

Kangawallafox Super Fund Trust Deed

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KANGAWALLAFOX SUPER FUND

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THIS DEED is made the date set out in Item 1 of Schedule 1.

BY: The person or persons named and described in Item 2 of Schedule 1 as the Trustee

RECITALS

- A. The Trustee has resolved to establish a fund to be known by the name set out in Item 6 of Schedule 1 for the sole purpose of providing superannuation benefits for its Members and their Dependants.
- B. The Trustee has resolved to act as trustee of the Fund in the first instance.
- C. The Fund was established on the date of this Deed and it is intended that the Fund be conducted as a complying regulated superannuation fund within the meaning of the Superannuation Law.

OPERATIVE PART

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the subject or the context otherwise requires:-

"Asset" means any asset that the Trustee holds for the purposes of the Fund;

"Associate" has the meaning given by the Superannuation Law;

"Beneficiary" includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Superannuation Law;

"Benefit Arrangement" means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions and includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Reserve;

"Benefit Schedule" means Schedule 2 to this Deed;

"Binding Death Benefit Nomination" means a direction which is a binding direction for the purposes of the Superannuation Law as to payment of the Member's Death Benefit and referred to in Clause 12.6d;

"Child", in relation to a Beneficiary, includes a stepchild, an adopted child or an ex-nuptial child, a child of the person's spouse, someone who is a child of the person within the meaning of the Family Law or any other person who is a child for the purposes of the Superannuation Law;

"Constitutional Corporation" has the meaning given by the Superannuation Law;

"Death Benefit" means a benefit payable on a Member's death and includes a benefit that became payable in respect of a Member before, but that is not actually paid until after, the Member's death;

"Death Benefit Nomination" means an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination;

"Deed" means this deed as amended from time to time;

"Dependant", in relation to a Beneficiary, includes:

- a. the Beneficiary's Spouse or Child and any other person who has an interdependency relationship with the Beneficiary;
- b. any other person who, in the Trustee's opinion, is or was at the relevant time dependent on the Beneficiary;
- c. any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
- d. any person who is a dependant within the meaning of the Superannuation Law.

"Eligible Rollover Fund" has the meaning given by the Superannuation Law.

"Employed Member" means a Member in respect of whom an Employer contributes to the Fund.

"Employee" means an employee of an Employer;

"Employer" means an employer of a Member who contributes to the Fund on behalf of the Member;

"Employer Participation Terms" means the terms and conditions under which an Employer agrees to participate in the Fund in accordance with Clause 10;

"Financial Instrument" includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

"Fund" means the fund referred to in Recital A and established in accordance with this Deed;

"Gainful Employment" means employment or self-employment for gain or reward in any business, trade, profession, vocation, calling or occupation;

"Indicative Death Benefit Nomination" means a Death Benefit Nomination expressed to take effect as an indication of the Member's wishes to payment of the Member's Death Benefit and referred to in Clause 12.6c;

"Investment Option" means an investment strategy that may be chosen in respect of investments in the Fund in accordance with this Deed;

"Liabilities" means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities;

"Member" means a person who has been admitted as a member of the Fund in accordance with Clause 9 and who has not ceased to be a Member in accordance with Clause 9.6;

"Member's Account" means an account maintained in respect of a Member in accordance with Clause 9.8;

"Member's Account Balance" means the amount standing to the credit of a Member's Account, determined as described in Clause 9.8b;

"Old Age Pensions" has the meaning given by the Superannuation Law;

"Permanent Incapacity", in relation to a Member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health to engage in gainful employment for which the Member is reasonably qualified by education, training or experience;

"Policy" means an insurance policy arranged by the Trustee in accordance with Clause 4.3;

"Policy Committee" means a policy committee established in accordance with Clause 3.3d;

"Preserved Benefits" means any part of an amount held in the Fund in respect of the Member that the Superannuation Law requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Superannuation Law, or until such other circumstances as the Superannuation Law specifies;

"Regulator" means the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or the Commissioner of Taxation, as relevant;

"Reserve Account" means any Account referred to in Clause 15;

"Retirement Age" means

- a. age 65; or
- b. if the Superannuation law stipulates another age at which benefits can generally be paid from a regulated superannuation fund whether or not a Member has ceased Gainful Employment, that age;

"Rule" means a provision of the Schedules;

"Service" means:

- a. in relation to an Employed Member, the most recent continuous service of the Member as an Employee. It includes:
 - i. any period of absence from work attributable to injury or illness during which the Member receives workers' compensation or other regular income from the Employer or under arrangements organised by the Employer; and
 - ii. any other period that the Employer stipulates is to be considered as service; and
 - iii. if a Member transfers service from one Employer to another, unless the Trustee and the relevant Employers otherwise agree, the Member's Service will be considered continuous;
- b. in relation to Members other than Employed Members, a period of Gainful Employment by the Member;

"Spouse" in relation to a person, includes:

- a. another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the Acts Interpretation Act 1901 as a kind of relationship prescribed for the purposes of that section;
- b. another person who, whether or not legally married to the person, lives with them on a genuine domestic basis in a relationship as a couple; and
- c. any other person who is a spouse for the purposes of the Superannuation Law;

"Successor Fund" has the meaning given by the Superannuation Law;

"Superannuation Law" means any requirements under the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations 1994, the Corporations Act 2001, the Corporations Regulations 2001, the Financial Sector (Collection of Data) Act 2001, the former Occupational Superannuation Standards Act 1987, the former Occupational Superannuation Standards Regulations 1987, the Superannuation (Resolution of Complaints) Act 1993, the Family Law Act 1975, the Income Tax Assessment Act (1936 and 1997), and any other present or future legislation which the Trustee must comply with in order for the Fund to qualify for concessional taxation treatment as a complying superannuation fund or to avoid what

the trustee considers to be relevant penalty or imposition and to meet any other requirements of the Regulator;

“Tax” includes:

- a. all actual or anticipated stamp, financial institutions, registration and any other duties, bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges whatsoever;
- b. any goods and services tax, value added tax or similar tax imposition or charge; and
- c. any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraphs a. or b.;

“Terminal Medical Condition” exists in relation to a person at a particular time if the following circumstances exist:

- a. two registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the ‘certification period’) that ends not more than 12 months after the date of the certification;
- b. at least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
- c. for each of the certificates, the certification period has not ended.

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

“Trustee” means the trustee or trustees in the first instance as described in Item 4 of Schedule 1 and any trustee or trustees for the time being of the Fund and where there is more than one trustee it refers to each trustee for the time being of the Fund.

1.2 Compliance

If the Superannuation Law requires certain provisions to be included in the governing rules of a regulated superannuation fund, those provisions are (to the extent they are relevant to the Fund) deemed to appear in this Deed and to override any inconsistent provisions.

1.3 Interpretation

In this Deed unless the contrary intention appears or can reasonably be implied from the context:

- a. a reference to this Deed or any other instrument includes any variation or replacement of them;
- b. a reference to a statute or other law includes regulations and other instruments (“subordinate instrument”) made under such a statute or law and any consolidation, amendment, re-enactment or replacement of such a statute, law or subordinate instrument;
- c. the singular includes the plural and vice versa;
- d. terms such as “including”, “for example” and similar expressions or words are not words or expressions of limitation;
- e. a reference to a person:
 - i. includes a body corporate, any other entity recognised at law, a partnership and any other group or organisation of persons; and

- ii. includes a person's legal personal representatives, successors and assigns;
- f. where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- g. headings are inserted for convenience of reference only and are not to be taken into account in interpreting this Deed;
- h. a reference to any thing (including any amount) is a reference to the whole or any part of it; and
- i. a reference to a group of persons is a reference to any one or more of them.

2 THE FUND

2.1 Assets

The Fund comprises all Assets held by the Trustee at any time in accordance with this Deed.

2.2 Name

The name of the Fund is specified in Schedule 1. The Trustee may change the name or promote the Fund under a different name without the necessity of amending this Deed.

2.3 Investment Options

- a. The Trustee may offer any number of Investment Options in accordance with this Clause 2.3.
- b. The Trustee may offer a new Investment Option at any time which may relate to one or more Members specifically and may involve the nomination of particular Assets being held for different Investment Options for one or more specified members.
- c. On establishing an Investment Option, the Trustee will decide its name and other specifications relating to it (including the kinds of Asset or Assets to be held, the investment objectives and strategy and other relevant matters). The Trustee may change the name or other specifications at any time.
- d. Subject to the Superannuation Law, the Trustee may merge, divide or discontinue Investment Options at any time. In this event the Trustee will determine how the interests of Beneficiaries will be attributed between the Investment Options to reflect those changes.
- e. The Trustee will ensure that the Assets and Liabilities associated with each Investment Option can be identified separately.

2.4 Single Trust

Nothing in this Deed is to be taken as establishing a separate trust in respect of any Investment Option or any part of the Fund but the Trustee may establish any number of sub-accounts in respect of each Investment Option.

3 TRUSTEE

3.1 Initial Trustee

The person or persons named in Schedule 1 is or are appointed as the initial Trustee with effect from the date of this Deed.

3.2 Regulated Superannuation Fund

- a. Subject to Clause 3.2b, the Trustee must be a Constitutional Corporation;
- b. Despite Clause 3.2a, the Trustee may be, or include a person or persons, other than a Constitutional Corporation, but in that event and for so long as that situation continues,

the primary purpose of the Fund will be the provision of Old Age Pensions in accordance with Part 2 of the Benefit Schedule.

3.3 Conditions of Appointment

- a. A person that is to be appointed as Trustee must give written consent to the appointment in accordance with the Superannuation Law before accepting the appointment;
- b. Subject to the Superannuation Law, an additional or replacement person or persons may be appointed as Trustee by a deed executed by the existing Trustee;
- c. The Trustee must otherwise comply with any other requirements of the Superannuation Law; and
- d. If required by the Superannuation Law, the Trustee will appoint one or more Policy Committees representing Members or groups of Members on a basis determined by the Trustee in accordance with the Superannuation Law.

3.4 Termination of Trustee's Office

- a. A Trustee will hold office until:
 - i. the Trustee retires in accordance with Clause 3.4b;
 - ii. it goes into liquidation or has a receiver appointed or enters into administration; or
 - iii. the Trustee is removed, or ceases to be eligible to act as Trustee under the Superannuation Law.
- b. A Trustee may retire at any time upon giving notice in writing to all the Members of the fund.
- c. If a Trustee:
 - i. retires;
 - ii. becomes aware that it will be removed as Trustee;
 - iii. becomes aware that it will cease to be eligible to act as Trustee; or
 - iv. is otherwise disqualified or removed from its office as Trustee;it must appoint another person to act as Trustee that otherwise complies with the Superannuation Law unless there is more than one Trustee and the Superannuation Law does not require the vacancy to be filled.
- d. If the Superannuation Law or any other law does not permit the terminating Trustee to appoint a new Trustee in accordance with Clause 3.4c or the terminating Trustee fails to do so, the new Trustee may be appointed:
 - i. where management of the affairs of the Trustee has been placed under a liquidator, receiver, manager, administrator or other controller, by that person;
 - ii. where Clause 3.4d.i does not apply, or where it does apply but the controller fails to appoint a new Trustee within 30 days of the vacancy arising, by vote of the Members; or
 - iii. in accordance with any procedure prescribed by the Superannuation Law.

3.5 Transfer of Fund Assets

If a Trustee's office terminates, it must:

- a. provide to any new Trustee all records, information and other property relating to the Fund in its control; and
- b. otherwise do such acts, matters and things as may be necessary to perfect or complete the appointment of the new Trustee.

3.6 **Trustee – Power to Appoint**

Without limiting any other power conferred on the Trustee by this Deed or law, the Trustee has power to appoint any additional trustee by deed subject to any relevant provision of the Superannuation Law.

3.7 **Proceedings of the Trustee**

- a. Where the Trustee of the Fund consists of natural persons then the provisions of this clause shall apply to those Trustees but where the Trustee consists of a Constitutional Corporation the constitution of that Corporation shall govern the proceedings of the Trustee unless the Trustee resolves otherwise.
- b. A "Quorum of Trustees" shall for the purposes of this Clause 3.7 mean the greater of:
 - i. two Trustees; and
 - ii. not less than two-thirds of the Trustees in office for the time being;PROVIDED THAT a Quorum of Trustees shall only be properly formed if the composition of the Trustee would not cause the Fund to be in breach of any requirement of the Superannuation Law;
- c. Except as otherwise provided in this Deed the Trustees may meet adjourn and regulate their meetings as they see fit and a meeting of the Trustees for the time being at which a Quorum of Trustees is present shall be sufficient to exercise all or any of the powers exercisable by the Trustee generally;
- d. Except as otherwise expressly provided for in this Deed all questions arising at a meeting of Trustees shall be determined by resolution carried by a majority comprising at least a Quorum of Trustees;
- e. A written resolution signed by a Quorum of Trustees shall be as effective as a resolution passed at a meeting of Trustees provided a copy of the written resolution shall be given to each Trustee who has not signed the resolution as soon as is reasonably practicable after it is made;
- f. A Trustee may participate in a meeting of Trustees by means of any communication equipment by which all persons participating in the meeting can hear or see each other and this shall be deemed to constitute presence in person at the meeting;
- g. A Quorum of Trustees may by resolution at any meeting appoint a Trustee to be chairman of Trustees.
- h. Each Trustee present in person at a meeting of Trustees shall have one deliberative vote on any question.
- i. An individual Trustee may at any time convene a meeting of Trustees by giving not less than seventy-two hours prior written notice to the other Trustees PROVIDED THAT a Quorum of Trustees may determine that a meeting of Trustees shall be held upon such shorter notice as the Trustees consider appropriate;
- j. The Trustees shall keep proper minutes which shall be kept in a register provided for that purpose and the minutes of any meeting signed by the chair of the meeting or by the chair of the next succeeding meeting shall be evidence of the matters raised at the relevant meeting;
- k. A Trustee who is temporarily unable due to illness or for any other reason to attend to the duties of Trustee may with the consent of the Members appoint any person to act on behalf of that Trustee for the purposes of the Fund during such temporary absence and the person so appointed during the absence may exercise all or any of the powers of the Trustee subject to the Superannuation Law.

4 TRUSTEE POWERS, DISCRETIONS AND DUTIES

4.1 General Powers

Subject to the Superannuation Law, the Trustee:

- a. is empowered to do anything whatsoever necessary or desirable for the purpose of the maintenance, operation, management, development or promotion of the Fund;
- b. has, in addition to the powers conferred by this Deed, all the powers conferred on a trustee by statute or general law.

4.2 Additional Powers of Trustee

The Trustee shall have the following powers in addition to the powers which it has at law and which are otherwise granted to it under this Deed:

- a. to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members or Beneficiaries and to commence, carry on or defend legal proceedings in order to recover damages against any person arising out of any loss suffered by any Member or former Member or Beneficiary as a result of any negligence, default, omission, breach of duty or breach of the terms of this Deed;
- b. to settle, compromise or submit to arbitration any claims, matters or things relating to this Deed or to the rights of Members, former Members or Beneficiaries;
- c. to insure or reinsure any risks or liabilities of the Fund with any insurer;
- d. to purchase an annuity from an insurer in order to provide all or part of a pension payable in respect of a Beneficiary and such a pension may be purchased in the name of the Beneficiary;
- e. to engage and to appoint professional or other advisers in relation to the management, investment, administration or conduct of the Fund, to act on the advice of any such person and to pay the fee or remuneration for such advisers;
- f. to borrow money provided that such borrowing shall not breach the Superannuation Law;
- g. to pay and advance out of the Fund all costs, expenses and outgoings of and incidental to the management and administration of the Fund;
- h. to provide a full or partial release to any person in respect of any matters which have arisen or may arise as a result of an association with the Fund by that person;
- i. to insure any liability of the Trustee or any directors or officers of the Trustee;
- j. to indemnify or undertake to indemnify any person in respect of any claims, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund subject to the Superannuation Law;
- k. to seek modifications of or exemptions from the application of the Superannuation Law to the Fund.
- l. to enter into any agreement, provide any notice or make any election or undertake any other action which allows the Trustee to conduct the Fund as a complying superannuation fund; and
- m. generally to do all acts and things as the Trustee decides for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed.

4.3 Policies

Subject to the Superannuation Law, the Trustee has power without limiting any other provision of this Deed to enter into or acquire, including by way of assignment, a Policy or Policies in connection with any benefit to be paid from the Fund, including any Policy

relating to life, disability or accident insurance or in order to provide one or more annuities. Any such Policy may be made on terms and condition that the Trustee considers appropriate.

4.4 Appointment of an Auditor (the "Auditor") and Other Officers

- a. The Trustee shall from time to time appoint an Auditor to audit the balance sheet, profit and loss statement and any other records of the Fund in the manner as is required by the Superannuation Law at the remuneration and on the conditions as it shall think fit and if required by the Superannuation Law, the auditor shall be a registered company auditor.
- b. The Trustee may from time to time appoint the following persons at the remuneration and on the conditions as it shall think fit:
 - i. a secretary of the Fund; and
 - ii. any other officers considered desirable by the Trustee for the proper administration and management of the Fund.

4.5 Removal from Office

The Trustee may remove from office any person appointed pursuant to Clause 4.4.

4.6 Trustee Discretions

The Trustee:

- a. has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under this Deed;
- b. may exercise any of the Trustee's powers at any time;
- c. may refrain from exercising any of the Trustee's powers from time to time or at all;
- d. may exercise a power even if the Trustee or any of the Trustee's Associates have an interest that may be affected by the exercise of that power subject to the Superannuation Law;
- e. subject to the Superannuation Law may enter arrangements with Associates, Beneficiaries, Employers or other persons in connection with the Fund.

4.7 Trustee Remuneration

The Trustee may not charge fees unless permitted to do so under the Superannuation Law.

5 LIMITATION OF LIABILITY

5.1 Limitation

Subject to Clause 5.2, no Trustee or, where the Trustee is a corporation, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason.

5.2 Exceptions

Clause 5.1 does not apply to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise.

6 INDEMNITY

6.1 Indemnity

The Trustee and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Superannuation Law, to be

indemnified from the Fund against all liabilities incurred by each of them in connection with the execution, attempted execution, or in respect of the non-execution of the Trustee's powers and discretions under this Deed.

6.2 Payment and Reimbursement

Subject to the Superannuation Law, the Trustee and its directors and officers may recover from the Fund amounts necessary:

- a. to meet the indemnities referred to in Clause 6.1; and
- b. to meet all Liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

7 INVESTMENT

7.1 General Power to Invest

- a. Subject to the Superannuation Law, the Trustee may invest the Assets of the Fund in any manner or form in which it could invest if it were acting personally and as the sole and absolute legal and beneficial owner of the Assets.
- b. Without limiting Clause 7.1a and subject to the Superannuation Law, the Trustee has power:
 - i. to vary, substitute, or otherwise deal with Assets in any manner; and
 - ii. to acquire an interest in an Asset jointly with any other person and mix Assets of the Fund with other property (as long as separate records are maintained that enable Assets attributable to the Fund or any Investment Option to be identified).

7.2 Investment Strategy

Investments of the Fund must be made in accordance with an investment strategy formulated by the Trustee that complies with the Superannuation Law.

7.3 Reserves Management

The Trustee must formulate and give effect to a strategy for prudential management of any reserves maintained in the Fund, consistent with the Superannuation Law.

7.4 Valuation

The Trustee will arrange for valuations of Assets at such times on such basis as it considers appropriate, subject to the Superannuation Law.

7.5 Investment Earnings

Subject to the Superannuation Law, the Trustee will determine the rate of investment earnings, whether positive or negative, to be applied for the purposes of this Deed, having regard where relevant to the Investment Options applicable and may determine interim rates on a similar basis.

7.6 Authorised Investments of Trustee

Subject to the Superannuation Law moneys forming part of the Fund from time to time shall be invested as soon as practicable by the Trustee, or by any investment manager appointed, in any investment which the trustee considers to be an appropriate investment for the Fund having regard to investment strategies of the Fund including but without limitation in any one or more of the following:

- a. any securities or investments authorised by any laws of the Commonwealth or any State or Territory of Australia for the investment of trust moneys;
- b. on deposit with any bank, building society, credit union or solicitors' mortgage investment company, any dealer authorised by the Reserve Bank of Australia to

operate in the official short term money market or any firm or company either with or without security;

- c. the purchase or acquisition of any real or personal property or any right or interest in and the improvement of any real or personal property;
- d. Securities issued or guaranteed by any government sovereign ruler or authority supreme local or municipal;
- e. any shares, stock, debentures, bonds, warrants, notes, obligations and options (whether secured or unsecured) or other securities or obligations of any description in or of any corporation in any part of the world whether or not carrying on business in the State of Victoria including any investment in such shares or stock which is partly paid or resulting from a call on such shares or stock.
- f. any fully or partly paid units, in any unit trust or other scheme in the nature of a unit trust including investment in such units by way of payment for any calls on those units.
- g. any leasehold interest in real or other property.
- h. loans or other financial assistance whether secured or unsecured.
- i. any mortgage-backed debt securities, promissory notes or certificates payable to bearer
- j. any deed or chose in action of any estate or interest;
- k. the purchase of bills of exchange or other negotiable instruments or discount securities;
- l. any other investments which the Trustee could make if acting personally and not as a trustee;

7.7 Arms Length Transactions

The Trustee or investment manager shall only deal with other parties on terms which are arms length pursuant to the Superannuation Law.

8 RECORDS, AUDIT AND INFORMATION

8.1 Administration of Records

The Trustee must, in accordance with the Superannuation Law:

- a. keep records, books, accounts, minutes reports and other documents for the Fund;
- b. prepare financial and other statements and/or returns in respect of the Fund;
- c. arrange for the audit of records, financial statements and other information in respect of the Fund annually;
- d. arrange for the retention of records and other information in respect of the Fund; and
- e. provide information to Beneficiaries, prospective Members, Employers, prospective Employers and any other person in connection with the Fund.

8.2 Copy of Deed

A copy of this Deed and the latest annual balance sheet shall be made available for inspection at the office of the Trustee on request by any Member or Beneficiary.

8.3 Receipt and Payment of Moneys

Any money received by the Fund shall be lodged as soon as possible to the credit of an account in the name of the Fund kept with a bank, friendly society, building society or similar body by the Trustee.

8.4 **Issue of Receipts**

A receipt given on behalf of the Fund by the Trustee or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund shall be a sufficient discharge to the person by whom the moneys are paid.

9 **MEMBERSHIP**

9.1 **Eligibility and Participation in Different Capacities**

The Trustee may set eligibility conditions for membership of the Fund.

9.2 **Acceptance**

- a. Membership applications:
 - i. may be made by a person who wishes to become a Member or by a person on behalf of a prospective Member (for example an Employer or spouse of the person); and must be made in the form provided in Schedule 3 or in another form acceptable to the Trustee; and
 - ii. vary depending on whether the Member will make either an Indicative Death Benefit Nomination or a Binding Death Benefit Nomination under Clause 12.6d.
- b. The Trustee may:
 - i. provide a product disclosure statement in accordance with the Superannuation Law to a prospective Member where it does not believe that the prospective Member will receive or have and know they have access to all of the information that a product disclosure statement would be required to contain; and
 - ii. accept or reject any application; and
 - iii. establish arrangements under which people satisfying certain eligibility conditions may become Members provisionally from a certain date unless the Trustee subsequently rejects the application.

9.3 **Information**

Without limiting Clause 9.2, the Trustee may require a prospective Member or a person admitted as a Member to undergo a medical examination and to provide any relevant information.

9.4 **Deed**

Each person admitted as a Member and each Beneficiary is deemed to have approved of, and becomes bound by, the Deed.

9.5 **Member's Attorney**

Each Member irrevocably appoints the Trustee as the Member's attorney to execute, sign and complete any deeds, instruments or other documents and to do anything the Trustee reasonably considers appropriate for the purposes of administering the Fund.

9.6 **Termination of Beneficiary's Interest**

- a. A person ceases to be a Beneficiary when:
 - i. all benefits to which the Beneficiary has become entitled under this Deed have been paid;
 - ii. the whole of the Member's Account Balance relating to that Beneficiary has been transferred out of the Fund in accordance with Clause 13.2;
 - iii. the Beneficiary dies;
 - iv. the Beneficiary's entitlement to benefits is otherwise terminated.

- b. In addition to the circumstances described in Clause 9.6a, the Trustee may decide that a person will cease to be classified as a Member if a pension begins to be paid in respect of the person, unless the Superannuation Law otherwise requires.

9.7 **Beneficiaries' Interests and Liabilities**

- a. No Beneficiary has any interest in any particular Asset of the Fund.
- b. The liability of Beneficiaries in connection with the Fund is limited as described below:
 - i. The Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund's Assets; and
 - ii. Beneficiaries are not liable (in their capacity as Beneficiaries):
 - to indemnify the Trustee in respect of any deficiency in the Fund;
 - in connection with claims by any of the Trustee's creditors relating to the Fund.

9.8 **Member's Account**

- a. The Trustee will maintain a Member's Account in respect of each Member for the purpose of recording benefit entitlements under this Deed.
- b. The Member's Account Balance at any time is determined by adding:
 - i. contributions in respect of the Member and amounts transferred to the Fund in respect of the Member under Clause 13.1a or Clause 13.1b;
 - ii. investment earnings, determined having regard to Clause 7.5, the requirements of the Superannuation Law, and any Investment Options applicable to the Member;
 - iii. the proceeds of any Policy in respect of the Member; and
 - iv. any other amount that the Trustee considers should be credited to the Member's Account including any amounts transferred from a Reserve Account;and deducting the sum of:
 - v. benefits paid from the Member's Account or transferred to another Member's Account or Benefit Arrangement in accordance with Clause 13.2;
 - vi. any negative investment returns, determined having regard to Clause 7.5, the requirements of the Superannuation Law, and any Investment Option applicable to the Member;
 - vii. any costs or fees deducted from the Member's Account or any other Liabilities attributed to it;
 - viii. any amounts in respect of Tax deducted from the Member's Account; and
 - ix. any other amount that the trustee considers should be deducted from the Member's Account.
- c. More than one Member's Account may be maintained in respect of a Member if a Member participates in the Fund in more than one capacity (such as an Employed Member and otherwise) and in such situation, provisions dealing with a Member's Account will be applied separately to the separate Member's Accounts.

10 **ADMISSION OF EMPLOYERS**

10.1 **Application**

Employers may apply to participate in the Fund by completing an application in the form as prescribed by the Trustee from time to time. Alternatively, an Employer may participate in the Fund by the Trustee accepting contributions from that Employer

without requiring a formal application where an agreement has been made between the Employer and a Member for the payment of contributions to the Fund.

10.2 **Timing**

The Employer's participation will commence from:

- a. the date on which the Trustee accepts the application; or
- b. another date agreed upon between the Trustee and Employer; or
- c. the date the Trustee accepts the first contribution to the Fund from the Employer.

10.3 **Deed**

Each Employer is deemed to have approved of, and becomes bound by, the Deed except Employers who have not submitted a formal application to the Trustee and have made arrangements with a Member directly for contributions to be paid to the Fund.

10.4 **Termination – Circumstances**

An Employer's participation in the Fund terminates if:

- a. the Employer gives written notice to the Trustee that it wishes to terminate its participation;
- b. there are no members relating to that Employer or the Employer is dissolved as a legal entity (or the Trustee becomes aware that it is about to be dissolved) and the Trustee considers that participation should be terminated; or
- c. the Trustee otherwise decides that the Employer's participation should terminate.

In this event, the Trustee will decide the date on which the termination will take effect ("Termination Date").

10.5 **Termination – Effects**

If an Employer's participation terminates, then unless the Trustee otherwise agrees, the following provisions will apply:

- a. No further contributions may be accepted from that Employer and any arrears due to the Termination Date must be paid;
- b. Any benefits payable on or before the Termination Date will be paid;
- c. Subject to the Superannuation Law, the Member's Account Balance for each of the Beneficiaries concerned may be retained in the Fund or transferred to another Benefit Arrangement agreed to by both the Trustee and the Member.

10.6 **Payments to an Employer**

Subject to the Superannuation Law, the Trustee may pay money from the Fund to an Employer.

11 **CONTRIBUTIONS**

11.1 **Power to Accept Differing Contributions**

The Trustee may accept contributions whether that be in the form of cash or in specie as listed securities or business real property or any other form of in specie contribution permitted under the Superannuation Law from:

- a. Members or prospective Members;
- b. Employers; or
- c. a Spouse of a Member or prospective Member;

- d. any other person permitted under the Superannuation Law to contribute to the Fund in respect of a Member including but not limited to any contribution or co-contribution by a government.

Without limiting this Clause 11, the Trustee may accept a shortfall component, as defined in the Superannuation Guarantee (Administration) Act 1992 (Cth), in respect of a Member and may accept a contribution on behalf of a Member from the Member's First Home Saver Account in accordance with the First Home Saver Accounts Act 2008 (Cth).

11.2 Defective Contributions

- a. If the Trustee finds after accepting contributions that it should have not done so, it will, if the Superannuation Law permits, repay an appropriate amount to the person making the contribution and such amount must be calculated on a fair and reasonable basis.
- b. If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (such as where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

12 BENEFITS: GENERAL PROVISIONS

12.1 Schedules

Particulars regarding calculation of benefits and the circumstances in which they are payable are specified in the Benefit Schedule.

12.2 Conditions for Payment of Benefits

The Trustee may impose any reasonable conditions regarding payment of a benefit.

12.3 Policy

If a benefit would ordinarily include an insured component under a Policy but:

- a. no amount is paid under that Policy; or
- b. the amount paid under the Policy is less than the amount that would ordinarily be payable;

the amount payable to the Member may be adjusted accordingly.

12.4 Method of Payment

Benefits may be paid by any method that the Trustee considers appropriate including payment by way of the transfer of assets in specie to a Beneficiary of the Fund.

12.5 Circumstances and Amounts

- a. Benefits:
 - i. may, in addition to any specific circumstance described in the Benefit Schedules, be paid in any other circumstance permitted by the Superannuation Law;
 - ii. must be paid in the form and in the circumstances in which Superannuation Law compels benefits to be paid;
 - iii. may be paid in any form and in any circumstances in which the Superannuation Law permits benefits to be paid.
 - iv. will, except where the Deed otherwise provides, be paid in lump sum form except that the Trustee and a Beneficiary may agree for benefits to be paid wholly or partly in pension form, funded either directly or indirectly and either wholly or partly by way of purchase of an annuity or a pension; and
 - v. may, where payable in lump sum form, be paid in more than one instalment.

- b. Except where this Deed provides otherwise or the Trustee otherwise determines, the amount of any benefit will be an amount not:
 - i. exceeding the Member's Account Balance; or
 - ii. less than any amount required under the Superannuation Law.

12.6 **Death Benefits**

- a. A Death Benefit must, subject to the remaining provisions of this Clause 12.6, be paid in proportions decided by the Trustee to one or more of the following:
 - i. one or more of the Member's Dependants; and
 - ii. the Member's legal personal representative; andthe Trustee must consider any Death Benefit Nomination made in accordance with Clause 12.6c but unless Clause 12.6d applies may not treat the Death Benefit Nomination as binding.
- b. Subject to the Superannuation Law, if after making enquiries that it considers reasonable the Trustee cannot locate any Dependants or the legal personal representative, the benefit may be paid to any other person that the Trustee chooses or in any other manner.
- c. For the purposes of this Clause 12.6, the following provisions apply:
 - i. Members may give the trustee a Death Benefit Nomination;
 - ii. A Death Benefit Nomination may be an Indicative Binding Death Benefit Nomination, or, alternatively, a Binding Death Benefit Nomination as to payment of the Death Benefit payable in respect of the Member;
 - iii. Subject to any requirements of the Superannuation Law, Members may vary Death Benefit Nominations at any time;
 - iv. Death Benefit Nominations must be in the form included in the Member application forms contained in Schedule 3 or such other form as the Trustee decides;
 - v. The Trustee may disregard an Indicative Death Benefit Nomination if it does not comply with any formal requirements set by the Trustee; and
 - vi. The Trustee may disregard a Binding Death Benefit Nomination, if it does not comply with the formal requirements of the Superannuation Law.
- d. The Trustee will treat a Binding Death Benefit Nomination as a binding direction and nomination and effect payments in accordance with the Death Benefit Nomination, provided it is valid at the date of the Member's death.

12.7 **Transfer of Assets**

Subject to the Superannuation Law (including any requirement for approval by the Regulator) where the Trustee is obliged to pay a benefit, it may at the request of the Beneficiary meet that obligation wholly or partly by transferring one or more Assets of equivalent value to the Beneficiary.

12.8 **Bankruptcy and Assignments**

Subject to the Superannuation Law a Beneficiary's interest under this Deed will be forfeited if:

- a. a Beneficiary attempts to assign, alienate or charge all or part of their interest under this Deed; or
- b. any other event occurs that results in a person other than the Beneficiary becoming entitled to that interest (except an event that produces that result because of a provision of this Deed or the Superannuation Law); and

subject to the Superannuation Law, the amount representing any interest that is forfeited in accordance with this Clause may be applied in proportions decided by the Trustee for the benefit of one or more of the Beneficiary, former Beneficiary or Beneficiary's Dependants as the Trustee considers appropriate.

12.9 Minor Beneficiaries or Those Without Legal Capacity

If:

- a. a Beneficiary is a minor;
- b. the Trustee believes that a Beneficiary is unable to manage their financial affairs because of legal incapacity; or
- c. the Trustee otherwise considers it appropriate for any reason;

the Trustee may, subject to the Superannuation Law, pay some or all of the amount payable in respect of the Beneficiary to another person including the guardian or legal personal representative of that person to be applied for the benefit of the Beneficiary; and the receipt of the person to whom the benefit is paid is a complete discharge to the Trustee in respect of that benefit.

12.10 Discharge

The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full and the Trustee has no obligation to see how the payment is applied.

12.11 Deductions

Subject to the Superannuation Law, the Trustee may deduct fees and amounts in respect of Liabilities and Tax from any benefit payment.

13 TRANSFERS OF BENEFITS

13.1 Transfers In

- a. Where a Member is or was a member of or is or was the beneficiary under any other Benefit Arrangement the Trustee may accept into the Fund or acquire by transfer from the trustee of the other Benefit Arrangement the whole or any part of the assets of such Benefit Arrangement or an amount constituting the interest of any person who is a participant or former participant of that Benefit Arrangement with the intent of preserving the rights, entitlements and interests of the member of such Benefit Arrangement at the time of the transfer.
- b. Without limiting the effect of Clause 13.1a, where the Member's Spouse is either a Member of the Fund or of another Benefit Arrangement and that Spouse arranges for some of the superannuation contributions that have been made by or on behalf of that Spouse to be split in favour of the Member in accordance with the Superannuation Law, then the trustee may accept into the Fund the amount representing the proceeds of such contributions split. The Trustee will ensure that the amount so received is treated as a qualifying eligible termination payment or otherwise, as required by the Superannuation Law.

13.2 Transfers Out

- a. The Trustee may transfer the whole or part of any amount held in the Fund in respect of a Member to another account or another Benefit Arrangement.
- b. The Trustee may make such a transfer without the Member's consent where the Superannuation Law permits (including to a Successor Fund or an Eligible Rollover Fund or where a family law payment split must be made).
- c. The Trustee may make such enquiries as it considers appropriate to satisfy itself that the Benefit Arrangement complies with the requirements of the Superannuation Law

and that any Preserved Benefits must continue to be preserved in accordance with the requirements of the Superannuation Law.

- d. Provided the Member has requested the Trustee accordingly, and the requirements of the Superannuation Law have otherwise been complied with in this regard, the Trustee may transfer, pay or credit by way of a contributions split to the account of the Member's Spouse (whether in the Fund or in another Benefit Arrangement) an amount representing some of the superannuation contributions that have previously been made by or on behalf of the Member.
- e. A transfer of an amount under this Clause 13.2 is a complete discharge to the Trustee in relation to any liability to the Member or any person claiming through the Member in relation to the amount transferred.

14 INVESTMENT OPTIONS

14.1 Selection of Investment Options

Amounts may be attributed to one or more Investment Options as follows:

- a. In the case of an amount in a Member's Account attributable to an Employed Member, to the Investment Options requested by:
 - i. the Employer; or
 - ii. the Member, if the Employer Participation Terms permit and accepted by the Trustee; and
- b. In the case of an amount in the Member's Account to which Clause 14.1a does not apply, to the Investment Options requested by the Member and accepted by the Trustee.
- c. Any investment earnings determined having regard to Clause 7.5, the requirements of the Superannuation Law, and any Investment Options applicable.

14.2 Switches

- a. A Member may apply to switch amounts between Investment Options.
- b. In the case of Employed Members, switches are only permitted if the Employer Participation Terms permit or in the event that the Employer Participation Terms do not address switches.
- c. The Trustee may accept or reject a switch application and, if it accepts an application, determine the date on which it takes effect.
- d. If the Trustee accepts an application, it may determine the date on which it takes effect.

14.3 Order of Debiting

- a. Where there are two or more Investment Options attributable to a Beneficiary, the order in which debits relating to the Member's Account (including those relating to benefit payments) will be attributed to those Investment Options in accordance with arrangements selected by the Member and accepted by the Trustee.
- b. The Trustee:
 - i. may determine the form in which a selection referred to in Clause 14.3a is to be made; and
 - ii. may suspend a selection made in accordance with Clause 14.3a.

15 RESERVE ACCOUNTS

15.1 Maintenance of Reserves

Subject to the Superannuation Law, Reserve Accounts or such other accounts for the Fund the Trustee considers are necessary or convenient to properly administer the Fund, may be maintained in respect of the Fund, Members or Employers.

15.2 Credits to a Reserve Account

Subject to the Superannuation Law, the following amounts may be credited to a Reserve Account:

- a. Amounts transferred from another Benefit Arrangement that are not allocated to any Member's Account; and
- b. Any amount in a Member's Account that is not required or that cannot be applied to pay benefits in respect of the Member; and
- c. Any investment earnings determined having regard to Clause 7.5, the requirements of the Superannuation Law and any Investment Options applicable; and
- d. Any forfeited benefits forfeited pursuant to Clause 12.8; and
- e. Any amount used to establish pension reserves in accordance with Rule 11 of Part 3 of the Benefit Schedule or any amounts forfeited from those reserves.

15.3 Debits from a Reserve Account

The following amounts may be debited from a Reserve Account if the Superannuation Law permits:

- a. any amounts to be credited to Member's Accounts by way of:
 - i. additions to benefits otherwise payable; or
 - ii. satisfaction in whole or in part of any obligation of an Employer or Member to make contributions to the Fund;
- b. amounts to be applied by way of payment to an Employer; and
- c. any negative investment earnings determined having regard to Clause 7.5, the requirements of the Superannuation Law and any Investment Options.

15.4 Investment Reserve

The Trustee may at its discretion establish an investment reserve to hold investment earnings of the Fund which are not fully allocated to Members in a year of income to which may be credited the following:

- a. In the year the investment reserve is established investment earnings of the fund not exceeding 15% of the net market value of assets of the Fund or such other amount as the Superannuation Law permits; and
- b. Investment earnings on the investment reserve itself; and
- c. Any investment reserve component of an amount transferred from another Benefit Arrangement; and
- d. Any amount credited to allow the smoothing of the investment return of the fund.

15.5 Investment Reserve separate to Member's Account

Any amounts held in the investment reserve shall not form part of any Members Account whilst they are in the investment reserve and any income earned by the Fund for amounts held in the investment reserve shall be credited to the investment reserve.

15.6 Uses of Investment Reserve

The Trustee of the Fund shall, at its discretion use the investment reserve as follows:

- a. To give effect to any investment strategy for any Investment Option.
- b. To increase the investment earnings payable to a Member's or all Member's Accounts.
- c. To stabilise the investment earnings of the Fund.
- d. For any other purpose that the Trustee decides which does not breach the Superannuation Law.

15.7 **Miscellaneous Reserve**

The Trustee may at its discretion establish a miscellaneous reserve to hold forgone or forfeited benefits and other amounts forfeited as a result of the termination of a defined benefit pension or otherwise.

15.8 **Credits to Miscellaneous Reserve**

The Trustee of the Fund may credit the following amounts to a miscellaneous reserve:

- a. Any forgone or forfeited amounts;
- b. Investment earnings on the miscellaneous reserve.

15.9 **Miscellaneous Reserve separate to Members Account**

Any amounts held in the miscellaneous reserve shall not form part of any Members Account whilst they are in the miscellaneous reserve.

16 **CONFIDENTIALITY**

16.1 **Non-disclosure**

The Trustee will not disclose any confidential information regarding Beneficiaries or Employers acquired in the course of acting as trustee to other parties, except in connection with Member's interests in the Fund.

16.2 **Exceptions**

This Clause 16 does not apply:

- a. where the Trustee may be legally compelled to, or penalised for, failure to disclose such information; or
- b. to disclosures made to Employers or agents or delegates of the Trustee in connection with the operation of the Fund; or
- c. where non-disclosure of the material may cause adverse tax consequences to the Fund.

17 **TERMINATION OF THE FUND**

17.1 **Circumstances Causing Termination**

- a. The Fund will be terminated upon the first to occur of the following:
 - i. if the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days;
 - ii. if the Trustee resolves to terminate the Fund in accordance with Clause 17.2; or
 - iii. if the rule of law known as the rule against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts established under this Deed.
- b. Where Clause 17.1a.i applies, references in 17.3 to:
 - i. the "Trustee", refer to any entity appointed after the ninety (90) day period referred to in Clause 17.1a.i; and
 - ii. the "Closure Date" refers to the date of expiry of the ninety (90) day period referred to in Clause 17.1a.i.

- c. Where Clause 17.1a.iii applies, references in Clause 17.3 to the "Closure Date" refer to the date on which the Fund terminates by law.

17.2 Termination by Trustee

The Trustee may resolve to terminate the Fund at any time whereupon the following provisions will apply:

- a. the Members and Employers will be notified in accordance with the Superannuation Law; and
- b. the Trustee will determine a closure date ("Closure Date").

17.3 Application of assets

Assets of the Fund will be applied in the following order on termination:

- a. to provide for all Liabilities relating to the Fund, except for those relating to benefit payments;
- b. to provide for benefits that became payable on or before the Closure Date including benefits that have begun to be paid in pension form;
- c. in relation to Beneficiaries for whom benefits have not become payable under Clause 17.3b, and subject to this Deed, to provide for a benefit being an amount equal to the Member's Account Balance;
- d. in the case of Members in respect of whom a Reserve Account is maintained in the Fund, to increase any benefits by application of amounts from the Reserve Account on a basis determined by the Trustee; and
- e. subject to the Superannuation Law, to pay amounts remaining to or for the benefit of one or more of the Members, former Members, or Employers as the Trustee considers appropriate.

18 AMENDMENTS

18.1 Power to Amend

Subject to this Clause 18 the Trustee may at any time alter, add to, replace, delete or amend any provision of this Deed (including this clause) at any time by deed executed by the Trustee.

18.2 Effective Date of Amendments

An amendment made under this clause will take effect from a date specified by the Trustee, or if none is specified, from the date of the deed.

18.3 Limitation on Amendment

No amendment to this deed shall:

- a. permit an individual to be eligible to be appointed as Trustee unless the Deed provides that the Funds sole or primary purpose is the provision of old-age pensions; or
- b. have the effect that the sole or primary purpose of the Fund is other than the provision of old-age pensions unless the Trustee of the Fund is a constitutional corporation unless the Superannuation Law otherwise provides.

19 SEVERANCE

If any provision of this Deed is wholly or partly invalid that provision or the relevant part of the provision will be severed. The remainder of this Deed will have full force and effect unless severing the provision would be contrary to public policy or the Superannuation Law.

20 **NOTICES**

20.1 **Form of Notice**

Any notice given under this Deed must be in writing.

20.2 **Receipt of Notice**

Notices will be deemed to have been given to the recipient if:

- a. they are handed to them personally; or
- b. they are sent by pre-paid post addressed to:
 - i. in the case of a Beneficiary, the person's last known address or place of employment; or
 - ii. in the case of a Trustee or an Employer which is a corporation, its registered office or place of business; or
 - iii. in the case of a Trustee or an Employer which is not a corporation, its place of business or other last known address.

21 **GOVERNING LAW**

The law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia set out in Item 4 of Schedule 1.

SCHEDULE 1 - GENERAL SCHEDULE

17.06.2010

ITEM 1
Date of Deed:

ITEM 2
Name of Trustee:

Eric Ross Badenhope and Susanne Maree Webster of 18
Moresby Street, South Kingsville, Vic, 3015

ITEM 3
Name of Fund:

Kangawallafox Super Fund

ITEM 4
Governing Law:

Victoria

SCHEDULE 2 - BENEFIT SCHEDULE

PART 1 – WHERE TRUSTEE IS CONSTITUTIONAL CORPORATION

This Part 1 of the Benefit Schedule applies where the Trustee is a Constitutional Corporation in accordance with Clause 3.2a of the Deed.

1 Circumstances for Payment of Benefits

Subject to the Superannuation Law and this Deed, benefits may become payable in the following circumstances and such other circumstances as the Superannuation Law permits:

- a. if the Member has reached the Retirement Age; or
- b. if the Member has ceased Service; or
- c. if the Member has died; or
- d. if the Member suffers Permanent Incapacity; or
- e. if the Member has a Terminal Medical Condition; or
- f. if the Member suffers Temporary Incapacity; or
- g. if a Member has attained preservation age under the Superannuation Law.

2 Calculation of benefits other than pension benefits

2.1 General

Subject to this Deed and except where Rules 2.2 or 3 of Part 1 of this Schedule apply, the amount of a Member's benefit payable will be the amount of the Member's Account Balance unless the Member requests a deferral of payment of part or all of that benefit and the Superannuation Law allows such deferral and the Trustee agrees to such deferral.

2.2 Temporary Incapacity benefit

Rule 2.1 does not apply in the case of a benefit payable on the Member's Temporary Incapacity which can only be paid in the form of a non-commutable income stream (refer Rule 3 pension benefits).

3 Pension benefits

3.1 General

Where a benefit in respect of a Member is to be payable in pension form, the amount referred to in Rule 3.2 will be applied for the purposes of providing that pension.

3.2 Relevant amount

For the purposes of Rule 3.1, the relevant amount is:

- a. the amount that would be payable as a lump sum under Rule 2.1 if it applied; and
- b. if the Member requests that only part of that amount be applied to fund the pension and the Trustee accepts that request, the amount of the part requested.

3.3 Pension conditions

The conditions applicable to payment of pension benefits appear in Part 3 of this Benefit Schedule.

PART 2 – WHERE INDIVIDUALS ARE TRUSTEE

This Part 2 of the Benefit Schedule applies where the Trustee consists of individuals in accordance with Clause 3.2b of the Deed.

1 Application of Benefits where Trustee Consists of Individuals

Where Clause 3.2b of the Deed applies, the main benefit payable from the Fund is an Old Age Pension payable at the Member's Retirement Age as described in Rule 2 of this Part of the Benefit Schedule.

2 Retirement Pension

If a benefit is payable to the Member on the Member's attaining Retirement Age, then subject to the Superannuation Law, the benefit may be paid in the form of a pension on terms agreed between the Trustee and the Member, or in any absence of agreement, as determined by the Trustee. A Member to whom a pension benefit is payable as described above may be entitled, subject to the Superannuation Law, to commute part or all of that benefit to a lump sum on terms agreed between the Trustee and the Member, or in the absence of agreement as determined by the Trustee.

3 Other Forms of Benefits Still Payable

Notwithstanding that the Trustee of the Fund consists of individuals benefits can otherwise be payable as incidental benefits in the circumstances specified in and in accordance with the terms of Parts 1 and 3 of this Benefit Schedule, even where the payment of a benefit is not made under Rule 2 of this Part 2 of the Benefit Schedule.

PART 3 - PROVISIONS APPLYING TO PENSION BENEFITS

1 Forms of pension

Without limiting anything in this Deed, and subject to the form of pension being permitted by the Superannuation Law, the Trustee and a Beneficiary may agree that the whole or any part of any amount payable to a Beneficiary under this Deed will be paid in one or more of the following forms:

- a. an Account-based Pension;
- b. a Transition to Retirement Pension;
- c. a Temporary Incapacity Benefit;
- d. an Allocated Pension;
- e. a Market Linked Pension;
- f. (Growth Pension); and
- g. any other form of pension permitted by the Superannuation Law which the Trustee chooses to make available at the relevant time including non-commutable pensions.

Terms relating to each type of pension referred to in paragraphs a. to d. of this Rule 1 are provided in the subsequent Rules 4 to 9 of this Schedule ("Pension Clauses").

2 Provisions of Superannuation Law

The Pension Clauses are designed to reflect certain provisions of the Superannuation Law relating to pensions. To the extent that those provisions of the Superannuation Law may be:

- a. varied or supplemented, the Trustee may offer pensions on terms that are consistent with the varied or supplemented provisions; or
- b. removed, the Trustee may adjust the features of pensions to which the Pension Clauses apply, having regard to the provisions that have been removed; and

subject to the Superannuation Law, where a change of the type referred to in paragraphs a. or b. of this Rule 2 occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current pension is paid, without being required to amend the terms of this Deed.

3 Additional Terms

Subject to the Superannuation Law, the Trustee is also permitted to:

- a. pay pensions in any form permitted by the Superannuation Law, which may include forms other than those described in the Pension Clauses;
- b. make the payment of pensions, including those governed by the Pension Clauses, subject to any other terms that the Trustee considers appropriate and those other terms may supplement or wholly or partly replace the terms that would otherwise apply; and
- c. further document the terms governing any pension, including those governed by the Pension Clauses, in any manner it considers appropriate, whether by way of variation, supplement, qualification or deletion of terms that might otherwise apply.

4 Terms

Terms used in the Pension Clauses have the same meaning as in the Superannuation Law (and in particular those provisions of the Superannuation Law relating to pensions) unless the context otherwise requires.

5 Account-based Pension

- a. An account-based Pension:
 - i. must be paid at least annually;
 - ii. must be transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be);
 - iii. must not be used as a security for a borrowing (both in relation to the capital value of the pension and the income from it); and
 - iv. in respect of payments to the beneficiary – the total of payments in any year (including under a payment split) must be at least the amount calculated under clause 1 of Schedule 7 in the Superannuation Law; and
- b. An account-based pension must otherwise comply with the requirements of the Superannuation Law as govern account-based pensions.

6 Transition to Retirement Pension

- a. A transition to retirement pension:
 - i. must be paid at least annually;
 - ii. must be transferable to another person only on the death of the beneficiary (primary or reversionary, as the case may be);
 - iii. must not be used as a security for a borrowing (both in relation to the capital value of the pension and the income from it);
 - iv. in respect of payments to the beneficiary – the total of payments in any year (including under a payment split) must be at least the amount calculated under clause 1 of Schedule 7 in the Superannuation Law;
 - v. in respect of payments to the beneficiary –
the total payments (including under a payment split) made in a financial year must amount to no more than 10% of the pension account balance:
 - (A) on 1 July in the financial year in which the payment is made; or

(B) if that year is the year in which the pension commences – on the commencement day; and

vi. comply with paragraph b of the definition of “non-commutable allocated pension” in the Superannuation Law, as if it were such a pension; and

b. A transition to retirement pension must otherwise comply with the requirements of the Superannuation Law as govern transition to retirement pensions.

7 Temporary Incapacity Benefit

A non-commutable income stream may be paid for:

- a. the purpose of continuing (in whole or part) the gain or reward which the Member was receiving before the Temporary Incapacity; and
- b. a period not exceeding the period of incapacity from employment of the kind engaged in immediately before the Temporary Incapacity.

8 Allocated Pensions

A Beneficiary may continue to be paid an Allocated Pension if commenced prior to 20 September 2007. However, unless permitted by the Superannuation Law a Beneficiary may not commence to receive an Allocated Pension after 19 September 2007.

The following terms apply to Allocated Pensions:

- a. Subject to the Superannuation Law, the size of Allocated Pension payments in a year is not fixed.
- b. Except where the Superannuation Law does not require:
 - i. payments must be made at least annually; and
 - ii. the payments in a year, except a payment by way of commutation shall be notified to the Trustee by the Beneficiary receiving the pension from time to time but may not be larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with the Superannuation Law.
- c. The Allocated Pension cannot be transferred to a person other than a reversionary beneficiary on the death of the primary beneficiary or of another reversionary beneficiary.
- d. The capital value of the Allocated Pension and the income from it cannot be used as security for a borrowing.
- e. The Allocated Pension may be commuted by application to the Trustee, subject to meeting the requirements of the Superannuation Law.
- f. For the purposes of paragraph c. of this Rule 8 the Trustee and a Beneficiary may agree that on the death of a Beneficiary to whom an Allocated Pension is being paid, a pension may be paid to one or more reversionary beneficiaries subject to the Superannuation Law. In the absence of agreement with the Beneficiary, the Trustee may determine such arrangements.
- g. Payments of the Allocated Pension will cease when the relevant Beneficiaries Account Balance is nil.
- h. If an Allocated Pension is commenced on or after 1 June in a financial year the minimum amount that would normally have to be paid to the Beneficiary in a financial year under the Superannuation Law does not have to be paid:
 - i. If the Allocated Pension is commuted unless the commutation results from:
 - i. the death of a pensioner or a reversionary pensioner; or
 - ii. the sole purpose of the commutation is:

- to pay a superannuation contributions surcharge; or
 - to give effect to an entitlement of a non-member spouse under a payment split; or
 - to meet the rights of a pensioner under the Corporations Act to return a financial product;
- iii. a partial commutation and the account balance of the market linked pension after the commutation is equal to or greater than the minimum amount required to be paid under the Superannuation Law;

then the minimum amount required to be paid from the pension under the Superannuation Law must be paid.

9 Market Linked Pension (Growth Pension)

A Beneficiary may continue to be paid a Market Linked Pension if commenced prior to 20 September 2007. However, unless permitted by the Superannuation Law a Beneficiary may not commence to receive an Allocated Pension after 19 September 2007.

a. A market linked pension:

- i. must be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy on the commencement day of the pension, rounded up to the next whole number if the primary beneficiary's life expectancy does not consist of a whole number of years; or
- ii. must be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to the primary beneficiary's life expectancy mentioned in sub-paragraph a.i. calculated, at the option of the primary beneficiary, as if the primary beneficiary were up to 5 years younger on the commencement day; or
- iii. if the pension has a commencement day on or after 1 January 2006 – the pension must be paid at least annually to the primary beneficiary or reversionary beneficiary throughout a period that is not less than the period available under sub-paragraph a.i. and not more than the greater of the following periods:
 - (A) the maximum period available under sub-paragraph a.ii.;
 - (B) the period of years equal to the number that is the difference between the age attained by the primary beneficiary at his or her most recent birthday before the commencement day, and 100; or
- iv. if:
 - (A) the pension is a pension that reverts to a surviving spouse on the death of the primary beneficiary;
 - (B) the life expectancy of the primary beneficiary's spouse is greater than the life expectancy of the primary beneficiary; and
 - (C) the primary beneficiary has not chosen to make an arrangement mentioned in sub-paragraphs a.i or a.ii. or a.iii. for the pension;

the pension must be paid at least annually to the primary beneficiary or to a reversionary beneficiary throughout a period equal to:

- (D) the life expectancy of the spouse on the commencement day; or
- (E) the life expectancy of the spouse calculated at the option of the primary beneficiary, as if the spouse were up to 5 years younger on the commencement day; or

- (F) if the pension has a commencement day on or after 1 January 2006 – a period that is not less than the period available under sub-paragraph a.iv.(D), and not more than the greater of the following periods:
- the maximum period available under sub-paragraph a.iv.(E);
 - the period of years equal to the number that is the difference between the age attained by the spouse at his or her most recent birthday before the commencement day, and 100.
- at the option of the primary beneficiary, and rounded up to the next whole number if the life expectancy of the spouse or the period does not consist of a whole number of years; and
- b. The total amount of the payments of a market linked pension to be made in a year (excluding payments by way of commutation but including payments made under a payment split) must be determined in accordance with the Superannuation Law; and
- c. The market linked pension must not have a residual capital value; and
- d. The market linked pension cannot be commuted except:
- i. if the pension is not funded from the commutation of another annuity or pension provided under the Superannuation Law and the commutation is made within 6 months after the commencement day of the pension; or
 - ii. subject to sub-paragraph d.iii., on the death of the primary beneficiary or reversionary beneficiary, by payment of:
 - (A) a lump sum or a new pension to one or more dependants of either the primary beneficiary or reversionary beneficiary; or
 - (B) a lump sum to the legal person representative of either the primary beneficiary or reversionary beneficiary; or
 - (C) if, after making reasonable enquiries, the provider of the pension is unable to find a person mentioned in sub-paragraph d.ii(A) or d.ii(B) – a lump sum to another individual; or
 - iii. for sub-paragraph d.ii., if the primary beneficiary has opted, under sub-paragraph a.iii., for a period worked out in relation to the life expectancy or age of the primary beneficiary's spouse – the market linked pension cannot be commuted until the death of both the primary beneficiary and the spouse; or
 - iv. if the superannuation lump sum resulting from the commutation is transferred directly to the purchase of another benefit that is an annuity or pension permitted under the Superannuation Law;
 - v. to pay a superannuation contributions surcharge; or
 - vi. to give effect to an entitlement of a non-member spouse under a payment split; and
- e. If the market linked pension reverts – it must not have a reversionary component greater than 100% of the account balance immediately before the reversion; and
- f. If the market linked pension is commuted – the commutation amount must not exceed the account balance immediately before the commutation; and
- g. The market linked pension can be transferred only:
- i. on the death of the primary beneficiary:
 - to 1 of the dependants of the primary beneficiary; or
 - to the legal personal representative of the primary beneficiary; or
 - ii. on the death of the reversionary beneficiary:
 - to 1 of the dependants of the reversionary beneficiary; or

- to the legal personal representative of the reversionary beneficiary; and
 - h. The capital value of the market linked pension, and the income from it, must not be used as security for a borrowing.
 - i. If the commencement day of a market linked pension is on or after 1 June in a financial year, no payment is required to be made for that financial year.
 - j. If the Market Linked Pension is commuted unless the commutation results from:
 - i. the death of a pensioner or a reversionary pensioner; or
 - ii. the sole purpose of the commutation is:
 - to pay a superannuation contributions surcharge; or
 - to give effect to an entitlement of a non-member spouse under a payment split; or
 - to meet the rights of a pensioner under the Corporations Act to return a financial product;
 - iii. a partial commutation and the account balance of the market linked after the commutation is equal to or greater than the minimum amount required to be paid under the Superannuation Law;
- then the minimum amount required to be paid from the pension under the Superannuation Law must be paid.

10 Particular arrangements

Subject to the Superannuation Law, the Trustee may:

- a. Require a Beneficiary requesting payment of a pension to provide the Trustee with information and other particulars relating to the pension before the pension begins to be paid and during the period of payment of the pension; and
- b. Agree with the Beneficiary on particular arrangements to apply to the pension such as the number and identity of any reversionary beneficiaries, the frequency of pension payments, the amount of pension payments, the treatment of benefits on the Beneficiary's death and any other relevant matters; and
- c. Set business rules relating to default arrangements that may apply to pension payments, in the absence of agreement between the Trustee and Beneficiary, or relating to any other relevant matters; and
- d. Provide a Beneficiary with a product disclosure statement in relation to a pension.

11 Reserves

Subject to the Superannuation Law, where it considers it appropriate, the Trustee may:

- a. obtain the advice of an actuary regarding the amount of pension payments, any variation to the amount of those payments, commutations, the establishment, monitoring or treatment of pension reserves, or any other relevant matter;
- b. establish pension reserves in relation to the funding of pension obligations relating to particular Beneficiaries;
- c. where a pension benefit liability to which a pension reserve relates no longer exists, or the amount of the pension reserve exceeds the expected liability, arrange for any assets or excess assets in the pension reserve to be applied in any manner whatsoever that the Trustee considers fair and reasonable, including for the general purposes of the fund, but having special regard to the Beneficiary to whom the pension benefit related and that Beneficiary's Dependants.

12 **Death benefits**

- a. This Rule 12 applies if the terms of a particular pension as provided above, and taking into account any particular arrangements made in accordance with Rule 9, do not provide for the consequences for payment of the pension on the death of the pension recipient.
- b. Where this Rule 12 applies, then unless the Trustee otherwise agrees, and subject to the Superannuation Law, if any amount is payable in respect of the pension recipient on the pension recipient's death, it will be dealt with in accordance with Clause 12.6 of the Deed and for this purpose, references in Clause 12.6 to the Member will be treated as references to the deceased pension recipient.

SCHEDULE 3 – APPLICATIONS FOR MEMBERSHIP

PART 1 - APPLICATION FOR MEMBERSHIP

WITH INDICATIVE DEATH BENEFIT NOMINATION – (NON-BINDING)

Member details
Name:
Address:
Date of Birth:
Occupation:
Tax File Number: Note: You are not obliged to provide your TFN. However, if you do not, TFN tax will be required to be withheld by the Trustee on concessional contributions at the top tax rate plus Medicare levy and no non-concessional contributions may be accepted by the Fund.
Telephone:
Fax:
Amount of Contribution/Benefit Rollover (\$) : *

I hereby apply to become a member of Kangawallafox Super Fund.

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED DATED

Employer details
Employer:
Address:

* A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund
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INDICATIVE DEATH BENEFIT NOMINATION (NON-BINDING)

- 1 This Nomination Notice is not binding. The Trustee will take it into account in the event that a benefit is paid from the Fund on your death. However, the Trustee has complete discretion as to which of your Dependants and/or the Legal Personal Representative of your estate may receive your benefit and in what proportions.
- 2 This Nomination Notice must be fully completed in accordance with the details below:
 - Ensure both pages of this Notice are completed.
 - The Beneficiaries named in this Notice must be Dependants and/or your Legal Personal Representative.

For the purposes of the Trust Deed, a Dependant is:

- a spouse of a Member;
- any children of a Member;
- any other person (whether related to the Member or not) who has an "interdependency relationship" with the Member, or who was financially dependent on the Member.

"Spouse" includes a de facto spouse and "children" includes step-children, adopted and ex-nuptial children.

There will be an "interdependency relationship" where two people have:

- a close personal relationship; and
- they live together; and
- one or each of them provides the other with financial support; and
- one or each of them provides the other with domestic support and personal care.

However where either or both persons suffer from a physical, intellectual or psychiatric disability an interdependency relationship will exist if they just have a close personal relationship.

Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person, who, as your next of kin, applies for and has been granted letters of administration for your estate. Should you wish to nominate your Legal Personal Representative, please write 'Legal Personal Representative' as the name of the Beneficiary.

For each person nominated, you must provide both their relationships to you and the proportion of any benefit that is to be paid to each.

Nomination of Dependants

Name	Relationship to you	Proportion of benefit

Member declaration

I, _____ of _____

as a member of the Fund, request the Trustee pay my death benefit to the above persons in the proportions shown.

I understand that:

- In the event of my death, the Trustee has complete discretion as to which of my Dependents and/or estate will receive any death benefit payable.
- This Notice revokes and amends any previous notice supplied to the Trustee of the Fund in regard to my nominated beneficiaries.

Signature of Member	Date / /
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**PART 2 - APPLICATION FOR MEMBERSHIP
WITH BINDING DEATH BENEFIT NOMINATION**

Member details
Name:
Address:
Date of Birth:
Occupation:
Tax File Number:
Note: You are not obliged to provide your TFN. However, if you do not, TFN tax will be required to be withheld by the Trustee on concessional contributions at the top tax rate plus Medicare levy and no non-concessional contributions may be accepted by the Fund.
Telephone:
Fax:
Amount of Contribution/Benefit Rollover (\$) : *

I hereby apply to become a member of Kangawallafox Super Fund.

I understand that my membership is subject to terms and conditions specified in the Trust Deed governing the Fund.

SIGNED DATED

Employer details
Employer:
Address:

* A Statement of Termination Payment needs to be attached if an amount is being transferred from another superannuation fund

BINDING DEATH BENEFIT NOMINATION (BDBN)

IMPORTANT INFORMATION ABOUT BDBN'S

The operation of the Fund, of which you are a member or are being invited to be a member, is governed by a document called a Trust Deed. The Trustee of the Fund is bound to act in accordance with the requirements of the Trust Deed in administering the Fund.

Under the Trust Deed, the Trustee has a discretion to decide to whom (and in what proportions) to pay your superannuation benefit in the event of your death. Generally your benefits can only be paid to your estate or to your Dependants.

However, the Trust Deed also enables you to override the Trustee's discretion by you giving a binding death benefit nomination (BDBN) to the Trustee. This is a direction to the Trustee to pay any death benefit payable either to your estate or to Dependants specified by you and in the proportions that you specify.

You may either elect for the trustee to exercise the discretion given to it to decide who to pay your benefit to, in the event of your death, or you can give a binding direction to the Trustee by completing this BDBN.

INSTRUCTIONS FOR COMPLETING BDBN

1. You can only direct the Trustee to pay the benefit to your estate and/or to the Dependants that you specify on this Nomination.
2. If you wish to give such a direction to the Trustee, you must specify the percentage of your total death benefit which is to be paid to each of the estate and/or your Dependants.
3. You can confirm, amend or revoke this Nomination at any time by giving written notice to the Trustee.
4. If, on this BDBN, you direct the Trustee to pay any part of your benefit to a person who is not a Dependant (as described below), your direction will be void and of no effect and the Trustee will be required to decide who to pay your death benefit to.
5. For the purposes of the Trust Deed, a Dependant is:
 - a spouse of a Member;
 - any children of a Member;
 - any other person (whether related to the Member or not) who has an "interdependency relationship" with the Member, or who was financially dependent on the Member.

"Spouse" includes a de facto spouse and "children" includes step-children, adopted and ex-nuptial children.

There will be an "interdependency relationship" where two people have:

- a close personal relationship; and
- they live together; and
- one or each of them provides the other with financial support; and
- one or each of them provides the other with domestic support and personal care.

However where either or both persons suffer from a physical, intellectual or psychiatric disability an interdependency relationship will exist if they just have a close personal relationship.

If you have any doubt as to whether a person you wish to nominate to receive any part of your death benefit is a Dependant, you should seek advice from the Trustee before completing this BDBN.

6. For the BDBN to be effective, it must be signed and dated by you in the presence of two witnesses who are both at least 18 years old and neither of the witnesses can be a person who you have nominated to receive a part of your death benefit.
7. In order for this BDBN to be valid, it must be fully completed in accordance with the details below:
 - Ensure the Nomination, Member Declaration and Witness Declaration are completed.
 - The Beneficiaries named in this BDBN must be Dependants and/or the Legal Personal Representative of your estate.

Your Legal Personal Representative is either the person named as your executor in your will, or, if you do not have a valid will at the date of your death, the person who applies for and has been granted letters of administration of your estate.

Should you wish to nominate your legal personal representative, please write 'Legal Personal Representative' as the name of the Beneficiary.

- For each person nominated, you must provide both their relationship to you and the proportion of any benefit that is to be paid to that person.
8. If any of this information is not provided, then your BDBN may be invalid. The Trustee will contact you for clarification if this is the case.

NOMINATION

Nomination of Dependants		
Name of beneficiary	Relationship to you	Proportion of benefit

Member declaration

I, _____ of _____ direct the Trustees to pay my death benefit to the above persons in the proportions shown above.

I understand:

- I can amend or revoke this Nomination at any time by providing a new Nomination to the Trustee/s of the Fund, signed and dated by myself in the presence of two witnesses who are aged 18 years or over;
- This Nomination revokes and amends any previous notice supplied to the Trustee/s of the Fund in regard to my nominated beneficiaries;
- If this Nomination is not correctly completed, it may be invalid.

Signature of Member	Date / /
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Witness Declaration

We declare that:

- This Nomination was signed by the Member in our presence;
- We are aged 18 or more; and
- We are not named as beneficiaries.

Signature of First Witness:	Date: / /
.....	
Full Name of First Witness:
Address of First Witness:

Signature of Second Witness:	Date: / /
.....	
Full Name of Second Witness:
Address of Second Witness:

SIGNATURES

EXECUTED as a deed.

SIGNED SEALED AND DELIVERED)
by **ERIC ROSS BADENHOPE** in the capacity)
as Trustee in the presence of:)



Eric Ross Badenhope

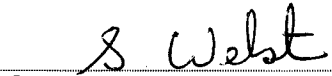
Penny Pakis

(Name of Witness in Full)

[Signature]

(Signature of Witness)

SIGNED SEALED AND DELIVERED)
by **SUSANNE MAREE WEBSTER** in the)
capacity as Trustee in the presence of:)



Susanne Maree Webster

Penny Pakis

(Name of Witness in Full)

[Signature]

(Signature of Witness)