Fund, or a director of the Corporate Trustee, if:

- (a) the person resigns by notice in writing to all of the Members;
- (b) the person is removed by the exercise of the power in Rule 4.2(a);

- (c) the person ceases to be a Member of the Fund under Rule 12.5;
- (d) the person is or becomes a disqualified person under Rule 4.5;
- (e) being an individual, he or she dies or loses his or her legal capacity; or
- (f) the person is otherwise disqualified, suspended or removed under the Superannuation Law.

#### 4.5 **Disqualified from acting as Trustee or a director of the Corporate Trustee**

- (a) An individual shall be a disqualified person if:
  - (i) at any time, the individual has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
  - (ii) at any time, a civil penalty order was made in relation to the individual;
  - (iii) the individual is an insolvent under administration; or
  - (iv) in such other circumstances as are prescribed under the Superannuation Law or another law.
- (b) A Corporate Trustee shall be a disqualified person if:
  - (i) a resolution is passed or a petition is presented for its winding up or for it to be placed into receivership or liquidation;
  - (ii) a receiver or receiver and manager of its assets is appointed;
  - (iii) an administrator has been appointed in respect of the company;
  - (iv) a Responsible Officer of the Corporate Trustee is or becomes a disqualified person under Rule 4.5(a); or
  - (v) in such other circumstances as are prescribed under the Superannuation Law or another law.

#### 4.6 **Transfer of assets on ceasing as Trustee**

Any person who acts as Trustee must, on ceasing to be Trustee:

- (a) do all things necessary to vest the Fund in the remaining or new Trustee or Trustees; and
- (b) must promptly deliver up all records relating to or in respect of the Fund in that person's possession or control to the remaining or new Trustee or Trustees.

#### 4.7 Exclusion of Trustee Acts in relation to Trustee

Notwithstanding any provision in the Trustee Acts but subject to the provisions of the Superannuation Law and these Rules, a single company or any number of individuals may at any time be appointed as Trustee of the Fund.

### 5. PERFORMANCE OF THE ROLE OF TRUSTEE

#### 5.1 Role of Trustee

- (a) The Trustee must perform and observe the Rules, Covenants, conditions and obligations of this Trust Deed as set out in the Trust Deed or as incorporated by the Superannuation Law or Rule 2.1.
- (b) Notwithstanding any other provision in this Trust Deed, the Trustee shall use its best endeavours to ensure that the Fund is maintained as a SMSF and as a Complying Superannuation Fund.

#### 5.2 Exercise of powers by Trustee

Subject to the Superannuation Law and these Rules, the Trustee:

- (a) in administering the Fund and in exercising any powers, shall have an absolute and uncontrolled discretion at all times, except that the Trustee shall not discriminate against any person in a way which infringes any law of the Commonwealth or of a State or Territory law, that is applicable to the Fund, in respect of discrimination;
- (b) may exercise any power notwithstanding that the Trustee, any individuals acting as Trustee, or any Responsible Officer or shareholder of a Corporate Trustee has a direct, indirect or personal interest in the exercise of the power;
- (c) may contract or agree in any form with the Trustee in its own right or in its capacity as trustee of any other trust in any matter; and
- (d) is not obliged to give reasons for any act or omission of, or the exercise of any powers by, the Trustee.

#### 5.3 Manner in which Trustee may exercise powers

- (a) All of the powers granted to or conferred on the Trustee by, under or for the purposes of this Trust Deed may be fully and effectively exercised by the Trustee:
  - (i) in the case of a Corporate Trustee:
    - (A) by resolution of the Directors; or
    - (B) by any person or persons having the authorisation to act on behalf of the Corporate Trustee,

in accordance with the constitution of the Corporate Trustee; or

(ii) in the case of one or more individuals acting as the Trustee, as follows:

(A) by a resolution approved at a meeting by two-thirds of the Trustees; or

(B) by a resolution signed in writing by two-thirds of the Trustees,

provided it complies with any requirements of the Superannuation Law.

- (b) Where there are 2 or more individual persons acting as Trustee, any one of the Trustee is authorised on behalf of all the Trustees to execute, sign, enter into and acknowledge all cheques, negotiable instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents as validly and effectually as all the Trustees could do.
- (c) The Trustees, or the directors of a Corporate Trustee, shall regulate and conduct meetings of the Trustees or the directors of a Corporate Trustee as they see fit, subject in the case of a Corporate Trustee to its constitution.
- (d) Where a director of a Corporate Trustee is required to cease to be a director, the other directors of the Corporate Trustee shall use their best endeavours to terminate that person's directorship.

## 6. TRUSTEE'S GENERAL POWERS AND DUTIES

### 6.1 General powers of the Trustee

Subject to the Superannuation Law and these Rules, the Trustee shall have complete management and control of the Fund and may do anything it considers appropriate to administer the Fund and may exercise any powers, including the power, in addition to any other powers in this Trust Deed:

- (a) to establish, maintain, operate and close an Account;
- (b) to pay out of the Fund all Taxes, costs, expenses and outgoings of and incidental to the administration, management or winding up of the Fund;
- (c) to engage or appoint such persons as the Trustee considers appropriate for the proper administration of the Fund, and to cease the engagement of or remove any such person, provided that the appointment of an Investment Manager, Custodian, Approved Auditor or Actuary shall be in writing and no other person shall be appointed to perform those roles, and provided the appointment of an Investment Manager or Custodian is in accordance with the requirements of the Superannuation Law;
- (d) to enter into such agreements, contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund;
- (e) to appoint any person as the representative or attorney of the Trustee to exercise all or any of the powers conferred on the Trustee;

- (f) to carry on a business;
- (g) to take and act on the advice of:
  - (i) a barrister or solicitor in relation to the interpretation of any provision of this Trust Deed, or any other document, statute, regulation or provision relating to the Fund, or the administration of the Fund; and
  - (ii) an accountant, Actuary, Approved Auditor, superannuation consultant or any other adviser in relation to the administration of the Fund,
 without being bound to follow that advice;
- (h) to commence, carry on, defend, compound or discontinue any legal proceedings by or against the Fund or the Trustee that the Trustee determines to undertake for the proper administration of the Fund or to protect the rights of Beneficiaries, including the recovery of any damages against any person;
- (i) to open, maintain and operate such bank accounts as the Trustee determines;
- (j) to sell the assets of the Fund by private sale or public auction, for cash or on terms, in such other manner and on such other terms as the Trustee determines and in connection with any sale transfer any assets of the Fund to another person;
- (k) to borrow any sum of money for the purposes permitted by the Superannuation Law (including for the purposes of sections 67A and 67B of the SIS Act) and secure the repayment any money borrowed in such manner as permitted by the Superannuation Law, upon such terms and conditions and at such rate of interest as the Trustee determines, and in respect of any borrowing no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed;
- (l) to give guarantees or indemnities for the payment of money or the performance of obligations by any person, whether or not a Beneficiary, or associated in any way with the Fund, the Trustee, the Beneficiaries or any directors or officers of the Corporate Trustee, on such terms and conditions, for such reasons and giving such security as permitted by the Superannuation Law as the Trustee may decide;
- (m) to self-insure, insure, re-insure and keep insured as it thinks fit:
  - (i) any liability of the Trustee, or if a Corporate Trustee, its directors or officers, or the Fund; and
  - (ii) any risk or contingency of the Fund;
- (n) to elect that the Fund become a Regulated Superannuation Fund, and to do all such things and perform such acts necessary to enable that election to be made;

- (o) to do all such things and perform such acts necessary to enable the Fund to become and be maintained as a Complying Superannuation Fund;
- (p) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund;
- (q) to do all things necessary to act on a direction given by a Court, the Regulator or the Superannuation Complaints Tribunal;
- (r) to do all things necessary to comply with the Covenants;
- (s) to do all things necessary to give effect to agreements or orders (including to superannuation agreements, termination agreements and orders, Splitting Orders, flagging agreements and orders, flag-lifting agreements and orders and payment flags and splits as those terms are defined in the Family Law Act) made pursuant to the Family Law Act, and the Trustee shall be entitled to charge reasonable fees and charges for any actions taken by the Trustee provided such fees are payable or borne by the Member or Non-Member Spouse as determined by the Trustee in accordance with the Family Law Act;
- (t) to register for the GST and to do all such things and perform such acts as the Trustee, in its absolute discretion determines to be appropriate in complying with the obligations imposed under the GST;
- (u) to raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument, and to secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit, provided that any money raised by the Trustee will form part of the Fund; and
- (v) to accept Contributions and Transferred Amounts into the Fund, and pay, transfer or roll over Transferred Amounts or Member's Benefits out of the Fund;
- (w) to change the name of the Fund without amending this Trust Deed;
- (x) to do those things permitted or required by the Superannuation Law or the Contributions Tax Acts; and
- (y) generally to do all such things and perform such acts as the Trustee determines to be appropriate in the administration of the Fund and the performance of its obligations under this Trust Deed.

## 6.2 Remuneration of the Trustee

- (a) Where the Fund is a SMSF, the Trustee or a director of the Corporate Trustee shall not be entitled to receive any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund unless permitted by the Superannuation Law or this Trust Deed.

- (b) Where the Fund is not an SMSF, the Trustee shall be entitled to be paid and retain out of the Fund such remuneration as it determines to be reasonable.

### 6.3 **Directions of Regulator or tribunal**

Without prejudice to the Trustee's right of appeal and unless determined otherwise by the Trustee, the Trustee must comply with any direction, order or requirement of the Regulator or a Tribunal.

### 6.4 **Complaints and enquiries**

Where required to by the Superannuation Law, the Trustee must implement and administer an arrangement for a Beneficiary of the Fund to make enquiries into, or complaints about, the operation or management of the Fund in respect of that Beneficiary.

### 6.5 **Ceasing to be a SMSF**

The Trustee shall give written notice to the Commissioner of Taxation within 21 days (or such other period as the Superannuation Law may allow) of the Trustee becoming aware that the Fund has ceased to be an SMSF.

## 7. **AUDIT, RECORD KEEPING AND DISCLOSURE REQUIREMENTS**

### 7.1 **Audits, reports and records**

To the extent and on the frequency required by, and in accordance with, the Superannuation Law, the Trustee shall:

- (a) keep such records and accounts for the Fund as required to correctly record and explain the transactions of the Fund and the financial position of the Fund, including a minute book in which proceedings and resolutions of the Trustee, or the directors of a Corporate Trustee, are recorded;
- (b) prepare financial and other statements, returns and reports in respect of the Fund;
- (c) arrange for the timely audit of the Fund and its financial and other statements and other information and records by an Approved Auditor, and ensure that Approved Auditor provides all necessary certificates and reports required by the Superannuation Law;
- (d) appoint an Actuary to conduct an actuarial investigation and provide all necessary certifications; and
- (e) arrange for the safe retention of records, minute books, statements, reports and all other information in respect of the Fund or the Trustee including:
  - (i) the retention of the accounting and taxation records for at least 5 years or for such other period required by the Superannuation Law; and

- (ii) the retention of all other Fund records, including copies of all reports given to Members and records of the Trustee, for at least 10 years or for such other period required by the Superannuation Law.

## 7.2 Production and disclosure of information

- (a) The Trustee must, to the extent required by the Superannuation Law, produce and/or disclose, or cause to be disclosed, any information or documentation required by the Superannuation Law to be disclosed to:
  - (i) a Member (including a former, prospective and future Member);
  - (ii) a Beneficiary;
  - (iii) an Employer;
  - (iv) the Regulator;
  - (v) the Actuary;
  - (vi) the trustee of any Entity to which a transfer is made;
  - (vii) the accountant;
  - (viii) an Approved Auditor; and
  - (ix) such other persons specified in the Superannuation Law.
- (b) The Trustee must do all things necessary to comply with its obligations to the Superannuation Complaints Tribunal under the *Superannuation (Resolution of Complaints) Act 1993* (Cth).
- (c) A copy of this Trust Deed, and any other document required by the Superannuation Law to be available for inspection, must be available for inspection by any Beneficiary at all reasonable times.
- (d) Other than as required by this Rule 7.2, no person shall be entitled to obtain information or documentation relating to the Fund unless the Trustee determines to release that information or documentation.
- (e) Subject to this Trust Deed and the Superannuation Law, the Trustee and the directors of any Corporate Trustee must, to the extent possible, treat information obtained in the course of administering the Fund as confidential.

## 8. INVESTMENT POWERS AND DUTIES

### 8.1 Investment strategy

- (a) The Trustee must invest according to one or more written investment strategies for the Fund formulated from time to time having regard to the whole of the circumstances of the Fund and in accordance with the requirements of the Superannuation Law.



- (b) Where the Trustee establishes one or more Reserve Accounts, the Trustee must invest in respect of those Reserve Accounts in accordance with a separate written investment strategy formulated from time to time that is consistent with the Fund's investment strategies and having regard to the purpose of the Reserve Account, the prudential requirements of the Fund, the capacity of the Fund to discharge its liabilities and the whole of the circumstances of the Fund, and in accordance with the requirements of the Superannuation Law.

## 8.2 Investment powers of the Trustee

- (a) Subject to the Superannuation Law and this Rule 8, the Trustee may invest directly or indirectly the whole or any part of the moneys or assets of the Fund not presently required for other purposes in any manner or form of investment in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the money or assets, including:
- (i) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds;
  - (ii) the purchase of, improvement of or mortgages of real property of any tenure whether improved or unimproved;
  - (iii) on loan or deposit with any bank, building society, company, partnership or other person or institution, either with or without security and on such terms as the Trustee determines;
  - (iv) the acquisition, subscription or otherwise of any shares, stock, options, rights, debentures, bonds, unsecured notes or other securities of any kind including commodities and subject to any terms or liabilities;
  - (v) the acquisition, subscription or otherwise of units or sub-units of any unit trust;
  - (vi) bills of exchange and other negotiable instruments; and
  - (vii) in any Annuity and any chose in action, interest for life or any lesser term or any reversion or otherwise arising and whether as the original holder or by assignment;
  - (viii) the purchase or the acquisition by way of lease finance or hire purchase or otherwise of any plant, equipment or other property for lease, or rental, or hire purchase or sale to any person; and
  - (ix) any other investments permitted by the Superannuation Law.
- (b) The Trustee shall have power to vary, transpose or replace any investment.
- (c) The Trustee may, subject to the Superannuation Law, hold any investment in the names that the Trustee determines, including in the name of an Investment Manager or Custodian.

### 8.3 Policies of insurance for Members

- (a) The Trustee may effect any Policy, invest or apply the whole or any part of the Fund in the payment of premiums of any Policy or self-insure to the effect of any Policy, including a Policy in which the Trustee has a legal or equitable interest, and may secure the Member's Benefit of a Member by means of any Policy.
- (b) The Trustee may effect a Policy with any company, on any terms and conditions and for such periods as the Trustee determines, including by accepting the assignment of any Policy.
- (c) The Trustee has the power to continue any Policy or self-insurance for such periods as the Trustee determines and to discontinue or surrender such Policy or self-insurance.
- (d) The Trustee may debit any premiums for any Policy in respect of one or more Members to the Member Accounts of those Members in such proportion as the Trustee determines.
- (e) Unless otherwise determined by the Trustee, the proceeds of any Policy shall be credited to the Member Accounts of those Members from which, and in the same proportion as, any premiums for the Policy were debited.

### 8.4 Specific Investment

Subject to the Superannuation Law and this Rule 8, the Trustee may, without the consent of any Beneficiary, hold particular assets or investments in such proportions as the Trustee determines for particular Beneficiaries, classes of Beneficiaries or Pensions, and may at any time cease to hold such assets or investments in that way.

### 8.5 Restrictions on investment powers

- (a) The Trustee must not invest in any investment which:
  - (i) is not permitted by the Superannuation Law; or
  - (ii) would cause the Fund to cease being a Complying Superannuation Fund.
- (b) Without limiting Rule 8.5(a) and unless otherwise permitted by the Superannuation Law, the Trustee is not permitted to:
  - (i) acquire assets from a Related Party of the Fund;
  - (ii) invest in an asset of the Fund subject to a lease or lease arrangement between the Trustee of the Fund and a Related Party of the Fund;
  - (iii) invest in In-House Assets in excess of the maximum limit provided in the Superannuation Law; or

- (iv) lend any part of the moneys or assets of the Fund, or provide financial assistance, to Members or Relatives of Members.
- (c) Notwithstanding any other provision in this Deed, where WA Property is acquired by the Fund from a Member of the Fund (the "Transferor Member"), either by sale or by way of In-Specie Contribution, such asset:
- (i) shall be held in the Member Account of the Transferor Member in proportion to their interests in the WA Property immediately prior to the sale or In-Specie Contribution as a Specific Investment in accordance with this Rule 8.5(c);
  - (ii) shall not be transferred out of the Member Account of the Transferor Member or pooled with other contributions or assets of another Member or Members; and
  - (iii) shall be provided in-specie to the Transferor Member as a retirement benefit in accordance with the provisions of this Trust Deed or sold and the cash proceeds from the sale allocated to the Member Account of Transferor Member;
  - (iv) shall be maintained such that only the Transferor Member has an interest in the WA Property whilst the Fund owns the WA Property.
- (d) Notwithstanding any other provision in this Deed, where WA Property is acquired by the Fund from more than one Member of the Fund (the "Transferor Members"), either by sale or by way of In-Specie Contribution, such asset:
- (i) shall be held in the Member Accounts of the Transferor Members in proportion to their interests in the WA Property immediately prior to the sale or In-Specie Contribution as a Specific Investment in accordance with this Rule 8.5(d);
  - (ii) shall not be transferred out of the Member Accounts of the Transferor Members or pooled with other contributions or assets of another Member or Members; and
  - (iii) shall be provided to the Transferor Members as a retirement benefit in accordance with the provisions of this Trust Deed or sold and the cash proceeds from the sale allocated to the Member Accounts of the Transferor Members in proportion to their interests in the WA Property;
  - (iv) shall be maintained such that only the Transferor Members have an interest in the WA Property whilst the Fund owns the WA Property.
- (e) The Trustee shall not assign, or give a charge over, or in relation to, an asset of the Fund other than in the circumstances set out in the Superannuation Law.

## 8.6 Disclosure

Where the Trustee, or any director of the Corporate Trustee, has an indirect or direct interest in any investment, or may benefit directly or indirectly from the investment, that person must disclose that interest if required to, and in the manner required by, the Superannuation Law.

## 9. LIABILITY AND INDEMNIFICATION OF THE TRUSTEE

### 9.1 Liability of the Trustee

- (a) Subject to Rule 9.1(b), the Trustee, and each Responsible Officer of the Corporate Trustee, shall not be liable for any loss, damage, expense or detriment incurred by any person in connection with the Fund, whether or not it is caused by any act, omission or mistake of the Trustee or a Responsible Officer of the Corporate Trustee.
- (b) Rule 9.1(a) does not apply to the extent that the liability:
  - (i) was due or attributable to dishonesty or an intentional or reckless failure to exercise the degree of care required of a trustee or a Responsible Officer of a trustee on the part of the Trustee or the Responsible Officer of the Corporate Trustee;
  - (ii) is not able to be excluded fully or partially by the Superannuation Law or any other law.

### 9.2 Indemnification of the Trustee

- (a) Subject to Rule 9.2(b), the Trustee and each Responsible Officer of the Corporate Trustee shall be indemnified out of the Fund against all liabilities incurred by them.
- (b) The Trustee and each Responsible Officer of the Corporate Trustee shall not be indemnified out of the Fund:
  - (i) in circumstances where the Trustee, or the directors or officers of the Corporate Trustee are liable because of Rule 9.1(b);
  - (ii) for any penalty imposed on them under the Superannuation Law; or
  - (iii) where the law of the Commonwealth, or of a State or Territory, prevents such indemnification.

**PART D - ACCOUNTS AND FINANCIAL ADMINISTRATION OF THE FUND****10. ACCOUNTS OF THE FUND****10.1 Member Account**

- (a) The Trustee must establish and maintain at least one Member Account in respect of each Member.
- (b) The Trustee may establish more than one Member Account, including more than one of each type of Member Account, in respect of each Member.
- (c) The Member Accounts in respect of each Member must record, either in a single Member Account or across multiple Member Accounts:
  - (i) the Contributions accepted in respect of that Member in accordance with Rule 14;
  - (ii) the Transferred Amounts in respect of that Member in accordance with Rule 15;
  - (iii) the proportion of the Net Profits or Net Losses of the Fund credited or debited in respect of that Member in accordance with Rule 11.1;
  - (iv) the proportion of the Net Value Increases or Net Value Decreases of the Fund credited or debited in respect of that Member in accordance with Rule 11.2;
  - (v) the identity and proportion of any Specific Investments held in respect of that Member in accordance with Rule 8.4 as varied from time to time;
  - (vi) the proportion of any proceeds of any Policy credited in respect of that Member in accordance with Rule 8.3;
  - (vii) the proportion of any premiums paid for any Policy debited to the Member Accounts in respect of that Member in accordance with Rule 8.3;
  - (viii) the amount of any Member's Benefit paid in respect of that Member in accordance with Rules 16 and 18;
  - (ix) any amounts deducted or withheld from the Member Accounts in respect of that Member for Taxes, expenses or liabilities in accordance with Rule 11.3;
  - (x) any amount debited in respect of that Member under a Contributions Splitting Application in accordance with Rule 14.10;
  - (xi) any amount debited in respect of that Member under a Payment Split in accordance with Rule 22; and

- (xii) any other amount that is required by this Trust Deed, the Superannuation Law or by the Trustee to be credited or debited to, or recorded in, a Member Account.
- (d) Notwithstanding this Rule 10, the Trustee must not credit or debit to a Member Account any amount where to do so would breach the requirements of the Superannuation Law.

## 10.2 Member Accumulation Account

- (a) The Trustee may establish and maintain a Member Accumulation Account.
- (b) Where a Member Accumulation Account is established, the Trustee must record in that Member Accumulation Account every thing the Trustee considers is required to be recorded or is otherwise required to be recorded under Rule 10.1(c) that occurs in respect of that Member Accumulation Account.

## 10.3 Member Pension Account

- (a) For each Pension determined to be paid by the Trustee to a Member, and before the Pension commences, the Trustee may:
  - (i) establish a Member Pension Account for that Member; and
  - (ii) transfer or roll over to that Member Pension Account an amount and/or assets, including any Specific Investments, equal in value to the proportion of the Member's Benefit that is to be used to provide that Pension to the Member, as determined by the Trustee.
- (b) The Trustee must record in a Member Pension Account:
  - (i) the Transferred Amount credited in accordance with Rule 10.3(a)(ii);
  - (ii) the proportion of any Specific Investments held in respect of that Member Pension Account in accordance with Rule 10.3(a)(ii);
  - (iii) subject to Rule 10.3(c), the Transferred Amounts in respect of that Member Pension Account in accordance with Rule 15;
  - (iv) subject to Rule 10.3(c), the proportion of any Specific Investments held in respect of that Member Pension Account in accordance with Rule 8.4;
  - (v) the proportion of the Net Profits or Net Losses of the Fund credited or debited in respect of that Member Pension Account under Rule 11.1;
  - (vi) the proportion of the Net Value Increases or Net Value Decreases of the Fund credited or debited in respect of that Member Pension Account under Rule 11.2;

- (vii) amounts debited to pay the Pension in respect of which that Member Pension Account was created;
  - (viii) any amount deducted, transferred or rolled over as a result of the commutation of a Pension in accordance with Rule 20;
  - (ix) any amounts deducted or withheld in respect of that Member Pension Account for Taxes, expenses or liabilities in accordance with Rule 11.3;
  - (x) any amount debited in respect of that Member under a Contributions Splitting Application in accordance with Rule 14.10;
  - (xi) any amount debited in respect of that Member under a Payment Split in accordance with Rule 22; and
  - (xii) any other amount that is required by the Trustee, this Trust Deed or the Superannuation Law to be credited or debited to, or otherwise recorded in, that Member Pension Account.
- (c) Unless otherwise permitted under the Superannuation Law, no amount or asset can be paid, transferred or rolled over to a Member Pension Account once a Pension has commenced.

#### 10.4 Reserve Account

- (a) Subject to the Superannuation Law, the Trustee may establish, maintain and operate one or more Reserve Accounts for the Fund on such basis as the Trustee in its discretion from time to time determines, including:
  - (i) as an investment reserve
  - (ii) as pension reserve for one or more Pensions;
  - (iii) as a reserve in respect of a particular Employer; or
  - (iv) as a reserve for contingent or future Tax, expenses or liabilities.
- (b) The Trustee may record in a Reserve Account:
  - (i) the proportion of the Net Profits or Net Losses of the Fund credited or debited in respect of that Reserve Account under Rule 11.1;
  - (ii) the proportion of the Net Value Increases or Net Value Decreases of the Fund credited or debited in respect of that Reserve Account under Rule 11.2;
  - (iii) any amounts deducted or withheld in respect of that Reserve Account for Taxes, expenses or liabilities in accordance with Rule 11.3;
  - (iv) the Transferred Amounts in respect of that Reserve Account in accordance with Rule 15;

- (v) any amount paid to an Employer in accordance with Rule 24.4;
  - (vi) any other amount that is required by the Trustee, this Trust Deed or the Superannuation Law to be credited or debited to, or otherwise recorded in, that Reserve Account.
- (c) The Trustee may record in a Reserve Account:
- (i) Transferred Amounts from another Entity in accordance with Rule 15 that are not in respect of a Member;
  - (ii) Contributions in accordance with Rule 14 that are not in respect of a Member;
  - (iii) the proportion of any proceeds of any Policy credited to the Fund in accordance with Rule 8.3 that are not in respect a Member;
  - (iv) the proportion of any premiums paid for any Policy paid by the Fund in accordance with Rule 8.3 that are not in respect of a Member;
  - (v) any amount in a Member Account that, in the Trustee's opinion, is not required or cannot be applied to pay Member's Benefits in respect of that Member; and
  - (vi) any other amount the Trustee determines to credit or debit to that Reserve Account.
- (d) If a Reserve Account is created by the Trustee in respect of an Employer, the Employer's consent must be obtained to any payment, transfer or roll over made by the Trustee from that Reserve Account.

#### 10.5 Other Accounts of the Fund

- (a) Subject to the Superannuation Law, the Trustee may establish such other accounts in the Fund for such purposes and on such terms and conditions as the Trustee shall determine, provided the Trustee complies with this Rule 10;
- (b) Unless otherwise determined by the Trustee, any other accounts established under Rule 10.5(a) do not form part of any Member Account or any Reserve Account.

### 11. EARNINGS, EXPENSES AND VALUATION OF THE FUND

#### 11.1 Profits and losses of the Fund

- (a) Subject to Rule 11.1(b) and the Superannuation Law, at the end of each financial year of the Fund, or at any other time required under the Superannuation Law or that the Trustee considers appropriate, the Trustee must credit the Net Profits or debit the Net Losses of the Fund to:
  - (i) the Member Accounts;



- (ii) any Reserve Accounts; and
- (iii) any Forfeiture Accounts,

in such proportions as the Trustee determines on a fair and reasonable basis, including having regard to the balance of such Accounts at the start of the period for which the Net Profits or Net Losses were calculated.

- (b) Subject to the Superannuation Law, that proportion of the Net Profits or Net Losses of the Fund that the Trustee determines as relating to each Specific Investment shall be credited or debited to:
  - (i) the relevant Member Accounts of those Beneficiaries; and
  - (ii) the relevant Member Pension Accounts in respect of those Pensions, for which, and in those proportions that, the Specific Investment is held.
- (c) The Trustee may credit or debit any interim amount that the Trustee determines in respect of any anticipated Net Profit or Net Loss to the Member's Account from which a Member's Benefit is being paid prior to the Net Profit or Net Loss being determined under Rule 11.1(a), and shall account for that interim amount in determining the Net Profit or Net Loss in accordance with Rule 11.1(a).

## 11.2 Valuation of the Fund

- (a) At the end of each financial year of the Fund, or at any other time required under the Superannuation Law or that the Trustee considers appropriate, the Trustee may make a valuation of all of the assets of the Fund, including any Policy other than a Policy in respect of life insurance, in such a manner as the Trustee determines.
- (b) Subject to Rule 11.2(c) and the Superannuation Law, the Net Value Increase or Net Value Decrease as a result of the valuation in Rule 11.2(a) shall be credited or debited to:
  - (i) the Member Accounts;
  - (ii) any Reserve Accounts;
  - (iii) any Forfeiture Accounts;

in such proportions as the Trustee determines on a fair and reasonable basis, including having regard to the balance of such Accounts at the start of the period for which the Net Value Increases or Net Value Decreases were calculated.

- (c) Subject to the Superannuation Law, that proportion of the Net Value Increase or Net Value Decrease of the Fund that the Trustee determines as relating to each Specific Investment shall be credited or debited to:

- (i) the relevant Member Accounts of those Beneficiaries; and
  - (ii) the relevant Member Pension Accounts in respect of those Pensions,
- for which, and in those proportions that, the Specific Investment is held.
- (d) The Trustee may credit or debit any interim amount that the Trustee determines in respect of any anticipated Net Value Increase or Net Value Decrease to the Member's Account from which a Member's Benefit is being paid prior to the Net Value Increase or Net Value Decrease being determined under Rule 11.2, and shall account for that interim amount in determining the Net Value Increase or Net Value Decrease in accordance with Rule 11.2.

### 11.3 Tax, liabilities and expenses of the Fund

- (a) Subject to the Superannuation Law, the Trustee may make provision for the payment of any Tax, expenses or liabilities of the Fund, whether current, future or contingent, as the Trustee determines is appropriate and as may be required by the Superannuation Law.
- (b) In making provision for the payment of any Tax, expenses or liabilities of the Fund and subject to Rule 11.3(c) and the Superannuation Law, the Trustee may deduct or withhold amounts in such proportions as the Trustee determines at any time or as otherwise required by the Superannuation Law, from any of the following:
  - (i) the Investment Earnings of the Fund;
  - (ii) any increase in value of the assets of the Fund since the immediately previous valuation in accordance with Rule 11.2;
  - (iii) Member's Benefits paid out of the Fund;
  - (iv) Transferred Amounts;
  - (v) Contributions;
  - (vi) any Accounts, including Member Accounts and any Reserve Accounts; and
  - (vii) any other source permitted by the Superannuation Law.
- (c) Subject to the Superannuation Law, that proportion of the Tax, expenses and liabilities of the Fund that the Trustee determines as relating to each Specific Investment shall be deducted from:
  - (i) the relevant Member Accounts of those Beneficiaries; and
  - (ii) the relevant Member Pension Accounts in respect of those Pensions,

for which, and in those proportions that, the Specific Investment is held.

## **PART E - MEMBERSHIP OF THE FUND**

### **12. MEMBERSHIP**

#### **12.1 Application for Membership**

- (a) A person who wishes to become a Member may apply for membership by completing the application form in:
  - (i) Appendix "A" for Employer Sponsored Members; or
  - (ii) Appendix "B" for Non-Employer Sponsored Members,
 or in such other form as the Trustee may approve.
- (b) By applying for membership of the Fund, the Member is deemed to have consented to be bound by the provisions of this Trust Deed.

#### **12.2 Admission as a Member**

- (a) A person becomes a Member of the Fund when the Trustee admits the person as a Member, or at any other time determined by the Trustee.
- (b) The Trustee may admit any person as a Member, whether that person has applied for membership under Rule 12.1 or otherwise as the Trustee determines, provided that:
  - (i) where the person has not applied to become a Member, the person agrees in writing to be bound by the provisions of this Trust Deed;
  - (ii) the person, or another person who is able to replace that person under Rule 4.1(d), becomes at the time of being admitted a Trustee, or in the case of a Corporate Trustee, a director of the Corporate Trustee; and
  - (iii) the person's admission would not cause the Fund to fail to comply with the Superannuation Law.
- (c) The Trustee may refuse to admit any person as a Member.
- (d) The Trustee may impose any terms or conditions on a person becoming a Member it sees fit, in which case the person shall become a Member subject to those terms and conditions.
- (e) No individual who is a Trustee, Responsible Officer of a Corporate Trustee, or Employee, or any person to whom the Trustee delegates any power, is disqualified from being a Beneficiary or from exercising any powers as Beneficiary, by virtue of holding that office or position.

#### **12.3 Beneficiary to provide information**

- (a) All Beneficiaries and any person who applies to become a Member of the Fund shall, prior to and during the period they are a Beneficiary of the Fund:

- (i) provide any information to the Trustee as the Trustee requires, including evidence of health, proof of age or proof of identity; and
  - (ii) undergo any medical examination or any other steps required by the Trustee.
- (b) Where a Beneficiary refuses to comply with a reasonable request of the Trustee under Rule 12.3(a), including by way of providing incorrect or misleading information or withholding relevant information, the Trustee may alter or amend the Member's Benefits for or in respect of that Beneficiary as the Trustee may determine, having regard to the effect of that non-compliance.

#### 12.4 Member appoints Trustee as attorney

Upon being admitted as a Member of the Fund, each Member irrevocably appoints the Trustee as his or her attorney to execute and sign all such deeds and instruments and do all such things the Trustee decides to be necessary or desirable in administering the Fund.

#### 12.5 Ceasing to be a Member

- (a) A Member will immediately cease to be a Member of the Fund at the time when the first of the following occurs:
- (i) the Trustee determines the Member is no longer entitled to any benefits from the Fund, contingent or otherwise;
  - (ii) the Member, or a person replacing that Member under Rule 4.1(d), ceases to be a Trustee or a director of a corporate Trustee under Rule 4.4;
  - (iii) the Member becomes an Employee of another Member of which he or she is not a Relative;
  - (iv) the Trustee determines that the Member's continued membership would cause the Fund to cease complying with the Superannuation Law or cease to be a Complying Superannuation Fund; or
  - (v) the Trustee determines, on reasonable grounds, that the Member should cease to be a member.
- (b) Notwithstanding Rule 12.5(a), the remaining individuals who comprise the Trustee or the directors of the Corporate Trustee may resolve that a Member will not cease to be a Member.
- (c) Subject to the Superannuation Law and this Trust Deed, a Member may remain as a Member for any period:
- (i) notwithstanding that no Contributions are made in respect of that Member; or

- (ii) during which the Member is on a leave of absence from their Employer.

## 12.6 Liability of Member

Each of the Members (other than in their capacities as Trustees or directors of a Corporate Trustee) shall not be liable for any action taken or omitted in administering the Fund.

## 12.7 Member's rights to Member's Benefit

- (a) A Member shall have no right to or interest in his or her Member's Benefit or any assets of the Fund except as provided in this Trust Deed.
- (b) The rights of the Members and their Dependants and Legal Personal Representatives to receive benefits from the Fund shall be those set out in this Trust Deed.
- (c) No Member or any persons claiming through a Member has any interest in any insurance proceeds that may be received by the Fund.

## 12.8 Compensation or Damages Claim

The provisions of this Trust Deed shall not in any way affect the right of a Member or his or her personal representatives or any other person to claim compensation or damages under an Act of Parliament or at common law in the event of the Member being injured or dying as a result of an event arising out of and in the course of his or her employment.

## 12.9 Work-Related Claims

The fact of being a Member shall not be used as a ground for claiming or increasing damages in a claim by the Member for alleged wrongful termination of employment or for claiming the payment of any amount on retrenchment.

## 13. ADMISSION OF EMPLOYERS

### 13.1 Admission of an Employer into Fund

- (a) The Trustee may admit an Employer as a contributor to and a participant in the Fund on completion of Appendix "C" or such other form of application as the Trustee decides upon.
- (b) An Employer admitted to the Fund shall be bound by the provisions of this Trust Deed as if it had been an original party to the Trust Deed.

### 13.2 Withdrawal of an Employer from Fund

- (a) An Employer shall cease to be a contributor to and a participant in the Fund:
  - (i) from the effective date of a notice that it gives to the Trustee of its intention to cease to be an Employer; or

- (ii) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.
- (b) The Trustee can, if it so determines, accept contributions from Employees of an Employer that has ceased to be a participant in the Fund as Non-Employer Sponsored Members.

### 13.3 Employer's right to terminate not affected

- (a) Nothing in this Trust Deed shall restrict the right of the Employer to dismiss or otherwise terminate the employment of a Member or remove a Member director of the Employer from office
- (b) Admittance and continuation as an Employer-Sponsored Member shall not be taken as guaranteeing continuation of employment.

## PART F - CONTRIBUTIONS, TRANSFERS AND ROLL OVERS

### 14. CONTRIBUTIONS TO THE FUND

#### 14.1 Eligible Contribution

- (a) Subject to the Superannuation Law and Rule 14.1(b), the Trustee may accept Contributions from:
  - (i) a Member
  - (ii) an Employer of the Member
  - (iii) the Spouse or Parent of a Member;
  - (iv) the Federal Government; or
  - (v) any other person authorised by the Superannuation Law to make Contributions to the Fund.
- (b) Subject to the Superannuation Law, the Trustee:
  - (i) shall refuse to accept Contributions where:
    - (A) the acceptance of the contribution is contrary to, or not authorised by, the Superannuation Law; or
    - (B) the Regulator directs the Trustee not to accept any Contributions in accordance with the Superannuation Law; and
  - (ii) may refuse to accept any Contribution.

#### 14.2 Permitted form of Contribution

- (a) A Contribution may be made either in cash or by In-Specie Contribution.

- (b) Where the Contribution is an In-Specie Contribution, the Trustee will only accept the In-Specie Contribution where:
  - (i) investment in the asset forming the In-Specie Contribution:
    - (A) is permitted by Rule 8; and
    - (B) not prohibited by the Superannuation Law; and
  - (ii) the transfer of the asset the subject of the In-Specie Contribution meets the requirements of the Superannuation Law.

#### 14.3 Amount of Contribution

Where a Contribution is accepted by the Trustee, the amount of that Contribution shall, subject to the Superannuation Law, be:

- (a) in the case of cash, the amount of the cash;
- (b) in the case of an In-Specie Contribution, the amount determined by the Trustee, or in the absence of a determination by the Trustee, the market value of the asset forming the In-Specie Contribution at the time of the Contribution.

#### 14.4 Allocation of Contribution

- (a) Where a Contribution is accepted by the Trustee in respect of one or more Members, the Trustee must allocate that Contribution to, and record the Contribution in, each Member Accumulation Account to the extent, and within the timeframe, required by the Superannuation Law.
- (b) The amount of the Contribution allocated to each Member Accumulation Account in respect of a Member is determined by the person making the Contribution, or if no amount is specified by that person, by the Trustee on a fair and reasonable basis, provided that the allocation in respect of a Member cannot exceed the amount of the Contribution under Rule 14.3.
- (c) Where a Contribution is accepted that is not in respect of a Member, the Trustee shall allocate that Contribution to an Account that the Trustee determines.

#### 14.5 Information required by Trustee

Where a Contribution is accepted by the Trustee, the person making the Contribution must advise the Trustee:

- (a) the amount of the Contribution made in respect of each Member;
- (b) whether, in respect of each Member, the Contribution is made to avoid liability to pay the Superannuation Guarantee Charge;
- (c) any other information requested by the Trustee.

#### 14.6 **Guarantee Act Contribution**

Where the Trustee accepts a Contribution made to avoid liability to pay the Superannuation Guarantee Charge, the Trustee must provide all certificates, reports and other information required by the Guarantee Act.

#### 14.7 **Ineligible Contribution**

Where a Contribution, or part of a Contribution, is accepted by the Trustee in breach of these Rules or the Superannuation Law, the Trustee must, subject to the Superannuation Law, refund such Contribution to the person making the contribution, less any Taxes paid or payable, expenses or other amounts reasonably determined by the Trustee, and must debit and record the amount refunded to the Member Accumulation Account.

#### 14.8 **Deemed Payment to Trustee by Employer**

Subject to the Superannuation Law, any payment of contributions by an Employer, or any other person contributing, directly to a life insurance company or Investment Manager shall be deemed to be a payment of contributions to the Trustee by that person and a payment by the Trustee to the life insurance company or Investment Manager, and shall be recorded in the Member Accounts as such.

#### 14.9 **No Enquiry to be made by Trustee**

The Trustee may assume, without enquiry, that an Employer is authorised by the Member and by law to pay the Contribution by deducting an agreed amount from the Member's salary and neither the Trustee nor the Fund shall be liable in any case where such payment or deduction is not authorised by the Member or by law, even if the Trustee has notice that such payment or deduction is not authorised.

#### 14.10 **Contribution splitting**

- (a) A Member can make an application for contributions splitting in accordance with the Superannuation Law.
- (b) The Trustee may accept a Contributions Splitting Application if permitted to accept that application by the Superannuation Law.
- (c) Where the Trustee accepts a Contributions Splitting Application, the Trustee must do all things necessary in accordance with the Superannuation Law to give effect to that decision, provided that:
  - (i) any transfer or roll over complies with Rule 15;
  - (ii) before the Trustee Allots any amount to the Receiving Spouse:
    - (A) the requirements of Rule 4.1 must be satisfied; and
    - (B) the Receiving Spouse must be a Member.



- (d) The Trustee may charge reasonable fees in respect of any thing done by the Trustee in relation to a Contributions Splitting Application and debit them from the Member Account of the Member making the Contributions Splitting Application.

## 15. TRANSFERS TO AND FROM THE FUND

### 15.1 Transfer and roll over into an Account

- (a) Subject to this Rule 15 and the Superannuation Law, the Trustee may accept to the credit of an Account a Transferred Amount, and may impose any terms and conditions on the acceptance of the Transferred Amount as the Trustee determines.
- (b) Unless otherwise permitted by the Superannuation Law, the Trustee may only accept a Transferred Amount in respect of an individual under Rule 15.1(a) where:
  - (i) the individual is a Member, or on the condition that the individual becomes a Member;
  - (ii) to the extent the Transferred Amount consists of a Preserved Benefit, the Transferred Amount is subject to the same restrictions as the Preserved Benefit had in the other Account or Entity.
- (c) To the extent the Transferred Amount is comprised of one or more assets:
  - (i) the Trustee may only accept the Transferred Amount under Rule 15.1 where it is an investment in accordance with Rule 8; and
  - (ii) the Trustee shall determine the value of those assets.

### 15.2 Transfer and roll over out of an Account

- (a) Subject to this Rule 15 and the Superannuation Law, an amount or asset may be transferred or rolled over to an Account or Entity by the Trustee subject to any terms or conditions as the Trustee may determine and in such a manner as the Trustee considers appropriate.
- (b) Subject to the Superannuation Law, to the extent the Transferred Amount consists of:
  - (i) a Preserved Benefit, the Trustee must ensure the Transferred Amount is preserved in the Entity or Account in accordance with the Superannuation Law, and the Trustee may make such enquiries as it considers appropriate to satisfy itself that this Rule is complied with; and
  - (ii) one or more assets, the value of the assets shall be determined by the Trustee and shall, when combined with any other amount comprising the Transferred Amount, not exceed the Member's Benefit.

- (c) The receipt of a Transferred Amount by the Trustee of an Entity in respect of a Beneficiary shall be a complete discharge of the Trustee of any liability in respect of that Beneficiary in relation to the Transferred Amount.

### 15.3 Beneficiary consent to transfer or roll over

A Transferred Amount in respect of a Member can only be transferred or rolled over where:

- (a) the Beneficiary entitled to that Transferred Amount provides consent in writing or in such other form permitted by the Superannuation Law to the Trustee;
- (b) the Fund or Entity receiving the Transferred Amount is a Successor Fund; or
- (c) it is otherwise permitted by the Superannuation Law.

### 15.4 Application by a Beneficiary

A Beneficiary may apply to the Trustee in writing for an amount or asset held in respect of a Member's Benefit to which that Beneficiary is entitled to be transferred or rolled over to an Account or Entity, and if the Trustee accepts that application, the Trustee shall, subject to the Superannuation Law and this Rule 15, ensure the amount or asset is transferred or rolled over in accordance with that application.

## PART G - BENEFITS

### 16. BENEFITS PAYABLE TO A MEMBER

#### 16.1 Payment of Member's Benefit

- (a) Where a Member becomes entitled to be paid a Member's Benefit in accordance with this Trust Deed and the Superannuation Law, the Trustee may pay the Member's Benefit to or in respect of the Member in one or more of following forms:
  - (i) an Annuity;
  - (ii) a lump sum;
  - (iii) a Pension; or
  - (iv) any other form permitted by the Superannuation Law.
- (b) The Trustee may impose any reasonable terms or conditions regarding the payment of a Member's Benefit.
- (c) A Member may elect in writing to the Trustee to be paid a Member's Benefit in one or more of the forms permitted by Rule 16.1(a), and if more than one form the proportion of the Member's Benefit to be paid in each form, but the Trustee shall not be bound by the Member's election.

- (d) Notwithstanding Rule 16.1(a), where the Member becomes entitled to a Member's Benefit because it satisfies a Condition of Release with a Cashing Restriction, the Trustee must pay the Benefit in accordance with that Cashing Restriction.
- (e) Subject to the Superannuation Law and where a Beneficiary consents, a Beneficiary may be paid a Member's Benefit by:

- (i) the transfer or assignment of any Policy in which the Beneficiary has an interest;
- (ii) the transfer of any assets of the Fund,

to or in respect of the Beneficiary, provided the combined value of any transfer or assignment, as determined by the Trustee, and other payments does not exceed the Member's Benefit.

## 16.2 Entitlement to be paid a Member's Benefit

- (a) Subject to the Superannuation Law and this Rule 16.2, a Member becomes entitled to be paid their Member's Benefit on the occurrence of one or more of the following events:
  - (i) the Member has reached the Retirement Age;
  - (ii) the Member suffers Permanent Incapacity;
  - (iii) the Member suffers Temporary Incapacity;
  - (iv) the Member suffers Severe Financial Hardship;
  - (v) the Member has reached the Preservation Age; or
  - (vi) any other Condition of Release.
- (b) A Member is also entitled to be paid all or part of the Member's Benefit that is an Unrestricted Non Preserved Benefit, as determined by the Trustee, at any time by election in writing to the Trustee or in any other form the Trustee may determine.
- (c) The Trustee must preserve any part of the Member's Benefit consisting of Preserved Benefits in accordance with the Superannuation Law.
- (d) A Member who becomes entitled to a Member's Benefit shall inform the Trustee as soon as practicable after the relevant event in Rule 16.2(a) occurs.

## 16.3 Time for payment of Member's Benefit

- (a) Subject to this Rule 16.3 and the Superannuation Law, the Trustee must begin paying, or must transfer or roll over, a Member's Benefit as soon as practicable after a Member becomes entitled to the Member's Benefit.

- (b) Subject to the Superannuation Law, the Trustee may retain all or part of any Member's Benefit payable to a Member in the Member Account at the request of that Member, until the Member requests the Member's Benefit to be paid or until required to be paid by the Superannuation Law.

#### 16.4 Pension

Where the Trustee pays a Member's Benefit as a Pension:

- (a) the Trustee may determine that Pension is to be paid as any type of Pension permitted by the Superannuation Law, including an Account-Based Pension or a Transition to Retirement Income Stream;
- (b) the Trustee and Beneficiary must comply with any requirements of the Superannuation Law and this Trust Deed in regard to paying that Pension, or where paying a particular type of Pension, that type of Pension, including:
- (i) any requirement to make a minimum annual payment of the Pension;
  - (ii) any requirement that prohibits the capital of the Pension being added to after the Pension has commenced;
  - (iii) any requirement that prohibits the commutation of that Pension or imposes conditions on the commutation of that Pension;
  - (iv) any requirement that the Pension not be transferred or assigned other than on the death of the Beneficiary; and
  - (v) the requirement that the capital or income of the Pension not be used as security for a borrowing;
- (c) subject to this Rule 16.4 and the Superannuation Law, the Trustee may agree with a Beneficiary, or otherwise determine in default of any agreement, any terms and conditions on which the Pension is to be paid, including:
- (i) the commencement date of the Pension;
  - (ii) whether the Pension is to be paid as a Reversionary Pension on the death of the Beneficiary, and if so, the terms and conditions of that Reversionary Pension and the number and identities of the Beneficiaries of that Reversionary Pension;
  - (iii) the frequency and amount of payments under the Pension; and
  - (iv) whether, and on what conditions, the Pension can be Commuted,
- and the Trustee may at any time vary such terms and conditions for a Pension that has already commenced;
- (d) where an instalment or payment of a Pension is due to be paid, and the balance of the Member Pension Account in respect of that Pension is less than the

instalment or payment that is due, the Trustee shall only be required to pay that amount that is standing to the credit of the Member Pension Account; and

- (e) the Pension shall cease when the Member Pension Account balance for that Pension is reduced to nil, and from that time:
  - (i) the Beneficiary shall cease to have any entitlement to that Pension; and
  - (ii) the Trustee shall be full discharged from any liability in respect of that Pension.

#### 16.5 **Lump Sum**

Subject to the Superannuation Law, where the Trustee pays a Member's Benefit as a Lump Sum, that Lump Sum can be paid:

- (a) as a single lump sum, or
- (b) in instalments comprising:
  - (i) one or more interim lump sums which are less than the Member's Benefit on the day each interim lump sum is paid; and
  - (ii) a final lump sum for the remainder of the Member's Benefit as calculated on the day the final lump sum is paid.

#### 16.6 **Beneficiary without legal capacity**

Where a Beneficiary has lost legal capacity or the Trustee otherwise considers it appropriate, the Trustee may, subject to the Superannuation Law, pay some or all of the Member's Benefit to the Legal Personal Representative, or if the Beneficiary is a minor without a Legal Personal Representative, the parent or guardian, of that Beneficiary.

#### 16.7 **Discharge**

The payment or transfer or roll over to an Entity of a Member's Benefit to or in respect of a Beneficiary shall be in full and final satisfaction and discharge of the obligations of the Trustee in respect of that Beneficiary and Member's Benefit to the extent of that payment, transfer or roll over, and the Trustee is under no obligation to ascertain how the payment is applied.

#### 16.8 **Provisions do not apply to benefits payable on the death of a Member**

Subject to the Superannuation Law and unless otherwise provided in Rule 18, this Rule 16 does not apply or ceases to apply as the case may be, and Rule 18 applies instead, to the payment of a Member's Benefit following the death of that Member.

## 17. DEATH BENEFIT NOMINATIONS

### 17.1 Non-Binding Nomination

- (a) A Member may make a Non-Binding Nomination to the Trustee in writing.
- (b) A Non-Binding Nomination may indicate:
  - (i) the Beneficiaries to whom the Member wishes the Member's Benefit to be paid upon the death of the Member;
  - (ii) the form in which the Member wishes each Beneficiary nominated to be paid the Member's Benefit, provided that the form is allowed by Rule 17.1; and
  - (iii) if there is more than one Beneficiary, the amount or proportion of the Member's Benefit that the Member wishes to be paid to each nominated Beneficiary.
- (c) A Non-Binding Nomination is not binding in any way on the Trustee.

### 17.2 Binding Nomination

- (a) A Member may make a Binding Nomination to the Trustee provided it:
  - (i) is in writing;
  - (ii) states that it is intended to be binding on the Trustee;
  - (iii) is signed and dated by the Member, in the presence of two witnesses, each of whom is:
    - (A) an individual who has reached 18 years of age; and
    - (B) not mentioned in the Binding Nomination; and
  - (iv) contains a declaration signed and dated by those two witnesses stating that the Binding Nomination was signed by the Member in the presence of both witnesses.
- (b) A Binding Nomination may specify, and shall be binding on the Trustee to the extent it specifies:
  - (i) the Beneficiaries to whom all or part of the Member's Benefit is to be paid upon the death of the Member;
  - (ii) the form in which each Beneficiary nominated is to be paid the Member's Benefit, provided that the form is allowed by Rule 17.1; and
  - (iii) if there is more than one Beneficiary nominated, the amount or proportion of the Member's Benefit that is to be paid to each Beneficiary, provided that the proportions do not exceed the Member's Benefit.

- (c) Unless the Trustee determines otherwise, a Binding Nomination has no effect, and shall not be binding on the Trustee, to the extent that compliance with the Binding Nomination would result in a contravention of the Superannuation Law or these Rules.
- (d) The terms and conditions of any Binding Nomination shall override the terms and conditions of any Pension made in accordance with Rule 16.4 (including any provision for a Reversionary Pension) but only to the extent of any inconsistency.

### **17.3 Application and revocation of nomination**

- (a) Subject to the Superannuation Law, a Non-Binding Nomination or a Binding Nomination, as is relevant, shall continue to have full force and effect until it is revoked.
- (b) A Non-Binding Nomination or a Binding Nomination, as is relevant, may be revoked by the Member at any time prior to the death of the Member by:
  - (i) making a new Non-Binding Nomination or Binding Nomination, as is relevant; or
  - (ii) notice in writing to the Trustee revoking a Non-Binding Nomination or Binding Nomination, as is relevant.

## **18. BENEFITS PAYABLE ON THE DEATH OF A MEMBER**

### **18.1 Payment of Member's Benefit on the death of a Member**

- (a) Where a Member dies, the Trustee must pay the Member's Benefit in accordance with this Rule 18, and as soon as is practicable.
- (b) Subject to Rule 18.3, the Member's Benefit payable on the death of a Member may be paid in one or more of the following forms:
  - (i) an Annuity
  - (ii) a lump sum;
  - (iii) a Pension (including a Reversionary Pension); or
  - (iv) any other form permitted by the Superannuation Law.

### **18.2 Payment where there is no Binding Nomination or it is invalid**

- (a) Subject to the Superannuation Law, where the deceased Member does not have a Binding Nomination in force at the time of their death, or the Binding Nomination is invalid in any way, including because it does not comply with the requirements of Rule 17.2, the Trustee may pay the Member's Benefit to:
  - (i) one or more Dependants of that Member; and/or

- (ii) one or more of the Legal Personal Representatives of that Member, in such proportions as the Trustee shall determine and in accordance with Rule 18.1(b).
- (b) In exercising the discretion under Rule 18.2(a), the Trustee shall have account of, but not be bound by, any Non Binding Nomination in force at the time of the Member's death, or any invalid Binding Nomination that had not been revoked.
- (c) Where Rule 18.2(a) would otherwise apply, to the extent that:
  - (i) a Pension was being paid from part or all of the Member's Benefit prior to the death of the Member;
  - (ii) the terms and conditions of that Pension agreed in accordance with Rule 16.4 included provision for that Pension to be immediately and automatically continued as a Reversionary Pension to specified Beneficiaries following the Member's death; and
  - (iii) the specified Beneficiaries are all Dependents or Legal Personal Representatives of the Member,

then, subject to the Superannuation Law, the Trustee must pay that part of the Member's Benefit as a Reversionary Pension to the Beneficiaries specified, unless and until the specified Beneficiaries commute the Reversionary Pension in accordance with Rule 20.

### 18.3 Payment where there is a valid Binding Nomination

- (a) Subject to the Superannuation Law, where the deceased Member had a Binding Nomination in force at the time of their death, the Trustee must pay the Member's Benefits in accordance with that Binding Nomination.
- (b) To the extent that a Binding Nomination in force at the time of the Member's death:
  - (i) does not deal with some part of the Member's Benefit - the Trustee shall pay that part of the Member's Benefit in accordance with Rule 18.2;
  - (ii) does not specify the form in which one or more nominated Beneficiaries are to be paid - the Trustee shall determine the form in which each of those Beneficiaries is paid in accordance with Rule 18.1(b); and
  - (iii) nominates more than one Beneficiary, but does not specify the proportion in which each of those Beneficiaries are to be paid - the Trustee shall determine the proportions to be paid to each beneficiary whose proportion is not specified.



#### 18.4 **Payment in other circumstances**

Subject to the Superannuation Law, where the Trustee, after making enquiries it considers reasonable, cannot establish that there are any Dependants or a Legal Personal Representative of the deceased Member, the Member's Benefit may be paid to such other persons as the Superannuation Law permits.

#### 18.5 **Application of other Rules**

Where this Rule 18 applies, Rules 16.2(c), 16.4, 16.5, 16.6 and 16.7 apply in addition to this Rule 18.

### 19. **CALCULATION OF MEMBER'S BENEFIT**

#### 19.1 **Member's Benefit**

- (a) The Transferred Amount transferred or rolled over to another Entity and any amount paid under this Trust Deed in respect of a Member's Benefit must not exceed the Member's Benefit as varied under this Rule 19.
- (b) Subject to the Superannuation Law and this Rule 19 and unless otherwise determined by the Trustee, the amount of a Member's Benefit is as follows:
  - (i) where the Member's Benefit is paid as a lump sum (other than following the commutation of a Pension in accordance with Rule 20), the amount standing to the credit of the Member Accumulation Account;
  - (ii) where the Member's Benefit is paid as a Pension, or as a lump sum following the commutation of a Pension in accordance with Rule 20, the amount standing to the credit of the Member Pension Account in respect of that Pension;
  - (iii) where the Member's Benefit is paid as an Annuity, the amount payable under that Annuity;
  - (iv) otherwise, in accordance with the Superannuation Law.
- (c) Where the Member's Benefit is to be paid in more than form (for example, as a lump sum and a Pension, or as two different Pensions) or only part of the Member's Benefit is to be paid, the Trustee may determine what proportion of the Member's Benefit is allocated to each of those payments.

#### 19.2 **Variation to Member's Benefit**

- (a) Subject to the Superannuation Law and in addition to any other power in this Trust Deed, the Trustee may, as it considers fair and reasonable, vary the amount of the Member's Benefit as follows:
  - (i) increase the Member's Benefit by transferring or rolling over any amount or assets that the Trustee determines from any Reserve Accounts to the Member Accounts of that Member, but in doing so, the

Trustee must have particular regard to the purpose of the Account and the Beneficiary (if any) in respect of which the Account was created, maintained and operated;

- (ii) where the Member's Benefit is paid as a Superannuation Lump Sum following the death of the Member, increase the Member's Benefit by way of the transfer or roll-over of a potential detriment payment under section 295-485 of the Tax Act from an Account;
  - (iii) reduce the Member's Benefit in circumstances where the Employer Participation Terms have the effect that the Member is only entitled to receive that part that has vested in the Member;
  - (iv) reduce the Member's Benefit by an amount where the Member's Benefit would include a Policy but:
    - (A) no amount is, or in the opinion of the Trustee will be, paid under that Policy; or
    - (B) the amount paid under the Policy is, or in the opinion of the Trustee will be, less than the amount that would ordinarily be payable; and
  - (v) otherwise increase or reduce the Member's Benefit in any way to comply with the Superannuation Law or to ensure the Fund remains a Complying Superannuation Fund.
- (b) Despite any other Rules, the Trustee shall not pay a Member's Benefit, or any part of a Member's Benefit, to the extent that it would cause the Fund to cease being a Complying Superannuation Fund or to not comply with the Superannuation Law.

## 20. COMMUTATION OF A PENSION

Where a Member's Benefit is being paid as a Pension, then on the request of the Beneficiary receiving that Pension or in respect of which that Pension is being paid or when required by the Superannuation Law, the Trustee must commute all or part of that Pension into a lump sum, or to any other form in which a Member's Benefit can be paid under the Superannuation Law, provided the commutation meets the requirements of the Superannuation Law, including:

- (a) where any minimum amount of the Pension is required to be paid to the Beneficiary prior to commutation under the Superannuation Law, that amount is paid to the Beneficiary prior to commutation; and
- (b) where the Pension can only be commuted under the Superannuation Law on certain conditions, such as to the use of the proceeds of that commutation, those conditions are complied with.

## 21. FORFEITED OR UNCLAIMED MEMBER'S BENEFIT

### 21.1 Forfeiture of Member's Benefit

Unless determined otherwise by the Trustee and subject to the Superannuation Law, the whole of a Member's Benefit payable in respect of a Beneficiary must be forfeited if:

- (a) in the opinion of the Trustee:
  - (i) that Beneficiary attempts or purports to assign, alienate or charge all or part of the Member's Benefit; or
  - (ii) that Beneficiary commits an act of bankruptcy or becomes an insolvent person under administration;
- (b) that Beneficiary, by notice in writing to the Trustee, voluntarily forfeits all or part of the Member's Benefit and such voluntary forfeiture is permitted by the Superannuation Law; or
- (c) the Member's Benefit, whether by act of the Beneficiary or otherwise, becomes payable to or vested in any other person other than in accordance with this Trust Deed.

### 21.2 Application of forfeited Member's Benefit

- (a) Where under Rule 21.1 a Member's Benefit is forfeited, the Trustee, in such proportions as the Trustee determines, must transfer the Member's Benefit to:
  - (i) the Member Accumulation Accounts in respect of one or more Members; and/or
  - (ii) a Forfeiture Account established by the Trustee, from which the forfeited Member's Benefits can only be applied by the Trustee:
    - (A) to increase the Member's Benefits in respect of a Beneficiary of the Fund;
    - (B) to any other purpose approved in writing by the Regulator; or
    - (C) in such other manner that is permitted or required by the Superannuation Law; or
  - (iii) any other Account or Entity permitted by Superannuation Law.
- (b) If the Trustee determines to pay any part of the forfeited Member's Benefit to an Employer under Rule 21.2(a), the Trustee shall do all things required under the Superannuation Law, including providing Members of the Fund three month's written notice prior to the payment of the forfeited Member's Benefit.

### 21.3 Unclaimed Member's Benefit

The Trustee must deal with any Member's Benefit that is Unclaimed Money, or the Member's Benefit in respect of a Lost Member, in accordance with the Superannuation Law.

## 22. EFFECT OF FAMILY LAW ON MEMBER'S BENEFIT

### 22.1 Information and notices to Members and Non Member Spouses

If a Member's Benefit becomes subject to a Payment Split, the Trustee must provide the Member and the Non Member Spouse with all notices and information, and in such form, required by the Superannuation Law

### 22.2 Non Member Spouse entitlements

- (a) Subject to the Superannuation Law and unless otherwise determined by the Trustee, a Non-Member Spouse shall not be admitted as a Member of the Fund, and the Non-Member Spouse shall not be entitled to the creation or retention of an interest or Account in the Fund.
- (b) Where the Trustee determines to admit a Non Member Spouse as a Member of the Fund, or to create or retain an interest or Account in the Fund for a Non Member Spouse, the Trustee must:
  - (i) do all things necessary under Part 7A of the SIS Regulations to give effect to that decision and in doing so may, subject to the Superannuation Law, determine the amount of the reduction in the Member's Benefit as a result of the Payment Split; and
  - (ii) ensure that:
    - (A) the requirements of Rule 4.1 are satisfied; and
    - (B) the Non Member Spouse is a Member.
- (c) In all other cases where a Member's Benefit is subject to a Payment Split:
  - (i) the entitlement of the Non Member Spouse must be either:
    - (A) transferred or rolled over to an Entity; or
    - (B) paid to the Non Member Spouse, where permitted or required to do so under the Superannuation Law,

by the Trustee; and
  - (ii) the Trustee must do all things necessary under Part 7A of the SIS Regulations to give effect to the Payment Split, and in doing so may, subject to the Superannuation Law, determine the amount of the reduction in the Member's Benefit as a result of the Payment Split.

### 22.3 Trustee may charge Fees and withhold amounts

- (a) Subject to the Superannuation Law, where a Member's Benefit is subject to a Payment Split, the Trustee may charge reasonable fees in respect of any action taken by the Trustee in dealing with the Payment Split, and may recover those fees as the Trustee determines from:
  - (i) the remaining Member's Benefit; and/or
  - (ii) the entitlement of the Non Member Spouse.
- (b) In addition to any other powers under this Trust Deed, the Trustee may deduct and withhold from the entitlement transferred, rolled over or paid to the Non Member Spouse any Tax that the Trustee determines may be payable on that entitlement.

### 22.4 Discharge

Where the entitlement of a Non Member Spouse is transferred, rolled over or paid in accordance with Rule 22.2, the Trustee's obligations to that Non Member Spouse or to the Member in respect of that Non Member Spouse are completely discharged to the extent of the entitlement transferred, rolled over or paid.

## PART H - VARIATION AND DISSOLUTION

### 23. VARIATION OF THE TRUST DEED

- (a) Subject to Rule 23(b) and the Superannuation Law, the Trustee may, at any time by deed or oral or written resolution vary, add to or rescind any or all of the provisions of this Trust Deed with effect immediately or from a past or future date.
- (b) The Trustee cannot amend this Trust Deed to the extent the amendment:
  - (i) is inconsistent with, or alters, the purposes of the Fund in Rule 3.3;
  - (ii) is inconsistent with, or breaches, the Superannuation Law;
  - (iii) has the effect of reducing a Member's Benefit that has accrued to, or become payable to or in respect of, a Member before the amendment, unless the reduction is:
    - (A) required because of, and does not exceed the value of, any Taxes payable by the Fund;
    - (B) required to enable the Fund to comply with the Superannuation Law;
    - (C) approved by the Member in writing; or
    - (D) approved by the Regulator in writing.

## 24. DISSOLUTION OF THE FUND

### 24.1 Perpetuity period

The trusts constituted by this Trust Deed shall endure for such period as is allowed by law (if any) for the duration of the trusts established by this Trust Deed, and at the expiry of that period the Fund, and the trust constituted by this Trust Deed, shall wind-up and terminate.

### 24.2 Dissolution of the Fund

The Fund, and the trust constituted by this Trust Deed, shall wind-up and terminate on the date when the first of the following events occurs:

- (a) the Trustee resolves to terminate the Fund by notice in writing to all of the Members of the Fund and each Employer;
- (b) all Members agree to terminate the Fund;
- (c) the last remaining Member ceases to be a Member of the Fund; or
- (d) the Fund is required to be terminated by the Regulator or the Superannuation Law.

### 24.3 Contributions

With effect from the Termination Date:

- (a) unless the Trustee determines otherwise, no further Contributions or Transferred Amounts can be accepted by the Fund, other than arrears of Contributions due up to the Termination Date; and
- (b) the Trustee must call in and use their best endeavours to immediately collect any arrears of Contributions to the Fund.

### 24.4 Application of assets of the Fund

Subject to the Superannuation Law, on termination and winding-up of the Fund, the Trustee shall apply, in any proportions the Trustee determines, the total assets of the Fund in the following order of priority:

- (a) to provide for the payment of all Tax, expenses and liabilities relating to the Fund, except for those relating to Member's Benefits;
- (b) to provide for the payment, transfer or roll over of the Member's Benefits that were commenced to be paid by the Fund on or before the Termination Date, including benefits that have begun to be paid as a Pension;
- (c) to provide for the payment, transfer or roll over of the Member's Benefit for those Beneficiaries who are entitled to receive a benefit from the Fund but payment of the Member's Benefit had not commenced on or before the Termination Date;

- (d) to increase any Member's Benefit by application of amounts from the Reserve Account or any Account other than any Member Accounts;
- (e) to pay an Employer any amounts from a Reserve Account attributable to that Employer on a basis agreed between the Trustee and Employer; and
- (f) to pay and/or transfer or roll over any amounts remaining in the Fund to or for the benefit of one or more of:
  - (i) the Members;
  - (ii) former Members;
  - (iii) Dependents of Members or Former Members;
  - (iv) the Legal Personal Representatives of any person in sub-Rule (i), (ii) or (iii); or
  - (v) any Employers or former Employers,
 as the Trustee determines.

#### 24.5 Benefits payable to deceased Member

Where a Member dies before receiving a Member's Benefit to which they become entitled under Rule 24.4, that Member's Benefit must be paid in accordance with Rule 18.

#### 24.6 Form of payment

- (a) Subject to Rule 24.6(b), an amount may be paid, transferred or rolled over in accordance with Rule 24.4 in any combination of payments in cash, the transfer of assets, the assignment of Policies, the purchase of Annuities, or any other form permitted by the Superannuation Law, as determined by the Trustee.
- (b) Where all or part of a benefit to be paid, transferred or rolled over must be preserved or otherwise withheld until the satisfaction of any condition under the Superannuation Law, the Trustee must only pay, transfer or roll over the benefit:
  - (i) by transferring or rolling it over to an Entity; or
  - (ii) by purchasing an Annuity,

that the Trustee is satisfied does not permit payment of the benefit to the Beneficiary until the satisfaction of that condition, or in any other form permitted by the Superannuation Law.

**24.7 Discharge**

The amounts paid, transferred or rolled over in accordance with Rule 24.4 shall be accepted by any person who receives an amount in full discharge of all claims in respect of the Fund.



**THE SCHEDULE**

1. **NAME OF SUPERANNUATION FUND**

Kariba Superannuation Fund

2. **TRUSTEE**

De Broekert Nominees Pty Ltd ACN 159 758 040

3. **COMMENCEMENT DATE**

Date of execution of this Trust Deed

**EXECUTED as a deed**

**SIGNED** for and on behalf of )  
**DE BROEKERT NOMINEES PTY LTD** )  
ACN 159 758 040 by the authority of the Directors )  
in accordance with section 127 of the )  
Corporations Act and its Constitution by: )

.....*Giulio de Broekert*.....  
Signature of Director/Secretary

.....*P de Broekert*.....  
Signature of Director

.....*GIULIA DE BROEKERT*.....  
Name of Director/Secretary in full

.....*Peter de Broekert*.....  
Name of Director in full

**APPENDIX "A"**

**APPLICATION FOR MEMBERSHIP  
(EMPLOYER SPONSORED MEMBER)  
OF  
KARIBA SUPERANNUATION FUND**

("the Fund")

1. I,.....  
of .....  
Tax File Number .....  
apply for membership of the Fund which is administered in terms of the Trust Deed governing the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining the Fund, the timing of those benefits, the method of determining those benefits and any conditions relating to those benefits.
3. I acknowledge that I have received a Product Disclosure Statement in relation to the Fund.
4. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the Trust Deed governing the Fund.
5. I authorise my current Employer to deduct from my salary such amounts (if any) as are from time to time agreed upon by myself, the Trustee and my Employer as contributions to be made by me to the Fund.
6. I agree to **De Broekert Nominees Pty Ltd** ACN 159 758 040 acting as Trustee of the Fund.

7. **NOMINATION OF BENEFICIARIES**

- (a) I nominate the following person(s) to receive the benefit payable by the Trustee in the event of my death:

<b>PERSON</b>	<b>RELATIONSHIP</b>	<b>FORM</b>	<b>PERCENTAGE</b>
			%
			%
			%

- (b) I do/do not wish this nomination to be binding on the Trustee.

**Dated this** ..... day of ..... 2012

Signature of Member .....

We, the undersigned witness declare that the above member signed above in our presence on the above date and that we signed below in the presence of the above member and each other.

First Witness ..... Second Witness .....

Full Name: ..... Full Name: .....

Occupation: ..... Occupation: .....

Address: ..... Address: .....

APPENDIX "B"

APPLICATION FOR MEMBERSHIP  
(NON-EMPLOYER SPONSORED MEMBER)  
OF  
KARIBA SUPERANNUATION FUND

("the Fund")

1. I,.....  
of .....  
Tax File Number.....  
apply for membership of the Fund which is administered in terms of the Trust Deed governing the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining the Fund, the timing of those benefits, the method of determining those benefits and any conditions relating to those benefits.
3. I acknowledge that I have received a Product Disclosure Statement in relation to the Fund.
4. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the Trust Deed governing the Fund.
5. I agree to **De Broekert Nominees Pty Ltd** ACN 159 758 040 acting as Trustee of the Fund.

6. **NOMINATION OF BENEFICIARIES**

(a) I nominate the following person(s) to receive the benefit payable by the Trustee in the event of my death:

PERSON	RELATIONSHIP	FORM	PERCENTAGE
			%
			%
			%

(b) I do/do not wish this nomination to be binding on the Trustee.

Dated this ..... day of ..... 2012

Signature of Member .....

We, the undersigned witness declare that the above member signed above in our presence on the above date and that we signed below in the presence of the above member and each other.

First Witness ..... Second Witness .....

Full Name: ..... Full Name: .....

Occupation: ..... Occupation: .....

Address: ..... Address: .....

