

**T AND N  
SUPERANNUATION FUND**



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## TABLE OF CONTENTS

### Contents

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1.	Establishment and Rules.....	1
2.	Governing Law .....	1
3.	Severability.....	1
	Rules.....	2
1.	Fund .....	2
2.	Membership.....	2
3.	Contributions .....	3
4.	Investments .....	4
5.	Accounts.....	5
6.	Categories and Investment Portfolios .....	8
7.	Valuation .....	9
8.	Records .....	10
9.	Disclosure and reporting .....	10
10.	Benefits .....	10
11.	Trustee – appointment and removal.....	14
12.	Powers of trustee .....	16
13.	Administration of fund.....	19
14.	Superannuation Law to prevail.....	21
15.	Indemnity of trustee.....	21
16.	Trustee's remuneration.....	22
17.	Amendment .....	22
18.	Termination of fund .....	22
19.	Governing Law .....	23
20.	Severability.....	23
21.	Definitions and interpretation.....	23

**This Deed** made at the date specified at **Item 1** of the Schedule ("**Execution Date**").

**By**

The party or parties named as Trustee at **Item 2** of the Schedule ("**Name of Trustee(s)**").

## **Background**

- A. The Trustee has resolved to establish a superannuation fund ("**Fund**") by the name specified at **Item 3** of the Schedule ("**Name of Fund**").
- B. The Trustee has agreed to act as the trustee of the Fund.
- C. The purpose of this Fund is to make provision for benefits to be paid to Members on their retirement and as permitted by this Deed for benefits payable to Members as result of Permanent Disablement or to Dependants of Members in accordance with the terms of this Deed.

## **Operative provisions**

### **1. Establishment and Rules**

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- (a) With effect from the Execution Date, the Trustee establishes an indefinitely continuing superannuation fund to be known by the name specified at **Item 3** of the Schedule.
- (b) The Trustee will hold the assets of the Fund on the trusts contained in the rules attached to this Deed ("**Rules**").
- (c) The Rules have the same force and effect as if they were set out in the body of this Deed.

### **2. Governing Law**

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This Deed will be governed by the laws of the jurisdiction described in **Item 5** of the Schedule.

### **3. Severability**

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If any part of this Deed is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the Deed will not be affected and this Deed will be read as if the part had been deleted in that jurisdiction only.

## Rules

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Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation rule at the end of this document (**rule 21**).

### 1. Fund

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#### 1.2 Purpose of Fund – Corporate Trustee

- (a) The Trustee must maintain the Fund solely for purposes permitted under Superannuation Law.
- (b) If **Item 4** of the Schedule (“Must have Constitutional Corporation as Trustee”) is completed “Yes”, then the Trustee must be a Constitutional Corporation within the meaning of the Superannuation Law.
- (c) If **Item 4** of the Schedule (“Must have Constitutional Corporation as Trustee”) is completed “No”, then the primary purpose of the Fund is the provision of old-age pensions.

#### 1.3 Beneficiary’s interest

Each Beneficiary has a beneficial interest in the Fund. Other than as provided by this Deed, a Beneficiary does not have any interest in a particular Asset.

### 2. Membership

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#### 2.1 Application

A person may apply for membership of the Fund by, if required by the Trustee, completing and submitting to the Trustee an application form in a form approved by the Trustee. The Trustee shall consider any such application and in its absolute discretion may admit the applicant as a Member of the Fund. A person on being admitted as a Member agrees to be bound by the terms of this Deed. The Trustee must provide a written statement to a prospective Member setting out that person's right to receive benefits pursuant to the Deed and such other matters required in order to satisfy the Superannuation Law.

#### 2.2 Trustee’s approval

The Trustee may approve a person’s application to become a Member of the Fund if Superannuation Law permits.

#### 2.3 Member bound by deed

On admission as a Member of the Fund, the Member is bound by the provisions of the Trust Deed.

#### 2.4 Transfer Assets to Fund

The Trustee may make arrangements it considers appropriate with:

- (a) a person;
- (b) any employer or previous employer of a person; or
- (c) the trustees of any superannuation fund,

for the transfer of assets to the Fund and to provide benefits in respect of a Member. The arrangements must comply with Superannuation Law.

## **2.5 Transfer Assets from Fund**

The Trustee may transfer Assets to another superannuation fund for the benefit of a Member if:

- (a) the Member is eligible to be a member of that other fund; and
- (b) the transfer complies with Superannuation Law.

## **2.6 Ceasing to be a Beneficiary**

A person ceases to be a Beneficiary when:

- (a) all benefits which are or may be payable in respect of the Beneficiary have been paid; or
- (b) a transfer is made under **rule 2.5** in satisfaction of all the Beneficiary's entitlements to benefits.

## **3. Contributions**

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### **3.1 Personal contributions**

A Member may make personal contributions to the Fund.

### **3.2 Other contributions**

A Member's employer, or any other person, may contribute to the Fund for the benefit of a Member.

### **3.3 Spouse or Child contributions**

With the consent of the Trustee, a Member may contribute to the Fund for his or her Spouse or Child.

### **3.4 Splitting of contributions**

- (a) Subject to the provisions of Superannuation Law a Member may apply to the Trustee to roll over, transfer or allot the whole or part of his or her Individual Account for the benefit of the Member's spouse.
- (b) The Trustee may accept the application if the amount nominated does not exceed the splittable contributions made by the Member nor the amount that Superannuation Law allows to be rolled over, transferred or allotted.

- (c) If the Trustee accepts the application it must credit the amount rolled over, transferred or allotted to an account in the name of the Member's spouse and make all other appropriate entries in the accounts of the Fund.

### **3.5 Trustee may refuse contributions and return contributions**

The Trustee may:

- (a) refuse to accept all or part of a contribution made for or on behalf of a person without giving any reason; and
- (b) if permitted by Superannuation Law, repay any contributions if made in error, or if the making of the contributions was not permitted by Superannuation Law, or if the receipt of the contributions would prejudice the tax treatment of the Fund.

### **3.6 Trustee must refuse contributions**

The Trustee must refuse to accept any contribution which is not permitted by Superannuation Law.

## **4. Investments**

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### **4.1 Investment power**

In making investments of money comprising the Trust Fund, the Trustee must:

- (a) formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including but not limited to the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (b) keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally;
  - (ii) that are held by the Trustee in capacity as trustee of some other trust; or

- (iii) that are money or assets, as the case may be, of an employer of a Member or other associate of a Member, or any other person;
- (c) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide; and
- (d) ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members.

#### **4.2 General Power of Investment**

Subject to **rule 4.1** and the Superannuation Law, the Trustee may invest all money or other Assets as it, in its absolute discretion, thinks fit.

#### **4.3 Additional Powers**

If permitted by Superannuation Law, the Trustee may in its absolute discretion:

- (a) vary, replace, encumber and deal with the Assets;
- (b) lend money or give other financial assistance to a person;
- (c) invest Assets in a related entity of the Trustee or a Beneficiary; and
- (d) cause or permit any Asset of the Fund to be held and (if applicable) registered in the name of any other person as custodian or bare trustee for the Trustee (in its capacity as Trustee of the Fund).

### **5. Accounts**

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#### **5.1 Individual Accounts**

The Trustee must establish one or more Individual Accounts in respect of each Member, each separate account being equal to:

- (a) Any contributions and transfers to the Fund to that account by or in respect of the Member; plus
- (b) Net earnings credited to that account; less
- (c) Any benefit payments and other outgoings applicable to that account as determined by the Trustee.

The Trustee may establish one or more Individual Accounts in respect of each:

- (d) Spouse of a Member for whom the Trustee holds a contribution or other amount;
- (e) Child of a Member for whom the Trustee holds a contribution or other amount; and

- (f) Previous Spouse for whom an amount is transferred from a Member's Account.

## **5.2 Other provisions relating to Individual Accounts**

- (a) More than one Individual Account may be maintained for a Member to properly record separate types of transactions or entitlements including for the purpose of distinguishing between different benefits in course of payment or accounts still able to accept further contributions and transfers.
- (b) The Trustee may maintain such sub-accounts within each Individual Account to properly record any specific entitlement or other information that may be required by the Superannuation Law or as deemed necessary by the Trustee. Credits and/or debits against any sub-account shall be determined by the Trustee after taking into account the requirements of the Superannuation Law.
- (c) The earnings credited to each Individual Account or any sub-account shall be allocated to the Individual Account on a basis determined by the Trustee and may include the relevant share of any diminution in the value of Fund assets (or specific assets maintained for that Beneficiary) that has occurred.
- (d) The amounts held in each Individual Account, or the amounts payable pursuant to the Category Rules applicable to that Beneficiary (whichever is the lesser) are fully vested for the benefit of the relevant Beneficiary.
- (e) In the event of the death of a Member, the Trustee may maintain an Individual Account for each Beneficiary who is entitled to receive a benefit from the Fund.

## **5.3 Record in Individual Accounts**

The Trustee must record in an Individual Account:

- (a) contributions and transfers to the Fund for the Beneficiary;
- (b) any insurance proceeds received by the Trustee in respect of the death or Permanent Disablement of a Beneficiary and allocated to the Beneficiary pursuant to clause 10.9;
- (c) any other amount received by the Trustee in respect of the Beneficiary;
- (d) transfers from another Account for the Beneficiary;
- (e) amounts paid from the Fund (including benefits and transfers) for the Beneficiary;
- (f) pension payments from the Fund for the Beneficiary;
- (g) transfers from the Individual Account for another Beneficiary;
- (h) any Liabilities (including any Tax or amount payable to the Trustee) which are attributable to the Beneficiary;
- (i) any provisions for any payments in respect of the Beneficiary;



- (j) the Investment Portfolio or Investment Portfolios to which the Account is attributable;
- (k) movements in the value of the Fund or any Investment Portfolios which the Trustee determines are attributable to the Account;
- (l) any Fund expenses that the Trustee considers appropriate to attribute to the Account;
- (m) any flagging agreement, flagging order or splitting agreement or any like order or agreement under the *Family Law Act 1975* that has been notified to the Trustee in relation to the Beneficiary; and
- (n) any other matters the Trustee considers appropriate.

#### **5.4 Forfeiture of benefits**

Any Member or other Beneficiary:

- (a) who assigns or charges or attempts to assign or charge any benefits; or
- (b) whose benefits whether by his own act or operation of law become payable to or vested in any other person or organisation; or
- (c) who for any reason is unable personally to receive or enjoy the whole or any portion of his benefits or, in the opinion of the Trustee, is incapable of managing his affairs; or
- (d) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee in a five year period after a payment was due to be made to him;

shall, subject to the Superannuation Law, forfeit further entitlement under the Deed.

The Trustee may, subject to the Superannuation Law, hold the forfeited benefit upon trust and pay it to the Beneficiary and/or his Dependants or any one or more of them in such proportions between them and on such terms and at such times as the Trustee in its absolute discretion determines. Alternatively, the Trustee may, in its absolute discretion, deal with such forfeited benefit pursuant to **rule 10.12**.

#### **5.5 Reserve Account**

The Trustee may keep one or more Reserve Accounts. The Trustee must record in the Reserve Account:

- (a) any part of a Beneficiary's Individual Account which is no longer required to pay a benefit to the Beneficiary;
- (b) any amount transferred to the Fund which is not allocated to an Individual Account;
- (c) movements in the value of the Fund or of any Investment Portfolios attributable to the Reserve Account; and

- (d) where permitted by Superannuation Law, any other amount which in the Trustee's opinion ought to be held in reserve and not allocated.

## **5.6 Application of the Reserve Account**

The Trustee must, subject to the Superannuation Law, apply amounts held in the Reserve Account for one or more of the following purposes:

- (a) to provide additional benefits for Beneficiaries and their Dependants;
- (b) to meet the expenses of the Fund;
- (c) to replace contributions otherwise payable by an Employer; and
- (d) other purposes the Trustee determines,

if permitted by the Superannuation Law.

## **6. Categories and Investment Portfolios**

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### **6.1 Categories of benefit**

The Trustee may create such categories of membership as are permitted by the Superannuation Law, and set out the terms and conditions upon which benefits are paid for each such category (the "**Category Rules**"). Subject to Superannuation Law, the Trustee:

- (a) shall if requested by the Member; and
- (b) may in any event, allocate a Member to a Category and make payment of benefits in accordance with the Category Rules.

### **6.2 New Category**

The Trustee may establish a new Category or close an existing Category by resolution.

### **6.3 A Category is not a separate trust**

A Category does not constitute a separate trust and a person's interest in the Fund and the Trustee's liability in respect of the Fund are not limited to any Category.

### **6.4 Investment Portfolios**

The Trustee may at any time, by resolution:

- (a) divide the Fund into two or more Investment Portfolios;
- (b) establish a new Investment Portfolio; or
- (c) close any Investment Portfolio.

## **6.5 Changes to Investment Portfolio**

If the Trustee establishes or closes an Investment Portfolio under **rule 6.4**, the Trustee may allocate the whole or any part of the Fund to the Investment Portfolio in such manner which the Trustee considers appropriate.

## **6.6 Members may nominate Investment Portfolios**

If the Fund is divided into two or more Investment Portfolios, the Trustee may:

- (a) ask Members to nominate one or more Investment Portfolios to which the value of their Individual Accounts will be attributed;
- (b) make rules permitting Members to switch between Investment Portfolios;
- (c) attribute an Individual Account to any Investment Portfolio the Trustee determines if the Member does not notify the Trustee of their nominated Investment Portfolios within a reasonable time; and
- (d) subject to the above, attribute an Account to any Investment Portfolios or Investment Portfolios it considers appropriate.

## **6.7 Order Investment Portfolios are to be applied**

If a Beneficiary's Individual Account is attributed to two or more Investment Portfolios, the Trustee may ask the Beneficiary to choose the order in which those Investment Portfolios are to be applied to meet payments to or liabilities of the Beneficiary.

## **6.8 Trustee's power to apply Investment Portfolios**

If a Beneficiary has not made a valid choice under **rule 6.7** or if an Individual Account is attributed to two or more Investment Portfolios, the Trustee may determine the order in which Investment Portfolios are to be applied to meet payments to or liabilities of the Beneficiary.

## **6.9 Switching**

The Trustee may switch amounts between Investment Portfolios:

- (a) on request by a Beneficiary; or
- (b) in its discretion.

## **6.10 An Investment Portfolio is not a separate trust**

The Trustee must keep records so that the Assets and Liabilities attributed to an Investment Portfolio can be identified. However, an Investment Portfolio does not constitute a separate trust and a person's interest in the Fund and the Trustee's liability in respect of the Fund are not limited to any Investment Portfolio.

## **7. Valuation**

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- (a) The Trustee shall when required by the Superannuation Law, and may at such other times as the Trustee considers appropriate, instruct a person, who the

Trustee considers to be appropriately qualified and experienced, to value the whole or any part of the Fund.

- (b) Movements in the value of the Fund must be recorded in one or more Accounts determined by the Trustee within a reasonable time after each valuation is completed.

## **8. Records**

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### **8.1 Records**

The Trustee must keep records for the Fund which:

- (a) it considers appropriate; and
- (b) comply with the Superannuation Law.

### **8.2 Financial statement**

For each Financial Year, the Trustee must prepare financial statements for the Fund as required by the Superannuation Law and otherwise as the Trustee considers appropriate.

### **8.3 Audit**

If the Superannuation Law requires, the Trustee must ensure that, for each Financial Year, an auditor:

- (a) audits the accounts and records of the Fund; and
- (b) reports in writing to the Trustee,

within the time required by the Superannuation Law.

## **9. Disclosure and reporting**

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- (a) The Trustee must give to each Beneficiary and each prospective Member, at the times required by the Superannuation Law, all the information required by the Superannuation Law.
- (b) The Trustee must give the relevant regulator, at the times required by the Superannuation Law, all the information required by the Superannuation Law.
- (c) A copy of this Deed and the latest financial statements pertaining to a Beneficiary must be made available for inspection by the Beneficiary upon request.

## **10. Benefits**

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### **10.1 Payment**

Benefits payable to or in respect of a Member under this Deed must be made from accounts established pursuant to **rule 5**.

## 10.2 Benefit payable to a Member

In the event of a Member having satisfied any preservation requirement of the Superannuation Law, and becoming entitled to an immediate payment of a benefit and requesting such a benefit be paid, the Trustee must pay a benefit to the Member up to the amount requested by the Member but not exceeding the amount standing to the credit of that Member's Individual Account.

## 10.3 Compassionate grounds or financial hardship

If Superannuation Law permits, the Trustee may pay a benefit to a Beneficiary on compassionate grounds or on the grounds of financial hardship or at such other time or times and in such other circumstances as are permitted by the Superannuation Law. The Trustee may adjust the Beneficiary's other benefit entitlements as it considers appropriate.

## 10.4 Benefit payable in respect of a Member on death of that Member

(a) In the event of the death of a Member, the Trustee must pay a benefit in respect of the Member equal to the balance held in the deceased Member's Individual Account(s) and payment of the benefit must commence to be paid not later than the time allowed by the Superannuation Law.

(b) Where:

(i) the Trustee is entitled or required to pay a benefit by way of a lump sum payment upon death of a Member; and

(ii) if the Trustee, pursuant to this clause, increases the benefit (or does not reduce the benefit) otherwise payable, the Fund would be entitled to a deduction for an amount pursuant to Section 295-485 of the *Income Tax Assessment Act 1997* (or any provision of the Tax Law to the effect of that section);

then:

(iii) the Trustee may so increase the benefit (or not reduce the benefit) otherwise payable by an amount provided for in Section 295-485 of the *Income Tax Assessment Act 1997* (or any provision of the Tax Law to the effect of that section), and pay an amount in excess of the Individual Account of the Member; and

(iv) if the Trustee does so, the Trustee may reduce the Individual Accounts of the other Members in such proportions as the Trustee may reasonably determine having regard to the benefit obtained or likely to be obtained by those other Members as a result of the tax deduction to the Fund referred to in **rule 10.4(b)(ii)**, or may make the excess payment out of an appropriate Reserve Account.

(c) Subject to the Superannuation Law, the benefit payable in respect of the Member must be paid to the Legal Personal Representative and/or the Dependant(s) of the Member nominated by him or her to the Trustee (**Binding Death Nomination**). The Trustee may specify the form and manner of making such a nomination, but in the absence of any such specification, the

nomination shall be effective and binding if it is in writing and signed by the Member.

- (d) In the event that the Member:
- (i) makes no such nomination; or
  - (ii) makes a nomination, otherwise than in accordance with **rule 10.4(b)** or which has lapsed pursuant to the Superannuation Law, if a provision of the Superannuation Law which applies to the Fund, so provides (**Non-binding Death Nomination**),

the Trustee may pay the benefit to one or more of the Dependants of the Member as the Trustee may at its discretion determine, and if more than one, in such shares as the Trustee at its discretion determines, and the Trustee may take into account in exercising any such discretion any Non-binding Death Nomination.

- (e) In the absence of any Dependant or if the Trustee declines to make a determination in favour of the Dependant, the Trustee shall pay the benefit to the deceased Member's legal personal representative.

#### **10.5 Form and conditions of benefit**

The benefit payable to or in respect of a Member:

- (a) subject to rules 1.2 and 11.6, shall be paid in such manner and on such conditions as are provided for in the Category Rules if applicable; and
- (b) subject to that and for the avoidance of doubt, subject to rules 1.2 and 11.6, shall be paid in such manner and on such conditions as is determined by the Trustee and permitted by the Superannuation Law current at the time such benefit is determined. Subject to the provisions of the Superannuation Law current at the time such benefit becomes payable, the form of the benefit, the terms on which the benefit is paid, and the amount and details thereof, may be agreed between the Trustee and the Member (or other Beneficiary).

#### **10.6 Transfer of Assets**

If permitted by Superannuation Law, the Trustee may satisfy a benefit payable to a person by transferring Assets of equivalent value to the person or the person's nominee.

#### **10.7 Annuity purchase**

In lieu of paying any benefit from the Fund, a Member to whom a benefit is payable may elect to have an appropriate annuity purchased from a authorised provider and, in order to provide for that purpose, the Trustee will transfer the relevant benefit in cash to such annuity provider. The Trustee shall not be bound or concerned to see to the application of the benefit.

#### **10.8 Incapacity**

If the Trustee believes that a person who is entitled to a benefit is unable to manage his or her financial affairs, the Trustee may:

- (a) pay the benefit to another person to be used for the benefit of the person entitled to it; and
- (b) accept the other person's receipt as a good discharge,

if permitted by Superannuation Law. The Trustee is not responsible for the application of the benefits by the person to whom it is paid.

#### **10.9 Additional death and Permanent Disablement benefits where covered by Insurance**

- (a) The Trustee may insure any Member for additional benefits to be payable on death or Permanent Disablement. Where the Trustee has effected such death and/or Permanent Disablement insurance, the amount received under that insurance in the event of a Member's death or Permanent Disablement shall be invested on behalf of the Fund or, applied to repay or reduce any liabilities of the Fund, and shall, subject always to clause 14, be credited, at the discretion of the Trustee:
  - (i) to increase the Account of the Member in respect of the death or Permanent Disablement the insurance proceeds were received; or
  - (ii) to increase the Account of another Member.
- (b) In respect of Permanent Disablement, the Trustee is specifically entitled to insure a Member for an income benefit payable for a period of up to two years (or for such other benefit and payment conditions as may be permitted under Superannuation Law).
- (c) Premiums payable to effect any such insurance may, at the sole discretion of the Trustee, be debited against an Account of the relevant Member or may be treated as a general Fund expense.

#### **10.10 Reversionary benefits**

The terms of any Pension payable to a Member may include a subsequent benefit payable to one or more Dependants following the relevant Member's death and the Trustee must record the details of such benefit, in a minute prepared pursuant to **rule 10.15**.

#### **10.11 Commutation of Pension**

A Member or Beneficiary in receipt of a pension shall be entitled to commute all or any part of that Pension with the intent of stopping it or for taking a lump sum benefit or for converting it to another pension, provided such action is in accordance with the requirements of the Superannuation Law.

#### **10.12 Payment to others on behalf of Beneficiaries**

When any Beneficiary is under the age of eighteen years or when in its opinion it would be in the best interests of the Beneficiary, the Trustee may pay all or part of a benefit to any other person for application on behalf of the Beneficiary and/or to his Dependants and the receipt of the person to whom the benefit is paid shall be a

complete discharge to the Trustee for the payment in respect of that benefit. The Trustee will not be bound or concerned to see to the application of the benefit.

### **10.13 Tax**

The Trustee may deduct from a payment from the Fund any amount it is required or the Trustee reasonably believes it is required to deduct for Tax.

### **10.14 Finalisation of benefit**

The payment of any benefit from an Individual Account or Accounts is limited to the balance of that account. All payments to or in respect of the Member from an Individual Account shall cease when its value is reduced to zero.

### **10.15 Trustee to minute details of benefits**

The Trustee must maintain written minutes containing the details of any benefit paid or payable under this **rule 10** and such minutes (if signed by the relevant Member or Beneficiary) shall be conclusive proof to any party that the terms of the benefit are as stated in that minute.

### **10.16 Receipt**

Any person to whom a benefit is payable shall, if requested by the Trustee, furnish the Trustee with a receipt and release in the form from time to time required by the Trustee, and the Trustee may withhold payment of the benefit until the receipt is provided.

### **10.17 Trustee's discharge**

The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person who the Trustee believes is entitled to the benefit.

## **11. Trustee – appointment and removal**

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### **11.1 Original Trustee**

The original Trustee are the persons or is the corporate body who are or which is named as Trustee on Page 1 of this Deed.

### **11.2 Vacancy in Office**

A Trustee shall cease to be a Trustee if the Trustee:

- (a) is removed from office by the Members;
- (b) resigns the office by notice in writing to the Members;
- (c) being a body corporate, goes into liquidation or administration or suffers the appointment of a receiver; or
- (d) being an individual, dies or becomes incapable of acting or otherwise becomes ineligible to continue to act as a Trustee.



### 11.3 Appointment of new Trustee on Removal

If a Trustee ceases to be a Trustee pursuant to **rule 11.2(a)**, the Members may appoint a new Trustee to act in the place of the former Trustee.

### 11.4 Appointment of new or additional Trustee

If the Trustee ceases to be a trustee pursuant to **rule 11.2(b), (c) or (d)**, or if the Superannuation Law requires appointment of an additional trustee:

- (a) if the Trustee is an individual, the continuing Trustee, if there is one, must appoint a new Trustee to act in the place of the former Trustee. If there is not any continuing Trustee, the legal personal representative of the last surviving Trustee may appoint a new Trustee;
- (b) if the Trustee is a body corporate, then the body corporate or its liquidator, administrator or receiver may appoint a new Trustee.

If a new Trustee is not appointed within 14 days of the event referred to in **rule 11.2** occurring, then the Members may appoint a new Trustee in the place of the Trustee who or which has ceased to be a Trustee.

### 11.5 Continuity of Obligation

A Trustee, on ceasing to be a Trustee, shall do everything necessary to transfer the Fund to the new Trustee and shall deliver all Fund records and other books to the remaining or new Trustee.

### 11.6 Replacement of Trustee being Constitutional Corporation

If **Item 4** of the Schedule (“Must have Constitutional Corporation as Trustee”) is completed “Yes”, and the Trustee retires and a replacement Trustee is appointed not being a Constitutional Corporation, then the primary purpose of the Fund as and from the appointment of the new Trustee shall be the provision of old-age pensions.

### 11.7 Transfer of Assets

On retirement, the retiring Trustee must:

- (a) transfer or arrange for the transfer of all Assets to the new Trustee; and
- (b) deliver to the new Trustee all books, documents, records and other property relating to the Fund.

### 11.8 Liability of retiring Trustees

From the date of appointment of a new Trustee in compliance with the Trust Deed and Superannuation Law, the Trustee has no further obligation or liability under the Trust Deed except:

- (a) in respect of any neglect or default by the retiring Trustee occurring prior to the date of appointment of the new Trustee; and

- (b) any failure by the retiring Trustee to transfer the Assets to the new Trustee.

## **12. Powers of trustee**

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### **12.1 Trustee's powers**

Subject to the Superannuation Law, the Trustee has:

- (a) all the rights, powers and privileges that a natural person has in administering their own affairs; and
- (b) all the rights, powers and privileges that are vested in a Trustee under Superannuation Law.

Without limiting this, the Trustee may:

- (c) open any account or accounts with any financial institution and to operate such account or accounts and draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument as the Trustee thinks fit;
- (d) invest all monies and assets forming part of the Fund in or upon investments of any kind (not limited to investments permitted by law for the investment of trust funds) and in its absolute discretion either retain the investment in that form or sell or convert into money any of those investments for cash or on terms so as to allow a purchase any time for payment of the whole or part of the purchase price with or without interest and with or without security) and may in its absolute discretion from time to time vary or transpose any investments into others authorised by these Rules with or without security as though the Trustee was the beneficial owner thereof;
- (e) sell, transfer, hire, lease or dispose of any real or personal property of the Fund, whether at a profit or not;
- (f) grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;
- (g) purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this clause, develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;
- (h) give receipts for money or other property provided to the Trustee, notwithstanding that the Trustee may be a sole trustee;
- (i) without limitation to any of the foregoing, invest in:
  - (i) any investments 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;
  - (ii) any mortgage of or charge on freehold property wheresoever located;

- (iii) any deposit or loan with any company, or other organisation whatsoever;
  - (iv) any purchase or acquisition of shares, fixed interest investments and options of any company or organisation wheresoever situated, as well as any derivative issue called by whatsoever name;
  - (v) any mortgage of or charge on any personal or other property including assets of a wasting or depreciable nature;
  - (vi) any policy of insurance or annuity contract, interests for life or any lesser terms or in reversion;
  - (vii) any purchase or acquisition of any real or personal property and the improvement or extension thereof;
  - (viii) any purchase or acquisition of any interests either jointly or in partnership or in any unit of interest including units or sub-units of any unit trust or mutual fund wheresoever situated;
  - (ix) any discounting of loans, mortgages, contracts, hire purchase agreements or leases; or by direct lending in any of the same investments; and
  - (x) any other investments which the Trustee could make if it was acting as an individual person and not as Trustee; and
- (j) may do anything incidental to the exercise of any other power herein contained,

provided that:

- (k) in the event that the law of any State or Territory applies so as to restrict the power of the Trustee with respect to the investment of monies forming part of the Fund, the Trustee must observe such law in respect of that investment; and
- (l) the Trustee shall not make any investment that may be prohibited by the Superannuation Law.

## 12.2 Borrowing

- (a) The Trustee may borrow money if not prohibited by the Superannuation Law. Subject to, but without limiting this, the Trustee may 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. The Trustee may secure, against the Fund assets, 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.
- (b) Any money raised by the Trustee under **rule 12.2(a)** will form part of the Fund.
- (c) The interest payable on any such borrowings under **rule 12.2(a)** is a proper outgoing of the fund.

### 12.3 Charging of Fund assets

The Trustee may charge the Fund assets to secure the repayment of any borrowings and other obligations permitted by the Superannuation Law.

### 12.4 Delegation

The Trustee may, to the fullest extent permitted by law:

- (a) delegate any of its powers, duties and discretions to any person, including a related entity, on terms which the Trustee considers appropriate; and
- (b) without limiting this, in writing, delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee, to a financial institution for the purpose of a mortgage, loan or other associated lending instrument, and execute any power of attorneys or other documentation necessary to effectuate such purpose.

### 12.5 Custodian, Administration and Investment Manager

Without limiting **rule 4.3(d)**, the Trustee may appoint a person to:

- (a) take custody of (including hold legal title to) any or all of the Assets on terms which the Trustee considers appropriate;
- (b) act as the administrator of the Fund; and
- (c) manage investments of the Fund.

### 12.6 Personal interest

- (a) The Trustee, any individual Trustee, any directors of the Trustee may exercise any power, duty or discretion under this Trust Deed notwithstanding that they have a personal interest in the matter or that any shareholder of a Trustee that is a corporation has a personal interest in the matter.
- (b) This clause 12.6 applies whether any the personal interest results from and interest as trustee of any other settlement, in a personal capacity, as a shareholder or director of any company, as a partner in a partnership, as a unitholder in a unit trust, as a beneficiary of a discretionary trust or any other personal interest.

### 12.7 Indemnities

Subject to the Superannuation Law and **rule 15** of this Deed, the Trustee may grant an indemnity to any person on terms which the Trustee considers appropriate.

### 12.8 Covenants by Trustee

- (a) The Trustee must:
  - (i) act honestly in all matters concerning the Fund;
  - (ii) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would

exercise in dealing with property of another for whom the person felt morally bound to provide;

- (iii) ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (iv) keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (A) that are held by the Trustee personally; or
  - (B) that are money or assets, as the case may be, of an employer of a Member or other associate of a Member;
- (v) not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (vi) formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (A) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (B) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (C) the liquidity of the Fund's investments having regard to its expected cash flow requirements; or
  - (D) the ability of the Fund to discharge its existing and prospective liabilities;
- (vii) if there are any reserves of the Fund, formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (viii) allow a Member access to any prescribed information or any prescribed documents.

### **13. Administration of fund**

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#### **13.1 Financial records to be maintained**

The Trustee must:

- (a) keep account of all moneys received and disbursed from the Fund and of all dealings in connection therewith;

- (b) collect, and pay promptly into a bank (or some other authorised investment account) in the name of the Fund or Trustee, all moneys paid to it as Trustee of the Fund;
- (c) keep all records and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments; and
- (d) prepare as at the end of each financial year the financial statements required of superannuation funds.

### **13.2 Accounts**

The Trustee must:

- (a) comply with the Superannuation Law relating to the maintenance of accounting and other records as are required to be kept and prepare all reports thereof as are required by the Regulations; and
- (b) prepare and submit annual financial statements to the auditor to be audited as required by the Superannuation Law.

### **13.3 Administrative functions**

The Trustee may carry out all or any of the following functions for the Fund:

- (a) Where a Member or Beneficiary requests the Trustee to hold one or more specific investments in the Fund to fully or partially provide for his or her benefits, the Trustee may in its absolute discretion agree with such request and (if so) establish and maintain an account or sub-account under rule 5 for that purpose and ensure that income and net gains or losses are credited or debited to those accounts;
- (b) Where a transfer of balances and/or contributions between Individual Accounts of the same or different Members is permitted under the Regulations, carry out the said transfer as requested by the Members;
- (c) Maintain separate balances in an Individual Account or sub-account in order to meet any current or future payment to be made to a spouse of a Member as a result of a marital breakdown and such entitlement may furthermore be established as a separate Individual Account for the spouse concerned or be treated as an amount able to be transferred under **rule 2.5** or be dealt with in any other way as directed or permitted under the Family Law provisions; and
- (d) Establish and maintain such reserve accounts for purposes as decided by the Trustee, to which shall be credited amounts set aside by the Trustee for such relevant purpose and to which payments or transfers shall be debited as decided by the Trustee from time to time.

### **13.4 Information to be supplied**

Information requested by the Trustee from a Member or Beneficiary to assist in the proper administration of the Fund must be given. The Trustee need not verify any information given as aforesaid.

**13.5 Advice**

The Trustee may seek advice or services from any person or any firm in order to provide for the proper administration of the Fund and may act on advice given and meet the relevant costs of obtaining any such advice or service from the Fund.

**14. Superannuation Law to prevail**

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**14.1 Compliance with Standards**

Where the Superannuation Law provides:

- (a) standards applicable to the operation of a regulated superannuation fund, then those standards shall apply to the Fund as if set out in these Rules; and
- (b) that a benefit of a particular type is taken to be a pension if the Fund meets standards set out in the Superannuation Law, then those standards (or if alternate standards, the standards chosen by the Trustee) shall apply to the Fund so far as they relate to that benefit, as if set out in these Rules.

**14.2 Incorporation of Superannuation Law requirements**

Notwithstanding any provision of these Rules to the contrary, each provision of the Superannuation Law, to the extent it applies to or is required to be observed by the trustee of a Self Managed Superannuation Fund so that it will be or remain a regulated Self Managed Superannuation Fund, will apply to the Fund as though that provision had been specifically incorporated in these Rules.

**14.3 Conflict**

In the event of any conflict between a provision of the Superannuation Law and a provision in these Rules, the former shall prevail over the latter.

**14.4 Deemed inclusion of Superannuation Law**

Notwithstanding any other Rule of this deed, the Fund will be administered in accordance with the requirements of the Superannuation Law.

**15. Indemnity of trustee**

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**15.1 No liability**

The Trustee is not liable for any act or omission other than those which are dishonest or which constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

**15.2 Indemnity**

The Trustee may recover from the Fund any liability or loss incurred in relation to the Fund unless:

- (a) the Trustee acts dishonestly; or

- (b) the Trustee intentionally or recklessly fails to exercise the degree of care and diligence that it is required by law to exercise; or
- (c) the Superannuation Law prohibits it.

### **15.3 Former Trustees and directors**

The benefit of **rules 15.1** and **15.2** extends to each:

- (a) former Trustee;
- (b) individual Trustee and former individual Trustee;
- (c) director and former director of the Trustee; and
- (d) such other officers and former officers of the Trustee or former Trustee as the Trustee determines.

### **15.4 Beneficiaries not liable to Trustee**

The Trustee is not entitled to an indemnity, reimbursement or recompense from the Beneficiaries and the Beneficiaries are not liable for the debts of the Trustee or the Fund.

## **16. Trustee's remuneration**

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If permitted by Superannuation Law, the Trustee is entitled to be paid and retain out of the Fund such remuneration as it determines from time to time including any liability it has to a goods and services tax on that amount.

## **17. Amendment**

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The Trustee has the power by resolution in writing or by deed to alter, modify or add to any of the provisions of this Deed provided that such alteration does not reduce the obligations as imposed under **rule 14**. Any alteration modification or addition, when made, will have the same effect, as if it had been contained in this Deed.

## **18. Termination of fund**

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### **18.1 Winding up of Fund**

The Fund must be wound up upon the earlier of:

- (a) the expiry of two months' notice to each Member by the Trustee; and
- (b) the date on which there is no person to whom a benefit is or may be payable under these Rules.

The Fund is terminated on a date determined by the Trustee.

### **18.2 Application of Assets**

If the Fund is terminated, the Assets are to be applied in the following order of priority:



- (a) to meet any Liability at the date of termination (other than for benefits);
- (b) to pay all benefits that became payable prior to the date of termination;
- (c) to pay Beneficiaries their Individual Account on the date of termination; and
- (d) if any amount remains in the Fund after the Individual Account of each Beneficiary has been paid, the amount remaining must be allocated to the Members, former Members and Beneficiaries in such proportions as the Trustee considers to be appropriate.

## 19. Governing Law

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This Deed will be governed by the laws of the jurisdiction described in **Item 5** of the Schedule.

## 20. Severability

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If any part of this Deed is or becomes illegal, invalid or unenforceable in any relevant jurisdiction, the legality, validity or enforceability of the remainder of the Deed will not be affected and this Deed will be read as if the part had been deleted in that jurisdiction only.

## 21. Definitions and interpretation

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### 21.1 Definitions

In this document:

**Account** means each of an Individual Account or Reserve Account.

**Assets** mean all the property, rights and income of the Fund.

**Beneficiary** means a Member or a Member's Spouse, Previous Spouse or Child or any other person who is entitled to an immediate benefit from the Fund.

**Category** means a category of the Fund established by the Trustee under **rule 6.1** or **rule 6.2** and, in relation to a Member, means the Category of membership if any to which the Member is admitted or transferred.

**Category Rules** has the meaning provided in **rule 6.1**.

**Child** of a Member includes a step-child or an ex-nuptial child of the Member.

**Deed** means this document and includes any amendments made pursuant to this document.

**Dependant** means a Spouse of a Member, Child of a Member and any other person who is, in the opinion of the Trustee, at the relevant date wholly or partially dependent on a Member.

**Employer** means the employer of a Member who contributes to the Fund for the Member under an arrangement with the Trustee.

**Financial Year** means a year commencing on 1 July and ending on 30 June in the following year and the part of a year commencing or ending on the commencement date or termination date of the Fund.

**Fund** means the assets held by the Trustee on the Trusts of this Deed;

**Individual Account** means an account kept for a Member or a Beneficiary under **rule 5.1**.

**Investment Portfolio** means a division of the Fund established by the Trustee under **rule 6.4**.

**Legal Personal Representative** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

**Liabilities** mean the liabilities of the Fund and the Trustee (as trustee of the Fund) including liabilities accrued but not yet paid and amounts payable to the Trustee.

**Member** means a person who is admitted as a Member of the Fund under **rule 2.2** and who has not ceased to be a Beneficiary under **rule 2.6**.

**Permanent Disablement** means:

- (a) where any part of the benefit payable in the event of a Member's permanent disablement is insured with a life insurance company, the definition of permanent disablement, or any like expression, contained in the policy document; and
- (b) if paragraph (a) does not apply, disablement which has rendered the Member incapable of full-time work for six months and which, in the opinion of the Trustee, is likely to render the Member permanently and continuously incapable of engaging in any occupation for which the Member is reasonably suited by reason of education, training and experience.

**Previous Spouse** means the Spouse or former Spouse of a Member for whom the Trustee is required, or reasonably believes it is required, to provide a benefit under a splitting agreement or splitting order or any like agreement or order made under the *Family Law Act 1975*.

**Reserve Account** means the account kept under **rule 5.5**.

**Rules** means the rules and paragraphs of this Deed and its Schedule.

**Spouse** of a Member includes a person who, although not legally married to the Member, lives with the Member at the relevant date on a bona fide domestic basis as the husband or wife of the Member.

**Superannuation Law** means the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Guarantee (Administration) Act 1992*, the *Family Law Act 1975* and the Regulations made under those Acts together with any other legislation which applies to superannuation funds at a time. It also includes any direction or rule issued by the Australian Taxation Office, the Australian Prudential and Regulation Authority

or the Australian Securities and Investments Commission which must be complied with to avoid a detriment to the Trustee, the Fund or a Member.

**Tax** includes all kinds of taxes, duties, charges and surcharges imposed by a government together with interest and penalties.

**Trust Deed** means, at any time, the deed to which these Rules are attached and these Rules and any amendments to them at that time.

**Trustee** means the Trustee or Trustees for the time being appointed for the purpose of administering the Fund.

## 21.2 Interpretation

In this document, rule and sub-rule headings are used in this document for reference purposes only and, unless the context requires otherwise:

- (a) terms used which are defined in the Superannuation Law have that defined meaning;
- (b) a reference to a statute or advice, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) any word or expression which is cognate to or a grammatical or linguistic variation of a defined word or expression has a corresponding meaning;
- (d) any reference to a party in any agreement or document includes its successors and permitted assigns;
- (e) any reference to any agreement or document includes that agreement or document as amended at any time;
- (f) any reference to a provision means a rule, clause, schedule, annexure, or provision of or to this document;
- (g) reference to a person includes a firm, a body corporate, an unincorporated association or an authority;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) an agreement, representation or warranty on the part of two or more people binds them together and separately; and
- (j) where the day on which something must be done is not a business day, that thing must be done on the immediately following business day.

# SCHEDULE

**ITEM 1: Execution Date:** 14/11/2014

**ITEM 2: Name of Trustee/s:** T AND N SUPERANNUATION HOLDINGS PTY LTD  
ACN 602 843 783

**ITEM 3: Name of Fund:** T AND N SUPERANNUATION FUND

**ITEM 4: Must have Constitutional Corporation as Trustee (YES or NO):** YES

**ITEM 5: Jurisdiction for applicable law:** NSW

**EXECUTED AS A DEED** by T AND N ]  
SUPERANNUATION HOLDINGS PTY LTD ]  
ACN 602 843 783 as Trustee by being ]  
signed on behalf of the directors of the ]  
Company pursuant to the *Corporations Act* ]  
*2001 (Cth)*: ]  
]



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TRENTON RUSSELL WILKS  
Director



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NATALIE MAREE WILKS  
Director