

COPY

HEXFORD SUPERANNUATION FUND

**D E E D**

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Telephone 07-3236 2824 Fax 07- 3236 2825

**HEXFORD**

Commissioner of Stamp Duties,  
Queensland 8.7.96

**SUPERANNUATION FUND**

**THIS DEED** is made on the eleventh day of June, 1996.

**WHEREAS:**

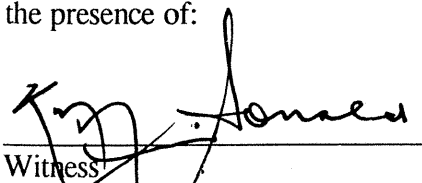
- A** The Principal intends to establish a superannuation fund;
- B** The purpose of the said Fund is to provide superannuation and other related benefits for those persons who become or are members of the Fund for their Dependants and for such other purposes as may from time to time be permissible under the Acts in force regarding superannuation in Australia;
- C** The Trustee has agreed to be the initial trustee of the Fund.

**NOW THIS DEED WITNESSES THAT:**

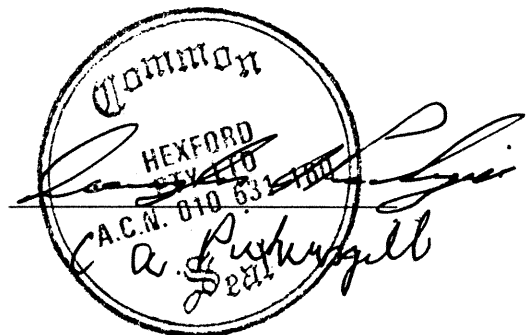
- I** Parties to this Deed are Douglas Pickersgill of 6 Bart Place, Chapel Hill, QLD 4069 and Christine Anne Pickersgill of 6 Bart Place, Chapel Hill, QLD 4069 ( the Trustees) and Hexford Pty Ltd ACN 010.631.160, registered address being C/- Henry Zehr & Co, 19 Princeton Street, Kenmore, in the state of Queensland (the Principal Employer")
- II** Upon signing this Trust Deed, the Trustee and the Principal Employer hereby establish a Superannuation Fund in accordance with the provisions of Schedule A and Schedule B.
- III** The name of the Fund is Hexford Superannuation Fund or such other name as the Trustee and Principal Employer agree in writing.

**THE COMMON SEAL of the PRINCIPAL EMPLOYER**

**HEXFORD PTY LTD** was affixed  
to this deed in the presence of Douglas  
Pickersgill a director thereof and  
Christine Anne Pickersgill a director thereof in  
the presence of:

  
Witness

**K. M. McDonald**  
Name (please print)



Signed, sealed and delivered by  
the Trustee Douglas Pickersgill in the presence of:

Witness

K. M. Mc DONALD

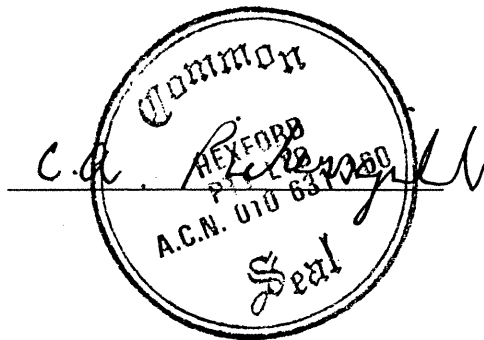
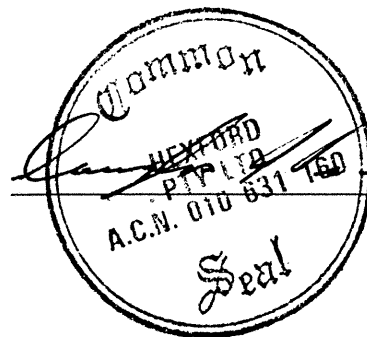
Name (please print)

Signed, sealed and delivered by  
the Trustee Christine Anne Pickersgill in the presence of:

Witness

K. M. Mc DONALD

Name (please print)



# **SCHEDULE A**

## ***THE DEED***

### **Interpretation**

In this Trust Deed and in the rules and in all forms, documents and reports issued hereunder or in connection herewith:

- 1.1** "Acts" means:
  - (a) the Superannuation Industry (Supervision) Act 1993 (the "SIS Act"),
  - (b) the Superannuation (Resolution of Complaints) Act 1993 (the "Complaints Act"),
  - (c) the Superannuation Guarantee (Administration) Act 1992 (the "Guarantee Act"),
  - (d) the Occupational Superannuation Standards Act 1987 ("OSSA"),
  - (e) the Income Tax Assessment Act 1936 (the "Tax Act"),
  - (f) Regulations issued under these Acts, and
  - (g) all circulars, guidelines or rulings issued by the Commissioner in relation to occupations superannuation;
- 1.2** "Amend" includes alter, delete, extend, substitute for and modify, and "Amendment" has a corresponding meaning;
- 1.3** "Commissioner" means the Insurance and Superannuation Commissioner, the Commissioner of Taxation, or such other person as shall have responsibility for the regulation or taxation of occupational superannuation from time to time;
- 1.4** "Complying Superannuation Fund" has the meaning set out in the Tax Act;
- 1.5** "Employer" means the party named as the Employer herein or any other party who agrees to adopt the obligations of the Employer pursuant to this Deed, and the term "Employer" shall include any Participating Employer, and where the word Employer is used in relation to a Member who is an employee, it means the Employer by which the Member is for the time being employed;
- 1.6** "Fund" or "Plan" means the superannuation fund hereby constituted and the investments, income, cash and property from time to time held by or on behalf of the Trustee upon the trusts hereof for the benefit of the Members and their Dependants;
- 1.7** "Member" means a person who is engaged in full time or part time gainful employment or who otherwise satisfies the requirements relating to membership conditions in the Acts, who has applied for membership and who has been accepted as a Member of the Fund in accordance with the provisions of this Deed and who remains a Member of the Fund in accordance with the provisions of this Deed;
- 1.8** "Participating Employer" means a party who or which, with the prior approval of the Trustee and the Principal, signs such application to participate as an Employer under the Fund as the Trustee may agree to accept;
- 1.9** "Principal" means the party defined in the Deed or a person who with the approval of the Trustee, and in accordance with any other procedures set out in the Rules, assumes this role as the successor of the Principal;
- 1.10** "Regulated Superannuation Fund" has the meaning set out in the SIS Act;
- 1.11** "Rules" means the rules and regulations (as amended from time to time) which govern the administration of the Fund;
- 1.12** "Trust Deed" or "Deed" means this Deed of Trust (as amended from time to time) together with the Rules (as amended from time to time); and
- 1.13** "Trustee" means the Trustee or Trustees for the time being of the Fund whether original additional or substituted.

## **Declaration of Trust**

2. The Trustee declares that it will hold all the assets and income of the Fund upon the trusts hereby created for the benefit of the Members of the Fund and that it will administer the Fund in accordance with the Rules and in accordance with the requirements of the Acts.

## **Compliance**

- 3.1 (a) Notwithstanding anything express or implied to the contrary in any other provision of this Deed, if there is a conflict between this clause 3.1 and any other provision of this Deed (including any other provision which purports to override this clause) this clause prevails.
- (b) Any provision or requirement of the Acts which is expressly required by the Acts to be included in this Deed for the Fund to comply with or satisfy a requirement of the Acts is deemed to be included in this Deed with effect on and from the date as at which it must be included if that requirement is to be complied with or satisfied to enable the Fund to comply with requirements for Regulated Superannuation Funds and Complying Superannuation Funds, or any earlier date specified by the Trustee.
- (c) The Trustee must do or procure to be done all acts, matters and things which it considers appropriate to comply with or satisfy the Acts and is empowered, but is not required, to comply with or implement any standard or provision of the Acts which is not a requirement.
- 3.2 If, notwithstanding clause 3.1 above, a provision or provisions of this Deed has the effect that this Deed does not comply with the requirements of the Acts for Regulated Superannuation Funds or Complying Superannuation Funds, that provision or provisions (as the case may be) is severed from the Deed and the remaining provisions of this Deed shall be given full force and effect.
- 3.3 Notwithstanding anything contained in this clause or in this Deed, any provisions of the Acts, which is or may be included in this Deed or any provision of this Deed which reflects or represents a requirement of the Acts shall, unless the Trustee otherwise determines, cease to be a provision of this Deed, if the provision ceases to be or to reflect or to represent the relevant provision or requirement of the Acts.

## **Trustee and Fund**

- 4.1 The Trustee must be a Constitutional Corporation (as defined in the Acts) or the Trustee must provide old-age pensions provided that the Trustee can be such a corporation and provide such old age-pensions. The Trustees may be one or more natural persons where the Rules provide that the sole or primary purpose of the Fund is the provision of old-age pensions.
- 4.2 The Trustee may be removed as Trustee of the Fund in accordance with the procedure set out in Rule 20.

## **Amalgamation**

- 5.1 The Trustee, with the approval of the Principal, shall have the power to amalgamate the Fund with another superannuation fund having a similar purpose and nature as this fund, PROVIDED THAT:

- (a) there shall be no reduction in the rights, benefits or entitlements of any Member hereunder; and
- (b) there shall be no costs charged to the Members hereunder in connection with the said amalgamation; and
- (c) any requirements of the Acts, and in particular, the Superannuation Industry (Supervision) Act, are satisfied.

**5.2** After such amalgamation the Trustee shall provide to each Member details of the resultant amalgamated fund.

### **Amendment of Trust Deed and Rule**

- 6.1** The Trust Deed and the Rule (other than clause 4 of this Deed) may, subject to any restrictions contained in the Acts, be amended by Deed executed by the Trustee and Principal PROVIDED THAT no Amendment shall retrospectively reduce or adversely affect the accrued value of the benefit in the Fund of any Member without the written approval of the Commissioner or of all such Members whose consent is required under the Acts.
- 6.2** Where an Amendment is made to the Trust Deed or the Rules the Trustee shall provide the Members with a written explanation of the nature and purpose of the Amendments and the effects thereof upon the Members' entitlements in the Fund. The explanation shall be provided within such period as is required by the Acts or, of no such period is prescribed, as soon as practicable after the date of the Amendment.
- 6.3** Clause 4.1 of this Deed may be amended only if expressly authorised by the Acts, as may be amended from time to time.

### **Rules Deemed to be part of the Deed**

- 7.** The Rules shall be deemed to form part of the Trust Deed.

## SCHEDULE B

### THE RULES

#### Constitution

- 1.1** The superannuation fund as hereunder constituted shall be administered by the Trustee so as to comply with the provisions of the Acts to the intent that the Fund shall qualify, where the Trustee so decides, for the taxation concessions afforded under the Tax Act to Complying Superannuation Funds and contributions thereto.

#### Definitions and Interpretation

In the Trust Deed and in the Rules and in all forms, documents and reports issued hereunder or in connection with herewith:

- 2.1** "Annuity" includes an eligible annuity and eligible policy as defined in the Tax Act.
- 2.2** "Approved Deposit Fund" means a fund described as an approved deposit fund in the Acts.
- 2.3** "Auditor" means the Auditor for the time being appointed under Rule 23.2 and qualified in terms of the Acts to audit the Fund.
- 2.4** "Authorised Investments" means the investments described in Rule 21.1.
- 2.5** "Category" means, with respect to a Member, the category of membership (if any) designated by the Employer.
- 2.6** "Dependant" means the spouse and/or child of a Member, and any other person who, in the opinion of the Trustee, is or was prior to the Member's death or Total and Permanent Disablement in whole or in part dependent upon that Member for maintenance or support, and the terms "spouse" and "child" are as defined in the SIS Act.
- 2.7** "Employer" means any party who agrees to adopt the obligations of the Employer pursuant to this Deed and where the term is used in relation to the exercise of power the term shall refer to the Principal unless the context otherwise requires. Where the term "Employer" is used in relation to a Member who is an employee, it means the Employer by which the Member is for the time being employed;
- 2.8** "Employee" means a person to whom a wage, salary or remuneration is payable by an Employer and who is eligible for membership of a superannuation fund which may accept employer contributions and the term "Employee" includes a director.
- 2.9** "Financial Year" means a year ending on 30<sup>th</sup> June.
- 2.10** "Fund Salary" means, in relation to a Member, his or her wage, salary or remuneration as most recently advised to the Trustee.
- 2.11** "Industrial Authority" means a State or Commonwealth Industrial Authority as defined in OSSA.
- 2.12** "Mandated Employer Contributions" has the meaning set out in the SIS Act.
- 2.13** "Member" means a person who has been accepted by the Trustee as a Member of the Fund and has not ceased to be a Member.
- 2.14** "Member's Account" and "Account" mean, in relation to a Member, that Member's account within the Fund as set out in Rule 10.
- 2.15** "Normal Retiring Age" means sixty-five (65) years of age.
- 2.16** "Pension" means a benefit payable at a yearly rate by instalments.
- 2.17** "Pooled Superannuation Trust" means a fund described as a pooled superannuation trust in the Acts.

- 2.18** “Preservation Standards” means the standards prescribed pursuant to Section 31(2) of the SIS Act with respect to the preservation of benefits for superannuation fund members as set out in Rule 14.
- 2.19** “Reasonable Benefit Limits” and “RBL” mean the maximum amount of concessional taxed benefits a Member is permitted by the Acts to receive.
- 2.20** “Register of Members” means the register maintained by the Trustee to record the names and addresses of the Members of the Fund and the Register may be maintained in electronic form.
- 2.21** “Roll-Over Institution” means an Approved Deposit Fund, superannuation fund, deferred annuity, immediate annuity, allocated annuity and any other institution or contract that accepts eligible termination payments (as defined in the Tax Act) from or in respect of a Member.
- 2.22** “Superannuation Agreement” has the meaning given to this expression under the Tax Act.
- 2.23** “Total and Permanent Disablement” means incapacity or invalidity to such a degree that, in the opinion of two registered medical practitioners appointed by the Trustee, the Member is unlikely ever to work again in a position for which he or she is reasonably qualified by education, training or experience except that where the Trustee has taken out an insurance policy in respect of the Member for the payment of the benefit the definition used in that insurance policy shall, other than for the purposes of Rule 14.2(b), be the definition used for Total and Permanent Disablement.
- 2.24** Words denoting any gender include all other genders; the singular includes the plural and vice versa; words implying persons shall include corporations.
- 2.25** Reference to a provision of the Acts, or any of them, is deemed to include any provision amending or replacing same.

### **Applicable Law**

- 3.1** The Trust Deed and Rules shall be governed and construed in accordance with the laws of the State of Queensland.

### **Principal Employer**

- 4.1** The first Principal Employer is HEXFORD PTY LTD.
- 4.2** The Principal Employer may employ another person to replace it as Principal Employer provided that:-
- (i) that person agrees to be bound by the Rules; and
  - (ii) the Trustee consents.
- 4.3** If an order is made or an effective resolution is passed for the winding up of the Principal Employer, another person may take its place by written agreement with the Trustee.

### **Participating Employer**

- 5.1** An employer may become a Participating Employer, with the consent of the Trustee and the Employer, by executing an application to participate in the Fund in the form approved by the trustee from time to time.
- 5.2** A Participating Employer may at any time cease to be a Participating Employer by so notifying the Trustee in writing.



- 5.3** In the event that a Participating Employer ceases to be a Participating Employer any Member in respect of whom the Participating Employer was the Employer shall cease to be a Member of the Fund and any amount held in the Account of that Member shall be dealt with in accordance with Rule 14.6.

### **Employer - Merger, Sale or Winding Up**

- 6.1** In the event of the Employer being reconstructed, amalgamated with another employer, or wound up, or if it disposes of its business, the Trustee may, in its discretion:
- (a) enter into a Deed with the successor (if any) of the Employer wherein the successor will continue to be the Employer of the relevant Members for the purposes of this Fund; or
  - (b) transfer to a superannuation fund conducted by the successor employer the balances standing to the credit of the relevant Member's Accounts for the benefit of those Members; or
  - (c) realise the assets of the Fund and apply the resultant proceeds firstly in the payment of Members' vested benefits hereunder and then proceed in accordance with Rule 24.2.

### **Charge in favour of the Employer**

- 7.1** That part of a Member's Account which is attributable to employer contributions other than Mandated Employer Contributions, preserved benefits, minimum benefits under the Acts, and contributions vested under Rule 15.2 may be charged with payment to the Employer of any amount which the Member may owe the Employer, or which the Employer may have lost because of any dishonesty on the part of that Member. The debt or dishonesty must be proven to the satisfaction of the trustee and the Trustee may, if it wishes, appoint an independent arbitrator in accordance with Rule 26.1.

### **Contributions**

#### ***Mandated Employer Contributions***

- 8.1** (a) The Employer shall contribute to the Account of each Member all Mandated Employer Contributions which the Employer has agreed to make to the Fund provided that, where a Superannuation Agreement has not been ratified by an Industrial Tribunal and the Employer becomes required (pursuant to a Superannuation Agreement made or ratified by an Industrial Authority) to make Mandated Employer Contributions to another superannuation fund or to this Fund, then the contributions already payable hereunder shall, if the Employer in its discretion so decides, be reduced to the extent that the Employer is required to pay such last mentioned Mandated Employer Contributions.

#### ***Additional Employer Contributions***

- (b) Notwithstanding Rule 8.1(a), the Employer may from time to time in its absolute discretion make such other contributions as it determines to the Account of any Member. Any minimum contributions payable hereunder shall be as determined in accordance with "Vesting Designation" contained in Rule 15.3 hereof.

### ***Member Contributions***

- 8.2** The Member may also make personal contributions to his or her Members's Account.

### ***In Specie Contributions***

- 8.3** The Trustee may, subject to any contrary provision of the Acts accept contributions, transfers and roll-overs *in specie*, other than as cash.

### ***Payment to Administer***

- 8.4** The Trustee may arrange for any contribution (including any transfer of assets and earnings thereon or the proceeds of an insurance policy) to be paid directly to a person appointed as Administrator of the Fund as agent of the Trustee and any such contribution shall be deemed to be a contribution to the Trustee for the purposes of this Deed.

### ***Ineligible Contributions***

- 8.5** The Trustee shall not accept any contributions otherwise than in accordance with the Acts.
- 8.6** If the Trustee shall at any time ascertain that contributions have been accepted from the Employer or a Member in breach of the Acts, the Trustee shall refund such contributions less any charge incurred in respect of insurances for cover against death and/or disability which has been provided in relation to those contributions, as well as any applicable taxes or duties, and reduce the benefits held for the Member under the Fund to those which would have been held if such contributions had not been paid.

## **Membership**

### ***Nomination for Membership***

- 9.1** The Employer or any Participating Employer may nominate any one or more of its Employees and their spouses (whether legal or de facto) to become a Member of the Fund. Membership of the Fund may consist of such Categories of membership as the Employer or any Participating Employer shall advise the Trustee. The Employer shall specify the Category of membership to which each nomination for membership applies.

### ***Admission of Nominated Employee***

- 9.2** (a) The person so nominated may accept the offer of membership under the Category of membership specified by the Employer by applying to the Trustee to become a Member of the Fund and, upon acceptance of the application, the Trustee shall enter the Members's name in the Register of Members.
- (b) Notwithstanding paragraph 9.2(a) a person may be admitted to membership of the Fund without making any application for membership to the Trustee.

### ***Refusal of Application***

**9.3** The Trustee shall not be required to state any reason for declining an application for membership of the Fund.

### ***Commencement of Membership***

**9.4** Membership commences at 0900 hours on the date of entry of Members's name in the Register of Members, whereupon the Trustee shall provide the Member with such information as required by the Acts.

### ***Cessation of Membership***

**9.5** A person shall cease to be a Member of the Fund immediately upon:

- (a) the date upon which payment of all the Member's benefits is made to the Member or at the Member's direction or otherwise in accordance with this Deed; or
- (b) the Member's death; or
- (c) there is no credit balance remaining in a Member's Account and the Trustee, as a consequence, has removed that Member's name from the Register of Members.

### ***Trust Deed Binding***

**9.6** Each Member and the Employer will be bound by the provisions of the Trust Deed as amended from time to time.

### ***Member's Account***

#### ***Account***

**10.1** The Trustee shall establish within the Fund a separate account to receive all contributions and transfers made for the benefit of each Member under Rule 8 or Rule 14.5 and shall call this account the "Member's Account".

#### ***Debits***

**10.2** The Trustee may pay out of the Fund or out of the Member's Accounts as the Trustee shall decide those expenses relating directly to the investments and insurances of the Fund, including brokerage, service charges, stamp duties, income tax, capital gains tax and any other Governmental charges and the administration expenses of the Fund including but not limited to any fees paid to an Administrator appointed pursuant to Rule 20.2, or to any accounting, actuarial, legal, audit, record-keeping, reporting, management, consulting or other fees payable pursuant to the Trustee's exercise of its powers under Rule 20.3.

#### ***Income***

**10.3** The Trustee shall credit the Account of each Member such proportion of the net investment income of the Fund as the Trustee, in its absolute discretion considers equitable to all Members. For the purposes hereof, "net investment income" means all interest, dividends, rent and other income of the Fund, less the expenses applicable to

the Fund as provided by Rule 10.2 and any allocation to reserves as provided by Rule 10.5.

### ***Capital Profits or Losses***

**10.4** The Trustee shall credit or debit to the Account of each Member as the case requires such proportion of any capital profits or losses made on the investments of the Fund (whether realised or unrealised) as the Trustee, in its absolute discretion, considers equitable to all Members.

### ***Reserves***

**10.5** The Trustee shall, subject to first formulating and giving effect to a suitable strategy for their prudential management as required by the SIS Act, have the power to create reserves within the Fund in order to avoid large fluctuations in investment returns to Members and to provide for any taxation payable by the Fund; for these purposes the Trustee shall have the power to appropriate, out of the investment income and capital profits (whether realised or unrealised) made on the investments of the Fund, such amounts as the Trustee, in its absolute discretion, determines. Such reserves may be held, in the Trustee's sole discretion, in respect of a particular Member or of all the Members. The Trustee shall have the power to appropriate from the said reserves such amounts at such times as the Trustee, in its absolute discretion, shall determine.

### ***Valuation***

**10.6** The Trustee shall cause a valuation of the Fund to be conducted at least once in each Financial Year. Unless otherwise required by the Acts or the Commissioner, the Trustee shall cause any real property investment of the Fund to be valued by an independent expert valuer at least once every three years.

## **Retirement Benefit of Member**

### ***Benefit Due***

- 11.1** With respect to any benefit accumulated in a Member's Account, the Trustee covenants that it shall comply with the Preservation Standards and any standards laid down with respect to the maximum or minimum age at which a Member is required or permitted to be paid his or her benefit from the fund.
- 11.2** Subject to Rule 11.1, the primary benefit of a Member, other than a death benefit under Rule 12 or a benefit under Rule 13, shall become payable upon such Member leaving service on or after the Normal Retiring Age. Otherwise the benefit may be paid on the Member becoming entitled or obliged under the Act to receive the benefit.

### ***Benefit Value***

- 11.3** Subject to Rules 15 and 7, the capital value of a Member's benefit at any time shall be the amount standing to the credit of the Member's Account, less any applicable taxation.

### ***Payment Mode***

#### **11.4 Subject to the Acts:**

- (a) death benefits shall be paid by lump sum;
- (b) where the Trustee is a Constitutional Corporation, benefits shall be paid as a lump sum unless an election has been made by the Member and agreed to by the Trustee to have the benefit paid as a Pension or Annuity.
- (c) where the Trustee(s) are individuals, benefits shall be paid as a Pension or Annuity unless an election has been made by the Member and agreed to by the Trustee to have the benefit paid in whole or in part by way of lump sum;
- (d) Unrestricted non-preserved benefits, as that term is defined in the Acts, may be paid at any time.

### ***Pension***

**11.5** The Trustee shall apply that part of the capital value of a Member's benefit which is to be paid as a Pension or Annuity in the payment of or for a Pension or Annuity selected by the Member and approved by the Trustee. If the Member and the Trustee do not agree on the Member's selection of the Annuity or Pension, the Trustee in its sole discretion, shall select the Annuity and/or Pension, and purchase or provide same on the Member's behalf.

### ***Annuity***

**11.6** Where all or part of the Member's benefit has been applied to the purchase of an Annuity, the terms and conditions of that Annuity shall be deemed to be the terms of the Member's Pension for the purpose of this Rule.

### ***Pension Commutation***

**11.7** The Trustee, may, upon being advised of the election of the Member in accordance with Rule 11.4 change the composition of the Member's benefit as between lump sum and Pension benefits (as the case may be) to reflect that election, subject to this deed and any relevant conditions laid down from time to time by the Commissioner or the Acts.

### ***Transfer or Benefit in Specie***

#### **11.8 (a) Policy of Insurance**

Where a Member or the Dependant of that Member is entitled to receive benefits from the Member's Account and the same includes any interest in an insurance policy on the life of the Member, the Trustee may, in its absolute discretion, assign the policy to the Member or to the Dependents in lieu of paying the cash value thereof. Upon assignment, neither the Trustee nor the Employer shall be liable to pay any further premiums under the said policy.

#### **(b) Transfer of Investments**

The Trustee may, with the consent of a Member or a Dependant to whom a benefit is payable, transfer investments of the Fund of equivalent value to the Member or

Dependant instead of paying the whole or part of the amount otherwise payable pursuant to the provisions of the Deed PROVIDED THAT the Trustee is satisfied that such transfer will not cause the Fund to breach any requirements of the Commissioner or the Acts.

### ***Release***

**11.9** The following shall constitute a good and valid discharge to the Trustee of the Trustee's liabilities and obligations in respect of the payment of benefits:

- (a) with respect to a single lump sum benefit, the encashment of the Trustee's cheque for the benefit;
- (b) with respect to a lump sum benefit payable by instalments or a pension, the encashment of the Trustee's final cheque for the benefit;
- (c) with respect to a pension effected by the purchase of an Annuity, the payment by the Trustee for that Annuity;
- (d) with respect to the transfer of a Member's benefits to another superannuation fund or Approved Deposit Fund or other Roll-Over Institution, the encashment by the trustee of the recipient fund or the cheque representing the transfer of the cash benefit, and the handing over of valid transfers in favour of the recipient trustee for such Authorised Investments as are being transferred in specie;
- (e) with respect to the payment of all or part of a Member's benefit in specie, the handing over of valid transfers in favour of the Member for such insurance policies and investments as are being transferred in specie.

### **Death Benefit**

- 12.1** If a Member dies prior to becoming entitled to receive his or her retirement benefit and while there is a credit balance in his or her Personal Portfolio, the Trustee shall pay a death benefit under this Rule 12. The capital value of the death benefit shall, subject to Rule 12.6, be the amount accumulated in the Member's Account and calculated in accordance with Rule 11.3, including the proceeds of any insurance carried by the Trustee on the life of the Member.
- 12.2** If the Member dies after becoming entitled to receive his or her retirement benefit but before that benefit has been paid, the Trustee shall pay a death benefit under this Rule 12. The capital value of the death benefit shall be the amount accumulated in the Member's Account and calculated in accordance with Rule 11.3.
- 12.3** The Member may, by notice in writing to the Trustee from time to time, nominate which of his or her Dependants the Member would prefer to receive the death benefit payable under this Rule 12, and the proportion payable to each such nominated Dependant. In the event that one of the nominated Dependants is the Member's spouse and they cease to be married, the spouse shall cease to be a nominated Dependant unless the Member subsequently advises otherwise.
- 12.4** The Trustee may take into consideration a Member's nomination under Rule 12.3, however the Trustee alone shall have the power to decide which of the Member's Dependant's (if any) shall be paid the death benefit and the proportion payable to each such Dependant, notwithstanding the Member's nomination.
- 12.5** If the Member has no Dependants living at the date of payment of the Member's death benefit hereunder, or if the Trustee in its sole discretion so decides, the Trustee shall pay the death benefit to the Member's legal personal representative, or to such other person permitted by the Acts.

- 12.6 The Trustee and a Member may agree in writing that, upon that Member's later death while a Member of the Fund, the Member's death benefit shall be any insurance carried by the Trustee on the life of the Member and that the amount accumulated in the Member's Account shall be dealt with in accordance with Rule 16 provided that neither the Member or any person claiming through the Member shall have any interest in or right to that accumulated amount.

### **Disablement Benefit**

#### ***Total and Permanent Disablement***

- 13.1 In the event that a Member whilst he or she is in the service of the Employer (and has not been dismissed or resigned from such employment) establishes Total and Permanent Disablement to the satisfaction of the Trustee, the Member shall be paid a Total and Permanent Disablement Benefit. The capital value of the Total and Permanent Disablement benefit shall be the amount calculated in accordance with Rule 11.3 including the proceeds of any total and permanent disablement insurance carried by the Trustee on the life of the Member, provided that such amount does not exceed the maximum Total and Permanent Disablement Benefit (if any) permitted by the Commissioner.

#### ***Sickness and Accident Benefit***

- 13.2 If a Member satisfies the Trustee that he or she is absent from work and is unable to perform the normal duties of his or her occupation due to sickness or accident, the Trustee at the request of the Member may apply all or part of the Member's Account in payment of an income to the Member during such period of absence, even though the Member (if an Employee) may remain in the service of the Employer. In determining the amount of such income the Trustee shall have regard to any benefit payment received on a policy effected pursuant to Rule 22.2, the Reasonable Benefit Limits and any other requirements of the acts or the Commissioner.

### **Portability and Preservation of Benefits**

#### ***Covenant***

- 14.1 The Trustee covenants as follows:

- (a) that it shall comply with the Preservation Standards with respect to all contributions made to the Fund;
- (b) that, where it accepts a transfer of cash or Authorised Investments into the Fund for the benefit of a Member, it shall comply with the Preservation Standards with respect to benefits arising from the amounts so transferred;

#### ***Duration of Preservation***

- 14.2 Superannuation benefits accumulated for a Member and arising from the classes of contribution and transfer specified in Rule 14.3 shall be preserved, in the manner specified in Rule 14.4, until:

- (a) the Member retires from the work force having attained age 55, or
- (b) the Member retires from the workforce before having attained age 55 on grounds of Total and Permanent Disablement; or
- (c) the Member leaves the service of his/her employer on or after 60 years of age; or
- (d) the Member dies; or
- (e) the Member departs permanently from Australia; or
- (f) the Acts otherwise allow or require the benefit to be paid to the Member; or
- (g) the Commissioner otherwise approves;

provided that the benefit may be paid to the Member on retirement before having attained 55 years of age if the benefit is paid in the form of a non-commutable Pension or Annuity payable for life.

### ***Classes for Benefit to be Preserved***

**14.3** The benefits arising from the following classes of contribution and transfer shall be preserved in accordance with the Preservation Standards:

- (a) Mandated Employer Contributions made under Rule 8.1(a);
- (b) preserved contributions accumulated in, or preserved benefits transferred from another superannuation fund or Roll-Over Institution;
- (c) employer contributions the benefits arising from which qualify for vesting and have accumulated in an employer sponsored superannuation fund (including this Fund) pursuant to a new or improved superannuation arrangement entered into on or after 22<sup>nd</sup> December, 1986;
- (d) any other contributions or transfers the benefits arising from which that are required to be preserved from time to time by the Acts or the Commissioner.

### ***Manner of Preservation***

**14.4** Where a Member or a former Member has benefits in the Fund which are required to be preserved in accordance with the Preservation Standards, the Trustee shall ensure that the benefit to be preserved in one or more of the following ways:

- (a) in default of a nomination by the Member pursuant to paragraph (b), (c), or (d) of this rule 14.4, the benefit shall be preserved within this Fund in a Personal Portfolio in the name of the Member and the provisions of this Deed, and in particular Rule 21, shall continue to apply to that Personal Portfolio;
- (b) in another superannuation fund, nominated by the Member, which is required to preserve the benefits in accordance with the Preservation Standards;
- (c) in a Roll-Over Institution nominated by the Member, which is required to preserve the benefits in accordance with the Preservation Standards;
- (d) in a deferred annuity, nominated by the Member, being a deferred annuity that cannot be surrendered or assigned before the Member attains the age of 55 years and that does not pay benefits except in the circumstances specified in Rule 14.2.

### ***Transfer from Another Fund***

**14.5** (a) Where a Member is or was a member or beneficiary under any other superannuation fund or Roll-Over Institution ("the Other Fund"), and wishes to transfer the whole or part of his or her accrued benefits in the Other Fund to this Fund, the Trustee may accept into the Fund cash or Authorised Investments from the Other Fund



to the value of the Member's benefits being transferred, and shall credit the Member's Account accordingly.

- (b) If the Trustee so determines, the Member shall be deemed to have become a Member of the Fund on the date he or she became a Member of the Other Fund.
- (c) The Trustee may, in its discretion, accept the liability to pay any taxation that may have accrued in relation to the benefits so transferred, and shall be entitled to make such provision for taxation as it deems necessary out of the cash or Authorised Investments transferred.
- (d) The Trustee may, in its discretion, accept into the Fund for the benefit of a particular Member the transfer from a person (other than a Member and other than where prohibited by the Acts) any insurance policy on the life of that Member which had been effected to provide superannuation, retirement or death benefits for the Member. The Member shall be liable for any costs incurred in respect of the transfer.

### ***Transfer to Another Fund***

**14.6** (a) Where a Member joins another superannuation fund or Roll-Over Institution and the Member requests that the whole or part of his or her benefit in the Fund be transferred to such other fund ("the Transferee Fund"), the Trustee, with the approval of the Employer, may transfer to the trustee of the Transferee Fund cash or Authorised Investments (as determined by the Trustee) representing the benefits to be transferred.

(b) When all or any part of the benefit of the Member has been transferred to the Transferee Fund, the benefit of the Member in this Fund shall be reduced by the amount so transferred, and the receipt therefor duly signed by the proper officer of the Transferee Fund shall be a completed discharge to the of all liabilities in respect thereof. The Trustee shall have no responsibility with respect to the application of transferred benefits.

### ***Credit for Member and Employer Contributions***

**14.7** (a) The Trustee shall be entitled to rely upon any certification from the trustee of any transferor fund for the purpose of determining the proportion of a Member's benefits that shall be regarded as Employer financed and that proportion that shall be regarded as Member financed and consequently fully vested for the purposes of Rule 15.1. In the absence of such certification, the Trustee shall, in its sole discretion, but subject to the Acts, make such determination.

(b) The Trustee shall advise the trustee of any transferee fund the proportion of any transferred benefits which are to be regarded as attributable to contributions by the Member and contributions by the Employer.

### ***Power to Sign Documents***

**14.8** The Trustee and the relevant Member shall have the power to sign all documents and to transfer all such cash and Authorised Investments as may be required to give effect to this Rule 14.

## **Vesting**

**15.1** Subject to Rule 15.3 and the Acts, the following benefits shall be fully vested for the purposes of the Act:

- (a) benefits arising from Mandated Employer Contributions made under Rule 8.1(a);
- (b) benefits arising from personal contributions made under Rule 8.2;
- (c) vested Member financed benefits as determined pursuant to Rule 14.7 (a); and
- (d) benefits arising from amounts transferred as the benefits of the Member.

**15.2** With respect to the Employer's contributions to a Member's Account under Rule 8.1(b) the Employer may instruct the Trustee, in the form or to the effect of the form set out at the foot of this clause (or in such other form as the Trustee may agree to accept), as to the vesting which is to apply to those contributions subject to the following:

- (a) any such contributions shall, subject to Rule 15.3, be deemed to be fully vested upon attainment by the Member of the Normal Retiring Age or upon the death or Total and Permanent Disablement of the Member before Normal Retiring Age while still in the service of the Employer;
- (b) any requirements of the Acts or the Commissioner with respect to minimum vesting of contributions or benefits.

In default of an instruction under this Rule, the Trustee shall be entitled to assume the relevant contributions are subject to Rule 15.3, fully vested immediately they are received by the Trustee.

**15.3** Subject to any contrary provisions in the Acts, that part of any contribution which represents the payment of taxation, administration expenses or life insurance premiums or other amounts that may be deducted from the contribution in accordance with this Deed and the Acts shall be excluded from the value of vested benefits hereunder.

*To the Trustee*

*of..... ("the fund")*

*We,.....being an Employer party to the Fund hereby authorise and instruct you as Trustee of the Fund to apply the Vesting Benefits designated hereunder with respect to those Members of the fund whom we have sponsored for Membership.*

## **VESTING DESIGNATION**

*In this Designation:*

- 1.1** "Vesting Benefit" means, in relation to the benefit of a Member of the Fund, that part of the value of the Member's Account which is attributable to Employer contributions other than Mandated Employer Contributions to which the Member shall be entitled upon leaving service of the Employer prior to the attainment by the Member of the Normal Retiring Age.
- 1.2** "Qualifying Service" means, in relation to a Member of the Fund, that period during which the Member has been in service of the Employer as advised by the Employer to the Trustee and as shall be counted for the purposes of determining the Vesting Benefit hereunder.
- 1.3** "Full Vesting" means a Vesting Benefit of 100% at all times.

- 1.4 "Three Year Vesting" means a Vesting Benefit which shall be 34 % after one complete year of Qualifying Service increasing to 67 % for a second year of Qualifying Service and attaining 100% after three years of Qualifying Service.
- 1.5 "Five year Vesting" means a Vesting Benefit which shall be 20% after one complete year of Qualifying Service increasing by 20% for each further year of Qualifying Service and attaining 100% after five years of Qualifying Service.
- 1.6 "Ten Year Vesting" means a vesting Benefit which shall be 10% after one complete year of Qualifying Service increasing by 10% for each further year of Qualifying Service and attaining 100% after ten years Qualifying Service.

<b>NAME OF MEMBER OR CATEGORY OF MEMBERSHIP</b>	<b>DATE OF COMMENCEMENT OF QUALIFYING SERVICE BENEFIT</b>	<b>VESTING</b>
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*Subject always to the right of the Employer in its sole discretion to increase the vesting Benefit of any Member (to the exclusion of any other Member or Members) up to 100%.*

*Note: Where the Employer does not give an instruction to the Trustee, within 30 days of the date of membership of the relevant Member, with respect to the Vesting Benefit applicable to that Member (or category of membership if appropriate), the Trustee shall be entitled to assume that the relevant contributions qualify for Full Vesting.*

#### **Benefits Forgone**

- 16.1 If for any reason there is a credit balance remaining in the Account of a Member after all benefits due to that Member have been paid, the Trustee shall apply this balance, within six (6) months after the end of the Financial year during which the final benefit was paid, in accordance with Rule 16.2.
- 16.2 Subject to the Acts, the Trustee, at the direction of the Employer, shall apply the credit balance relating to contributions other than Mandated Employer Contributions, which do not represent the accrued benefit or minimum benefit of a Member, forgone in accordance with Rule 16.1 in any of the following ways and in whatever proportions the Trustee may decide:
- (a) to credit the Account of any one or more of the other Members for whose benefit the employer is also contributing to the Fund; this credit may stand in lieu of a contribution which the Employer had agreed to make, or may provide a supplementary benefit; or
  - (b) to provide a supplementary benefit or welfare benefit to a former Member or Dependant of such a Member; or
  - (c) in any other manner permitted by the Commissioner or the Acts;
- 16.3 The Trustee shall apply the remaining credit balance in accordance with any procedures required by the Commissioner and the Acts.

#### **Benefits not Assignable**

- 17.1 A Member's benefit in the Fund is not assignable. If the Member becomes, in the opinion of the Trustee, incapable of managing his or her affairs the Member shall cease to be entitled to receive the benefit of cash. In such an event, the Trustee may, in its discretion, apply the credit balance in the Member's Account to support that Member or a Dependent of the Member.

### **Tax on Benefits**

- 18.1** The Trustee shall deduct from any benefit payable to a Member pursuant to this Deed any taxation required to be deducted and shall pay the said taxation to the relevant authority.
- 18.2** The Member or Beneficiary shall be entitled to receive only the net benefit or payment after the deduction of taxation PROVIDED THAT if as a result of a Member's electing to take a Qualifying Eligible Termination Payment (as defined in the Tax Act) the Australian Taxation Office refunds to the Trustee the taxation paid pursuant to Section 221H(5A) of the Tax Act, the Trustee shall pay the full amount of such refund to the payee of such Qualifying Eligible Termination Payment.

### **Benefits Unclaimed**

- 19.1** If the Acts so require, a benefit due but unclaimed shall be rolled over to an eligible rollover fund (as defined in the Acts) or paid to the Commissioner.

### **Trustee**

#### **Covenants**

- 20.1** The Trustee hereby agrees with the Members that it will carry out the statutory covenants required by the Acts, which at the date of this deed are as follows:-
- (a) to act honestly in all matters concerning the entity;
  - (b) to exercise, in relation to all matters affecting the entity, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - (c) to ensure that the trustee's duties and powers are performed and exercised in the best interests of the beneficiaries;
  - (d) to keep the money and other assets of the entity separate from any money and assets, respectively:
    - (i) that are held by the trustee personally; or
    - (ii) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the entity;
  - (e) not to enter into an contract, or do anything else, that would prevent the trustee from, or hinder the trustee in, properly performing or exercising the trustee's functions and powers;
  - (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the entity including, but not limited to, the following:
    - (i) the risk involved in making, holding and realising, and the likely return from, the entity's investments having regard to its objectives and its expected cash flow requirements;
    - (ii) the composition of the entity's investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
    - (iii) the liquidity of the entity's investments having regard to its expected cash flow requirements;
    - (iv) the ability of the entity to discharge its existing and prospective liabilities;
  - (g) if there are any reserves of the entity - to formulate and to give effect to a strategy for their prudential management, consistent with the entity's investment strategy and

its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;

- (h) to allow a beneficiary access to any prescribed information or any prescribed documents.

### ***Appointment of Administrator***

**20.2** The Trustee may employ any agent to transact any business or do any thing which is required by these Rules and may appoint any professional person or party to perform any function relating to the administration of or the management of the investments of the Fund or valuation thereof, and to pay out of the Fund all expenses of and incidental to any such appointment without limiting the generality of the foregoing; and the Trustee may appoint a person or company ("The Administrator") specifically to perform the following:

- (a) to accept or reject applications for membership of the Fund and to maintain the Register of Members;
- (b) to operate a bank account for the Fund in the name of the Fund or of the Administrator and to authorise and action the cash movement into and out of such account;
- (c) to collect contributions to the Fund;
- (d) to exercise the powers of investment conferred on the Trustee by Rule 21 of the Rules and to arrange for the management of the investments of the Fund in accordance with instructions with respect thereto given from time to time by the Trustee to the Administrator;
- (e) to hold any cash or investment of the Fund in the name of the Administrator or of the Fund either alone or co-mingled with the cash or investments of any other superannuation fund or trust fund administered by the Administrator subject to the provisions of the Acts;
- (f) to effect and maintain insurances as provided by Rule 22 of the Rules;
- (g) to pay benefits to members and their Dependants and to exercise such discretionary powers of the Trustee with respect thereto as are set out in the Rules;
- (h) to account for the Fund and to prepare its financial statements, submit returns to the Commissioner and to comply with all the other requirements of the Commissioner or the acts in relation to the fund;
- (i) to report to the Members of the Fund and the Employers hereunder according to Rule 23.3 of the Rules and the Acts;
- (j) such other duties as the Trustee and the Administrator agree.

### ***Additional Powers of the Trustee***

**20.3** The Trustee shall have the power:

- (a) to appoint and at its discretion remove or suspend the Auditor, administrator, managers, secretaries, clerks, agents and other servants, and advisers (including but not limited to solicitors, accountants, barristers, investment advisers, actuaries, valuers, medical practitioners, dentists, optometrists, insurance brokers, and share brokers), to appoint them for permanent, temporary or special services as it from time to time sees fit, to determine their powers and duties and fix their remuneration, to require security in such instances and to such amount as it sees fit, to rely upon and act upon the advice of such advisers, to delegate to advisers such

powers as it sees fit, and any person so employed shall be deemed for the purposes of this Deed to be employed by the Trustee.

- (b) to institute, conduct, defend compound or abandon any legal proceedings by or against the fund or its officers or otherwise concerning the affairs of the Fund, to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund, PROVIDED THAT the trustee shall not be obliged to take action under this Rule unless the Trustee is indemnified to its satisfaction in respect of all costs, damages, losses or liabilities arising from such action, and the Trustee shall have the power to charge the Account of a Member or of a group of Members with the proportion of any associated costs as it sees fit;
- (c) to pay all commission, brokerage, fees or otherwise that are necessary and incidental to the Trustee performing its obligations under this Deed.

### ***Accountability***

**20.4** Subject to Rule 8.4, the Trustee shall be accountable only for contributions actually received by it and shall not be liable to account for moneys paid by a Member or the Employer to any agent, broker or other person or company which acts or purports to act as agent of the Trustee unless these moneys are actually received by the Trustee.

### ***Indemnity***

**20.5** (a) The Trustee shall be indemnified out of a Member's Account or out of the Fund at its election for any expense or liability that may be incurred by appointing an arbitrator under Rule 26.1 or in prosecuting or defending any matter or action or suit in connection with the Member or with the Fund or for any expense or liability incurred by it in the exercise or attempted exercise of the trusts, powers, authorities, or discretions vested in the trustee hereunder, but subject at all times to any restrictions under the Acts. This indemnity shall extend to any payment made to any person whom the trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled. The Trustee shall have a full and absolute discretion in deciding to undertake these matters.

(b) Subject to the Acts, a Director of the Trustee shall be indemnified out of the assets of the Fund in respect of a liability incurred while acting as a Director of the Trustee.

### ***Trustee's Discretion***

**20.6** Subject to Rule 20.1, the Trustee shall have the complete management and control of the Fund and shall have a full and absolute discretion in the exercise of its powers, authorities and discretions.

### ***Fees and Remuneration***

**20.7** (a) The Trustee (or a company related to the trustee) shall be entitled to charge and retain for its own use and benefit in relation to the Fund or to each Member's Account hereunder (as appropriate) the following:

- (i) administration and management charges pursuant to the scale of such charges as levied by the Trustee (or company related to the Trustee) from time to time;
- (ii) any commissions or similar payment arising from insurance effected pursuant to Rule 22.

- (iii) any commissions or similar payment arising from any other transaction undertaken on behalf of the Fund or service provided to the Fund;

PROVIDED HOWEVER THAT the Trustee shall, when requested by a Member in respect of whose Account a transaction pursuant to sub-clause (iii) above has been undertaken, declare to the Member the nature and amount of any such payments or commissions.

(b) The Trustee hereby covenants that it will:

- (i) advise the Employer and each Member at the time of joining the Fund, the standard administration and management charge for the Fund;
- (ii) not increase the said charges unless it has given at least one months' notice of any such increase to the Employer.
- (c) Where the Trustee has appointed an Administrator pursuant to Rule 20.2 of this Deed, any fees, profits or commissions properly payable hereunder shall be paid to the Administrator, and the provisions of the Rule 20.7 as they apply to the Trustee shall be deemed to apply to the Administrator as if it were the Trustee.

### ***Liability***

**20.8** Subject to Rule 20.5, the Trustee shall not, as Trustee of the Fund, be liable for anything done or omitted to be done except in the case of its dishonesty, or intentional or reckless failure to exercise the required degree of care and diligence as set out in the acts, and in particular, but subject to this Rule, the Trustee shall not be liable for any loss incurred on any investment of the Fund whether that investment is made pursuant to Rule 21.1 or 21.4.

### ***Retirement, Removal and Replacement of Trustee***

- 20.9** The Trustee may retire as Trustee of the Fund upon giving thirty (30) days' written notice to the Employer of its intention to retire or such lesser period accepted by the Employer, and the appointment by the Employer of a new Trustee has been appointed.
- 20.10** Where the Trustee is a person and that person retires as trustee or dies, or where the Trustee is a number of persons and one of those persons retires or dies, the Employer shall, appoint a replacement Trustee within thirty (30) days, and the Employer shall act as Trustee until the replacement Trustee has been appointed.
- 20.11** If the Trustee goes into liquidation (except for the purpose of amalgamation or reconstruction) or if a receiver is appointed to manage the affairs of the Trustee, the Trustee shall forthwith cease to act as Trustee of the Fund whereupon the Employer shall appoint a new Trustee.
- 20.12** Upon the appointment of a new trustee, the retiring trustee shall do all things and execute all documents necessary to vest the investments, cash, property, records and documents of the Fund in the new Trustee; thereafter the new trustee shall exercise all the powers, enjoy all the rights and be subject to all the obligations and liabilities of the Trustee as fully as if the new Trustee had been originally named as the trustee party to the Trust Deed. From the date of the appointment of the new Trustee, the retiring Trustee shall, subject to Rule 20.5, be released from all further obligations and liabilities with respect to the Fund and the Members.

### ***No Guarantee***

**20.13** Neither the trustee, nor the Employer, nor the administrator guarantees any estimation or projection of the amount of benefit to which a Member shall be entitled. Any projection of the amount of benefit made by the trustee or the Employer or the Administrator or any of their respective directors, officers or agents is given solely for the purpose of illustrating the potential of the Fund, based upon assumptions as to the amount of contributions, the earnings rate of the Fund and other relevant factors and may not be held by a Member or that Member's Dependents as a representation or as an inducement to become or to remain a Member of the Fund.

### ***Request Information***

- 20.14** Every Member and every person in receipt of or claiming a benefit from the Fund shall give to the Trustee such information and produce such documents as the Trustee reasonably may require to discharge its duties as Trustee of the Fund, in default of which the Trustee may refuse to pay or to continue to pay the benefit of the Member or other person or to accept any further contributions from the Member and/or the Employer.
- 20.15** The Employer shall, as and when requested by the Trustee, give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by the Employer pursuant to this Deed and shall not be required to verify same.
- 20.16** The Trustee shall make available and supply in accordance with the acts all such information required by the acts to be made available respectively to beneficiaries of the Fund and others.

## **Investments**

### ***Authorised Investments***

**21.1** The Trustee shall invest the Fund only in Authorised Investments, and shall have the power, subject to this Deed and in particular to Rule 21.2, to sell or vary the investments held for the Fund from time to time. For the purposes of this Rule "Authorised Investments" means such investments as the Trustee would be entitled to make if it were absolutely entitled to the Fund beneficially and includes (but is not limited to):

- (a) policies of life insurance including investment contracts constituted as a policies of life assurance;
- (b) Pooled Superannuation Trusts;
- (c) Annuities, whether immediate or deferred, and including allocated annuities;
- (d) units, shares or other interests in any unit trust, mutual fund, bona fide pooled investment fund or like instrument howsoever named and whether the investments thereof be in Australia or elsewhere, and whether or not the units, shares or other interests are traded on the Stock Exchange;
- (e) bonds, notes, deposits, stock or other securities issued and/or guaranteed by the Government of the Commonwealth of Australia or of any State or Territory thereof or by any statutory body constituted by an Act of Parliament of the Commonwealth of Australia or any State or Territory thereof;



- (f) debentures issued by any company, the shares of which are quoted on the official list of any of the Australian Stock Exchanges, or by the subsidiary of such a company.
- (g) deposits with any Banking Corporation as defined in the Corporations law or its subsidiary, or with any building society in Australia or with an authorised dealer in the official short term money market accredited as such by the Reserve Bank of Australia;
- (h) bills of exchange or other negotiable or transferable instruments issued accepted or endorsed by a Banking Corporation as defined in the Corporations Law or its subsidiary or any deposit of money fully secured by such a bill of exchange or other instrument;
- (i) a policy or bond issued by a registered Friendly Society in any State or Territory in Australia;
- (j) Land (including tenements and hereditaments, corporeal and incorporeal, and every estate and interest therein, whether vested or contingent, freehold or leasehold, and whether at law or in equity, in severalty or otherwise) and all improvements (if any) erected or to be erected thereon and all furniture carpets fittings machinery plant and other movables installed or to be installed therein and/or used in connection therewith or any interest therein, and the reconstruction, renovation, subdivision or development of any such land;
- (k) shares of any company listed on the Australian Stock Exchange and the term shall include ordinary, preferred, deferred, contributing and other class of shares, stock or debenture (whether convertible or otherwise) unsecured notes (whether registered or not) options certificates, rights, letters of allotment and variable interest stock bonds or obligations;
- (l) participation in any capacity in any synthetic investment, including a futures contract, hedge contract, swap contract or option contract, whether or not related to any other property forming part of the Fund; and
- (m) loans secured by mortgage, sub-mortgage, charge, transfer or assignment over and any of the investments in (a) to (l) above inclusive whether ranking as a first or subsequent mortgage, sub-mortgage, charge, transfer or assignment and whether any such loan is made in the name of and is contributed by the Trustee alone or by the Trustee jointly with another or others or is held in the name of a nominee.

### ***Investment Restrictions***

#### **21.2 The Trustee covenants that:**

- (a) it shall not make any investment which shall cause the Fund to fail the investment standards or requirements laid down from time to time by the Commissioner or the Acts;
- (b) it shall not make a loan (either directly or indirectly) to a Member or the Member's spouse (including de facto) except to the extent permitted by the Acts;
- (c) it shall neither borrow money for the Fund nor charge any of the assets of the Fund except to the extent permitted by the Acts; and
- (d) it shall not acquire an asset from a Member except as permitted by the Acts.

#### **21.3 Where, for whatever reason, an investment held for the Fund ceases to be an Authorised Investment, the Trustee may, in its discretion, realise that investment and re-invest the proceeds in any Authorised Investment.**

### ***Investments for Particular Members***

- 21.4** The Trustee may, subject to and in accordance with the Acts, undertake to invest separately in respect of such Member or Members of the Fund as requested in writing. The Trustee shall record on whose behalf any such specific investments are made. In such an event the income and profits (less losses) arising from such specific investments and any costs or charges applicable thereto shall be allocated to the relevant Member's Account or Accounts (as the case may be) and the Trustee shall not be responsible or liable for any difference in investment performance of the Member's Account or Member's Accounts compared with the Account of any other Member or Members.
- 21.5** With respect to any investment made pursuant to a request given under Rule 21.4, the Trustee shall not be responsible or liable for:

- (a) the suitability of; or
- (b) the potential profitability of; or
- (c) monitoring the performance or progress of; or
- (d) any loss incurred on that investment.

### **Insurance**

- 22.1** (a) The Trustee may arrange and maintain an insurance policy for the benefit of a Member and/or the Dependants of the Member in the event of the Member's death or Total and Permanent Disablement. The Trustee shall be responsible for (but not liable for) determining the type, the amount and the terms of this policy and for appointing the insurance company. A Member may be included in a group insurance policy. For the purposes of effecting, increasing or otherwise varying any such policy, the Trustee may from time to time require any Member or applicant to:
- (i) be medically examined, or
  - (ii) submit other evidence of health, habits or pastimes, or
  - (iii) provide proof of age to the satisfaction of the insurer, or
  - (iv) take such other actions as may reasonably be required by the Trustee or the insurer.
- (b) If, after an application for membership has been accepted, any statement made or evidence submitted to the Trustee is found to contain any mis-statement, error, mistake, omission or suppression the trustee may make such adjustments as it, in its absolute discretion considers appropriate to the benefits to be provided for that Member and/or the contributions (if any) to be paid by that Member.
- (c) If any Member or applicant refuses to undergo such medical examination or to undertake any other action which may reasonably be required for the aforesaid purposes, or does or omits to do anything that would or might vitiate the policy, or result in the policy monies or any part thereof not becoming payable, the Trustee may adjust the benefits to be provided in respect of that Member or applicant in such manner as the Trustee considers appropriate.
- (d) Where the Trustee applies or has applied for insurance of any part of the benefit of a Member, that Member's benefit shall, subject to Rule 12.6, be reduced by the amount of any such insurance or part thereof which the insurer refuses (or refuses to grant on terms acceptable to the Trustee) or by the amount of any such insurance or part thereof which having been effected the insurer declares void or otherwise restricts for any reason.

- (e) The Trustee may defer the payment of a benefit or other amount secured by a policy until the proceeds of the policy are paid by the insurer.

**22.2** Where the Trustee arranges a policy to provide benefits for a Member in the event of accident to, or sickness or disablement of the Member, the terms and conditions pertaining to such benefits shall be as set out in, and subject to the said policy, notwithstanding the definition of Total and Permanent disablement in Rule 2.23.

**22.3** The Premiums for any policy held for a Member shall be paid out of that Member's Account or out of the Fund as determined by the Employer with the consent of the Trustee. The Trustee shall retain custody and control of the policy and may in its discretion make any decision or exercise any right in respect of it. The Trustee shall receive all moneys payable under the policy and shall credit the relevant Member's Account with that Member's proportion of the proceeds.

**22.4** The Trustee shall not be liable to maintain any insurance policy, in particular, but without limiting the generality of this Rule, where the amount standing to the credit of the relevant Member's Account is insufficient to pay the premiums, or where contributions to the Member's Account have ceased or where for any reason the Trustee determines to discontinue the insurance.

## **Accounts and Audit**

### ***Records***

**23.1** The Trustee shall keep:

- (a) a Register of Members;
- (b) a separate Account for each Member together with such details as to contributions from the Employer and the Member as the Trustee deems necessary;
- (c) details of any amount transferred into a Member's Account from another superannuation fund or from a Roll-Over Institution;
- (d) such details of contribution and transfers into a Member's Account as are necessary to comply with the Preservation standards;
- (e) such records as are required to be kept for the period, and containing all the information as is required by the Acts and the Tax Act;
- (f) such other records as the Trustee may consider necessary for the proper administration of the Fund or for compliance with the Acts and the Tax Act.

### ***Audit***

**23.2** The Trustee shall prepare accounts for the Fund as at the end of each Financial Year and shall appoint an independent approved auditor ("the Auditor") to audit the accounts, books and other relevant records of the Fund and to report upon such other matters relating to the Fund and to give such certificates as may be required by the Commissioner or the Acts. The Trustee shall make available all books, accounts and records relating to the Fund which may be required by the Auditor. For the purposes of this Rule the Term "approved auditor" shall have the same meaning as given to that term under the Acts.

The Trustee shall have the power to dismiss the Auditor on thirty (30) days' notice and appoint a new Auditor.

### ***Annual Report to Members***

- 23.3** The Trustee shall provide each Member, within six (6) months of the end of each Financial Year, with a statement of his or her Account including all the information required pursuant to the financial reports and disclosure of information standards under the Acts.

### ***Report on Benefit Payment***

- 23.4** The Trustee shall provide each Member claiming a benefit hereunder a statement in writing setting out the amount or and method of determining his or her benefit entitlement, including details of amounts which are subject to the Preservation Standards, and all such other information as may be required pursuant to the financial reports and disclosure of information standards under the Acts.

### ***Returns***

- 23.5** The Trustee shall furnish all returns, audit reports and other information required under the Acts.

### ***Co-Mingled Assets***

- 23.6** Subject to the acts, the Trustee may hold the cash and other assets of the Fund jointly with the cash and assets of other superannuation funds for which the Trustee is also the trustee or administrator.

### ***Winding up the Fund***

- 24.1** If at any time the benefits of all the Members of the Fund have been paid in full, and there are no assets remaining in the Fund after the Fund has met all its liabilities, the trustee may wind up the Fund.
- 24.2** If at any time the benefits of all the Members of the Fund have been paid in full, and there are assets remaining in the Fund after the Fund has met all its liabilities, the assets shall be dealt with by the Trustee in a manner permitted under the acts or approved by the Commissioner, whereupon the Trustee may wind up the Fund.

### ***Commissioner's Rulings***

- 25.1** Where the Commissioner by any general ruling or by a ruling relating specifically to the Fund indicates that the Commissioner will favourably exercise any discretion to disregard non-compliance by the Fund with any of the operating standards for Regulated Superannuation Funds applicable to the Fund, then the trustee may, notwithstanding the express terms of this Deed, not comply with those operating standards PROVIDED THAT the Trustee strictly acts in accordance with the conditions attaching to the exercise of the Commissioner's discretion and such actions of the trustee are not contrary to the Acts.

### ***Miscellaneous***

- 26.1** If any dispute or doubt whatsoever arises as to the interpretation of the Trust Deed or these Rules or as to the rights of a Member, the Employer or any other person hereunder, subject to any competent court which may acquire jurisdiction, to the Acts

and in particular to the Complaints Act, the decision of the Trustee is final and conclusive against all parties PROVIDED THAT if the Trustee so determines or is required by the Acts, the question or dispute shall be submitted to arbitration administered by the Australian Commercial Disputes Centres Limited ("ACDC") conducted at Brisbane or Sydney (as chosen by the Trustee). The arbitrator shall be a person agreed between the parties chosen from a panel suggested by ACDC and, failing agreement, shall be a person nominated by the Secretary-General of ACDC.

- 26.2** Whenever it is necessary for the Trustee to decide questions of fact, whether for the purpose of Rule 26.1 or otherwise, it may act upon such proofs or presumptions as it thinks fit whether they are legal proofs or presumptions or not.
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