

DEED POLL
ESTABLISHING
CUNDY SUPERANNUATION FUND

MADE BY

KOOLoola INVESTMENTS PTY LTD
ACN 087 213 349
("the Trustee")



T H O M S O N

P L A Y F O R D

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THIS DEED POLL is made on

11th May

1999

BY: KOOLOOLA INVESTMENTS PTY LTD ACN 087 213 349 whose registered address is 48 Greenhill Road Wayville 5034 in the State of South Australia (hereinafter referred to as "the Trustee")

WHEREAS:

- A. The Trustee wishes to establish a superannuation fund for the provision of superannuation benefits for members in the event of their retirement from any business, trade, profession, vocation, occupation or employment in which the members are engaged and for the provision of superannuation benefits for dependants of such members in the event of the death of a member and for such incidental and ancillary purposes as may be authorised from time to time.
- B. It is intended by this Deed to establish a superannuation fund to be known as the **CUNDY SUPERANNUATION FUND** (hereinafter called "the Fund").
- C. The Trustee has agreed to act as the first Trustee of the Fund upon the trusts of this Deed.

The Trustee **HEREBY DECLARES** the terms of this Deed as follows

COMMISSIONER OF STATE REVENUE - LARGE
 SA STAMP DUTY PAID 410.00
 ORIGINAL WITH 2 Copies
 DEED
 REF NO 11/09/99
 AUTH: THO 1109 2 11/09/99

TERMS OF DEED

1. THE FUND

1.1 Name of Fund

The name of the Fund shall be the **CUNDY SUPERANNUATION FUND**.

1.2 Establishment

The Fund shall be established as and from the date of this Deed and the Fund shall be managed administered and applied in accordance with this Deed.

1.3 Purpose of the Fund

Either:

1.3.1 the Trustee shall be a sole trustee which is a constitutional corporation within the meaning of the Relevant Law; or

1.3.2 the primary purpose of the Fund shall be to provide old age pensions for the Members of the Fund upon their retirement and for any other purposes which may be permitted under the Relevant Law from time to time.

2. INTERPRETATION

2.1 Definitions

Unless the context otherwise requires, in these presents:-

2.1.1 "**Actuary**" means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia or another suitably qualified person recognized as an actuary pursuant to the Relevant Law or a firm of such persons which may be appointed by the Trustee to advise in relation to the Fund;

- 2.1.2 "**Administrator**" means such entity or person which may be appointed by the Trustee to provide administration services to the Fund;
- 2.1.3 "**annuity**" means an annuity within the meaning of the Relevant Law;
- 2.1.4 "**Auditor**" means an approved auditor within the meaning of the Relevant Law being the auditor for the time being appointed by the Trustee;
- 2.1.5 "**Benefit**" means any amount paid or payable by the Trustee or any amount to which a Member may be presumptively entitled under this Deed;
- 2.1.6 "**Clause**" means a clause of this Deed;
- 2.1.7 "**Condition of Release**" means in relation to a Member any condition of release within the meaning of the Relevant Law as it applies to Regulated Superannuation Funds;
- 2.1.8 "**Contributions**" means contributions to the Fund by or in respect of a Member in accordance with Clause 9.1;
- 2.1.9 "**Current Pension Liabilities**" means current pension liabilities within the meaning of the tax legislation and is a reference to the liabilities that have been assumed by the Trustee to pay pensions;
- 2.1.10 "**this Deed**" means these presents and any authorised alterations amendments and modifications thereto;
- 2.1.11 "**defined benefit pension**" means a pension within the meaning of any of clauses 10.8.1, 10.8.2 and 10.8.4 being defined benefit pensions within the meaning of the Relevant Law and being pensions which are not wholly determined by reference to policies of life assurance which have been acquired by the Trustee for the purpose of paying the said pension;
- 2.1.12 "**Dependant**" means a spouse (including a person who has lived with the Member on a bona fide domestic basis as the husband or wife of the Member) or child (including any adopted child, stepchild or ex-nuptial child) of a Member or any other person whom the Trustee may in the exercise of its absolute discretion determine to be dependent either wholly or in part on that Member at the time of the happening of the event in respect of which the Trustee makes such determination or any person who has at such time a legal right to look to the Member for support;
- 2.1.13 "**Eligible Contributor**" means any company firm or person who is eligible to make superannuation contributions for a Member in accordance with the Income Tax Assessment Act 1936;
- 2.1.14 "**Eligible Person**" means any person who is eligible to become a member of a Regulated Superannuation Fund under the Relevant Law;
- 2.1.15 "**Excluded Fund**" means an excluded superannuation fund or self-managed fund within the meaning of the Relevant Law or such other term as applies to like style superannuation funds.
- 2.1.16 "**Foregone Benefits Account**" means the Fund account established and maintained pursuant to Clause 6.3;

- 2.1.17 "**full time employment**" in relation to a Member means the Member is gainfully employed for thirty (30) hours or more weekly;
- 2.1.18 "**Fund**" means the Fund constituted by this Deed;
- 2.1.19 "**Fund Year**" means the period of twelve months ending on the thirtieth day of June in each year or such other period as the Trustee may determine from time to time to be applicable;
- 2.1.20 "**gainful employment**" in relation to a Member means the Member is employed or self-employed for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages;
- 2.1.21 "**Member**" means a person who has been admitted to membership pursuant to Clause 8, a pensioner or any person who is entitled to a Benefit under this Deed;
- 2.1.22 "**Member Account**" means in respect of a Member the account established and maintained pursuant to Clause 6.1;
- 2.1.23 "**part time employment**" in relation to a Member means the Member is gainfully employed for ten (10) hours or more weekly but less than thirty (30) hours weekly;
- 2.1.24 "**pension**" is a reference to a contractual obligation on the part of the Trustee to make regular payments to a pensioner that is deemed by the Relevant Law to be a pension;
- 2.1.25 "**pensioner**" means a primary beneficiary or reversionary beneficiary who is currently entitled to a pension;
- 2.1.26 "**person**" includes any natural person, trustee, partnership or company;
- 2.1.27 "**primary beneficiary**" means a primary beneficiary within the meaning of the Relevant Law being the person or persons first becoming entitled to be paid a pension in accordance with Clause 10.8 which person or persons may previously have been a Member or otherwise shall be such person or persons entitled to be paid a Benefit in the event of the death of a Member in accordance with Clause 10.4
- 2.1.28 "**Regulated Superannuation Fund**" means a superannuation fund which is a regulated superannuation fund within the meaning of the Relevant Law;
- 2.1.29 "**Relevant Law**" means the Superannuation Industry (Supervision) Act 1993 and the Superannuation Industry (Supervision) Regulations and any other statute regulation or law relating to Regulated Superannuation Funds within the meaning of the said Act;
- 2.1.30 "**residual capital value**" in relation to a pension means a capital amount payable on the termination of the pension as a term and condition attaching to the pension contract as between the Trustee and pensioner;
- 2.1.31 "**Responsible Authority**" means any one or more of the Australian Prudential Regulation Authority, Australian Taxation Office or any other governmental authority responsible for administering the laws regulations or any other rules governing the operation of superannuation funds;

- 2.1.32 "reversionary beneficiary" means reversionary beneficiary within the meaning of the Relevant Law being the person or persons who become entitled to be paid a pension in accordance with Clause 10.8 following the death of a primary beneficiary or a former reversionary beneficiary;
- 2.1.33 "Tax" includes income tax, land tax, stamp duty, and any other tax impost or duty;
- 2.1.34 "Trustee" means the Trustee for the time being of the Fund whether original or substituted.

2.2 Defined Words

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

2.3 Governing Law

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of principal residence of the Trustee. The Trustee for the time being, Members and Dependants shall accept the jurisdiction of the Courts of that State or Territory provided that, if this Deed or any rights of any person hereunder shall lawfully be affected by any law custom or practice of the Commonwealth of Australia or of any other State or Territory then this Deed shall have effect subject to that law custom or practice and the Trustee shall be empowered to determine and to adjust the rights, Contributions and Benefits to and in respect of that person to the extent necessary to comply therewith.

2.4 Acts of Parliament

In this Deed unless the context otherwise requires a reference either generally or specifically to an Act of a Parliament of the Commonwealth or any State or Territory shall include any statutory notification, amendment to or re-enactment of such Act for the time being in force and any reference to any provision thereof is to that provision so modified, amended or re-enacted and any such reference shall also include any rules, regulations and orders made pursuant to any such Act.

2.5 Severance and Reading Down

- 2.5.1 If any provision of this Deed or any part thereof is void or invalid under the Relevant Law then such provision or part thereof shall be valid, binding and enforceable to the full extent permitted by the Relevant Law and shall be read down and severed accordingly.
- 2.5.2 Each provision of this Deed shall be construed as a separate and severable provision so that if any such provision is severed in accordance with Clause 2.5.1 the remainder of the Deed shall be read and construed as if the severed provision had not been contained in the Deed notwithstanding any consequential alteration to the meaning or construction of that provision that may result from the severance.

3. TRUSTEE

3.1 Number of Trustees

- 3.1.1 Where the Trustees are natural persons there may be any number of Trustees subject at all times to any standard to the contrary prescribed by the Relevant Law.
- 3.1.2 Where the trustee is a corporation the Trustee shall be a sole Trustee which is a constitutional corporation within the meaning of the Relevant Law;
- 3.1.3 In instances where there is more than one Trustee, the expression "Trustee" where it appears in this Deed shall mean all the Trustees.

3.2 Appointment and Removal of Trustee

- 3.2.1 The Members shall have the right from time to time to appoint and remove the Trustee by deed subject at all times to the Relevant Law and each Trustee and all directors of the Trustee, in the event the Trustee is a company, shall prior to or upon becoming appointed to that office consent in writing to such appointment.
- 3.2.2 A Trustee shall cease to be a Trustee if the Trustee:-
 - (a) resigns the office by notice in writing to the Members; or
 - (b) being a natural person, dies; or
 - (c) being a natural person, becomes incapable of performing his duties hereunder; or
 - (d) being a corporation enters into liquidation or a receiver or receiver and manager of the property of the Trustee is appointed; or
 - (e) is removed from office by the Members pursuant to the provisions of Clause 3.2.1; or
 - (f) otherwise becomes a disqualified person within the meaning of the Relevant Law.
- 3.2.3 In the event of a vacancy in the office of Trustee a new Trustee shall be appointed in accordance with Clause 3.2.1 within such time as may be prescribed by the Relevant Law.
- 3.2.4 In the event the Relevant Law prescribes standards in relation to members of Excluded Funds being required to be trustees or directors of the trustee the Trustee shall be constituted in accordance with the said standards and to the extent of any inconsistency between this Deed and the standards the said standards shall apply.

3.3 Fund Vested in Trustee

The Fund shall be vested in the Trustee and managed by the Trustee upon the terms and conditions of this Deed and no Member shall have a beneficial interest in any property of the Fund.

3.4 Powers of Trustee

In addition to the powers which the Trustee has at law and which are otherwise granted to the Trustee by this Deed the Trustee shall have the following powers:-

- 3.4.1 To enter into and execute all contracts, deeds and documents and do all acts, matters or things which the Trustee may deem expedient for the purpose of securing the benefits to be provided by or from the Fund and for otherwise giving effect to the authorities, powers and discretions conferred on the Trustee by this Deed;
- 3.4.2 To purchase or otherwise acquire and to sell or otherwise dispose of property of the Fund and to take property on lease for the purposes of the Fund and to lease out any property of the Fund on such terms and conditions as the Trustee thinks fit;
- 3.4.3 To appoint and at its discretion remove or suspend the Actuary, Administrator, Auditor, any medical practitioner, investment managers, investment advisors, solicitors, custodian trustees, secretaries, clerks, agents and other servants or appoint them for permanent, temporary or special services as it thinks fit from time to time;
- 3.4.4 To insure or reinsure any risks, contingencies or liabilities of the Fund, the Trustee and/or the Members and their Dependants;
- 3.4.5 To institute, conduct, defend, compound or abandon any legal proceedings concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;
- 3.4.6 To make and give receipts and releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- 3.4.7 To open bank accounts and to retain on current or deposit account at any bank such money as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- 3.4.8 To determine who shall be entitled to sign on the Fund's behalf; receipts, acceptances, endorsements, releases, contracts and documents;
- 3.4.9 To pay Benefits out of the Fund to persons entitled thereto;
- 3.4.10 In the case of the mental or physical incapacity of a Member to pay or apply the Benefit or any part thereof at the Trustee's discretion to or for the benefit of the Member, any legal personal representative of the Member or any Dependants of the Member;
- 3.4.11 To take and act upon the advice and opinion of any legal practitioner whether in relation to interpretation of this Deed or any other document or statute or as to the administration of the trusts hereof or upon the advice or opinion of any medical practitioner or any investment or financial adviser or any other professional person without being liable to any Member or Dependant in respect of any act done by them in accordance with such advice or opinion;
- 3.4.12 To make an election that the Fund be a Regulated Superannuation Fund;

3.4.13 To do any act, matter or thing that the Relevant Law authorises or permits the Trustee to do notwithstanding any inconsistent provision or the absence of a specific power in this Deed;

PROVIDED HOWEVER that the Trustee in the exercise of any power hereby granted shall have regard to and conform with any standard prescribed by the Relevant Law.

3.5 Delegation

The Trustee may from time to time delegate to any person including any individual Trustee or director of the Trustee as the case may be such powers, discretions and authorities relating to the management and administration of the Fund as the Trustee may think fit. The Trustee shall have the power to remove any delegate appointed in accordance with this Clause 3.5 at any time.

3.6 Liability of Trustee

3.6.1 Subject to Clause 3.6.3 a Trustee shall not incur any personal liability for anything done or omitted to be done by the Trustee as a Trustee except in respect of any fraud or wilful misconduct on the part of such Trustee.

3.6.2 A Trustee shall not in any circumstance be entitled to indemnity, reimbursement or recompense from any Member and no Member shall be liable for the debts or other obligations of the Fund.

3.6.3 The Trustee may not be exempted from liability under Clause 3.6.1 if to be so exempted would be contrary to the Relevant Law.

3.7 Indemnity

3.7.1 The Trustee shall be entitled to be indemnified out of the assets comprising the Fund against liabilities incurred by the Trustee in consequence of the exercise by it of its powers, authorities and discretions under this Deed and at law generally **PROVIDED HOWEVER** that the Trustee may not be indemnified where to be indemnified would be contrary to the Relevant Law.

3.7.2 A reference to "the Trustee" in Clause 3.7.1 shall be interpreted as including a reference to any person who may be a director of the Trustee.

4. APPOINTMENT OF AUDITOR/ACTUARY/ADMINISTRATOR

4.1 Auditor/Actuary/Administrator

The Trustee shall appoint an Auditor, an Administrator and an Actuary as required from time to time each of whom shall have such qualifications as may be prescribed by the Relevant Law and the Trustee may remove any such Auditor, Actuary or Administrator as it sees fit.

4.2 Audit

The Trustee shall in each Fund Year cause to be prepared an income and expenditure account and statement of assets of the Fund in accordance with standard accounting practice and subject to the requirements of any applicable accounting standards which accounts shall be audited by the Auditor within such time as may be prescribed by the Relevant Law. The Auditor shall have access to

all papers accounts and documents connected with the Fund and shall report in writing to the Trustee the result of such audit.

4.3 Lodgement of Returns

The Trustee shall lodge with the Responsible Authority all such returns, certificates, audit reports and other information which may be required under the Relevant Law.

5. RECORDS AND FINANCIAL STATEMENTS

5.1 Receipt and Payment of Moneys

Moneys of the Fund may be lodged upon receipt to the credit of an account in the name of the Fund kept with any branch of any bank or like institution determined from time to time by the Trustee or may be applied by the Trustee in such other manner as may appear appropriate. Subject to Clause 10.10 all payments out of the Fund shall be made by cheque or order signed in such manner as shall be determined by the Trustee.

5.2 Records and Accounts to be Kept

The Trustee shall:

- 5.2.1 Keep account of all moneys received for and disbursed from the Fund and of all dealings in connection therewith;
- 5.2.2 Keep appropriate records and accounts, in proper order, and make suitable arrangements for their custody and for custody of documents relating to Fund investments;
- 5.2.3 Prepare a balance sheet, profit and loss statement and any other financial reports of the Fund that it considers appropriate as soon as is practicable after the end of each Fund Year;
- 5.2.4 Procure the Fund accounts to be audited as and when required and shall prepare and lodge income tax returns and ISC annual returns as and when required.

5.3 Information for Members

The Trustee shall supply such information and reports and provide copies of any documents and records to the Members as may be required by the Relevant Law which may include information reports documents and records:

- 5.3.1 For new or prospective Members of the Fund;
- 5.3.2 Concerning any event in relation to the Fund that the Trustee reasonably believes the Members would reasonably expect to be informed of;
- 5.3.3 On termination of a Member's membership of the Fund;
- 5.3.4 Relating to the Fund generally in respect of each Fund Year; and
- 5.3.5 To Members relating to each Member's benefits and entitlements and the Fund generally in respect of each Fund Year.

6. ACCOUNTS

6.1 Member Account

The Trustee shall establish and maintain a Member Account in respect of each Member to which the following amounts shall be debited or credited as appropriate:

- 6.1.1 Contributions to the Fund by or in respect of the Member including contributions by an Eligible Contributor which may be credited net of provision for Tax and including any payment in accordance with Clause 9.1.3;
- 6.1.2 Amounts transferred to or from any other superannuation fund in respect of the Member pursuant to Clauses 13 or 8.3;
- 6.1.3 Any amounts appropriated in accordance with Clause 6.4;
- 6.1.4 Amounts paid by way of a Benefit or applied to the purchase of an annuity in respect of the Member;
- 6.1.5 Amounts transferred to or from the Foregone Benefits Account in accordance with Clause 6.3;
- 6.1.6 Premiums on any policy of life assurance effected to provide benefits in the event of the death or disability of a Member;
- 6.1.7 Amounts arising from the proceeds of any policy of life assurance;
- 6.1.8 Any tax duty or impost paid out of the Fund including Tax payable in accordance with Clause 6.6; or
- 6.1.9 Amounts paid to satisfy the expenses of the Fund pursuant to Clause 9.2.

6.2 Sub Accounts and Segregation

- 6.2.1 The Trustee may maintain sub accounts within each Member's Member Account on such basis as it may consider appropriate including for the purposes of:-
 - (a) differentiating between benefits funded by the Member and an Eligible Contributor;
 - (b) differentiating between preserved and non-preserved benefits;
 - (c) identifying minimum benefits within the meaning of the Relevant Law;
 - (d) identifying those assets or amounts in respect of the Member which are funding Current Pension Liabilities;
 - (e) enabling more than one pension to be arranged in respect of a Member.
- 6.2.2 If the Trustee commences to pay a pension, the Trustee may segregate the assets of the Fund as between those assets that are set aside to fund the Fund's Current Pension Liabilities and those assets that have not been set aside for that purpose. Upon assuming a liability to pay a

pension and determining to segregate assets for that purpose, the Trustee shall ensure that the amount applied to fund the pension is equivalent to the value of the assets which are segregated. Where the Trustee has already commenced to pay a pension, the Trustee may determine in its discretion to commence or cease (as the case may be) the segregation of assets provided that such action shall be authorised by the Relevant Law and the tax legislation.

6.3 Foregone Benefits Account

The Trustee shall maintain an account to be known as the Foregone Benefits Account to which shall be credited any amount forfeited pursuant to Clauses 10.6, 10.8 or 10.11. The amount standing to the credit of the Foregone Benefits Account shall be applied by the Trustee within the period prescribed by the Relevant Law (if any) or otherwise as and when the Trustee may determine, for:

- 6.3.1 The provision of benefits for other Members or their Dependants; or
- 6.3.2 The provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Responsible Authority is satisfied is reasonable having regard to all the circumstances; or
- 6.3.3 Any other purpose that may be permitted by the Relevant Law or by the Relevant Authority from time to time.

6.4 Application of Income/Loss and Unrealised Gains/Losses

- 6.4.1 In the event that a Benefit becomes payable to a Member the Trustee shall determine, after account has been taken of any Tax paid or payable, an amount comprising income or losses of the Fund and an amount representing unrealised profits or losses in the event of a revaluation pursuant to Clause 6.5 in respect of the period since the end of the most recent Fund Year. The Trustee shall determine the Member's share of such amount and shall credit the same to the Member's Member Account;
- 6.4.2 As at the end of each Fund Year the Trustee shall appropriate, after account has been taken of any Tax paid or payable and after account has been taken of the balance of the income or losses of the Fund together with any amount representing unrealised profits or losses on a revaluation pursuant to Clause 6.5, an amount to each Member's Member Account. The method of apportionment shall be determined by the Trustee so as to be convenient of application and so as to be fair and reasonable as between the Members and where the Trustee has segregated assets in accordance with Clause 6.2.2, the Trustee shall apportion according to the earnings and changes in asset values as if each portfolio of segregated assets constituted a separate fund.
- 6.4.3 Notwithstanding this Clause 6.4 the rate of increase of Benefits vested in any Member shall be less than the rate, if the Fund were immediately terminated after the vesting, would have the effect of reducing the amount of the assets of the Fund so that those assets would be insufficient to pay the minimum benefits (having regard to the vesting standards) required to be paid to all other Members.

6.5 Revaluations/Solvency

The property of the Fund may be revalued by the Trustee at the end of each Fund Year and at such other times as the Trustee may consider appropriate and on such a basis as the Trustee determines **PROVIDED THAT** the timing and basis of such revaluation is in accordance with the Relevant Law and **PROVIDED FURTHER THAT** revaluations are undertaken and amounts are debited or credited to the Members' Member Accounts and the Foregone Benefits Account as may be required to ensure the maintenance of the solvency of the Fund in accordance with the Relevant Law.

6.6 Tax

If the Trustee becomes liable for Tax in respect of Contributions or any earnings of the Fund the Trustee may deduct such amount of Tax assessed out of the income of the Fund and if the income of the Fund from time to time is insufficient to make payment of the amount assessed the Trustee may debit the Members' Member Accounts on whatever basis the Trustee considers to be fair and reasonable so as to satisfy in full all the Tax assessed.

7. INVESTMENTS

7.1 The Assets

The following property and the property for the time being representing the same and the income therefrom shall constitute the assets of the Fund, namely:

- 7.1.1 Contributions;
- 7.1.2 Any property transferred to the Fund in respect of a Member in accordance with Clause 8.3; and
- 7.1.3 Any other moneys received or receivable by the Trustee for the purposes of the Fund.

7.2 Investment Strategy

7.2.1 Subject to the Relevant Law the Trustee shall formulate and give effect to a written investment strategy having regard to the whole of the circumstances of the fund including but not limited to:

- (a) the risk involved in making, holding and realising and the likely returns of the Fund's investments having regard to its objectives and expected cash flow requirements;
- (b) the composition of the Fund's investments including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
- (d) the ability of the Fund to discharge its existing and prospective liabilities.

7.2.2 The Trustee **HEREBY COVENANTS** to formulate and give effect to a strategy for the prudential management of any reserves of the Fund including the credit in the Foregone Benefits Account from time to time

such strategy to be consistent with the Fund's investment strategy, the maintenance of the Fund's solvency within the meaning of the Relevant Law and the Fund's capacity to discharge its liabilities as and when they fall due.

- 7.2.3 If the Trustee invests in what is known as derivative investments the Trustee shall regularly review the Fund's investment strategy and risk management policies and shall implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Relevant Law and any guidelines issued by the Responsible Authority from time to time.

7.3 Investments Authorised

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed, shall be invested as soon as practicable by and under the control and in the name of the Trustee, in any of the following investments:-

- 7.3.1 Any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- 7.3.2 On deposit with any company, building society, trust, fund, person or partnership with or without security and at the rate of interest and upon terms which the Trustee may deem expedient **PROVIDED HOWEVER** that any such deposit made with an Eligible Contributor shall only be made in accordance with the Relevant Law;
- 7.3.3 The purchase or acquisition of any shares, any interest in shares such as instalment receipts and endowment warrants, any stock rights and options for shares or stock of any class or description and of all or any type of bonds, mortgages or debentures in or of any building society, trust or fund or any company incorporated in any part of the world and whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and of any notes, options or other like securities issued by any of those companies or societies and whether secured or unsecured, registered or unregistered **PROVIDED HOWEVER** that any such investment capable of being interpreted as an investment in an Eligible Contributor shall only be made in accordance with the Relevant Law;
- 7.3.4 Any units of any common fund, property trust or unit trust including a pooled superannuation trust within the meaning of the Relevant Law;
- 7.3.5 Any policy of assurance whether for life or any form of disability or any annuity contract whether by proposal, purchase or otherwise, and any choses in action, interest for life or any lesser term or in reversion and howsoever arising;
- 7.3.6 The purchase or acquisition of any real or personal property whether absolutely or an unencumbered share or interest and in effecting repairs maintenance or improvements to such property;
- 7.3.7 Any securities or bonds of any government semi-governmental body or public authority;

- 7.3.8 Any bill of exchange, promissory note or other negotiable instrument;
- 7.3.9 The purchase or acquisition of any interest either jointly or in partnership or in any unit of interest;
- 7.3.10 Any option, hedging contract, futures contract, interest swap or other financial contract that may from time to time be made available;
- 7.3.11 Any other investments which the Trustee could make if acting personally and not as the Trustee;

PROVIDED THAT no moneys or assets of the Fund shall be invested contrary to the Relevant Law and in particular without limiting the foregoing no moneys or assets of the Fund shall be invested on a non-arm's length basis, in unauthorised in-house asset investments (as the term is defined by the Relevant Law), in any loans to any Member or in an asset or property known by the Trustee to be owned by a Member.

7.4 Power to Sell and Vary Investments

The Trustee shall have power as the Trustee deems fit to vary replace encumber or otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with a person's own property may do **PROVIDED THAT:**

- 7.4.1 The Trustee shall not invest in loans to Members; and
- 7.4.2 No investment shall be encumbered or charged otherwise than in accordance with Clause 7.5.

7.5 Borrowing

The Trustee may borrow or raise money up to such amount as the Trustee thinks proper and may secure the payment or repayment thereof by charge or mortgage over all or any of the assets of the Fund or in such other manner as it shall think fit but only if the Relevant Law may permit.

8. ENTRANCE TO FUND

8.1 Eligibility

Membership of the Fund is confined to Eligible Persons in the discretion of the Trustee.

8.2 Admission of Members

The Trustee may determine the basis on which an Eligible Person is to be admitted to membership of the Fund and the Trustee may require such an Eligible Person to complete an application for membership in such form as it may determine and the Eligible Person shall become a Member upon being admitted to membership by the Trustee. The Trustee may require the Member to complete a nomination of beneficiary form or some other like nomination which requires the Member to nominate the person or persons who shall benefit in the event of the Member's death.

8.3 Transfer from Another Fund

The Trustee may make arrangements with the trustee of any superannuation fund of which the Member is a member for the transfer of any assets or moneys to the Fund in respect of the Member which assets or moneys shall be credited to the Member's Member Account **PROVIDED THAT** if any of the said assets or moneys have been required to be preserved in accordance with the requirements of the Relevant Law the Trustee shall preserve those assets or moneys in like manner.

8.4 Members to Provide Information

8.4.1 Each Member shall comply with all reasonable requests made by the Trustee from time to time and when requested by the Trustee a Member shall furnish any information the Trustee shall deem necessary for the purposes of any investigation or otherwise in connection with the Fund and shall submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee. If a Member fails to comply with the provisions of this Clause the Trustee may suspend the payment of any Benefit until the Member has so complied; and

8.4.2 Where the information furnished by or in respect of a Member in any statement submitted to the Trustee is incorrect in any material particular the Benefit paid to, or in respect of such person may be adjusted to correct the error.

8.5 Member Bound by Deed

Notwithstanding that a Member may have failed to make any declaration upon or in conjunction with becoming a Member a Member shall by virtue of becoming a Member be deemed to have agreed to be bound by this Deed.

8.6 Fund to be an Excluded Superannuation Fund

The Trustee shall do all such things as may be necessary to establish and maintain the Fund as an Excluded Fund that is not a public offer fund (within the meaning of the Relevant Law).

9. CONTRIBUTIONS AND EXPENSES

9.1 Contributions

9.1.1 Contributions by the Member shall be of such amount or at such rates as shall be agreed upon by the Member and the Trustee from time to time.

9.1.2 The Trustee may accept Contributions by an Eligible Contributor in respect of a Member at such times and in such manner as the Trustee deems appropriate from time to time.

9.1.3 The Trustee may accept a payment in respect of a Member which is the whole or any part of a shortfall component within the meaning of the Superannuation Guarantee (Administration) Act 1992 and shall credit the same to the Member Account of the Member.

9.1.4 Notwithstanding any other provision of this Deed the Trustee shall not accept Contributions by or in respect of a Member unless the Contributions are authorised by the Relevant Law.

9.2 Fund Expenses

All costs, charges and expenses incurred in connection with the establishment, maintenance, administration and operation of the Fund shall be borne by the Fund and be deducted from the Fund on such basis as the Trustee considers fair and reasonable. Subject to the Relevant Law the Trustee may charge expenses of the Fund against a Member's Member Account or certain Members' Member Accounts without charging all Members' Member Accounts on a pro rata basis **PROVIDED THAT** the Trustee considers that charging on such basis is fair and equitable as between the Members.

10. BENEFITS

10.1 Occurrence of Condition of Release

Upon the occurrence of a Condition of Release in relation to a Member the Member's Benefit may become payable in whole or in part (subject to such limitations as may be prescribed by the Relevant Law). Subject to Clause 10.11 the amount of the Member's Benefit in the event of a Benefit being paid shall be calculated as an amount not exceeding the amount standing to the credit of the Member's Member Account at the time and the Trustee may:

- 10.1.1 Pay the Benefit to the Member in a lump sum; or
- 10.1.2 Apply the Benefit to the acquisition of an annuity; or
- 10.1.3 Apply the Benefit or segregate assets equivalent in value to the Member's Benefit in accordance with Clause 6.2.2 for the purposes of paying a pension for the benefit of the Member in accordance with Clause 10.8;

EXCEPT THAT in the event that Clause 1.3.2 applies and the Member has reached retirement age within the meaning of the Relevant Law the Trustee may only apply the Member's Benefit to or for the benefit of the Member in accordance with Clauses 10.1.2 or 10.1.3.

10.2 Voluntary and Compulsory Payment of Benefits

In the event that a Member becomes entitled to be paid a Benefit the Member may advise the Trustee of the Member's preference that a Benefit not be paid and the Trustee may in its absolute discretion apply the Member's Benefit either in whole or in part to or for the benefit of the Member at that or any later time in any of the ways specified in Clause 10.1 but only if Clause 1.3.1 applies or if Clause 1.3.2 applies and the Member's age is less than the retirement age for the purposes of the Relevant Law but otherwise in one or both of the ways specified in Clauses 10.1.2 or 10.1.3 **EXCEPT THAT** the Member's Benefit must be applied in full after the occurrence of any of the following events:

- 10.2.1 When having reached age 65 but not age 70 the Member ceases gainful employment on either a full time or a part time basis;
- 10.2.2 When the Member has attained age 70 and is not gainfully employed on a full time basis; or
- 10.2.3 When the Member dies in which case the Member's Benefit shall be paid in accordance with Clause 10.4.

10.3 **Benefit Not Required to be Paid on Termination of Employment**

Notwithstanding the termination of employment of a Member with an Eligible Contributor and subject to this Clause 10 the Trustee shall not be required to pay the Member the Member's Benefit or transfer the Benefit in accordance with Clause 13 unless the Trustee is desirous of doing so and in the event that the Member's membership is continued the Member's Member Account shall continue to be maintained just as if the Member was still employed and the Trustee may continue, or at some later point commence again, to accept Contributions by or in respect of the Member.

10.4 **Payment of Death Benefits**

If a Member dies then a Benefit calculated in accordance with Clause 10.1 shall be payable as a lump sum, annuity and/or pension as the Trustee sees fit.

In the event that the Member has made a nomination of beneficiary/ies to take effect on the Member's death the Trustee shall pay the Benefit in accordance with the nomination provided the nomination remains valid. A nomination shall be valid provided each person nominated who remains alive was a Dependant at the time of the nomination being made and at the date of death and provided the Member has not married during that time. A Member may amend a nomination that has become invalid thereby rendering the nomination valid.

In the event that the Member has not made a nomination or the nomination is invalid then the Trustee may pay or apply the Benefit to the Member's Dependents or legal personal representative/s **PROVIDED ALWAYS** that if the deceased Member shall have more than one Dependant the Trustee may pay the Benefit to the Dependents or any one or more of them exclusive of the other or others in such proportions as the Trustee shall deem fit and **PROVIDED FURTHER** that the Trustee may in the Trustee's absolute discretion determine to pay the whole or any remaining portion of the Benefit to the legal personal representative/s of the deceased Member and **PROVIDED FURTHER** that the Trustee may in the Trustee's absolute discretion increase the Benefit payable to either the Dependents or legal personal representative/s of the deceased Member by an amount equivalent to such amount (if any) which is a taxation deduction to the Fund under the Income Tax Assessment Act 1936. Subject to the Relevant Law a death benefit may be payable to an individual not being a Dependant where there is no legal personal representative appointed within twelve (12) months of the date of death and where there are no Dependents but otherwise the Benefit shall be forfeited in accordance with Clause 10.6.

10.5 **Unrestricted Non-Preserved Benefits**

In the event that any unrestricted non-preserved benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member being benefits transferred to the Fund in accordance with Clause 8.3 or otherwise such benefits may be paid to the Member.

10.6 **Forfeiture of Benefits**

10.6.1 Any Member or Dependant:-

- (a) who assigns or charges or attempts to charge any Benefit; or
- (b) whose Benefit whether by voluntary act, operation of law including pursuant to the provisions of the Bankruptcy Act 1966 or otherwise

becomes payable to or vested in any other person, company, government or other public authority; or

- (c) who (subject to reasonable enquiries having been made by the Trustee) cannot be located and whose Dependants cannot be located by the Trustee during a period of seven (7) years after a payment was last made or last payable to the Member by the Trustee, or who dies without any Dependants and where no grant of probate or letters of administration shall have been made in respect of the estate of such Member within twelve (12) months of the date of the Member's death; or
- (d) whose credit in the Member Account exceeds the Member's IsrbI (see Clause 10.11) may be liable to the Member's Benefit being forfeited by the Trustee at any time (whether before or after the occurrence of a condition of release in relation to the Member) but only to the extent of that excess as determined by the Trustee being an amount to which the Member would only otherwise become entitled upon the occurrence of a condition of release in the absolute discretion of the Trustee. A forfeiture of such an excess amount as against a Member may only be effected by an unanimous resolution of the Trustee in writing which is consented to in writing by the affected Member;

and the Member shall forfeit such Benefit **PROVIDED THAT** this sub-clause 10.6.1 shall not have the effect of forfeiting any Benefit or entitlement where the Member has already become presently entitled to that Benefit or entitlement as against the Trustee.

10.6.2 The Trustee shall credit all Benefits forfeited pursuant to Clause 10.6.1 to the Foregone Benefits Account and such Benefits shall be applied in accordance with Clause 6.3.

10.6.3 The Trustee shall only forfeit a Member's entitlement or Benefit in accordance with this Clause 10.6 where such forfeiture does not breach the Relevant Law and the Trustee in giving effect to such forfeiture shall do all such things as may be required by the Relevant Law.

10.7 Deduction of Tax from Benefit

The Trustee may deduct from any Benefit or payment under this Deed any tax or duty payable from or in respect of the same whether by the Member, the Fund or the Trustee in its capacity hereunder, and may thereupon pay the said Tax or duty to the Relevant Authority. The Member shall be entitled to receive only the net Benefit or payment after the deduction has been made.

10.8 Benefits Payable by Pension

The payment of a Benefit as a pension pursuant to Clauses 10.1.3 and 10.4 may be paid by way of the following styles of pension (subject to Clause 10.8.5) or such other style of pension that may be authorised by the Relevant Law from time to time:-

10.8.1 Life time pension

A pension may be arranged as a life time pension which shall have the following features:

- (a) the pension shall be payable at least annually throughout the life of the primary beneficiary;
- (b) the Trustee may in its discretion determine that the pension continue to be paid upon the death of the primary beneficiary to a reversionary beneficiary throughout the reversionary beneficiary's life but if the reversionary beneficiary is a minor the pension shall be paid at least until his or her 16th birthday and if the reversionary beneficiary is a full-time student at age 16 at least until his or her 25th birthday or cessation of full-time studies (whichever occurs first);
- (c) the size of payments of the pension in a year shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Clause 10.12 and subject to a commutation that may be required to pay a superannuation contributions surcharge;
- (d) if the inflation rate prescribed by the Relevant Law is not negative then the pension payable in a year shall be not less than the sum payable in the immediately preceding year (annualised if necessary);
- (e) if the inflation rate prescribed by the Relevant Law is negative then the pension payable in a year shall not be less than the said negative rate applied to the sum payable in the immediately preceding year (annualised if necessary);
- (f) the pension shall not have a residual capital value otherwise than as authorised by the Relevant Law at the time and any amount that remains to the credit of the Members Account of the pensioner at the time of termination of the pension that is not applied by way of residual capital value shall be forfeited as against the said pensioner and shall be credited to the Foregone Benefits Account;
- (g) the pension may not be commuted except as allowed by the Relevant Law which circumstances may include the purchase of a pension satisfying the requirements of Clause 10.8.2 (fixed term pension);
- (h) any reversion of the pension authorised by this Clause 10.8.1 shall not exceed the amount of pension that would otherwise had been paid to the previous pensioner;
- (i) any commutation or residual capital value of the pension that is authorised by this Clause 10.8.1, and the Relevant Law shall not exceed the lesser of the credit in the pensioner's Member Account and the amount (if any) that may be authorised under the Relevant Law.

10.8.2 Fixed term pension

A pension may be arranged as a fixed term pension which shall have the following features:

- (a) the commencement date of the pension ("the commencement date") shall be the day when the primary beneficiary becomes entitled to be paid the pension;

(b) the primary beneficiary must have already attained the pension age within the meaning of the Relevant Law as at the commencement date;

(c) the pension shall be paid at least annually to the primary beneficiary or a reversionary beneficiary:-

if the life expectancy (within the meaning of the Relevant Law) of the primary beneficiary on the commencement date is less than 15 years, for a fixed term of the said life expectancy rounded up to the next whole number of years; or

if the said life expectancy is 15 years or more for a fixed term determined by the Trustee not being less than 15 years but not more than the period of the life expectancy rounded up to the next whole number of years;

(d) the size of payments of pension in the first year after the commencement date shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Clause 10.12 and the first such payment shall relate to the period commencing on the commencement date;

(e) the size of payments of pension after the first year as prescribed by paragraph (d) shall not be less than the sum payable in the immediately preceding year and shall not be increased by a percentage rate greater than may be prescribed by the Relevant Law from time to time;

(f) the pension payments made in accordance with this Clause 10.8.2 may only be varied to allow commutation that may be required to pay a superannuation contributions surcharge;

(g) the pension shall not have a residual capital value otherwise than is authorised by the Relevant Law at the time and any amount that remains to the credit of the Member's Account of the pensioner at the time of termination of the pension that is not applied by way of residual capital value shall be forfeited as against the pensioner and shall be credited to the Foregone Benefits Account;

(h) the pension may not be commuted except as allowed by the Relevant Law which circumstances may include the purchase of a pension satisfying the requirements of Clause 10.8.1 (lifetime pension) or payment by way of commutation upon the death of the pensioner;

(i) any reversion of the pension authorised by this Clause 10.8.2 shall not exceed the amount of the pension that would otherwise have been paid to the previous pensioner.

10.8.3 Allocated pension

A pension may be arranged as an allocated pension which shall have the following features:

(a) the pension may be payable monthly in arrears or on such other terms as determined by the Trustee provided the payment is made

at least annually **EXCEPT THAT** where the date of commencement of the pension is on or after the 1st day of April in a year the Trustee shall not be required to make a pension payment prior to 30 June in that year;

- (b) the size of payments of the pensions in a year shall be determined by reference to the amount of the Benefit or the value of assets segregated in accordance with Clause 6.2.2 for the purpose of paying the pension and payments in respect of a year, except by way of commutation, shall not be larger or smaller in total than respectively the maximum and minimum amounts calculated in accordance with the Relevant Law;
- (c) the pension may be payable to a reversionary beneficiary;
- (d) the pension may be commuted and a residual capital value may be payable by the Trustee subject at all times to the requirements of the Relevant Law.

10.8.4 **Fixed benefit payment pension**

A pension may be arranged as a fixed benefit payment pension which shall have the following features:

- (a) the pension may be payable monthly in arrears or on such other terms as determined by the Trustee provided that a payment is made at least annually;
- (b) subject to paragraph (c) the size of payments of the pension in a year shall be determined by the Trustee having regard to the advice of the Actuary given in accordance with Clause 10.12;
- (c) the size of payments of pension (not including payments by way of commutation) after the first year shall not be increased by an amount greater than the average rate of increase in the Consumer Price Index (within the meaning of the Relevant Law) in the 3 years preceding the year;
- (d) the pension may be payable to a reversionary beneficiary provided that the pension payable to the reversionary beneficiary does not exceed the amount of the pension that would otherwise have been paid to the previous pensioner;
- (e) a residual capital value of the pension may be payable by the Trustee subject at all times to the requirements of the Relevant Law;
- (f) the pension may be commuted on such terms as the Trustee may determine **EXCEPT THAT** the amount able to be commuted shall not exceed the lesser of the credit in the pensioner's Member Account and the sum determined by applying the appropriate pension valuation factor determined in accordance with the Relevant Law to the pension.

10.8.5 **Rules applicable to all pensions**

Any pension payable in accordance with this Clause 10.8 shall be subject to the following Rules:

- (a) the pension may not be transferred or assigned to another person unless such transfer or assignment is authorised by the Relevant Law; and
- (b) the capital value of the pension and the income from it cannot be used as security for a borrowing.

10.8.6 Other features

Subject to the specific requirements of Clauses 10.8.1, 10.8.2, 10.8.3 and 10.8.4 as the case may be a pension may be payable on such other basis or from such portion of the Member's Benefit or assets which have been segregated as representing the Member's Benefit as the Trustee may determine having regard to matters such as the level of benefits, the Member's pension or lump sum reasonable benefit limits, whether or not a residual capital value and commutation entitlement are to be paid or payable and whether there shall be a reversion of entitlement to a Dependant in the event of death of the Member and upon commencing the pension in accordance with this Clause 10.8 the Trustee may record in writing the contractual terms and conditions applicable to the pension which it has determined to pay.

10.8.7 One or more pensions

The Trustee may commence more than one pension in respect of a Member whether at the same time or different times and each such pension shall be arranged and paid just as if it were the only pension to be paid from the Fund in respect of the member.

10.9 Benefits Payable by Lump Sum

The payment of a Benefit as a lump sum pursuant to Clauses 10.1.1 and 10.4 shall be made by the Trustee as soon as reasonably practicable after the Benefit has become payable.

10.10 Benefits Other Than in Cash

The Trustee may with the agreement of a Member or Dependant to whom a Benefit is payable transfer or vest in the Member any of the property of the Fund where such property is equivalent in value to the Benefit payable and the Trustee in determining the value to be attributed to such property may take whatever steps may be necessary to determine the true, fair and reasonable market value for that property at the time of distribution **PROVIDED THAT** the payment of a Benefit by way of transfer is authorised by the Relevant Law.

10.11 Limit on Member's Benefit

Notwithstanding any other provision of this Deed no Member's vested entitlement under this Deed shall exceed the Member's lump sum reasonable benefit limit ("lsrbl") within the meaning of the Income Tax legislation other than benefits which are comprised of minimum benefits (within the meaning of the Relevant Law) in respect of the Member and in the event that the benefits accumulated in the Member's Member Account would be liable to be assessed as being in excess of the Member's lsrbl that excess (to the extent it is not represented by minimum

benefits) shall be held as a non-vested accumulation in respect of the Member and when the Member's Benefit becomes payable or available to be applied for the Member's benefit the Trustee may in its absolute discretion pay that excess in whole or in part for the benefit of the Member and to the extent that the said excess is not so paid or applied the excess shall be forfeited as against the Member and applied to the Foregone Benefits Account to then be applied in accordance with Clause 6.3.

10.12 Actuarial advice

10.12.1 In the event of the commencement of a defined benefit pension the Trustee shall obtain advice from the Actuary as to the various benefit design features of the pensions that are available and the pension amounts that would be payable in the first year having regard to the Member's Member Account balance, the type of pension and the benefit design features available in respect of each type of pension.

10.12.2 Within 12 months of the commencement of a defined benefit pension and within every 12 month period thereafter during which the liability to pay the pension remains on foot the Trustee shall obtain a certificate from the Actuary in accordance with the requirements of the Relevant Law.

11. ALTERATION OF THE DEED

11.1 Power to Amend

The Trustee may from time to time alter, amend, add to, delete or modify any of the provisions of this Deed by deed provided that no amendment pursuant to this Clause 11 shall:-

11.1.1 Vary the main purpose of this Deed namely to establish a Regulated Superannuation Fund and to provide benefits to Members on retirement or to the Dependants of Members in the event of death before retirement of the Member; or

11.1.2 Have the effect of reducing any Benefits that have accrued or have become payable to a Member before the amendment taking effect **EXCEPT THAT** where such reduction is required by reason of any tax payable on income of the Fund, where such reduction is to enable compliance with the Relevant Law, where the affected Members have approved of the reduction in writing or where the Relevant Authority has approved the reduction in writing.

11.2 Amendments Subject to Relevant Law

Notwithstanding anything in this Clause 11, this Deed may not be amended if that amendment would be contrary to the Relevant Law.

12. WINDING UP OF FUND

If at any time there shall be no Members or no Dependants of Members then the Fund shall thereupon be wound up, by the Trustee transferring the balance of investments remaining (if any) after allowance for any expenses expected to be incurred in winding up the Fund to the last person who was a Member or to the Dependants or estate of such Member in such proportion as the Trustee may in the absolute discretion of the Trustee determine and upon completion of such transfer and payment of all final expenses the Fund shall cease and determine **PROVIDED THAT** if any payment of Benefits provided for by this Clause is otherwise required by the Relevant Law or by this Deed to be deferred

until the occurrence of a Condition of Release then the Member shall not be entitled to receive such part of the Benefit and the Trustee shall transfer the Benefit to another superannuation entity nominated by the Member **PROVIDED THAT** such entity does not permit the payment of the Benefit prior to the occurrence of a Condition of Release.

13. TRANSFER OF BENEFITS

If a Member becomes eligible to join another Regulated Superannuation Fund the Trustee may if requested by the Member in lieu of part or all of any Benefit to which the Member may become entitled under this Deed, transfer to the trustees of such superannuation fund such portion of the property or moneys of the Fund as the Trustee in its discretion determines but in the event of a transfer of the whole entitlement of the Member an amount in value not less than the amount determined in accordance with Clause 10.1 as if a Benefit was payable to the Member.

14. DEED SUBJECT TO RELEVANT LAW

Notwithstanding anything else contained in this Deed, to the extent to which the Relevant Law imposes any requirements that must be met by the Fund or by the Trustee (in terms of being a Regulated Superannuation Fund which is a complying superannuation fund), then those requirements shall be deemed to be a requirement of this Deed.

EXECUTED as a deed.

THE COMMON SEAL of
KOOLoola INVESTMENTS PTY LTD
was affixed in the presence of:



Sole Director and Secretary

