

**C.J. & K.A. ROBERTS FAMILY  
SUPERANNUATION FUND**

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**SCHEDULE A**

## **SUPERANNUATION DEED**

**THIS DEED** is made on the date shown on Schedule A as the Date of Deed,

**BETWEEN** the person or persons named and described in Schedule A as the Founder ("Founder"),

**AND** the person or persons named and described in Schedule A as the trustee ("Trustee").

### **RECITALS:**

- A. The Founder wishes to establish and maintain a superannuation fund ("Fund") solely for the purpose of providing superannuation and disablement benefits for its Members and their Dependants as may become Members of the Fund, in the event of a Member's retirement from Gainful Employment or in the event of a Members' death.
- B. The Founder has requested the Trustee to act as trustee of the Fund in accordance with the provisions of this Deed and the Trustee has consented to act as the Fund's trustee.
- C. The Founder and the Trustee have agreed to conduct the Fund in such a manner so as to ensure that the Fund at all times attracts any income tax concessions that may apply to superannuation funds.



**OPERATIVE PROVISIONS:**

**PART 1**

**HOW TO READ THIS DEED**

**1. OVERVIEW OF DEED**

This Deed explains the way in which the Fund will operate and the roles and the responsibilities of each of the Trustees and any person, company or entity associated with or having some responsibility under this Deed.

The Deed comprises fifteen parts. Each part deals with a specific aspect of the Fund. These parts are described as follows:

<u>Part number</u>	<u>Description</u>
Part 1.	How to Read this Deed.
Part 2.	The Fund.
Part 3.	Trustees.
Part 4.	Other Persons in the Fund.
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Part 6.	Powers of Trustee.
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Part 10.	Membership of the Fund.
Part 11.	Contributions to the Fund.
Part 12.	Benefits.
Part 13.	Allocated Pensions.
Part 14.	Termination of Trust.
Part 15.	Deed Amendment.

**2. DEFINITIONS**

In this Deed, unless the context otherwise requires:

"**Account**" means Accumulation Account, Pension Account, Income Account, Equalisation Account, Forfeiture Account or any other account required to be opened or maintained by the Trustee in accordance with the Superannuation Law;

"**Accumulation Account**" means the Account established on behalf of each Member or Beneficiary as described in clause 16 ;

"**Actuary**" means the actuary (if any) for the time being appointed pursuant to the provisions of this Deed;

"**Additional Employer**" means any person, firm or corporation that by agreement with the Trustee is admitted to participation in the Fund under Part 5.

"**Administration Manager**" means a person appointed as Administration Manager of the Fund in accordance with clause 10(1)(c);

"**Allocated Pension**" means a Pension payable in accordance with Part 13;

"**Annuity**" means an annuity as defined for the purposes of the Superannuation Law;

"**Approved Benefit Arrangement**" means a fund or benefit arrangement other than the Fund including without limitation another Complying Superannuation Fund, an Approved Deposit Fund and an Annuity arrangement into which or from which assets can be transferred into or from the Fund without causing the Fund to be in breach of or to fail to comply with the Superannuation Law and includes a Eligible Roll-Over Fund;

"**Approved Deposit Fund**" in relation to a year of income means a fund which is a complying Approved Deposit Fund in accordance with the *Taxation Act*;

"**Auditor**" means the auditor for the time being appointed under clause 10(1)(d) of this Deed;

"**Beneficiary**" means a person entitled to receive a Benefit under the provisions of this Deed at the relevant time and includes a Pensioner but which shall not include a person who is a Member at that time;

"**Benefit**" means any amount which is payable by the Trustee out of the Fund in accordance with this Deed to or respect of a Member;

**"Benefit Entitlement"** means any amount held in the Fund which may become payable to a Member, Dependant or Beneficiary but to which the person has not become absolutely and indefeasibly entitled and it shall include a contingent right to payment of an amount;

**"Complying Superannuation Fund"** in relation to a year of income means a fund which is a Complying Superannuation Fund in accordance with the Superannuation Law;

**"Constitutional Corporation"** has the same meaning as for the purposes of the Superannuation Law;

**"Contributions"** means payments to the Fund by Members and Employers in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those Contributions;

**"Corporations Law"** means the Corporations Law 1989;

**"Deed"** means this Deed and any alterations, additions, amendments, modifications or variations to it;

**"Dependant"** in relation to a Member or former Member means:

- (a) the Spouse of a former Member or the widow or widower of a deceased Member;
- (b) any child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as the child of the Member; and
- (c) any other person who, in the opinion of the Trustee, was substantially dependant on the Member at the relevant time.

**"Directors"** means the directors or board of management for the time being of the Trustee or any Employer as the case requires, and "Director" has a corresponding meaning;

"**Earnings**" means all net income and net capital gains whether realised or unrealised after deducting any capital losses and such allowances for expenses and Taxation as the Trustee considers appropriate.

"**Eligible Person**" means any person who is engaged in Part-Time Gainful Employment or Full-Time Gainful Employment or who is otherwise permitted to become a Member of the Fund under the Superannuation Law;

"**Eligible Termination Payment**" has the same meaning as contained in Section 27A of the *Taxation Act*;

"**Employee**" means any Eligible Person in the employment of an Employer **PROVIDED THAT** the Founder may deem any person to be an Employee for such period and on such terms and conditions as it shall determine for the purposes of an Employee making Contributions in order to avoid liability for the superannuation guarantee charge under the Guarantee Act;

"**Employer**" means the Founder or Additional Employer of the Member or any person carrying on business in succession to or in amalgamation with the Founder which elects to assume by deed the obligations of the Founder under this Deed in accordance with clause 46(2);

"**Fluctuation Account**" means the account established pursuant to clause 19;

"**Financial Assistance**" means any financial assistance granted to the Fund in accordance with Part 23 of the *Superannuation Industry (Supervision) Act 1993*;

"**Financial Year**" means a period of twelve months ending on 30 June or such other period of twelve months as the Trustee shall determine;

"**Forfeiture Account**" means the account established pursuant to clause 40(4);

"**Founder**" means the person or the Legal Personal Representative of the person described as such in Schedule A ;

"**Full-Time Gainful Employment**" in relation to a Member means a Member who is Gainfully Employed on a full-time basis within the meaning of the Superannuation Law;

**"Fund"** means the Fund established by this Deed.

**"Fund Earning Rate"** means the earning rate for the Fund (which may for the purposes of this Deed be negative) determined under of clause 18(3) after taking into account such provisions or reserves for future contingencies as the Trustee consider reasonable;

**"Fund Year"** means a period of twelve months ending on 30 June, or such other period ending on such other date as the Trustee may determine from time to time;

**"Gainful Employment"** in relation to a Member means engagement in any business, trade, profession, vocation, calling, occupation or employment for personal gain to the extent required by the Superannuation Law;

**"Guarantee Act"** means the *Superannuation Guarantee (Administration) Act 1992* and any regulations made to that Act;

**"Individual Trustee"** means a natural person who is appointed to be a Trustee of the Fund;

**"Insured Member"** means any Member who has a Policy effected in his or her name by the Trustee;

**"Insurer"** means any insurer with whom the Trustee effects a Policy or Policies;

**"Investment Manager"** means a person appointed as an Investment Manager of the Fund in accordance with clause 10(1)(a);

**"Legal Personal Representative"** has the same meaning as is given to the expression in the *Administration and Probate Act 1958*;

**"Levy"** includes a levy payable by the Fund to the Commissioner in accordance with the *Superannuation Supervisory Levy Act 1991*, the *Superannuation (Fund Assistance Levy) Act 1993* and any other legislation or regulations which impose a levy or levies on the Fund;

**"Lifetime Pension"** means a Benefit paid in the form of a Pension which is acceptable to the Statutory Authority or is in accordance with the requirements of

the Superannuation Law for the purposes of the provision of Benefit as old-age pensions;

"**Member**" means an Eligible Person who has been accepted as a Member of the Fund under clause 26;

"**Member Account**" means a Member's Accumulation Account or Pension Account as the case may be;

"**Member's Vested Contributions**" means those Contributions less any Taxation payable on those Contributions, plus Earnings which are required to be vested in the Member by the Superannuation Law reduced by the cost of effecting any Policy on behalf of a Member where the Trustee determines that the premium should be wholly or partially debited against the Member's Vested Contributions in accordance with clause 24(4);

"**Membership**" means a Member or Beneficiary's membership of the Fund;

"**Nominated Dependant**" means a person nominated by a Member as the Nominated Dependant;

"**Non-Preserved Amount**" means an amount including a Roll-Over Payment payable to or in respect of a Member which is not required to be preserved or at the time of payment is no longer required to be preserved under the Superannuation Law;

"**Normal Retirement Age**" means the age of 65 years or such other age being not less than 55 years as is acceptable to or required by the Superannuation Law and as the Trustee with the consent of the Employer of that Member shall determine **PROVIDED HOWEVER THAT** where Benefits are determined under clause 38, "Normal Retirement Age" shall not be less than 60 years;

"**Part-Time Gainful Employment**" in relation to a Member means a Member who is employed for at least 520 hours per annum, or a Member who fulfils any other requirement specified in the Superannuation Law;

"**Pension**" includes a Benefit payable by instalments out of the Accumulation Account or the Pension Account of a Member or Beneficiary whether such instalments be equal or unequal;

**"Pensioner"** means a member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and shall include a Reversionary Beneficiary in receipt of a Pension;

**"Pension Account"** means the account established in respect of a Pensioner in accordance with clause 17;

**"Policy"** means any policy of assurance including a policy of the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member, "Policy" means the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of those risks and it further includes any policy which provides that Benefits shall be payable to the Trustee on the death or disablement of a Member provided that the acquisition of any such policy is not prohibited by Superannuation Law;

**"Preserved"** and **"Preserve"** means the prohibition of paying any amount held in the Fund before a Member reaches the age of 55 years or is otherwise entitled to be paid that amount in accordance with the Superannuation Law;

**"Preserved Payment"** means a payment made to the Fund by an Employer or a Member or by transfer from an Approved Benefit Arrangement which is required to be Preserved in order for the Fund to be a Complying Superannuation Fund;

**"Preserved Payment Benefit"** means a Benefit arising from a Preserved Payment;

**"Relative"**, in relation to a Member or former Member, means any of the following, namely:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of that Member or former Member or of the Spouse of the Member;
- (b) the Spouse of any person specified in paragraph (a); and
- (c) any child of any of the persons specified in paragraph (a) or (b);

**"Retires from Employment"** means actual retirement by a Member from employment with the Employer or retirement as defined by the Superannuation Law for the payment of Benefits;

**"Retires from Gainful Employment"** means actual retirement by Member from Gainful Employment or retirement as defined for the purposes of the Superannuation Law for the payment of Benefit;

**"Reversionary Beneficiary"** means a Dependant nominated by a Pensioner and in default of a nomination by the Pensioner a Dependant nominated by the Trustee who is eligible to receive a Benefit on the death of a Pensioner;

**"Shortfall Component"** has the same meaning as in Section 64 of the Guarantee Act;

**"Spouse"** means:

- (a) a person legally married to a Member at any time; or
- (b) a person who, although not legally married to the Member, in the opinion of the Trustee lives with a Member on a bona fide domestic basis as the husband or wife of the Member and, in relation to a deceased Member, the term "widow" or "widower" includes such a person,

but where a person has more than one Spouse, the Trustee shall determine which one or more of them shall be deemed to be that person's Spouse, and, if one or more person is so deemed to be a Spouse, the Trustee shall determine the proportions in which a Benefit payable to each Spouse is to be divided between them;

**"Statutory Authority"** means, as the case requires, the Commissioner of Taxation, the Insurance and Superannuation Commissioner or such other regulatory body or person as shall have responsibility for the administration of superannuation;

**"Superannuation Law"** means any requirement under the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation Industry (Supervision) Regulations*, the *Occupational Superannuation Standards Act 1987*, the *Occupation Superannuation Standards Regulations*, the *Taxation Act* and any other present or future legislation which the Trustee must comply with in order for the Fund -



- (a) to qualify for concessional Taxation treatment as a Complying Superannuation Fund; or
- (b) to meet any other requirement of the Statutory Authority,

and includes any proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect retrospectively;

"**Taxation Act**" means the *Income Tax Assessment Act 1936* and any Regulations or public rulings issued under that Act;

"**Taxation**" includes income tax, pay-roll tax, land tax, stamp duty and any other taxes or duties paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member, Dependant or Beneficiary;

"**Temporarily Totally Disabled**" and "**Temporary Total Disablement**" means disablement as a result of illness, accident or injury which commences at or prior to a Member attaining the age of 65 years or the Member's Normal Retirement Age (whichever is the earlier) and which causes the Member to be continuously absent from the Member's profession, trade, business, occupation or employment for such period as any Policy effected in respect of the Member in respect of total disablement requires **PROVIDED THAT** the Trustee expects the Member's disablement to be temporary.

"**Total and Permanent Disablement**" means ill health (whether physical or mental) where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Full-Time Gainful Employment or Part-Time Gainful Employment for which the Member is reasonably qualified by education, training or experience.

"**Tribunal**" means the Superannuation Complaints Tribunal established under the *Superannuation (Resolution of Complaints) Act 1993*;

"**Trustee**" means the Trustee or Trustees for the time being of the Fund whether original, additional or substituted which are appointed in accordance with clause 9 of this Deed;

"**Unclaimed Benefits**" means those Benefits described as "Unclaimed Money" under Part 22 of the *Superannuation Industry (Supervision) Act 1993*; and

"Vested Benefit" means any Benefit that has vested to the benefit of a Member in accordance with the Superannuation Law.

**3. INTERPRETATION OF OTHER MATTERS**

**(1) CLAUSE HEADINGS AND INDEX**

The headings and index in this Deed are for convenience and reference only and shall not affect the interpretation of this Deed;

**(2) LEGISLATION**

A reference to any Act of Parliament or Regulation or to any section or provision of such legislation, includes any statutory modification or re-enactment or any statutory provision substituted therefore and by-laws, regulations or other statutory instruments issued under them;

**(3) PLURAL AND GENDER OF WORDS**

The singular includes the plural and vice versa and one gender includes the other gender.

**(4) DISPUTE AS TO INTERPRETATION**

If any dispute arises as to the interpretation of any of the provisions of this Deed or as to the rights or obligations of the Member or any other person hereunder, then (except to the extent otherwise expressly provided in the Deed) the decision of the Trustee shall be final and binding.

**(5) SEVERANCE**

If:

- (a) any provision of this Deed is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly; or

(b) notwithstanding clause 3(5)(a), a provision of this Deed would still be void, voidable, unenforceable or illegal;

(i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and

(ii) in any other case, the whole provision must be severed;

and the remainder of this Deed will be of full force or effect.

**(6) FUND SUBJECT TO SUPERANNUATION LAW AT ALL TIMES**

(a) The provisions contained in this Deed are at all times subject to the Superannuation Law and are deemed to incorporate the Superannuation Law to the extent necessary for the Trustee and the Fund to qualify for concessional Taxation treatment or to satisfy any other requirements of the Statutory Authority.

(b) In the event that there is an inconsistency between the Deed and the Superannuation Law, the Superannuation Law shall prevail to the extent of the inconsistency.

**(7) REQUIREMENTS OF THE STATUTORY AUTHORITY**

Any references to any requirements, consents or approvals being required to be given by the Statutory Authority or for the purposes of satisfying the Superannuation Law, shall mean requirements, consents or approvals of the Statutory Authority or under the Superannuation Law.

**4. OTHER PROVISIONS TO NOTE**

**(1) EMPLOYER'S POWERS**

Nothing in this Deed shall affect the powers of an Employer with the regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between an Employer or Employee.

(2) **EXERCISE OF POWERS, RIGHTS AND SO ON**

All powers, rights, decisions, discretions, appointments or other authorisations of whatsoever nature or kind granted to or conferred on an Employer or the Trustee by, under or for the purposes of this Deed, may be fully and effectively exercised, made, done or performed by or on behalf of an Employer or Trustee:

- (a) where an Employer or Trustee is a company, by resolution of its directors in accordance with its articles of association or by any person or persons having the authorisation of such directors to act on their behalf;
- (b) where the Trustee consists of Individual Trustees, by unanimous resolution or, if required by the Superannuation Law, by a majority of persons holding the office of Trustee; or
- (c) where an Employer consists of individuals, by a majority of such individuals,

**PROVIDED THAT** any requirements of the Superannuation Law are satisfied.

(3) **BENEFITS SECURED**

The rights of the Members or their Dependants who receive Benefits payable under this Deed shall be secured within the meaning of the Superannuation Law.

5. **GOVERNING LAW**

This Deed shall be governed and construed in accordance with the laws of Victoria. The Trustee, Members, Beneficiaries and Employers hereby submit to the exclusive jurisdiction of the Courts of Victoria and of any Court competent to hear appeals therefrom.

6. **DISPUTE RESOLUTION**

(1) **ENQUIRIES AND COMPLAINTS MECHANISM**

The Trustee shall ensure that there are in force arrangements to deal with enquiries and complaints from Members, Dependants or Beneficiaries in the circumstances and within the time limits required by the Superannuation Law.

(2) **TRUSTEE TO IMPLEMENT DECISION**

Subject to the Trustee's rights to determine in its discretion to appeal against any decision of a Court or Tribunal, the Trustee shall ensure that it implements any decision of a Court or Tribunal as required by that Court or Tribunal.

**PART 2**

**THE FUND**

**7. STRUCTURE OF THE FUND**

**(1) ESTABLISHMENT**

By this Deed, the Trustee establishes the Fund which is known by the name stated in Schedule A.

**(2) FUND VESTED IN TRUSTEE**

The Fund shall at all times be vested in the Trustee and managed by the Trustee upon the terms and conditions subject to the trusts, powers, authorities and discretions contained in this Deed.

**(3) TYPE OF FUND**

The Fund shall be either a Fund providing:

- (a) Benefits payable as lump sums in accordance with clause 37, in which case the Trustee shall be a Constitutional Corporation;
- (b) if clause 7(5) or 7(6) apply, Benefits payable as Lifetime Pensions in accordance with clause 38 as its sole purpose in accordance with the Superannuation Law, in which case the Trustee may be a Constitutional Corporation, an Individual Trustee or group of Individual Trustees or a combination of both; or
- (c) if clause 7(7) applies, Benefits payable as Allocated Pension in accordance with Part 13.

**(4) IF TRUSTEE IS CONSTITUTIONAL CORPORATION**

Subject to clause 7(5), where the Trustee of the Fund is a Constitutional Corporation, clause 37 is used to determine the Benefits payable to Members.

(5) **TRUSTEE ELECTION OPTION**

Where the Trustee is a Constitutional Corporation, the Trustee may elect in writing not to pay lump sum Benefits under clause 37 but to pay Pension Benefits under clause 38.

(6) **IF TRUSTEE INCLUDES INDIVIDUAL TRUSTEES**

Subject to clause 7(7), where the Trustee of the Fund includes any Individual Trustee, Pension Benefits shall be payable under clause 38.

(7) **MEMBER ELECTION TO PAY ALLOCATED PENSION**

Where a Member requests that the Trustee pay the Benefit as an Allocated Pension, **PROVIDED THAT** the Member is eligible for payment of such a Benefit in accordance with clause 42, the Trustee shall notify the Member of such eligibility and the Member shall make an irrevocable election in writing that Benefits shall be payable in accordance with Part 13.

(8) **NOTIFICATION OF MEMBERS FOLLOWING ELECTION**

The Trustee shall notify Members of any change in the nature of Benefit payable by the Fund and the application of clauses 37 or 38 or Part 13 in accordance with this clause as soon as practical after the change occurs.

(9) **CLASS OF MEMBERS**

The Founder shall, with the consent of the Trustee, have the power to create any additional class or classes of Membership with such rights, entitlements, conditions of eligibility and Benefits as the Trustee and the Founder agree upon.

(10) **COMPOSITION OF THE FUND**

The gross assets of the Fund shall consist of all cash, investments and other property for the time being held and received by or on account of the Trustee upon the trusts of this Deed.

**PART 3**

**TRUSTEES**

**8. COVENANTS**

The Trustee covenants with the Founder to perform and observe the covenants, trusts conditions and obligations of this Deed as and to the extent they are included in the Deed or deemed to be included in the Deed by the Superannuation Law.

**9. APPOINTMENT AND CHANGE**

**(1) TRUSTEE TO BE A CONSTITUTIONAL CORPORATION**

Subject to the Superannuation Law, the Trustee shall at all times be a Constitutional Corporation with one-half of its Directors appointed by the Employers in accordance with clause 9(5) and one-half of its Directors appointed by the Members in accordance with clause 9(4) **PROVIDED THAT** an independent Director may be appointed by the Directors or the Founder with the consent of the Members, unless clause 38 operates.

**(2) APPOINTMENT OF TRUSTEE**

The Founder shall appoint and remove any Trustee in accordance with the Superannuation Law and any such appointment or removal shall be recorded in writing and immediately advised to any other Trustee and shall be carried out in accordance with the Superannuation Law.

**(3) ELIGIBILITY FOR APPOINTMENT AS TRUSTEE**

Subject to clause 9(1) and to any requirements of the Superannuation Law, a Trustee may be:

- (a) the Trustee as specified in this Deed;
- (b) an Individual Trustee;
- (c) if more than one Individual Trustee or if there is no Constitutional Corporation appointed as Trustee, a group of Individual Trustees, half of



which are appointed by Employers in accordance with clause 9(5) and half of which are appointed by Members in accordance with clause 9(4);

- (d) a Constitutional Corporation with one-half of its Directors appointed by Employers and one-half of its Directors appointed by Members **PROVIDED THAT** an independent Director may be appointed by the Directors or the Founder with the consent of the Members; or
- (e) any other person or entity appointed by the Statutory Authority or as satisfy the Superannuation Law.

(4) **APPOINTMENT OF MEMBER NOMINATED DIRECTORS OF TRUSTEE OR TRUSTEE**

The Members shall:

- (a) appoint as Directors of the Trustee or Trustee from time to time as directed by the Trustee such Members as they shall nominate in order that the Fund complies with clauses 9(2) or 9(3)(d); and
- (b) ensure that any Member appointed in accordance with clause 9(4)(a) is at least 18 years of age.

(5) **APPOINTMENT OF EMPLOYER NOMINATED DIRECTORS OF TRUSTEE OR TRUSTEE**

The Employer shall:

- (a) appoint as Directors of the Trustee or Trustee from time to time as directed by the Trustee such persons as they shall nominate in order that the Fund complies with clauses 9(2) or 9(3)(d); and
- (b) ensure that any person appointed in accordance with clause 9(5)(a) is at least 18 years of age.

**(6) REMOVAL OF MEMBER OR EMPLOYER APPOINTED DIRECTORS OR TRUSTEES**

Any Member or Employer appointed Director or Trustee may be removed in accordance with the Superannuation Law and any such person shall immediately cease to hold such position:

- (a) in the event that the person is appointed by Members, when that person is removed from office in accordance with any procedure established by the Trustee or the Articles of Association of a Constitutional Corporation;
- (b) in the event that the person is appointed by Employers, when the Employers revoke the appointment of the person in writing;
- (c) if the person resigns as a Trustee or Director by notice in writing to the other Trustees or the Constitutional Corporation for the time being acting as Trustee and to the Founder;
- (d) if the person is disqualified from holding office by operation of the Superannuation Law or is removed or suspended from office by the Statutory Authorities;
- (e) if the person is removed from office in accordance with the Articles of Association of the Constitutional Corporation;
- (f) if the person ceases to be in employment of an Employer; or
- (g) if the person dies or becomes bankrupt or mentally or physically incapacitated.

**(7) CHANGE OF TRUSTEE**

A Trustee shall immediately cease to act as Trustee of the Fund:

- (a) if, being a corporation, it is placed into receivership or liquidation or an administrator is appointed over its affairs;

- (b) if the Trustee is disqualified from holding office as a trustee by operation of the Superannuation Law or is removed or suspended from office under the Superannuation Law;
- (c) if the Trustee resigns as a trustee of the Fund by notice in writing to the Founder;
- (d) if being an Individual Trustee the person dies or becomes bankrupt or mentally or physically incapacitated;
- (e) if the person is removed or ceases to be a Member or an Employer appointed Director or Trustee;
- (f) if the person ceases to be an Independent Trustee; or
- (g) subject to the Superannuation Law, seven days after the person is removed from office by notice in writing given by the Founder to the Trustee.

**(8) CONTINUITY OF OFFICE**

Any person who acts as Trustee shall, on ceasing to be Trustee under this clause, do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records and other books to the remaining or new Trustee.

**(9) ABSENCE OF TRUSTEE**

If for any reason there is no Trustee of the Fund at any time, the Founder shall undertake the duties of the Trustee to the extent that it is necessary to appoint a new Trustee in accordance with the provisions of this Deed.

**(10) MEMBER MAY BE TRUSTEE**

No Individual Trustee, Director of a Constitutional Corporation or officer or Employee of the Employer shall by virtue of their office or the powers delegated to them by the Trustee be disqualified from being a Member of the Fund or from exercising rights or deriving any Benefits as a Member of the Fund.

**(11) QUORUM OF INDIVIDUAL TRUSTEES**

A quorum of Trustees shall be two-thirds of the Individual Trustees in office for the time being including at least one Member Trustee and one Employer Trustee or shall be such other number of Trustees as shall be agreed upon or as shall be required by the Superannuation Law.

**(12) REMUNERATION OF TRUSTEE**

Unless otherwise agreed in writing between the Trustee and Members, the Trustee shall not receive any remuneration from the Fund in respect of its services as Trustee.

**(13) CONFIDENTIALITY OF INFORMATION**

The Trustee and every Employer shall, as far as possible, treat as confidential all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed.

## **PART 4**

### **OTHER PERSONS IN FUND**

#### **10. APPOINTMENT AND REMOVAL OF OTHER PERSONS**

##### **(1) APPOINTMENT**

The Trustee may appoint in writing one or more persons or companies, as appropriate, as:

- (a) Investment Manager, who shall have powers, discretions and authority relating to the purchase, sale, management, investment, administration, valuation, retention and transposition of that part of the Fund entrusted to the Investment Manager;
- (b) Actuary, who shall be a Fellow of the Institute of Actuaries of Australia or a firm or company of Actuaries of which at least one member or director (as the case requires) is such a Fellow;
- (c) Administration Manager, who shall have power to carry out some or all of the administration of the Fund;
- (d) Auditor, who is appropriately qualified and is independent according to any criteria specified in the Superannuation Law;
- (e) Custodian, who shall have such powers, discretions and authorities relating to holding the legal title and the custody of title, deeds and any documents of any nature whatsoever or relating to the custody of any part of the assets of the Fund provided that person is not prohibited in so acting under the Superannuation Law; and
- (f) such other consultants and officers as may be desirable for the proper management and administration of the Fund.

(2) **REMOVAL**

The Trustee may remove from office any person or company appointed to any position under this clause and shall remove such person or company when so required by the Superannuation Law.

**PART 5**

**ADDITIONAL EMPLOYERS**

**11. ADDITIONAL EMPLOYERS**

Any person, company or other entity may apply to the Trustee to become Additional Employers of the Fund and should the Trustee accept such application by written notification to that person, company or entity, the employees of that person, company or entity may become Members of the Fund upon the same terms and conditions as any other Member.

**PART 6**

**POWERS OF TRUSTEES**

**12. INVESTMENT POWERS OF TRUSTEES**

**(1) INVESTMENT STRATEGY**

The Trustee shall from time to time formulate and give effect to one or more investment strategies having regard to the Fund's circumstances provided that such are strategies formulated and effected in accordance with the Superannuation Law.

**(2) POWER OF INVESTMENT**

Subject to the Superannuation Law and the Fund's investment strategy, the Trustee shall have power at the Trustee's absolute discretion from time to time to invest the whole or any part of the Fund's assets in any one or more of the following investments:

- (a) in the acquisition by original subscription or by purchase or otherwise of debentures, debenture stock, whether secured or unsecured, or secured or unsecured notes or other loan instruments of any corporation wheresoever situated or incorporated and payable or repayable in whatsoever currency and whether bearing interest or not;
- (b) in the acquisition by original subscription or by purchase or otherwise of the shares or stocks whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon of any corporation wheresoever situated or incorporated and expressed in whatsoever currency;
- (c) in the purchase of or at interest upon the security of such shares, stocks, funds, securities, land or other investment or property of whatsoever nature and wheresoever situated (other than such an investment of a wasting or speculative nature) and whether income producing or not and whether fully or partly paid up or involving liabilities or not or in loans upon personal credit with or without security as the Trustee in the Trustee's absolute discretion think fit and to the intent that the Trustee



shall have the same power in all respects as if the Trustee was the absolute owner beneficially entitled and nothing in this clause hereinafter appearing shall be construed as limiting in any way the generality of the foregoing;

- (d) in the acquisition by original subscription or by purchase or otherwise of interests or rights, whether partly paid or not and whether having liability thereon or not, in corporations not having a share capital wheresoever situated or incorporated;
- (e) in the acquisition of securities of any Country or of any State, Territory or Colony whether by original subscription, purchase or otherwise;
- (f) in the acquisition of securities of any statutory or municipal body wheresoever situated and for any period whatsoever and whether by original subscription, purchase or otherwise;
- (g) in the acquisition by original agreement or by purchase or otherwise of options and rights to take up shares or stock whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereon of any corporation wheresoever situated or incorporated or to take up interests or rights whether having liability thereon or not in corporations not having a share capital wheresoever situated or incorporated;
- (h) in the acquisition of units or sub-units of any unit trust whether by original subscription, purchase or otherwise;
- (i) in the acquisition by any means whatsoever of land or interest in land of any tenure, improved or unimproved and wheresoever situated;
- (j) on loan to any person or deposited with any person whatsoever or wheresoever situated with or without security and for any period whatsoever **PROVIDED HOWEVER** no loan or deposit shall be made to or with any Employer or associate of the Employer;
- (k) on deposit with any bank for any period whatsoever;

- (l) in erection of buildings or structures or the making of improvements on land with any tenure improved or unimproved and wheresoever situated; and
- (m) on any Policy or Annuity with an Insurer and any chooses in action, interest for life or any lesser term or any reversion or otherwise arising and whether as original Policy holder or by assignment,

with full power to vary, replace, or otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with their own property may do so, **PROVIDED THAT** the Trustee shall not invest in:

- (n) loans to or the giving of any financial assistance to a Member or a relative of a Member; or
- (o) loans to or investments in any Employer where such loans or investments do not comply with the Superannuation Law.

(3) **POWER TO HOLD INVESTMENT IN DIFFERENT NAMES**

Any investment may be held in such names including the name of a nominee (whether an individual or a corporation) as the Trustee shall from time to time determine.

(4) **DISCLOSURE OF TRUSTEE'S INTEREST IN INVESTMENT**

The Trustee and any Director shall disclose details of any interest in any investment in the manner prescribed under the Corporations Law and the Superannuation Law whenever they have a direct or indirect interest in the investment or may benefit directly or indirectly from it.

(5) **SPECIFIC INVESTMENTS**

Subject to clauses 12(1) and 12(2), the Trustee may, with or without the consent of a Member or Beneficiary, make separate investments as the Trustee may determine in respect of certain Members or Beneficiaries or certain Classes of Members or Beneficiaries of the Fund or in respect of different Classes for certain Members or Beneficiaries.

**13. TRUSTEES POWERS GENERALLY**

**(1) GENERAL POWERS**

Without prejudice the powers vested in the Trustee by this Deed or otherwise, the Trustee shall have the following powers to be exercised or not by the Trustee in the Trustee's absolute discretion, that is to say the power:

- (a) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or the Trustee or otherwise concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due or of any claims or demands by or against the Fund, and to commence, carry on and 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, remission, breach of duty or breach of the terms of this Deed;
- (b) to refer any claims or demands by or against the Fund to arbitration and to observe and perform the awards;
- (c) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (d) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make procedures for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (e) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, release, contracts and documents;
- (f) to pay benefits out of the Fund to a Member or a Dependant;
- (g) to decide who are Dependents for the purposes of the Deed;
- (h) in case of the mental or physical ill-health or incapacity of any person entitled to Benefits, to pay or apply such Benefits or any part thereof at the Trustee's discretion to or for the benefit of such person and the

Dependants of such person or any of them as the case may be without being responsible for seeing to the application of payments under this paragraph or payments made in the exercise of any other power vested in the Trustee by the Deed;

- (i) to indemnify or undertake to indemnify any person, company, government or institution 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 **PROVIDED THAT** an indemnity shall only be provided to the extent that it is not limited by or contrary to the Superannuation Law;
- (j) to pay and advance out of the Fund all costs, expenses and outgoings (including Taxation) of and incidental to the management and administration of the Fund;
- (k) to pay and advance out of the Fund the professional fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (l) to take and act upon the opinion of any legal practitioner, whether in relation to the interpretation of the Deed or any other document or statute or as to the administration of the trusts hereby declared, without being liable to any Member or his or her Dependants in respect of any act done by in accordance with such opinion;
- (m) to insure and keep insured as it sees fit any liability of the Trustee or any Directors or officers of the Trustee or the liability of the Fund to indemnify and reimburse the Trustee or its Directors of officers;
- (n) to insure or re-insure any risk, contingencies or liabilities of the Fund with any Insurer, mortgage insurance company or re-insurance company;
- (o) to provide a full or partial release to any person in respect of matters that have arisen or may arise in respect of the Fund;
- (p) to purchase an Annuity from an Insurer in order to provide all or a part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member;

- (q) to enter into any agreement or provide any notice or make any election or undertake any other action whether revocable or irrevocable which would or may have the effect of committing the Trustee to conduct the Fund at all times as a Complying Superannuation Fund;
- (r) to seek modifications of or exemptions from the application of the Superannuation Law to the Fund; and
- (s) to accept Contributions and any Shortfall Component from any person authorised to make Contributions or pay the Shortfall Component in the Deed or in accordance with the Superannuation Law.

(2) **DISCRETION OF TRUSTEE**

For the purposes of the Deed, the Trustee in the exercise of the trusts, authorities, powers and discretions conferred on it by this Deed, shall have an absolute discretion as to their exercise in relation to the manner, mode and timing of exercise, the exercise of which shall be final and binding

**PROVIDED THAT:**

- (a) the Trustee shall not discriminate against any person in such manner as to infringe any law of a State or Territory of Australia in respect of discrimination; and
- (b) the exercise of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed shall be subject to the Superannuation Law.

(3) **POWER OF DELEGATION**

The Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon such terms and conditions as the Trustee shall determine and the Trustee may vary, limit or revoke any such delegation **PROVIDED THAT** any such delegation shall only be undertaken in accordance with the Superannuation Law.

**14. LIABILITY AND INDEMNIFICATION OF TRUSTEE**

**(1) LIABILITY**

The Trustee shall not be liable for any act or default done or omitted to be done in the exercise of their powers, duties or discretions, or for any losses or expenses incurred by the Fund due to the insufficiency or deficiency of any security in or upon which any of the moneys of the Fund shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities shall be deposited, or for any other loss, damage or misfortune whatever **EXCEPT** if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil penalty order under the Superannuation Law.

**(2) INDEMNITY**

The Trustee shall be indemnified and shall have a lien on the Fund for such indemnity against all liabilities incurred by them through any act, omission or mistake in connection with the exercise of the powers, duties and discretions vested in them under the Deed or in the bona fide exercise of their duties under the Deed, **EXCEPT** if that person fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the person is required to exercise, or incurs a monetary penalty in respect of a civil order under the Superannuation Law.

**(3) LIABILITY OF DIRECTORS OF TRUSTEE**

A Director of the Trustee will not be liable for any loss or breach of trust whatsoever other than:

- (a) loss attributable to the Director in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the Director was required to exercise;  
or
- (b) liability for a monetary penalty under a civil penalty order made against the Director under the Superannuation Law.

**(4) LIMITATION OF CLAUSE**

This clause shall only operate to exempt a person from liability and provide an indemnity to the extent that such an exemption from liability or provision of indemnity would not be limited by or inoperative under the Superannuation Law.

**PART 7**

**ACCOUNTS OF THE FUND**

**15. TRUSTÉE TO OPEN ACCOUNTS**

The Trustee shall open and operate the Accounts and such other accounts as the Trustee establishes.

**16. ACCUMULATION ACCOUNT**

**(1) ESTABLISHMENT**

The Trustee shall establish an Accumulation Account in respect of each Member or Beneficiary.

**(2) AMOUNTS TO BE CREDITED**

The Trustee shall credit to the Accumulation Account such amounts as are required by the Deed and the Superannuation Law including Contributions, such portion of the Earnings (if positive) as the Trustee determines in accordance with clause 18(5), amounts received by transfer from Approved Benefit Arrangements, proceeds of any Policy or Annuity attributable to the Member, any Financial Assistance received by the Fund that is attributable to the Member, any amounts transferred from other Accounts, any Levy or Shortfall Component paid in respect of the Member and such other amounts as the Trustee determines.

**(3) AMOUNTS TO BE DEBITED**

The Trustee shall debit the Accumulation Account with such amounts as are required by this Deed and the Superannuation Law including Benefits paid to Members or Beneficiaries, such portion of the Earnings (if negative) as the Trustee determines in accordance with clause 18(5), amounts transferred to Approved Benefit Arrangements, any Taxation, calculated in accordance with clause 25 attributable to the Member for whom the Accounts or Account has been established, any amounts transferred to other Accounts, any costs or expenses attributable to the Member and such other amounts as the Trustee determines.



**17. PENSION ACCOUNT**

**(1) ESTABLISHMENT**

Where a Member has made an application under clause 32(1)(c) and the Trustee determines to pay all or any of the Benefits to the Member as a Pension, the Trustee shall establish a Pension Account in respect of the Member.

**(2) AMOUNTS TO BE TRANSFERRED**

The Trustee shall transfer to the Pension Account such amounts as are determined in accordance with the Deed which the Trustee believes are necessary in order to provide the Members Benefit as a Pension.

**(3) AMOUNTS TO BE CREDITED**

The Trustee shall credit to the Pension Account such amounts as would have been credited to the Member Account pursuant to clause 16(2) if the Member were entitled to the same, subject to any provision of this Deed or the Superannuation Law.

**(4) AMOUNTS TO BE DEBITED**

The Trustee shall debit to the Pension Account such amounts as would have been debited to the Member Account pursuant to clause 16(3) if the Member were entitled to the same, subject to any provision of this Deed or the Superannuation Law.

**18. INCOME ACCOUNT**

**(1) ESTABLISHMENT**

The Trustee shall establish an Income Account for the Fund.

**(2) AMOUNTS TO BE CREDITED**

The Trustee shall credit the Income Account with such amounts as are required by this Deed and the Superannuation Law including the Earnings determined in accordance with clause 18(4) and any proceeds from Policies or Financial Assistance not credited to a Member Account.

**(3) AMOUNTS TO BE DEBITED**

The Trustee shall debit the Income Account with such amounts as are required by this Deed (see clause 22(2)) and the Superannuation Law including any losses on sale of investments, any Taxation or Levy not attributed to a Member Account and the cost of any Policy not credited to a Member Account.

**(4) TRUSTEE TO DETERMINE EARNINGS AND FUND EARNING RATE**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee shall determine:

- (a) the Earnings of the Fund in respect of the period since the previous such determination; and
- (b) the Fund Earning Rate.

**(5) DISTRIBUTION OF EARNINGS**

Subject to clauses 19 and 21, the Fund Earning Rate determined in clause 18(4) shall be used to determine the proportion of the Earnings to be credited or debited to Member Accounts from the Income Account in accordance with the Superannuation Law.

**(6) TRUSTEE TO NOTIFY MEMBERS**

The Trustee shall, when required by the Statutory Authority or the Superannuation Law, notify the Members of the basis of the calculation of the Fund Earning Rate.

**19. FLUCTUATION ACCOUNT**

**(1) ESTABLISHMENT**

The Trustee may establish a Fluctuation Account.

**(2) TRANSFERS TO FLUCTUATION ACCOUNT**

The Trustee shall transfer to the credit of the Fluctuation Account any amount remaining in the Income Account after distribution of Earnings pursuant to clause 18(5).

**(3) SEPARATION OF ACCOUNT MONEYS**

Amounts credited to the Fluctuation Account shall not form part of any Member Account and any income earned by the Fund on the moneys held in the Fluctuation Account shall be credited to the Fluctuation Account.

**(4) USE OF FLUCTUATION ACCOUNT**

The Fluctuation Account shall be used for the following purposes:

- (a) as part of a reserving strategy to stabilise investment earnings;
- (b) to supplement the Fund Earning Rate; and
- (c) to pay any Taxation.

**20. ADJUSTMENT OF MEMBER ACCOUNT**

The Trustee may make, in its discretion and in accordance with the Superannuation Law, adjustments to the credit of a Member Account to reflect the Fund Earning Rate applying at the date of payment.

**21. SPECIFIC INVESTMENTS**

**(1) RECORDING OF SPECIFIC INVESTMENTS**

Where the Trustee invests separately in respect of certain Members or Beneficiaries in accordance with clause 12(5), the Trustee shall record on

whose behalf such specific investments are made for the purposes of determining allocation to the Member Account.

**(2) ALLOCATION OF EARNINGS AND COSTS  
for Specific Investments**

The Member Account shall be credited with any income and profit and debited with any costs, charges or Taxation in proportions applicable to any specific investment made pursuant to clause 21(1), in accordance with the Superannuation Law.

**22. VALUATION OF FUND**

At the end of each Fund Year or at such other time as the Trustee considers it appropriate or as the Superannuation Law requires, the Trustee shall:

- (1) make a valuation of all of the assets of the Fund (including the value of any Policy held by the Fund);
- (2) transfer any surplus or deficiency in the valuation of assets, other than specific investments in accordance with clause 21(2), to the Income Account; and
- (3) ensure that the records and Accounts of the Fund reflect the valuation of each asset.

**PART 8**

**RECORD KEEPING**

**23. RECORDS, REPORTS AND AUDIT**

**(1) TRUSTEE OBLIGATIONS**

The Trustee shall:

- (a) keep accounts and issue receipts in respect of all money and any other assets received into and disbursed from the Fund and of all dealings in connection with such money or assets;
- (b) collect and promptly pay to the credit of an account in the name of the Fund kept with a bank, building society, or other financial institution or into a trust account of a solicitor, accountant, investment manager or administration manager, all moneys due to the Fund;
- (c) pay such premiums to Insurers as are required;
- (d) keep and retain in safe custody all records, books, accounts, minutes, reports and other documentation for such period required by the Superannuation Law;
- (e) prepare and lodge all documents required by the Superannuation Law;
- (f) ensure the Fund is audited at the end of each Fund Year or at such other time as is required by the Superannuation Law and ensure that the Auditor provides such certificates as are required by the Statutory Authority in accordance with the Superannuation Law;
- (g) once in each year report on the affairs of the Fund to the Member and such report shall be given to the Member in such form as may be required by the Superannuation Law; and
- (h) produce any books or information relating to the Fund and make suitable arrangements for access to premises where the books or information are

kept for the purposes of inspection in accordance with the Superannuation Law.

**(2) PROVISION OF INFORMATION**

The Trustee shall provide to:

- (a) Employers;
- (b) the Statutory Authority;
- (c) the Actuary;
- (d) the Auditor;
- (e) Members; and
- (f) any other persons specified in the Superannuation Law,

any information or documentation required by the Superannuation Law.

**(3) INFORMATION AND DOCUMENTS FOR TRIBUNAL**

The Trustee shall do all things necessary to comply with its obligations to the Tribunal under the *Superannuation (Resolution of Complaints) Act 1993*.

**(4) DIRECTIONS OF STATUTORY AUTHORITY**

The Trustee shall comply with any direction or requirement of the Statutory Authority or Tribunal in relation to the Fund including, but not limited to, the acceptance of Contributions into the Fund, the disposal of assets of the Fund, the appointment of an investigator to the Fund and the conduct of an investigation into the Fund.

**PART 9**

**GENERAL MATTERS**

**24. POLICIES OF INSURANCE**

**(1) MEMBER POLICY'S**

The Trustee may at its absolute discretion effect Policies with an Insurer and may secure the Benefit of a Member by means of an individual Policy or Policies or a group Policy or Policies or partly in one and partly in another.

**(2) MEMBER MAY REQUEST A SPECIFIC POLICY**

Where a Member requests in writing the Trustee to effect a Policy of a specified type in respect of the Member, the Trustee must effect such Policy except if it is of the opinion that the Policy is not in the best interests of the Member or the Dependants of the Member and **PROVIDED THAT** the Member has not in writing withdrawn, cancelled or altered the Member's original request.

**(3) TRUSTEE TO EFFECT POLICY IF REQUIRED**

If the Trustee has informed a Member that a Policy of a specified type will be effected in respect of a Member, the Trustee must effect the Policy except if the Member has requested the Trustee in writing not to effect the same.

**(4) PREMIUMS**

Any Premiums for a Policy effected shall, if the Trustee considers it appropriate; be debited to an Insured Member's Accumulation Account.

**(5) LIMITATION ON LIABILITY OF TRUSTEE**

Where a Trustee is not required to exercise the power to effect a Policy or Policies, the Trustee shall not be responsible or liable to a Member, a Member's Legal Personal Representative or the Dependant of a Member if the Trustee determines not to exercise the power to effect such Policy or Policies.

**25. PAYMENT OF TAXATION AND LEVIES**

**(1) DEDUCTION OF TAX ON BENEFIT**

The Trustee, an Insurer or other appropriate organisation shall deduct from any Benefit payable to any Member or Beneficiary pursuant to this Deed any Taxation required to be deducted from it.

**(2) TAX ON CONTRIBUTIONS AND SHORTFALL COMPONENTS**

The Trustee or, with the agreement of the Trustee, an Insurer or other appropriate organisation may deduct any Taxation payable in relation to a Contribution or Shortfall Component prior to the Contribution or Shortfall Component being credited to the Accumulation Account of the Member.



**PART 10**

**MEMBERSHIP OF THE FUND**

**26. MEMBERSHIP**

**(1) ELIGIBILITY FOR MEMBERSHIP**

Any Employee who is invited by the Employer to participate in the Fund or who satisfies such conditions, if any, specified by the Employer and who makes application for admission within the time specified in such invitation, shall be eligible for admission as a Member of the Fund.

**(2) APPLICATION FOR MEMBERSHIP**

Each application for Membership is to be made by the relevant Employee to the Trustee through his Employer in such form as the Trustee may from time to time approve and each Employer shall send to the Trustee all applications for Membership when received by that Employer.

**(3) ADMISSION TO MEMBERSHIP**

A person shall be admitted as a Member from a date subsequent to his application, as determined by the Trustee.

**(4) MEMBERS AND BENEFICIARIES TO PROVIDE INFORMATION**

Each applicant for Membership and any Beneficiary shall whenever requested by the Trustee furnish such information as the Trustee deems necessary for the purposes of any investigations in connection with the Fund **PROVIDED THAT** where the Trustee is or becomes aware that the information so furnished is incorrect or misleading or any relevant information has been deliberately withheld, the Trustee may in its absolute discretion alter or amend the Benefits to amounts which would have been determined had full and accurate information been supplied.

**(5) MEMBER BOUND BY DEED**

Each Member shall by virtue of his application be deemed to have consented to be bound by the provisions of this Deed.

**(6) MEMBER TO BE MEDICALLY EXAMINED**

For the purposes of effecting, increasing or otherwise varying any Policy or Annuity as provided in clause 38, the Trustee may from time to time require any Member or any person who has applied to become a Member to be medically examined or to submit other evidence of health or to provide proof of age to the satisfaction of the Insurer or to take such steps as may be required for the aforesaid purposes. If any Member or person who has applied to become a Member refuses to undergo such medical examination or to undertake any other step which may reasonably be required for such purposes or if he omits to do anything which would or might prejudice the Policy or result in the Policy moneys or any part therefore not becoming payable, the Trustee may adjust the Benefit to be provided by the Fund for and in respect of that Member or person in such manner as the Trustee considers appropriate.

**27. MEMBERSHIP NOTIFICATION REQUIREMENTS**

**(1) NEW MEMBER NOTICES**

The Trustee shall give to all new Members a written statement containing information and details relating to the Fund as is required by the Superannuation Law.

**(2) DISCLOSURE AND REPORTING REQUIREMENTS**

The Trustee shall provide annually to Members, former Members and Beneficiaries, such information in writing and copies of accounts, records and documents of the Fund as are required by the Superannuation Law.

**(3) FORMER MEMBER NOTICES**

The Trustee shall give to former Members or their Legal Personal Representatives a written statement containing such information and details

relating to the Benefits of the former Member as is required to be provided by the Superannuation Law.

(4) **DISCLOSURE LIMITATION**

No Member or Dependent of a Member shall be entitled to obtain information in respect of any details or the operation of the Fund or on any matter which may relate to the conduct of the Fund which, in the opinion of the Trustee, would be inappropriate to disclose other than as is provided for by this clause.

(5) **INSPECTION OF TRUST DEED AND OTHER DOCUMENTS**

A copy of this Deed or any other documents as required by the Superannuation Law shall be made available for inspection by any Member or Beneficiary on the request of that Member or Beneficiary and, unless otherwise required by the Superannuation Law, it shall be sufficient for this clause to make a copy of this Deed or such documents available to the Member or the Beneficiary for inspection at the office of the Trustee or at the place of business of an Individual Trustee during hours when the office or business is open.

(6) **MEETINGS AND MEMBERS**

The Trustee shall notify the Members from time to time of the manner, time and place in which meetings of the Members of the Fund held in accordance with the provisions of the Superannuation Law and for the purposes of this Deed are to be called and conducted.

**PART 11**

**CONTRIBUTIONS TO THE FUND**

**28. MEMBERS' CONTRIBUTIONS**

**(1) MEMBERS' CONTRIBUTIONS**

A Member shall from the date of joining the Fund contribute to the Fund at such rate and in such manner and at such time as shall be agreed between the Trustee and the Member.

**(2) PAYMENT OF MEMBERS' CONTRIBUTIONS**

Unless the Member and the Employer agree otherwise, a Members' Contributions shall be deducted from each wage or salary payment by the Employer to the Member. The Employer shall pay the Members' Contributions so deducted to the Trustee in such manner and at such time as the Trustee directs in accordance with the Superannuation Law.

**29. EMPLOYERS' CONTRIBUTIONS**

**(1) EMPLOYERS' CONTRIBUTIONS**

The Employer shall from the time of a Member joining a Fund, contribute at such rate as agreed between the Trustee and the Member's Employer.

**(2) SUPERANNUATION GUARANTEE LEGISLATION**

The Trustee shall accept Contributions from Employers in accordance with the Guarantee Act and shall provide all such certificates, reports and other information as shall be required by the Guarantee Act.

**30. GENERAL PROVISIONS CONCERNING CONTRIBUTIONS**

**(1) FORM OF CONTRIBUTION**

A Contribution made under this Part may be made either in cash or by transfer of an asset or assets **PROVIDED THAT** the assets transferred are authorised

investments and are transferred upon the terms and conditions provided under the Superannuation Law and the acquisition of the assets is not prohibited by the Superannuation Law.

(2) **OBLIGATIONS TO CONTRIBUTE**

- (a) Subject to the requirements of the Superannuation Law and in the absence to any agreement to the contrary, neither a Member nor a Employer shall be under an obligation to make a Contribution to the Fund in respect of any Fund Year.
- (b) A Member may remain a Member of the Fund notwithstanding that no Contributions are made in respect of that Member for any Fund Year.

(3) **LIMITATION ON COMMENCING CONTRIBUTIONS**

The Trustee shall refuse to commence to accept Contributions to the Fund by or in respect of a Member if the Member is not in Part-Time Gainful Employment or Full-Time Gainful Employment or is not otherwise authorised to have Contributions made on the Member's behalf by the Superannuation Law.

(4) **LIMIT ON CONTRIBUTIONS**

The Trustee shall refuse to accept any Contributions or Shortfall Component:

- (a) if the Member:
  - (i) has ceased for a continuous period of two years to be in Full-Time Gainful Employment or Part-Time Gainful Employment; but
  - (ii) has not retired from the work force,

**PROVIDED THAT** the Contributions are not otherwise authorised to be made on the Member's behalf by the Superannuation Law;

- (b) if the Member has retired from the work force;

- (c) if acceptance of the Contribution or Shortfall Component would prevent the Fund from qualifying as a Complying Superannuation Fund;
- (d) if the Statutory Authority directs the Trustee not to accept any Contributions by an Employer or any Shortfall Component in accordance with Superannuation Law; or
- (e) if acceptance of any Contribution or Shortfall Component would result in the Member exceeding any contribution limit imposed by the Superannuation Law **PROVIDED THAT** the Trustee may accept any Contribution or Shortfall Component if the Member is able to elect to calculate any contribution limit imposed by the Superannuation Law in a manner that prevents the Contribution exceeding the limit.

**(5) INELIGIBLE CONTRIBUTIONS**

If any Contribution or Shortfall Component is accepted by the Fund in breach of the provisions of this Part, the Trustee shall refund such Contribution or Shortfall Component as required by the Superannuation Law, less any:

- (a) charge which an Insurer may have made in respect of any extra cover which it has provided in relation to those Contribution or Shortfall Components; and
- (b) reasonable administration charges,

and reduce the Benefits held for the Member to those which would have been held if such Contribution or Shortfall Component had not been received.

**31. TRANSFERS FROM AND TO APPROVED BENEFIT ARRANGEMENTS**

**(1) TRANSFERS FROM APPROVED BENEFIT ARRANGEMENTS**

The Trustee may, with the agreement of the Founder, make such arrangements as it thinks fit with any Member or the trustee of any Approved Benefit Arrangement, to transfer any assets to the Fund and may make arrangements about any other matter which, at the option of the Trustee, is incidental to or consequent upon the admission of such Employee to the Membership of the

Fund **PROVIDED THAT** if an Approved Benefit Arrangement from which such assets are transferred is one in which the payment of Benefits is otherwise required by Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Employee shall not be entitled to receive from the Fund any part of that Benefit that is attributable to those assets at a date earlier than that on which they would have been entitled to receive the same from the said fund.

**(2) TRANSFERS TO APPROVED BENEFIT ARRANGEMENTS**

If a Member:

- (a) leaves the employment of an Employer and becomes eligible to join an Approved Benefit Arrangement; or
- (b) remains in the employment of an Employer and becomes eligible to join another such Approved Benefit Arrangement,

the Trustee may, if requested by the Member, in lieu of part or all of any other Benefit to which the Member may be entitled under this Deed, transfer to the Trustee of the Approved Benefit Arrangement such portion of the assets of the Fund as the Trustee in its discretion determines not exceeding such amount as the Trustee considers equivalent in value to the Benefit being provided to the Member to the extent that it has accrued.

**(3) ROLL-OVERS**

A Member or former Member may request in writing to the Trustee that all or any of the Benefit or an Eligible Termination Payment of the Member in the Fund be paid to any Approved Benefit Arrangement in the manner prescribed in and in accordance with the Superannuation Law and the Taxation Act.

**(4) TRUSTEE TO PROTECT PRESERVATION ON ROLL-OVER**

Where a Member or Former Member has a Preserved Payment Benefit in the Fund which forms part of the amount transferred or rolled-over to an Approved Benefit Arrangement, the Trustee shall ensure that the governing rules of the Approved Benefit Arrangement provide that if the Member wishes

to leave the Approved Benefit Arrangement, the amount of the Preserved Payment Benefit must be preserved and vested in accordance with the Superannuation Law.



**PART 12**

**BENEFITS**

**32. TYPES OF BENEFITS**

**(1) BENEFIT ENTITLEMENT**

A Member shall be entitled, in accordance with this Deed, to the following type of Benefit:

**(a) LUMP SUM**

a Benefit payable in accordance with clause 37 as a lump sum;

**(b) PENSION**

a Benefit payable in accordance with clause 38 as a Pension;

**(c) CONVERSION OF LUMP SUM TO PENSION**

at such time as the Member is eligible for payment of a lump sum Benefit in accordance with the Superannuation Law and, on the written application of the Member, the Member requests the conversion of the lump sum to a Pension in lieu of the whole or a portion of any lump sum Benefit, a Benefit payable in accordance with clause 38 as a Pension; or

**(d) COMMUTATION OF PENSION TO LUMP SUM**

at such time as the Member is eligible for payment of a Pension in accordance with the Superannuation Law and, on the written application of a Pensioner or Reversionary Beneficiary, the Member requests that the Trustee commute to a lump sum Benefit the whole or any part of a Pension **PROVIDED THAT** the commutation is permitted by the Superannuation Law, a Benefit payable in accordance with clause 37 as a lump sum.

**(2) TRANSFER OF POLICY AS BENEFIT**

Where a Member or a Beneficiary is entitled to be paid a Benefit and the same includes any interest in a Policy of any kind on the life of the Member or Beneficiary, the Trustee may transfer the Policy to the Member or Beneficiary or to the Dependents.

**(3) TRANSFER IN-SPECIE AS BENEFIT**

The Trustee may, with the consent of a Member or Beneficiary to whom a Benefit is payable, transfer investments of the Fund of an equivalent value to such Member or Beneficiary in lieu of paying the whole or any part of the amount otherwise payable pursuant to the provisions of this Deed.

**33. PRESERVATION**

The Trustee shall Preserve such amounts of a Member's and an Employer's Contributions in respect of Members or Beneficiaries on such terms and conditions as are required by the Superannuation Law.

**34. PAYMENT OF NON-PRESERVED AMOUNT**

Notwithstanding any other provisions in this Deed which may be construed to the contrary and subject to the Superannuation Law:

- (1) a Member may elect at any time to withdraw the whole or any part of the Non-Preserved Amount of that Member by giving notice to the Trustee in such form and manner as may be determined by the Trustee from time to time; and
- (2) the minimum Non-Preserved Amount which may be withdrawn by a Member pursuant to clause 34(1) shall be determined by the Trustee and notified to Members of the Fund.

**35. PAYMENT OF ADDITIONAL BENEFITS**

In circumstances where a Member ceases to be a Member of the Fund, the Trustee may determine to pay, in addition to amounts otherwise payable under this Deed, such part of the Fluctuation Account, which the Trustee considers equitable, to the Member's Accumulation Account for purposes of payment of a Benefit.

**36. RETENTION OF BENEFIT IN FUND**

Where a Member or Beneficiary does not require Benefits to be paid immediately, the Trustee may, in its absolute discretion, retain all or any part of any Benefit payable under this Part in the Fund until:

- (1) the Member or Beneficiary entitled to the Benefit requests that the Benefit is paid to that Member or Beneficiary;
- (2) the Member dies, in which event the Benefit will be paid in accordance with clause 39(8);
- (3) payment of the Benefit is required in accordance with the provisions of this Deed or the Superannuation Laws; or
- (4) the Trustee elects for whatever reason to pay the Benefit to the former Member or Beneficiary,

whichever shall occur first and the amount then payable shall be a Benefit standing to the credit of that Member's Account as at the date of payment **PROVIDED HOWEVER** that all Benefits must be paid at such time and in such manner as shall be required by the Superannuation Law.

**37. DETERMINATION OF BENEFITS AS LUMP SUMS**

**(1) APPLICATION OF CLAUSE**

This clause applies where the Trustee of the Fund is a Constitutional Corporation.

**(2) RETIREMENT**

Where a Member retires from employment with an Employer at or after Normal Retirement Age, reaches the age of 65 years or satisfies the Superannuation Law requirements for the payment of Benefits, the Member shall be entitled to the full amount standing to the credit of the Member's Accumulation Account, the proceeds of any Policies effected in the Member's name and such further amount (if any) as the Trustee determines either as a lump sum or as a combination of a lump sum with a:

- (a) Pension;
- (b) periodic payment;
- (c) Annuity; or
- (d) over such other period as the Trustee in its absolute discretion thinks desirable.

(3) **TOTAL AND PERMANENT DISABLEMENT**

In the event that a Member becomes, in the opinion of the Trustee, Totally and Permanently Disabled, then such Member, upon being notified by the Trustee of the fact that the Trustee has formed such an opinion, shall be entitled to the Member's Vested Benefits, the full amount standing to the credit of the Member's Accumulation Account and the proceeds from any Policies effected in the Member's name pursuant to clause 24 **PROVIDED THAT** where the Trustee determines to pay the Benefit as a Pension, the Member shall be entitled to be paid a Pension in accordance with the provisions of clause 39.

(4) **TEMPORARY TOTAL DISABLEMENT**

In the event that a Member becomes, in the opinion of the Trustee, Temporarily Totally Disabled and the Trustee has effected a Policy with the Insurer to cover Temporary Total Disablement, then such Member, upon being notified by the Trustee of the fact that the Trustee has formed such an opinion, shall be entitled to any amount payable to the Trustee under the Policy in accordance with the Superannuation Law.

(5) **PRE-RETIREMENT FROM EMPLOYMENT**

Upon a Member ceasing to be an Employee of an Employer prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Member shall be entitled to a Benefit payable as a lump sum equal to the Vested Benefit and such further portion of the Member's Accumulation Account as the Founder with the consent of the Trustee determines **PROVIDED THAT** where the Trustee determines to pay

the Benefit as a Pension, the Member shall be entitled to be paid a Pension in accordance with the provisions of clause 39.

(6) **DEATH**

The Legal Personal Representative and/or the Dependants of a Member who dies whilst still a Member of the Fund, shall be entitled to a Benefit payable as a lump sum in respect of the deceased Member equal to the Vested Benefit and such further portion of the Member's Accumulation Account as the Trustee determines **PROVIDED THAT** the Trustee may determine to pay all or a part of the Benefit as a Pension or an Annuity and where the Trustee determines to pay the Benefit as a Pension or an Annuity, the deceased Member's Legal Personal Representative or Dependants shall be entitled to be paid a Pension or an Annuity which shall be paid in accordance with the provisions of clause 39.

38. **DETERMINATION OF BENEFITS AS PENSIONS**

(1) **APPLICATION OF CLAUSE**

This clause applies where the Trustee of the Fund includes any Individual Trustee or where the Trustee has elected in writing under clause 7(5) of the Deed that this clause shall operate and has not altered or rescinded its election.

(2) **RETIREMENT**

Where a Member retires from employment with an Employer at or after Normal Retirement Age, reaches the age of 65 years, or satisfies the Superannuation Law for the payment of Benefits, notwithstanding that the Member continues in Gainful Employment, then the Member shall be entitled to a Lifetime Pension and the Trustee may acquire an Annuity in the name of the Member in order to provide the Lifetime Pension **PROVIDED THAT** where a Member elects to receive the whole or a part of the Benefit payable under this clause as a lump sum, the Member shall be entitled to be paid that whole or part of the Benefit as a lump sum.

(3) **TOTAL AND PERMANENT DISABLEMENT**

In the event that a Member becomes, in the opinion of the Trustee, Totally and Permanently Disabled, then such Member, upon being notified by the

Trustee of the fact that the Trustee has formed such an opinion, shall be entitled:

- (a) to a Benefit payable as a lump sum equal to the full amount standing to the credit of the Accumulation Accounts of the Member as at the date upon which the payment is to be made; or
- (b) where a Member is eligible for payment of a Benefit in accordance with clause 38(3)(a) and the Trustee determines to pay the Benefit as a Pension, such Pension shall be payable in accordance with the provisions of clause 39.

(4) **TEMPORARY TOTAL DISABLEMENT**

In the event that a Member becomes, in the opinion of the Trustee, Temporarily Totally Disabled and the Trustee has effected a Policy with the Insurer to cover Total Disablement, then such Member, upon being notified by the Trustee of the fact that the Trustee has formed such an opinion, shall be entitled to any amount payable to the Trustee under the Policy in accordance with the Superannuation Law.

(5) **PRE-RETIREMENT FROM EMPLOYMENT**

In the event of a Member ceasing to be an Employee of an Employer prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Member shall be entitled to a lump sum equal to the Member's Vested Benefits and such further portion of the Member's Accumulation Account as the Trustee determines **PROVIDED THAT** where the Trustee determines to pay the Benefit as a Pension, the Member shall be entitled to be paid a Pension in accordance with the provisions of clause 39.

(6) **DEATH**

In the event of the death of a Member, whilst still a Member, the Dependants of the Member or the Legal Personal Representative of the Member shall be entitled to the Member's Vested Benefit and the full amount standing to the credit of the Member's Accumulation Account payable as a lump sum in accordance with the provisions of clause 39 **PROVIDED THAT** the Trustee may determine to pay all or a part of the Benefit as a Pension or an Annuity or

any combination thereof and where the Trustee determines to pay the Benefit as a Pension or an Annuity, the deceased member's Legal Personal Representative or Dependants shall be entitled to be paid a Pension or an Annuity in accordance with the provisions of clause 39.

39. **PAYMENT OF BENEFITS**

(1) **LUMP SUM BENEFIT**

(a) A Benefit payable to a Member in the form of a lump sum shall be paid at such date and in such form as the Trustee determines **PROVIDED THAT** where:

(i) a Member requests the conversion of a Benefit payable as a lump sum to a Benefit payable as a Pension in accordance with clause 32(1)(c), the Trustee shall determine; or

(ii) the Trustee determines that payment of the Benefit as a lump sum may cause the Member to become liable to a greater tax liability than would otherwise be payable if the Benefit was paid as a pension, the Trustee may elect,

that all or a part of the Benefit shall be payable as a Pension **PROVIDED THAT** where a Member elects to receive the whole or a part of the Benefit payable under this clause as a lump sum, the Member shall be entitled to be paid that whole or part of the Benefit as a lump sum of such annual amount, not exceeding such annual amount as may be paid from the Fund in accordance with the Superannuation Law, and in such instalments, as it, with the agreement of the Member, from time to time determines.

(b) The Trustee may, at the request of a Member, pay all or a part of any Benefit payable as a lump sum pursuant to the provisions of the Deed to such Approved Benefit Arrangement or for the purchase of such Annuity or otherwise generally as the Member may request.

(2) **PENSION BENEFIT**

The following provisions apply to the payment of a Pension:

- (a) A Benefit payable to a Member in the form of a Pension shall be payable as a Pension of such annual amount, not exceeding such annual amount as is permitted in accordance with the Superannuation Law, and in such instalments and on such dates as the Trustee may, with the agreement of the Member, from time to time determine.
- (b) A Pension shall, subject to clause 39(2)(c), be payable to the Member for life and the Trustee may, with the agreement of the Member, further determine that, subject to clause 39(2)(c), the Pension shall:
  - (i) be payable to the Member for a minimum period of a certain number of years;
  - (ii) be payable as from the Member's death, or the expiration of a minimum period as provided in clause 39(2)(a), to the Dependant of the Member; or
  - (iii) be increased to provide for cost of living increases,or any combination thereof or that the Pension shall be paid on other such terms as the Trustee shall consider appropriate.
- (c) Where an instalment of Pension is payable in respect of a Member and the amount standing to the credit of the Member's Accumulation Account is less than the instalment payable, the lesser amount shall be paid and there shall be no further payments from the Fund in respect of the Member.
- (d) Notwithstanding the foregoing provisions of this clause 39, where a Benefit is payable as a Pension, the Trustee may apply an amount representing the capital value of such Benefit in the purchase of an Annuity in its name and may arrange for payments thereunder to be made directly to the Member but may assign the Annuity to the Member if so requested and if it considers it appropriate and if the assignment thereof will not prejudice the status of the Fund as a Complying Superannuation Fund.
- (e) Where there continues to be a Member's credit in respect of a deceased Member after any amount payable as a Pension has ceased to be payable,



the amount standing to the credit of the Member's Accumulation Account shall be paid in accordance with clause 39(4).

**(3) NOMINATED BENEFICIARIES**

A Member may at any time designate a Dependant as a nominated Beneficiary **PROVIDED THAT:**

- (a) a Member wishing to designate a Dependent as a nominated Beneficiary shall do so in writing to the Trustee in such form as it may from time to time approve; and
- (b) a Member may from time to time change the Member's nominated Beneficiary by completing and lodging with the Trustee a written notice in such form as the Trustee approves from time to time.

**(4) PAYMENT OF BENEFIT OF DEATH**

Any Benefit payable on death of a Member may be paid, as the Trustee in its absolute discretion decides, by way of Annuity, Pension or other periodical payment (in each such case upon such terms as the Trustee may decide) or by lump sum payment or any combination of such methods of payment either:

- (a) to such one or more of the nominated Beneficiaries (if any) or other Dependants of the Member and in such proportions as the Trustee in its absolute discretion decides; or
- (b) to a Legal Personal Representative of a Member.

**(5) REDUCTION OF MEMBER'S BENEFIT**

- (a) Notwithstanding anything herein contained, the Member's Benefit may, in the absolute discretion of the Trustee, be reduced by:
  - (i) all amounts owing, actually or contingently, by the Member to an Employer or to the Trustee at the time when the Benefit becomes payable or applicable in accordance with this Deed or the Superannuation Law;

- (ii) the amount of any loss incurred by an Employer in consequence of the Member's proven fraud, dishonesty, misconduct or negligence; or
- (iii) the amount of any costs of all proceedings, civil or criminal, incurred by an Employer in attempting to recover any amount owing by the Member to the Employer or in respect of his proven fraud, dishonesty, misconduct or negligence,

**PROVIDED THAT** this clause 39(5) shall not be relied upon to reduce the Member's Benefit below the amount required in accordance with the Superannuation Law to be vested in the Member.

- (b) A statement in writing signed by an Employer and given to the Trustee specifying the amount owing by a Member to the Employer or the amounts of any loss or costs incurred by the Employer in respect of a Member and requesting that the Member's Benefit be reduced by such amount, shall be sufficient authority to the Trustee to thereby reduce the amount of the Member's Benefit and the Trustee shall then be entitled to pay to the relevant Employer all amounts actually owing or incurred as aforesaid and shall be entitled to retain any amount contingently owing pending the occurrence or non-occurrence of the contingency, whether the amount in question is dealt with in accordance with this paragraph or paid as a Benefit in respect of the relevant Member.

**(6) STATEMENT OF UNCLAIMED BENEFITS**

The Trustee shall give to the Statutory Authority a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Statutory Authority at such time and in such manner as is required by the Superannuation Law.

**(7) LIMITATION ON PAYMENT**

Notwithstanding any other provision in this Deed, the Trustee shall not pay any Benefits to Members, Dependants or Beneficiaries if such payment would cause the Fund to breach the Superannuation Law.

40. **FORFEITED BENEFITS**

(1) **FORFEITURE**

Benefits payable out of the Fund shall be:

- (a) forfeited if, without the prior approval of the Trustee, the Member or Beneficiary purports to assign, alienate or charge such Benefits or part thereof;
- (b) suspended if the Member, being an Employee at the relevant time:
  - (i) commits an act of bankruptcy;
  - (ii) becomes or is insolvent (including, without limiting the generality of the foregoing, if he signs an authority under Section 188 of, or enters into any deed of assignment or deed of arrangement in pursuance of in Part X of, the *Bankruptcy Act 1966*); or
  - (iii) in the opinion of the Trustee, becomes or is mentally ill or of unsound mind or incapable of managing himself or his own affair; and
- (c) forfeited upon the occurrence, in respect of the Member or Beneficiary not being in employment at the relevant time, of any of the events mentioned in clause 40(1)(b).

(2) **APPLICATION OF FORFEITED MONEY**

The whole of the Benefits forfeited by a person under clause 40(1)(a) or clause 40(1)(b) above, shall be applied by the Trustee for the benefit of a Member and his or her Dependants or any one or more of them **PROVIDED THAT** while the Member remains in employment the Trustee shall not make any payment to or for the Benefit of the Member or their Dependants other than for personal maintenance and support in case of hardship.

**(3) SUSPENDED MONEY**

The whole of the Benefits to which a Member or Beneficiary would otherwise have been entitled but which have been suspended under clause 40(1)(b) shall be dealt with in accordance with, and shall be subject to, the following provisions:

- (a) Upon such suspension, the Member or Beneficiary shall cease to have any right, title or interest whatsoever to or in such Benefits.
- (b) If, prior to the date upon which Member ceases to be in employment for any reason whatsoever, the Member ceases to be one to whom any of clause 40(1)(b) applies, then the suspension of such Benefits shall cease and the Trustee shall thereafter hold such Benefits in respect of the Member as if the suspension had not occurred.
- (c) If such Benefits remain suspended at the time when the Member ceases to be in the employment for any reason whatsoever, such Benefits shall thereupon be forfeited.
- (d) While such Benefits are suspended, the Trustee may pay amounts to or for the benefit of the Member or Beneficiary or their Dependants for, but only for, personal maintenance and support in the case of hardship.

**(4) FORFEITURE ACCOUNT**

The Trustee shall have power at any time to establish a Forfeiture Account of the Fund and shall transfer to the credit of the Forfeiture Account any amounts forfeited pursuant to the reasons above or otherwise forfeited in accordance with this Deed.

**(5) TREATMENT OF MONEY IN FORFEITURE ACCOUNT**

Whilst any moneys are held in the Forfeiture Account, they shall not form part of any other Account and any income derived by the Fund in respect of moneys held in the Forfeiture Account shall be credited to the Forfeiture Account.

**(6) UNCLAIMED BENEFITS ACCOUNT**

The Trustee shall be entitled to treat as unclaimed and to forfeit and to transfer to the Unclaimed Benefits Account, any moneys in the Fund standing to the credit of any Member whose whereabouts are unknown to it and if, after making such enquiries as it deems appropriate, it is unable to positively trace any person entitled to the benefit of such moneys.

## **PART 13**

### **ALLOCATED PENSIONS**

#### **41. APPLICABILITY OF PART**

This Part 13 shall apply where a Member has made an election pursuant to clause 7(7) and shall operate to the exclusion of any other clause in this Deed concerning the payment of Benefits.

#### **42. ELIGIBILITY OF MEMBERS**

A Member shall be eligible to have any Benefit payable as an Allocated Pension if:

- (1) they have made an irrevocable election in accordance with clause 7(7); and
- (2)
  - (a) they have retired from Full-Time Gainful Employment or Part-Time Gainful Employment and have attained at least 55 years of age;
  - (b) they have attained at least 65 years of age but remain in Full-Time Gainful Employment or Part-Time Gainful Employment;
  - (c) they are entitled to receive a Eligible Termination Payment as a result of Total and Permanent Disablement; or
  - (d) they have met any condition imposed by the Superannuation Law or the Statutory Authority concerning the payment of Allocated Pensions.

#### **43. EFFECT OF ELECTION**

Part 11 and Part 12 of this Deed shall not apply to that portion of a Member's Accumulation Account in respect of which a Member who has made an election that this Part 13 is to be used to determine the payment of Allocated Pensions.

#### **44. FORM OF CONTRIBUTION TO ALLOCATED PENSION ACCOUNT**

The Trustee shall accept in respect of a Member or prospective Member the following as contributions for payment as Allocated Pensions:

- (1) in the case of an existing Member, the amount standing to the credit of the Member's Accumulation Account at the date of the election as the Member nominates;
- (2) in the case of a person applying for admission to Membership of the Fund pursuant to clause 31(1), the amount transferred from the Approved Benefit Arrangement; or
- (3) in the case of a person applying for admission to the Membership of the Fund who is Totally and Permanently Disabled, the amount of any Eligible Termination Payment.

45. **DETERMINATION OF BENEFIT AS AN ALLOCATED PENSION**

(1) **LEVEL OF BENEFIT PAYMENT**

The Member shall notify the Trustee annually at such time as the Trustee requires of the weekly level of Allocated Pension to be payable by the Fund to the Member in that Fund Year **PROVIDED THAT** the Member shall nominate the weekly level of Allocated Pension payable as an amount between a minimum and a maximum figure notified by the Trustee to the Member for this purpose.

(2) **EFFECT OF PAYMENT**

The Trustee shall continue to pay the Allocated Pension for so long as there is a positive amount credited to the Member's Accumulation Account.

(3) **INVESTMENT EARNINGS**

The Trustee shall credit to the Member's Accumulation Account such Earnings as are attributable to the amount standing to the credit of the Member's Account for so long as that amount remains positive.

**PART 14**

**TERMINATION OF TRUST**

**46. TERMINATION**

**(1) EVENTS OF TERMINATION**

The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) if the Founder decides that it will permanently cease contributing to the Fund and no other Employer takes its place as Founder;
- (b) if an order is made or an effective resolution is passed for the winding up of the Founder other than for the purpose of amalgamation or reconstruction and no other Employer takes its place as Founder;
- (c) if there are no Members in the Fund and the Trustee resolves to terminate the Fund; or
- (d) on the 80th anniversary of the commencement date unless the laws governing the Fund provide that the rule against Perpetuities shall not apply to the Fund.

**(2) RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER**

If an Employer is reconstructed, goes into liquidation for the purpose of reconstruction, is merged or amalgamated with another Employer or disposes of all or the majority of its undertaking, the Trustee may deal with interests of Members in any of the following ways:

- (a) enter into a deed of adoption with the successor as a key Employer with the object of carrying on a Complying Superannuation Fund either under this Deed or any similar deed or rules on such terms and conditions as the Trustee considers to be reasonable and which protects the interests of the Members; or



- (b) transfer some or all of the assets of the Fund representing the assets applicable to the Members who were Employees of the former Employer to a Complying Superannuation Fund conducted by a new Employer in accordance with and subject to the provisions of clause 31 in respect to some or all Members or former Members; or
- (c) continue to operate the Fund for the benefit of any Members still employed with the former Employer; or
- (d) terminate the Fund in accordance with this clause 46(1).

**(3) NOTICE TO MEMBERS AND CLOSING DATE**

Upon the trusts ceasing and terminating in accordance with clause 46(1), the Trustee shall give notice in writing to each Employer and the Members, if any, that the Fund shall be wound up on a specified date, such date being no later than any date on which the Fund is required by clause 46(1)(a) to be terminated (hereinafter called the "Closing Date"). As from the Closing Date, the following shall apply:

- (a) no further Contribution shall be made by any Employer or any Member, other than arrears of Contributions due to the Closing Date; and
- (b) arrears of Contributions, if any, shall be called in immediately.

**(4) ORDER OF PAYMENT**

Upon the trusts ceasing and terminating in accordance with clause 46(1), the Trustee, subject to clause 46(8), shall make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the payment of the following Benefits in the following order of priority:

- (a) payments which on or before the Closing Date had become payable to retired Members or Dependants;
- (b) payments to each Member who is still in employment and has attained his Normal Retirement Date equal to his Member's Accumulation Account;

- (c) payment to each Member who is still in the employment of the Employer and has not attained his Normal Retirement Date equal to his Benefit had he resigned immediately prior to the Closing Date;
- (d) payment to each Member who is still in the employment of the Employer of such amount of the assets of the Fund then remaining as the Trustee considers equitable after taking into account payments determined under clauses 46(4)(b) and 46(4)(c) as can be paid without being regarded as excessive amounts having regard to the Superannuation Law.

**(5) PAYMENT IF MEMBER DIES**

Where a Member dies before receiving a Benefit to which he has become entitled pursuant to clause 46(4), such Benefit shall be paid at the sole discretion of the Trustee to the Member's Legal Personal Representatives or to the Members Dependants.

**(6) SURPLUS**

If, after providing Benefits for Members and their Dependants in terms of clause 46(4), a surplus remains, such surplus shall, subject to the requirements of any Superannuation Law, be paid by the Trustee, subject to clause 46(8), to or for the benefit of:

- (a) any Members;
- (b) any former Members;
- (c) any Dependants of any such Members or former Members;
- (d) the Legal Personal Representatives (in their capacity as such) of any such Members, former Members or Dependants; or
- (e) any Employer,

as the Trustee in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the Trustee in its absolute discretion determines, subject, in the case of clause 46(6)(a) and 46(6)(d) to clause 46(4).

**(7) FORM OF PAYMENT**

Subject to clause 46(8), the payments to be provided under clauses 46(4) and 46(6) shall be in cash, Policies, participation in any other Approved Benefits Arrangement or otherwise as determined by the Trustee, but shall not be payable to or for the benefit of a Member unless and until he ceases to be in the employment of the Employer other than for personal maintenance and support in case of hardship.

**(8) PAYMENT TO OTHER PERSONS**

If any payment of Benefits provided under clauses 46(a) and 46(6) is otherwise required by the Superannuation Law to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member shall not be entitled to receive from the Fund any part of the Benefit which is required to be so deferred and the Trustee shall make any of the following arrangements with respect to the Benefits required to be deferred:

- (a) transfer the Benefit to another Complying Superannuation Fund if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the specified event;
- (b) purchase an Annuity with the Benefits commencing no earlier than the particular age or specified event or which otherwise satisfy the Superannuation Law;
- (c) transfer the Benefits to an Approved Deposit Fund if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the specified event; or
- (d) purchase a non-commutable Pension payable for life in the name of the Member but only if the Member has permanently retired from the employment.

**PART 15**

**DEED AMENDMENT**

**47. AMENDMENT OF DEED**

**(1) METHOD OF AMENDMENT**

- (a) Subject to clause 47(1)(b) and 47(1)(c) and the Superannuation Law, the Trustee with the approval of the Founder may at any time by resolution or by instrument in writing amend, alter, vary, modify or delete with immediate, prospective or, to such extent as the law allows, retrospective effect from time to time any or all of the provisions of the Deed.
- (b) No reduction of the accrued Benefit of a Member shall be made without their consent in writing.
- (c) No amendment may be made pursuant to clause 47(1)(a) which would cause the trusts contained in the Deed to fail by reason of the application of the rule against perpetuities.

**(2) NOTIFICATION OF MEMBERS OF AMENDMENT**

As soon as practicable after the Deed has been amended pursuant to clause 47(1) above, the Trustee shall give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

**EXECUTED AS A DEED**

**SIGNED, SEALED AND DELIVERED** by  
**CHRISTOPHER JOHN ROBERTS** in the  
presence of: *PATRICIA A. KHOR*

) CSR  
) *[Signature]*

**SIGNED, SEALED AND DELIVERED** by  
**KYM ARLENE ROBERTS** in the presence  
of: *PATRICIA A. KHOR*

) KA  
) *[Signature]*

**SIGNED SEALED AND DELIVERED** by  
**CHRISTOPHER JOHN ROBERTS** in the  
presence of: *PATRICIA A. KHOR*

) CSR  
) *[Signature]*

**SCHEDULE A**

**DATE OF DEED:** The 1st day of July 1996

**FOUNDER:** CHRISTOPHER JOHN ROBERTS of 17  
Christine Street, East Rosanna, 3084

**TRUSTEES:** CHRISTOPHER JOHN ROBERTS of 17  
Christine Street, East Rosanna, 3084  
KYM ARLENE ROBERTS of 17 Christine  
Street, East Rosanna, 3084

**NAME OF FUND:** C.J. & K.A. ROBERTS FAMILY  
SUPERANNUATION FUND

**DATE OF ESTABLISHMENT  
OF FUND:** 1st July 1996