

SUPERANNUATION TRUST DEED

PARTIES:

**ROBERT GEORGE ZUBESHAW
and
JOANNE MARGARET BAXTER
as Trustees for the ZUBE TRUST**

as Principal Employer

**ORCHARD ROAD (QLD.) PTY LTD
ACN 069 540 870**

as Trustee

ZUBE SUPERANNUATION FUND

Drawn By:
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SUPERANNUATION TRUST DEED

THIS DEED is made the *15th* day of *December* 1995

BETWEEN: ROBERT GEORGE ZUBESHAW and JOANNE MARGARET BAXTER as Trustees for the ZUBE TRUST ("the Principal Employer")

AND: ORCHARD ROAD (QLD.) PTY LTD ACN 069 540 870 ("the Trustee")

WHEREAS:-

- A. The Principal Employer desires to make provision for the superannuation of certain persons by the establishment of a complying fund ("the Fund") pursuant to the requirements of the laws relating to superannuation.
- B. The Trustee has agreed to undertake the responsibilities of the Trustee of the Fund in accordance with the provisions of this Deed.
- C. The Principal Employer and the Trustee desire the Fund to be governed by a set of Rules which comply with Superannuation Law and so attract certain benefits for its members.

NOW THIS DEED WITNESSES AS FOLLOWS:-

- 1. The Fund shall be known as "ZUBE SUPERANNUATION FUND".
- 2. The Fund shall come into operation on such date as the Principal Employer shall determine.
- 3. The operation of the Fund shall be governed by this Deed of which the Rules annexed hereto form part.
- 4. The Principal Employer and the Trustee will abide by the terms of this Deed.

EXECUTED AS A DEED

THE COMMON SEAL of **ORCHARD ROAD (QLD.) PTY LTD ACN 069 540 870** as Trustee was hereunto affixed in accordance with its Articles of Association in the presence of:

DOUGLAS ROBERT BULLEN J.P.

Witness



SIGNED SEALED AND DELIVERED by **ROBERT GEORGE ZUBESHAW** and **JOANNE MARGARET BAXTER** as Trustees for the **ZUBE TRUST** as Principal Employer in the presence of:

DOUGLAS ROBERT BULLEN JP

Witness



Two handwritten signatures. The top one is "Robert George Zubeshaw" and the bottom one is "Joanne Margaret Baxter".

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RULES:

1. DEFINITION AND INTERPRETATION

1.1 Unless the contrary intention appears:

Accumulated Credit means the total balances of the Contribution Accounts of a Member.

Award means a prescribed agreement or award as defined in Superannuation Law or any other arrangement which the Employer and the Trustee agree should be treated as an Award.

Category in relation to a Member means the category of membership to which the Member is admitted or transferred.

Child includes an adopted child, a step-child or an ex-nuptial child.

Commencement Date means the date of establishment of the Fund.

Compulsory Contribution Account means the account kept for a Member under rule 9.6(b).

Compulsory Contributions means:

- (a) contributions the Employer makes for a Member to the Fund under an Award; and
- (b) contributions the Employer makes for a Member for the purpose of avoiding any Superannuation Guarantee Charge.

Contribution Account means Compulsory Contribution Account, Employer Contribution Account or Member Contribution Account.

Death Benefit means a benefit payable under rule 6.4.

Deed means the deed establishing the Fund

Dependant of a Member means:

- (a) a Spouse;
- (b) a Child;
- (c) any other person whom the Trustee believes is, or was at the date of death, dependent on the Member.

Distribution Date means a date determined by the Trustee under rule 9.10 for the declaration of a Fund Earning Rate.

Distribution Period means a period commencing on the Commencement Date or the day after a Distribution Date and ending on the next Distribution Date.

Employee means:

- (a) a full-time or part-time permanent employee of an Employer;
- (b) if the Employer is a company - a director of the company;
- (c) any other person nominated by an Employer;
- (d) a self-employed person.

Employer means the Principal Employer or any Participating Employer and in relation to any particular Member the Employer by which that Member is employed or nominated.

Employer Contribution Account means the account kept for a Member under rule 9.6(c).

Financial Year means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

Forgone Benefits Account means the account kept under rule 9.18.

Fund means the entire superannuation fund as constituted by the Deed and the Rules.

Fund Earning Rate means a rate declared under rule 9.11.

Fund Secretary means a person appointed under rule 11.9.

Investment Fluctuation Reserve means an account maintained under rule 9.16.

Member means a person who has been admitted to membership under rule 4.3 and has not ceased to be a Member under rule 4.12.

Member Contribution Account means the account kept for a Member under rule 9.6(a).

Normal Retirement Date means the day on which a Member reaches the age of 65.

Participating Employer means an employer which is admitted to the Fund under rule 3.1 and whose participation in the Fund has not been terminated under rule 3.2.

Principal Employer means the Principal Employer for the time being under rule 2.

Required Payment Date means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

Rules means the rules forming part of the Deed.

Salary means a Member's annual rate of ordinary salary or wages for services performed for the Employer, and includes director's fees but excludes commissions, payment for overtime and other special payments. However, the Principal Employer may establish some other basis for determining the Salary of a Member.

Service means the most recent continuous service of a Member as an Employee and includes:

- (a) any period during which the Member is off work because of injury or illness and receives workers' compensation, sickness pay or other regular income from either the Employer or any insurance scheme sponsored by the Employer; and
- (b) any other period declared by the Employer to be Service.

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

Sub-Fund means a separate part of the Fund maintained under rule 9.20.

Successor Fund means a fund which confers on a Member equivalent rights to those under an original fund and the Trustee has ensured that the fund will confer equivalent rights which the Member had under the original fund.

Superannuation Authority means the Insurance and Superannuation Commissioner or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

Superannuation Guarantee Charge means a charge or tax imposed on employers for not making certain superannuation contributions or providing certain superannuation benefits.

Superannuation Law means any requirements under the Occupational Superannuation Standards Act, the Superannuation Industry (Supervision) Act or any other law, or by a Superannuation Authority:

- (a) imposed on the Trustee; or
- (b) which the Fund must satisfy to qualify for the most favourable taxation treatment available to superannuation funds.

Total and Permanent Disablement means incapacitation, certified by two registered medical practitioners approved by the Trustee, to an extent that a Member is unlikely ever to be able to work again in a job for which the Member is reasonably qualified by education, training or experience.

Trustee means the trustee of the Fund.

1.2 Unless the contrary intention appears:

- (a) a reference to the Deed or the Rules or any other document includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) a power to appoint includes a power to vary or cancel the appointment;
- (e) **amend** includes delete or replace;
- (f) **including** when introducing a list of items does **not** exclude a reference to other items of the same class;
- (g) **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (h) **tax** includes any duty or government impost.

2. **PRINCIPAL EMPLOYER**

- 2.1 The first Principal Employer (if any) will be such person as is nominated by the Trustee. Where there is no Principal Employer appointed by the Trustee at any given time, the provisions of this Deed shall continue to apply and shall be given full effect and any provision making express reference to the Principal Employer shall be read down and construed accordingly.
- 2.2 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.
- 2.3 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.

3. PARTICIPATING EMPLOYER

Admission

- 3.1 The Trustee may admit any employer as a Participating Employer if:
- (a) the Principal Employer approves; and
 - (b) the employer agrees in a manner approved by the Trustee to be bound by the Rules.

Termination

- 3.2 The participation of a Participating Employer terminates if:
- (a) the Participating Employer gives written notice to the Trustee; or
 - (b) the Principal Employer gives written notice to the Employer and the Trustee; or
 - (c) the Participating Employer ceases to have any Employees who are Members.

The termination takes place on a date specified by the Trustee.

- 3.3 On termination:
- (a) the Participating Employer and its Employees who are Members must immediately pay any arrears of contributions up to the termination date but must make no further contributions; and
 - (b) the Trustee must continue to pay out of the Fund benefits which have become payable on or before the termination date; and
 - (c) the Trustee must transfer the amount representing the total Accumulated Credits of the Participating Employer's Employees, together with any share of the Forgone Benefits Account or of any reserves, agreed between the Principal Employer and the Trustee, to:
 - (i) a fund nominated by the Participating Employer; or
 - (ii) if the Participating Employer does not nominate a fund within 90 days after the termination date, a fund selected by the Trustee,

in a manner consistent with Superannuation Law.

4. ELIGIBILITY AND MEMBERSHIP

Eligibility

- 4.1 An Employee is eligible to become a Member if:
- (a) (i) the Trustee invites the Employee to apply; and
 - (ii) the Employee applies within the time specified in the invitation; or
 - (b) the Employer or the Trustee admits the Employee without an application.

The employee may be admitted as a Member in the Category specified in the invitation or direction, or if no Category is specified, then in such Category as is nominated by the Employer. In the event there is no Employer or the Employer fails to nominate the Category of membership then the Trustee may do so. The Trustee may divide the Members of the fund into different Categories and may specify the benefits and entitlements and levels of contributions by the Employer and the Member for each Category as well as the criteria for admission into each Category.

Membership

- 4.2 Before admitting an Employee as a Member, the Trustee may require the Employee:
- (a) to have a medical examination; and
 - (b) to provide information which the Trustee considers relevant to the administration of the Fund; and
 - (c) to declare in writing that on acceptance of his application he shall be bound by the Rules.
- 4.3 A person becomes a Member:
- (a) on the date when the Trustee has approved the person's application; or
 - (b) on the date directed by the Employer under Rule 4.1(b).

The Trustee, the Employer and the Member may agree that the Member is to be regarded as having become a Member on an earlier date.

- 4.4 The Trustee may:
- (a) reject an application or direction; or

- (b) impose special conditions when accepting an application or direction.
- 4.5 Each Member is bound by the Rules.
- 4.6 The Employer or the Trustee may alter a Member's Category. However, the alteration must not:
- (a) increase the Member's obligation to contribute; or
 - (b) reduce the Member's accrued benefit,

unless the Member gives written consent. The Trustee must advise the Member in writing of the alteration, but accidental failure to do so does not mean the alteration is ineffective.

Transfer to Fund

- 4.7 If the Principal Employer consents, the Trustee may make arrangements it considers appropriate with:
- (a) a Member; or
 - (b) any previous employer of the Member; or
 - (c) the trustees of any superannuation fund of which the Member has been a member,

to transfer assets to the Fund, to determine a suitable Category of membership and to provide benefits in respect of the Member as may be agreed and subject to compliance with Superannuation Law.

Transfer from Fund

- 4.8 The Trustee may transfer assets on behalf of a Member to another Superannuation Fund provided that:-
- (a) the Member is eligible to join the other fund; and
 - (b) the Member gives his written consent to the Trustee; and
 - (c) the transfer is to a successor fund; and
 - (d) the Trustee must not transfer more than the Member's accumulated credit or more than is requested by the Member; and
 - (e) the transfer must comply with Superannuation Law.

4.9 Once the transfer has been made in accordance with Clause 4.8 then:-

- (a) the transfer shall be deemed to have satisfied the Member's entitlement to any benefit in respect of the amount transferred; and
- (b) the Trustee is no longer responsible for the manner in which the Trustee of the fund deals with the amount transferred.

Temporary absences

4.10 If a Member:

- (a) leaves Service and the Principal Employer believes the Member is likely to return to Service within a reasonable period; or
- (b) takes unpaid leave,

the Principal Employer and the Trustee may make arrangements they consider appropriate concerning contributions and benefits for the Member for the period of absence.

Transfer of Service

4.11 The transfer of a Member from Service with one Employer to Service with another Employer is not a termination of Service unless the Principal Employer and the Trustee declare it to be.

Membership ceases

4.12 A person ceases to be a Member when:

- (a) all benefits which are or may be payable in respect of the Member have been paid; or
- (b) a transfer is made under rule 3.3 or 4.8 in satisfaction of all the Member's entitlement to benefits; or
- (c) all the Member's entitlement to benefits is terminated.

5. CONTRIBUTIONS

5.1 A Member must contribute to the Fund at the rate for the Member's Category until the Member leaves Service or reaches the Required Payment Date.

5.2 A Member may contribute any further amount if the Trustee and the Employer agree.

5.3 Unless the Member and the Employer agree otherwise, the Employer may

deduct the Member's contributions from the Member's remuneration. The Employer must pay the contributions to the Trustee:

- (a) in the manner and at the times agreed between the Employer and the Trustee; and
 - (b) within any time limit imposed by law.
- 5.4 The Employer must contribute to the Fund in respect of a Member at the rate for the Member's Category until the Member:
- (a) leaves Service; or
 - (b) reaches the Required Payment Date.
- 5.5 The Employer may contribute any further amount if the Trustee agrees.
- 5.6 An Employer may cease, suspend or reduce its contributions in respect of any Member by written notice to the Trustee. The Trustee must notify the Member and the Member may cease contributions. The Employer and the Member must pay any arrears of contributions.

General

- 5.7 The Trustee may refuse to accept all or part of a contribution from a person.
- 5.8 The Trustee must not accept contributions in the Fund contrary to Superannuation Law.
- 5.9 If the Trustee finds that it has received contributions which cannot be accepted into the Fund, the Trustee must repay them to the contributor. If Superannuation Law permits, the Trustee may deduct an amount for insurance effected or expenses incurred in relation to the contributions.
- 5.10 If the Employer makes contributions to the Fund for a Member in relation to a period and:
- (a) the contributions are intended to satisfy the Employer's obligations under any Award in relation to the period; and
 - (b) the contributions do not count towards satisfying the Award in relation to the period; and
 - (c) the contributions have been credited to any Contribution Account of the Member,

then the Trustee must transfer the contributions from the Contribution Accounts of the Member to the Forgone Benefits Account, if Superannuation Law permits.

5.11 If the Employer is required to make contributions to the Fund for a Member under rule 5.6 in relation to a period, but has not yet made them, and the Employer becomes bound to:

- (a) make contributions under an Award to another fund for the Member in relation to the Period: or
- (b) pay the Superannuation Guarantee Charge for the Member in relation to the period,

then the Employer's liability to contribute under rule 5.6 is reduced to the extent that the Employer must make the Award contributions or pay the Superannuation Guarantee Charge.

6. BENEFIT ENTITLEMENT

Retirement

6.1 A Member who leaves Service at or after the Normal Retirement Date is entitled to a benefit equal to the Accumulated Credit.

6.2 A Member who:

- (a) is in Service on or after the Normal Retirement Date; and
- (b) requests payment

is entitled to a benefit equal to the Accumulated Credit.

Disablement

6.3 A Member who leaves Service because of Total and Permanent Disablement is entitled to a benefit equal to the Accumulated Credit.

Death

6.4 On the death of a Member in Service the Trustee must pay a benefit equal to the Accumulated Credit to either or both of the Member's legal personal representative and one or more of the Member's dependants or in the event that the Trustee cannot locate either a legal personal representative or a dependant of the Member then to such person as the Trustee considers appropriate. A member may nominate one or more dependants and their shares of benefit but such nomination shall not fetter the trustee's discretion.

Leaving Service

6.5 A Member who leaves Service in circumstances other than those described in rules 6.1, 6.3 and 6.4 is entitled to a benefit equal to the sum of:

- (a) the Member Contribution Account; and

- (b) the Compulsory Contribution Account; and
- (c) such proportion of the Employer Contribution Account for the Member's Category.

Voluntary deferral

- 6.6 A Member who is entitled to a benefit may ask the Trustee to defer payment of all or part of it. The Trustee may comply with the request if Superannuation Law permits.

Preservation

- 6.7 If the Trustee considers it necessary under Superannuation Law to preserve any part of a benefit, then the Trustee must:
- (a) pay that part of the benefit under rule 8.1, 8.3 or 8.4 to a fund or organisation which also preserves it under Superannuation Law; or
 - (b) retain it in the Fund until it may be paid under Superannuation Law.

Retained benefits

- 6.8 Any part of a benefit retained under rule 6.6 or 6.7 remains credited to the appropriate Contribution Account until payment and the Trustee must adjust the amount of the benefit on the basis of further credits and debits recorded in the Account. If the Member dies before the benefit is paid in full then the Trustee must pay the remainder of the benefit as if it were a Death Benefit.

Remaining in Service After Required Payment Date

- 6.9 If a Member remains in Service but reaches the Required Payment Date, the Trustee must pay the Member the Accumulated Credit or apply it to provide an annuity or pension under Rule 8.1, 8.2, 8.3 or 8.4.

Assignments

- 6.10 The Trustee is not bound to recognise any purported assignment or charge of a benefit.

7. RESTRICTIONS ON BENEFIT ENTITLEMENT

Debt or wrongdoing

- 7.1 At the time a benefit becomes payable or available for transfer, the Trustee may reduce it by:

- (a) any amount actually or contingently owed by the Member to an Employer or to the Trustee; and
- (b) any loss incurred by an Employer because of the Member's misconduct, dishonesty, or gross negligence; and
- (c) any costs incurred by an Employer or the Trustee in attempting to recover an amount or loss in (a) or (b).

However, a benefit may only be reduced if Superannuation Law permits.

- 7.2 The Trustee may rely upon a written statement from an Employer as evidence of the amount and cause of any debt, loss or cost.
- 7.3 If Superannuation Law permits, the Trustee shall reimburse the Employer from the amount by which the Member's benefit is reduced.

Corporations law

- 7.4 The Trustee must not pay a benefit if the payment results in the Trustee or an Employer contravening any law relating to corporations.
- 7.5 If the Trustee believes that the payment of a Member's benefit is or will contravene any law relating to corporations the Trustee may:
 - (a) reduce the contributions payable in respect of the Member; or
 - (b) transfer an amount from a Contribution Account of the Member to the Forgone Benefits Account if Superannuation Law permits; or
 - (c) apply a combination of (a) and (b),as it considers appropriate.

PAYMENT OF BENEFITS

Annuity or pension

- 8.1 If the Member requests, the Trustee must apply all or part of the Member's benefit to purchase an annuity in the name of the Member, or of the Member and one or more Dependants. The annuity must comply with Superannuation Law.
- 8.2 The Trustee may pay a pension or lump sum or a combination of both a pension and lump sum on terms agreed between the Trustee and the Member provided they meet the standards provided under Superannuation Law.

Payment to other fund

- 8.3 If a person entitled to a benefit asks the Trustee to pay all or part of it to another fund, and the payment complies with Superannuation Law, the Trustee must comply with the request.
- 8.4 The Trustee may pay all or part of a benefit to another fund without the consent of the person entitled to it if Superannuation Law permits.

Unclaimed benefits

- 8.5 The Trustee shall pay unclaimed money to the Insurance and Superannuation Commissioner as required by the Superannuation Law.

Death Benefits

- 8.6 The Trustee must pay a Member's Death Benefit to one or more of the Member's:

- (a) Dependants; and
- (b) legal personal representative,

in proportions which the Trustee decides. The Trustee may pay each benefit as a lump sum, pension or annuity, or in any other form, as the Trustee considers appropriate.

Member's Wishes

- 8.7 A Member may give the Trustee a notice indicating how the Member would prefer the Member's Death Benefit to be distributed among the Member's Dependants and legal personal representative. The Member may give a new notice at any time. A notice given under this rule is given for information only and does not limit the Trustee's discretion on the distribution of the Death Benefit.

Transfer of Assets in Specie

- 8.8 The Trustees may, with the agreement of a person entitled to a benefit, transfer assets of the fund of equivalent value to such person or to another fund in accordance with Clauses 8.3 and 8.4 in lieu of paying the whole or part of the amount otherwise payable under the Rules.

Trustee's discharge

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

Financial incapacity

8.10 If the Trustee believes that a person who is entitled to a benefit is unable to manage his or her own financial affairs, and Superannuation Law permits, the Trustee may:

- (a) pay the benefit to another person to be used for the advantage of the person entitled to it;
- (b) accept the other person's receipt as a good discharge; and
- (c) Retain and accumulate the benefit or part thereof.

The Trustee is not responsible for the application of the benefit by the person to whom it is paid.

Tax

8.11 The Trustee may deduct from a payment from the Fund any amount which it is required to deduct for tax.

9. RECORDS AND ACCOUNTS

Records

9.1 The Trustee must keep records for the Fund;

- (a) of the matters; and
- (b) for the period; and
- (c) in the manner,

prescribed by Superannuation Law.

Accounts and audit

9.2 The Trustee must appoint an auditor who satisfies Superannuation Law.

9.3 For each Financial Year the Trustee must prepare any financial statements for the Fund which comply with Superannuation Law.

9.4 The Trustee must ensure that, for each Financial Year, the auditor:

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

within the time specified by Superannuation Law.

- 9.5 The Trustee must give to the Principal Employer a copy of the financial statements and auditor's report.

Contribution Accounts

- 9.6 The Trustee must record for each Member:
- (a) in a Member Contribution Account - Member contributions, and Employer contributions which the Employer directs the Trustee to credit to this account; and
 - (b) in a Compulsory Contribution Account - Compulsory Contributions made by the Employer for the Member; and
 - (c) in an Employer Contribution Account - all other Employer **contributions for the Member.**
- 9.7 The Trustee must also record in each Contribution Account:
- (a) amounts transferred from other funds which the Trustee decides to credit to the account;
 - (b) life insurance premiums which the Trustee decides to debit to the account;
 - (c) proceeds of life insurance policies to the extent that they were funded by premiums debited to the account;
 - (d) amounts debited to the account for tax or other expenses;
 - (e) amounts credited or debited to the account for earnings or losses of the Fund;
 - (f) amounts paid as benefits or transferred to other funds from the account;
 - (g) amounts transferred to or from the Forgone Benefits Account;
 - (h) any other amounts appropriately debited or credited to the account.

Tax and expenses

- 9.8A The Trustee may debit to Contribution Accounts:
- (a) tax incurred by the Trustee;

- (b) expenses of the Fund;
- (c) administration expenses of the Trustee;
- (d) provisions for (a), (b) and (c),

in proportions which the Trustee considers fair and which are consistent with Superannuation Law.

- 9.8B The Trustee may pay an amount out of the fund to an Employer for services rendered in connection with the management or operation of the fund in accordance with Superannuation Law. Such amounts may be debited to contribution accounts under Clause 9.8A(b).
- 9.9 If tax which would otherwise be incurred on Employer contributions is reduced or avoided because the contributions are met from the Forgone Benefits Account, then the Trustee must determine a reduced amount to be credited to Contribution Accounts as if the full rate of tax was being incurred and deducted from the full rate of contributions.

Distribution Date

- 9.10 The Trustee must declare a Distribution Date at least once in each Financial Year.

Fund Earning Rate

- 9.11 The Trustee must declare:
- (a) as soon as practicable after a Distribution Period ends, a Fund Earning Rate to be applied as at the Distribution Date to Contribution Accounts that remain at the date of declaration: and
 - (b) whenever it considers appropriate, an interim Fund Earning Rate to be applied to the Contribution Accounts of a Member as at the date when a benefit or transfer becomes payable from those Contribution Accounts,

for the period since the last date as at which a distribution was made to those Contribution Accounts.

- 9.12 The Trustee must decide whether a Fund Earning Rate is to be applied to Contribution Accounts:
- (a) on daily balances; or
 - (b) on average balances; or

- (c) on some other basis.
- 9.13 In determining a Fund Earning Rate the Trustee must comply with Superannuation Law and take into account:
- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
 - (b) the realised and unrealised losses and expenses of the Fund (including any tax that is or may be incurred by the Trustee) which are not debited to a Contribution Account;
 - (c) the appropriateness of averaging earnings, losses and expenses over several Distribution Periods.
- 9.14 A Fund Earning Rate may be positive or negative.
- 9.15 The Trustee must distribute earnings or losses to Contribution Accounts at the Fund Earning Rate which applies to them.

Investment Fluctuation Reserve

- 9.16 The Trustee may set up a reserve account called the Investment Fluctuation Reserve to handle any differences between the actual earnings or losses of the Fund and the total amount distributed to Contribution Accounts for a Distribution Period.
- 9.17 The Trustee must not declare a Fund Earning Rate for a Distribution Period that would take the Investment Fluctuation Reserve into debit.

Forgone Benefits Account

- 9.18 The Trustee may keep a Forgone Benefits Account to hold any part of a Member's Accumulated Credit no longer required to pay benefits for the Member.
- 9.19 The Trustee must apply amounts held in the Forgone Benefits Account for one or more of the following purposes:
- (a) replacement of contributions otherwise payable by any Employer or Member;
 - (b) additional benefits for Members;
 - (c) payment to an Employer;
 - (d) other purposes which the Trustee determines.

However, the Trustee may only apply amounts as approved by the Principal Employer and permitted by Superannuation Law, and must apply all amounts within the time limit imposed by Superannuation Law.

Sub-Funds

- 9.20 The Trustee may maintain the Fund in separate parts called Sub-Funds. For any Sub-Fund the Trustee must:
- (a) select the assets which comprise it; and
 - (b) apply rules 9.11 to 9.17 separately to the Sub-Fund and the Contribution Accounts it represents.
- 9.21 The Trustee may transfer assets between different Sub-Funds.
- 9.22 The Trustee must divide a Contribution Account into sub-accounts representing the proportions in which the Contribution Account is invested in different Sub-Funds.
- 9.23 The Trustee may make rules on when and how Members may give directions to apply:
- (a) future contributions; or
 - (b) existing balances in Contribution Accounts,
- to Sub-Funds. The rules must be consistent with Superannuation Law.

10. ASSETS, INVESTMENTS, BORROWINGS

Assets

- 10.1 The assets of the Fund consist of:
- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
 - (b) investments that the Trustee makes and all income on those investments.
- 10.2 The Trustee holds the assets of the Fund on trust to apply them in the manner set out in the Rules.

Investments

- 10.3 The Trustee may invest all money which is not required to meet current payments in any manner in which it could invest if it were personally entitled

to the money, including:

- (a) in investments authorised by the law relating to investment of trust funds;
- (b) in policies of life insurance;
- (c) in trusts or common funds;
- (d) on deposit or loan, with or without security;
- (e) in real property;
- (f) in shares, stocks, notes, options, debentures or other securities;
- (g) in options, hedging contracts, futures contracts and other financial instruments.

10.4 The Trustee may:

- (a) mix investments with investments of other people or trusts if Superannuation Law permits; and
 - (b) vary, replace, encumber and deal with the investments,
- as if it were dealing with its own property.

10.5 The Trustee must invest in a manner which complies with Superannuation Law.

10.6 The Trustee may only make a loan or give financial assistance to a person if that complies with Superannuation Law.

10.7 The Trustee may appoint nominees to hold investments. The appointment must comply with Superannuation Law.

Borrowing

10.8 The Trustee may borrow or raise money up to any amount and may secure repayment if Superannuation Law permits.

11. TRUSTEE

Nature

11.1 The Trustee may be a body corporate.

Removal

- 11.2 The Trustee ceases to be the Trustee when:
- (a) the Principal Employer serves written notice to that effect on the Trustee; or
 - (b) the Trustee retires after appointing its replacement with the agreement of the Principal Employer.

Appointment

- 11.3 The Principal Employer may appoint a new Trustee. The appointment must be made in writing. Where there is no principal employer and where the Trustee, if an individual, has died then the executor appointed by the last Will of the Trustee (or the Court appointed administrator in the case of intestacy) will become Trustee. The Trustee may appoint a replacement.
- 11.4 The appointment or retirement of a Trustee must:
- (a) be by notice in writing to the Principal Employer; and
 - (b) comply with Superannuation Law.
- 11.5 A retiring Trustee must transfer all assets to the new Trustee or its nominee.

Vacancy on board

- 11.6 Where the Trustee is a body corporate, a vacancy on the board of directors of the Trustee must be filled within any time required by Superannuation Law.

Trustee's powers

- 11.7 The Trustee may do anything it considers appropriate to administer the Fund and comply with Superannuation Law, including:
- (a) giving receipts and discharges;
 - (b) conducting and settling legal proceedings;
 - (c) referring claims to arbitration;
 - (d) compromising any claim;
 - (e) giving any guarantee or indemnity;
 - (f) insuring any risks;

- (g) acting as an underwriter;
- (h) providing for and transferring liability for any tax;
- (i) electing to be bound by any legislation.

Manager

- 11.8 The Trustee may appoint any person to administer the Fund or to manage investments of the Fund or both. The appointment must:
- (a) be in writing on terms which the Trustee considers appropriate; and
 - (b) comply with Superannuation Law.

Fund Secretary

- 11.9 The Trustee may appoint a secretary to the Fund.

Trustee's liability

- 11.10 The Trustee is only liable for its acts or omissions which are dishonest or constitute a failure to exercise the degree of care and diligence required of it.

Trustee's indemnity

- 11.11 The Trustee may recover from the Fund any loss or expenditure incurred in relation to the Fund or the administration of the Trustee unless:
- (a) it results from the Trustee's dishonesty or a failure to exercise the degree of care and diligence required of it; or
 - (b) the law prevents it.
- 11.12 A Member or Employer must indemnify the Trustee for:
- (a) any liability incurred; or
 - (b) any overpayment made; or
 - (c) any failure to provide for tax,

as a result of the Trustee relying on information given to it by that Member or Employer.

- 11.13 The benefit of rules 11.11-11.13 also applies to:

- (a) any directors or employees of the Trustee or an Employer;

- (b) the Fund Secretary;
- (c) any other person nominated in writing by the Trustee;
- (d) any person appointed by the Trustee under Clause 11.8;
- (e) a former Trustee or any person who previously fell within any of (a) to (d).

Employer authorisation

11.14 The Trustee may treat a written or oral authorisation given, or purported to be given, by a director of the Employer as a valid authorisation by the Employer.

Member authorisation

11.15 The Trustee may treat an authorisation purported to be given by a Member as given by the Member.

Trustee's discretions

11.16 The Trustee and any officer of the Trustee may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise provided that person discloses that interest to the Principal Employer.

11.17 The Trustee is completely unrestricted in the exercise of its powers and discretions if Superannuation Law and the Law of Trusts permit.

12. ADMINISTRATION

Expenses

12.1 All the expenses in connection with the Fund or the administration of the Trustee which are not paid by an Employer are payable from the Fund.

Deed and Rules

12.2 A Member may inspect a copy of the Deed and Rules at the Employer's office during the Employer's usual business hours.

Giving of information

12.3 Every person participating in the Fund or claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.

12.4 The Trustee may require a Member to have a medical examination

12.5 The Trustee must give:

- (a) each Member;
- (b) each Employer;
- (c) the Superannuation Authority;
- (d) the trustee of any other fund to which a benefit is transferred;
- (e) any other person,

the information which must be given under Superannuation Law at a particular time.

Confidentiality

12.6 The Trustee must treat as confidential any information relating to Members or Employers which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

Dispute Resolution

12.7 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:

- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
- (b) inquiries or complaints will be considered and dealt with within 90 days after they were made.

Notices

12.8 Any notice or other written communication in connection with the Fund is given to a person if it is:

- (a) handed to the person; or
- (b) delivered to the person's last known address; or
- (c) posted by ordinary post from within Australia to the person's last known address.

12.9 If the notice or communication is posted, it is taken to be received on the third business day after posting.

Power of Attorney

12.10 Each Member irrevocably appoints the Trustee as the Member's attorney to do all things which the Trustee considers appropriate to administer the Fund.

Other rights unaffected

12.11 The Rules may not be used in any proceedings against an Employer relating to a termination of employment.

Employer not fiduciary

12.12 An Employer may exercise any power or discretion given to it under the Rules in its own interest. It is not under any fiduciary or other obligation to any person in exercising that power or discretion.

Governing law

12.13 The Fund and the Deed and Rules are governed by the law in force in the State of Queensland.

13. TERMINATION OF THE FUND

By Principal Employer

13.1 The Principal Employer may give written notice to the Trustee that the Fund is to terminate at a date specified by the Principal Employer.

By Trustee

13.2 The Trustee must terminate the Fund on a date chosen by it if an order is made or an effective resolution is passed for the winding up of the Principal Employer, and the Trustee determines that no other person is likely to take the place of the Principal Employer.

Notification

13.3 If:

- (a) the Principal Employer gives notice under Rule 13.1; or
- (b) the Trustee terminates the Fund under rule 13.2,

then the Trustee must give written notice to each Employer and Member that the fund is to terminate. That notice must specify the termination date.

Contributions

13.4 Any contributions in arrears at the termination date must be paid immediately.

13.5 The Trustee must not accept any other contributions after the termination date.

Final Distribution

13.6 The Trustee must treat the termination date as a Distribution Date.

Application of Fund

13.7 On termination, the Trustee must apply the Fund assets in this order of priority:

- (a) to provide for all expenses and liabilities (other than benefits) for which the Trustee is or may become liable;
- (b) to provide in respect of each Member:
 - (i) any benefit which became payable before the termination date;
or
 - (ii) if (i) does not apply - a benefit equal to the Accumulated Credit calculated as at the termination date;
- (c) to increase any benefits as the Trustee and the Principal Employer agree or, if rule 13.2 applies, as the Trustee decides;
- (d) if Superannuation Law permits, to pay Employers in proportions agreed between the Principal Employer and the Trustee or, if rule 13.2 applies, determined by the Trustee.

Payment to Employers

13.8 The Trustee may not pay any part of the Fund to an Employer unless permitted by Superannuation Law.

Payment of benefits

13.9 A Member may not receive a benefit under rule 13.7 before Superannuation Law permits.

13.10 If a Member dies before receiving a benefit provided under rule 13.7, the Trustee must pay it as if it were a Death Benefit.

14. AMENDMENT OF DEED AND RULES

Power to amend

14.1 The Trustee may amend any of the provisions of the Deed or Rules including

this rule 14. The Trustee must not do so without the Principal Employer's consent.

Form of amendment

14.2 An amendment must be in writing.

Date of effect

14.3 An amendment may take effect from a date before or after the time it is made.

Limitation of power

14.4 No amendment may reduce:

- (a) the amount of any benefit, calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued or become payable to a Member before the amendment; or
- (b) the amount of any other benefit that is or may become payable to a Member in relation to a period before the amendment,

unless the Member or the Superannuation Authority consents in writing, or the reduction is permitted under Superannuation Law.

Notification

14.5 The Trustee must notify the Members of the nature, purpose and effect of any amendment in accordance with Superannuation Law. However, failure to notify does not invalidate the amendment.

15. COMPLIANCE RULE

15.1 The Governing Rules are deemed to include all matters prescribed by Superannuation Law whether or not they are explicitly stated in the Rules.

15.2 Whenever the Insurance and Superannuation Commission issues a requirement in relation to the standards required by Superannuation Law the Trustee shall be deemed to have amended the Rules to include such a requirement and these Rules shall be deemed to constitute an amendment to the Deed referred to in Clause 14.1.

15.3 A standard included by rule 15.1 prevails over any other rule which is inconsistent with it.

15.4 The primary purpose of the fund is the provision of old-age pensions.

16. SAVING PROVISION

If a provision of the Deed or Rules would otherwise be void because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee

then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.