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SUPERANNUATION FUND TRUST DEED

ESTABLISHING

TAYA PTY LTD SUPERANNUATION FUND

PARTIES RAYMOND SIN KIEW GWEE and CHRISTINE GWEE
both of 2 Lindsay Terrace Belair South Australia 5052
("the Principal")

AND TAYA PTY LTD ACN 007 993 106
of 14 Bartley Crescent Wayville South Australia 5034
("the Trustees")

COMMISSIONER OF STAMPS

S.A. STAMP DUTY PAID \$10.00
ORIGINAL STAMPED (COPY 1 OF 1)
25/05/95 15:28:39 00184245,1
DEED

RECITALS

- A. The Principal desires to establish and maintain a superannuation fund.
- B. The Trustee agrees to act as trustee of that superannuation fund subject to and in accordance with this Deed.

OPERATIVE PROVISIONS

1. Recitals

The matters referred to in the recitals are true and correct in every material particular and shall form part of this Deed.

2. Establishment of the Fund

TAYA PTY LTD SUPERANNUATION FUND ("the Fund") is hereby established and comes into operation on the execution of this Deed. The Fund shall be governed by the trusts, powers, terms and provisions contained in the Schedule to this Deed.

EXECUTED as a Deed in multiple originals and on the day and year hereinbefore first written in the State of South Australia.

THE COMMON SEAL of TAYA PTY LTD was hereunto affixed in the presence of:



[Signature]
.....
Director

[Signature]
.....
Director/Secretary

SIGNED by RAYMOND SIN KIEW GWEE in the presence of:

[Signature]
.....

JOHN KOK KEONG HO
.....
Name of Witness

[Signature]
.....
Signature of Witness

SIGNED by **CHRISTINE GWEE** in the presence of:)
)
)


.....

JOHN KOK KONG HO
.....
Name of Witness


.....
Signature of Witness

FIRST SCHEDULE

TAYA PTY LTD SUPERANNUATION FUND

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DIVISION 1: PRELIMINARY

1. **Schedule**

The provisions contained in this First Schedule shall form and be deemed to form part of the Deed.

2. **Interpretation**

In this Deed, unless the context otherwise requires:

- 2.1 "Act" means the Income Tax Assessment Act, 1936.
- 2.2 "Approved Deposit Fund" means an approved deposit fund for the purpose and within the meaning of Section 10 of the SIS Act.
- 2.3 "Ancillary Purposes" has the meaning assigned to that expression in Section 62 of the SIS Act.
- 2.4 "Auditor" means the auditor of the Fund (if any) for the time being appointed pursuant to this Deed and being an approved auditor for the purpose and within the meaning of Section 10 of the SIS Act.
- 2.5 "Beneficiary" means a person (including any Member or former Member) who is beneficially entitled to receive a Benefit from the Fund.
- 2.6 "Benefit" means any amount paid or payable by the Trustee out of the Fund to a Beneficiary.
- 2.7 "child" has the same meaning as in Section 10 of the SIS Act.
- 2.8 "Commissioner" means the Insurance and Superannuation Commissioner or, where relevant, the Commissioner of Taxation.
- 2.9 "Complying Superannuation Fund" means a superannuation fund in respect of which:
- 2.9.1 in the Financial Years preceding the date of application of the SIS Act to this Fund:
- (i) the Commissioner has given a notice under Section 12 of the Standards Act stating that the Fund satisfied the conditions under the Standards Act in relation to the relevant Financial Year of the Fund; or
 - (ii) the Commissioner has given a notice under Section 13 of the Standards Act stating that he is satisfied that the Fund should be treated as if it had satisfied the conditions under the Standards Act in relation to the relevant Financial Year of the Fund.
- 2.9.2 in the Financial Years commencing on or after the date of application of the SIS Act to this Fund:
- (i) the Fund satisfies the requirements set out in Section 42 of the SIS Act for a complying superannuation fund; and
 - (ii) the Fund satisfies the requirements set out in Section 45 of the SIS Act for a complying superannuation fund for the purposes of Part IX of the Act.

- 2.10 "Constitutional Corporation" has the same meaning as in Section 10 of the SIS Act.
- 2.11 "Contributions" means payments or transfers of property by way of contributions to the Fund by Members and/or Employers.
- 2.12 "corporation" means a body corporate wheresoever and whenever incorporated and includes a Constitutional Corporation.
- 2.13 "Dependant" in relation to a Member or a former Member means a dependant as defined in Section 10 of the SIS Act AND includes persons who now or subsequent to the date this Deed bears come within such description respectively notwithstanding that such persons may not now be so qualified at the date this Deed bears PROVIDED THAT if there is, at any 1 time, more than 1 such person the Trustee may determine which 1 or more of them shall be deemed to be a "Dependant" to the exclusion of the others and if more than 1 the Trustee shall determine the proportions in which a Benefit payable to a Dependant is to be divided between them PROVIDED ALWAYS THAT the Trustee at the request of the Principal may at any time declare in writing that a person therein specified should not qualify as a "Dependant" so defined whereupon such person shall not qualify. The Trustee may at the request of the Principal revoke a declaration previously made by the Trustee under this provision.
- 2.14 "Eligible Person" means a person who is, under the SIS Act and SIS Regulations, eligible to become a Member of the Fund.
- 2.15 "Eligible Rollover Fund" has the same meaning as in Part 24 of the SIS Act.
- 2.16 "Employer" means any person partnership or corporation who employs a Member and makes Contributions to the Fund under this Deed.
- 2.17 "Financial Year" means each period of 12 months ending on 30 June in each year or the period from establishment of the Fund until 30 June next following or the period commencing on 1 July immediately prior to the date of termination of the Fund and ending on the date of termination of the Fund.
- 2.18 "Forfeiture Account" means the account so named established on behalf of the Fund under this Deed.
- 2.19 "Fund" means the superannuation fund established under this Deed.
- 2.20 "Fund Account" means the account so named established on behalf of the Fund under this Deed.
- 2.21 "Fund Expense" means an expense of and incidental to the establishment, operation, management, administration or investment of the Fund.
- 2.22 "Member" means the Principal and/or any other person who for the time being has been admitted to membership of the Fund and not ceased to be a member as provided in this Deed.
- 2.23 "Member Account" means an account so named established on behalf of a Member under this Deed.
- 2.24 "Minimum Benefit" has the same meaning as in Part 5 of the SIS Regulations.
- 2.25 "Normal Retirement Age" means 65 years of age or, subject to any Superannuation Requirement, such other age as selected by the Trustee in respect of a particular Member.

- 2.26 "Old-Age Pension" has the same meaning as in Section 10 of the SIS Act.
- 2.27 "Operating Statement" has the same meaning as in Part 13 of the SIS Act.
- 2.28 "Pension" means a superannuation benefit payable in instalments and includes an Old-Age Pension and an allocated pension.
- 2.29 "Pension Standards" means the superannuation and/or allocated pension standards contained in the SIS Regulations.
- 2.30 "Policy" means any policy of insurance on the life of a Member for death, endowment, term, disablement, accident or sickness.
- 2.31 "Principal" means personally the person referred to in Clause 2 of the Second Schedule to this Deed provided that such person vacates the office of Principal:
- 2.31.1 if the Principal becomes an insolvent under administration within the meaning of the Corporation Law; or
- 2.31.2 if the Principal resigns such office by notice in writing to the Trustee.
- 2.32 "SIS Act" means the Superannuation Industry (Supervision) Act, 1993.
- 2.33 "SIS Regulations" means the Superannuation Industry (Supervision) Regulations, 1994.
- 2.34 "Spouse" in relation to a Member or former Member means a spouse as defined in Section 10 of the SIS Act PROVIDED THAT if there is, at any 1 time, more than 1 such person the Trustee may determine which 1 or more of them shall be deemed to be the Spouse at that time to the exclusion of the others and if more than 1 Spouse the Trustee shall determine the proportions in which a Benefit payable to a Spouse is to be divided between them.
- 2.35 "Standards Act" means the Occupational Superannuation Standards Act, 1987.
- 2.36 "Standards Regulations" means the Occupational Superannuation Standards Regulations, 1987.
- 2.37 "Superannuation Requirement" has the meaning given by Division 3 of this Deed.
- 2.38 "Total and Permanent Disablement" in relation to a Member means a Member who, in the absolute and final opinion of the Trustee (after obtaining from a Member such information as required by a Superannuation Requirement), is by reason of permanent incapacity or permanent invalidity unlikely to engage in any occupation for which the Member is reasonably qualified by education, training and experience and which provides an equivalent level of remuneration to that Member as if the Member were gainfully employed PROVIDED THAT if the Trustee has effected a Policy in relation to the Member the Trustee may determine that the meaning of Total and Permanent Disablement shall, subject to a Superannuation Requirement, in respect of a Member be modified so as to be identical to the circumstances in which an amount is payable by the insurer under such Policy. The term "Totally and Permanently Disabled" has a corresponding meaning for the purpose of this Deed.
- 2.39 "transfer" includes assign, convey or otherwise assure.
- 2.40 "Trustee" means the person or corporation referred to in Clause 2 of the Second Schedule to this Deed and any trustee for the time being of the Fund whether original, additional or substituted and if more than 1 jointly and also severally.

- 2.41 The headings in this Deed and all Schedules and any index are for convenience only and shall not affect the interpretation of this Deed.
- 2.42 Words importing the singular number include the plural and vice versa and words importing one gender include all other genders.
- 2.43 References to any statutory enactment, regulation, rule or other law or a provision thereof (hereinafter collectively called a "law") includes that law as amended or re-enacted from time to time and any law which replaces the same or has the same effect in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force) and also includes any determinations, rulings or guidelines made by any person under the authority of such a law.

DIVISION 2: THE FUND

3. **Name of the Fund**

The Fund shall be known as the name referred to in Clause 2 of the Second Schedule to this Deed.

4. **Establishment of the Fund**

The Fund is established and comes into operation on the date referred to in Clause 2 of the Second Schedule to this Deed.

5. **Nature of the Fund**

The Trustee shall maintain the Fund as an accumulation benefit fund and as a Complying Superannuation Fund in accordance with and subject to the terms of this Deed and any Superannuation Requirement.

6. **Purposes of the Fund**

The Fund shall be an indefinitely continuing fund and shall be maintained solely for the purposes of the provision of benefits of the kind specified in Section 62 of the SIS Act.

7. **Fund Assets**

The gross assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee under this Deed and all accretions and accumulations thereto.

DIVISION 3: SUPERANNUATION REQUIREMENTS

8. **Definition**

"Superannuation Requirement" means such of the provisions of:

- 8.1 the Act;
- 8.2 the Standards Act;
- 8.3 the Standards Regulations;
- 8.4 the SIS Act; and
- 8.5 the SIS Regulations

which must be complied with in order to ensure that in any Financial Year, the Fund is a Complying Superannuation Fund.

9 Superannuation Requirements and Pension Standards to be included in Deed

- 9.1 Each and every Superannuation Requirement which applies to the Fund shall be deemed to be included in this Deed.
- 9.2 Where there is any inconsistency between any Superannuation Requirement which applies to the Fund and the provisions of this Deed, the Superannuation Requirement prevails.
- 9.3 Where a Pension or allocated pension is paid from the Fund:
- 9.3.1 the relevant Pension Standards applicable to the Pension or allocated pension are deemed to be included in this Deed; and
- 9.3.2 the said standards shall apply to the payment of the Pension or allocated pension.

DIVISION 4: THE TRUSTEE AND OTHER OFFICERS

10. The Trustee

- 10.1 There shall be a Trustee of the Fund. The Fund shall be vested in and managed by the Trustee upon the trusts and subject to the terms of this Deed.
- 10.2 Either of the following must apply to this Fund:
- 10.2.1 the Trustee of the Fund must be a Constitutional Corporation; or
- 10.2.2 if the Trustee of the Fund is not a Constitutional Corporation, the Fund must be maintained for the primary purpose of providing an Old-Age Pension.

11. Appointment and Removal of Trustees

- 11.1 The Principal or, if there is no Principal in office, a majority of Members may at any time or times by notice in writing appoint a new or additional Trustee or Trustees or remove any Trustee or Trustees for the time being provided that the new or additional Trustee or Trustees shall by deed undertake to be bound by and perform the obligations of a Trustee under this Deed and accept liability for the proper obligations of any outgoing Trustee in its capacity as such.
- 11.2 A person may be a Trustee or the Secretary or a director, officer, employee or delegate of the Trustee, and may exercise any power exercisable by virtue of such office or position, notwithstanding that such person is an Employer, or a Beneficiary.
- 11.3 The Trustee declares that it shall act continuously as Trustee of the Fund until the Fund is terminated or the Trustee has vacated office as provided in this Deed.
- 11.4 A Trustee vacates the office of Trustee:
- 11.4.1 upon removal by the Principal or the Members as provided above;
- 11.4.2 upon giving at least 1 month's (or such lesser period as a majority of Members may in any particular case accept) notice in writing to the Members of the intention of the Trustee to retire, forthwith upon the expiration of the said notice period; or

- 11.4.3 if the Trustee being an individual becomes an insolvent under administration within the meaning of the Corporations Law or dies, or the Trustee being a corporation becomes an externally-administered body corporate within the meaning of the Corporations Law;

whereupon the Principal or failing him or her the Members shall if necessary appoint a new Trustee in lieu of the outgoing Trustee.

- 11.5 An outgoing Trustee shall forthwith deliver such books, documents, records, moneys and property and execute all such transfers, instruments, documents and authorities and do all such other acts and things necessary or expedient for vesting the Fund in the new or continuing Trustee or Trustees.
- 11.6 The costs, charges and expenses including stamp duty (if any) of and incidental to the retirement, removal and appointment of Trustees shall be a Fund Expense.
- 11.7 If at any time:
- 11.7.1 the Principal has become an insolvent under administration within the meaning of the Corporations Law or is dead; and
- 11.7.2 there are no Members,
- the person who is the next of kin of the insolvent Principal and who is sui juris, or the executor administrator or trustee of the deceased Principal (as the case may be) may exercise the powers in this Clause to appoint and remove Trustees.

12. **Officers of the Fund**

- 12.1 The Trustee may appoint any one or more of the following ("officers"):
- 12.1.1 an administrator of the Fund;
- 12.1.2 an actuary of the Fund;
- 12.1.3 an Auditor of the Fund;
- 12.1.4 a Custodian with the meaning of Section 10 of the SIS Act;
- 12.1.5 an Investment Manager within the meaning of Section 10 of the SIS Act;
- 12.1.6 such other officers and staff as the Trustee considers reasonable and expedient for the proper administration of the Fund.
- 12.2 The officers shall be appointed and shall perform such duties and have such powers as the Trustee determines and as are required under any Superannuation Requirement.
- 12.3 Subject to any Superannuation Requirement, the Trustee may remove from office or accept the resignation from office of any officer of the Fund for the time being.

13. **Officers' Remuneration**

The Trustee may pay remuneration to any officer or other staff of the Fund for their services. Such remuneration is a Fund Expense.

14. **Trustee's Remuneration**

A Trustee may from time to time charge and retain out of the assets of the Fund such Trustee's commission as may be agreed between the Trustee and the Principal or, if there is no Principal in office, as may be agreed between the Trustee and a majority of Members. If there is more than 1 Trustee such commission shall be divided between the Trustees as they determine. In addition, any Trustee or any firm of which a Trustee is a member and any director, officer, employee or shareholder of a Trustee being a corporation being an accountant, solicitor or other person engaged in any profession trade or calling may make and be paid from time to time all usual and proper charges for both professional and other services in the administration of the Fund done by the Trustee a firm of which the Trustee is a member or any director officer, employee or shareholder of the Trustee being a corporation including any services which a Trustee not being in any profession trade or calling could have done personally.

DIVISION 5: INDEMNITIES

15. **Indemnity**

15.1 The Trustee or a director of a Trustee being a corporation shall be indemnified and be entitled to be reimbursed out of the Fund against expenses, liabilities and obligations incurred or paid by the Trustee in its capacity as Trustee in the execution or purported or attempted execution or failure or neglect to execute the trusts powers authorities and discretions exercisable by the Trustee PROVIDED ALWAYS THAT neither the Principal nor any Employer nor any Beneficiary (as such) is liable personally to indemnify contribute to or reimburse the Trustee or any creditor of the Trustee or other person claiming against or through the Trustee notwithstanding any rule of law or equity to the contrary.

15.2 The indemnity given to the Trustee and any director of the Trustee being a corporation in this Clause is void to the extent that it would have the effect of exempting the Trustee from, or indemnifying the Trustee against:

15.2.1 liability for breach of duty or trust if the Trustee;

- (i) fails to act honestly in a matter concerning the Fund; or
- (ii) intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee is required to exercise; or

15.2.2 liability for a monetary penalty under a civil penalty order imposed under any Superannuation Requirement.

16. **Trustee not liable for Loss**

Subject to any Superannuation Requirement, a Trustee and any director, officer or employee of a Trustee being a corporation is not liable to compensate the Fund or any Beneficiary (as such) for any loss or damage incurred in the execution or exercise purported or attempted execution or exercise or failure or neglect to execute or exercise any of the trusts authorities powers or discretions exercisable by the Trustee unless it shall be proved to have been committed or omitted in personal conscious fraudulent bad faith by the Trustee charged to be so liable including, without limitation, loss or damage incurred in connection with:

16.1 the insufficiency of or deficiency in any manner or form of investment in which assets of the Fund may be invested;

16.2 the bankruptcy or insolvency of or any fraudulent or negligent act by any employee or delegate of the Trustee or any person with whom any investment may be deposited;

- 16.3 the payment of an amount or Benefit to a person reasonably believed to be entitled thereto but who is in fact not so entitled; or
- 16.4 any action taken or thing suffered in reliance upon any document, advice, record, authority, representation, statement or evidence reasonably believed by the Trustee or its employee or delegate in good faith to be genuine, accurate, effective or correct.

A Trustee is not bound to take proceedings against any former Trustee or any Co-Trustee for any breach or alleged breach of trust committed by such former Trustee or any Co-Trustee.

DIVISION 6: TRUSTEE POWERS AND COVENANTS

17. **Restrictions on Powers**

Notwithstanding any other provisions of this Deed the Trustee shall exercise the trusts authorities powers or discretions exercisable by the Trustee:

- 17.1 to comply with any Superannuation Requirement; and
- 17.2 so as not to infringe any law binding upon the Trustee (as such).

The Trustee shall be entitled to rely on any circular, guideline and rulings issued by the Commissioner as to the meaning, application or effect of a Superannuation Requirement or the manner in which the Commissioner will act in relation to them, notwithstanding that the same contains any disclaimer or qualification.

18. **General Management and Administration**

The Trustee has the complete management and control of all proceedings matters and things in connection with the Fund and may do all acts and things which it considers necessary or expedient for the proper administration maintenance and preservation of the Fund including the powers set out in this Deed. Subject to the provisions of the SIS Act, the Trustee has power to delegate any aspect of the management and administration of the Fund.

19. **Covenants by Trustees**

The covenants by the Trustee specified in Section 52 of the SIS Act apply to this Fund and are deemed to be incorporated into this Deed.

20. **Compliance with SIS Act**

Without limiting the other obligations and covenants contained in this Deed on the part of the Trustee, the Trustee will ensure that at all times it complies to the fullest extent with the requirements of the SIS Act and SIS Regulations.

21. **Power to elect to be bound by SIS Act**

The Trustee has power to make an election that the SIS Act is to apply in relation to the Fund, by giving to the Commissioner, a written notice in the form required by the SIS Act.

22. **Power to Invest**

- 22.1 The Trustee has power to apply all moneys and property at any time forming part of the Fund in such proportions and in such manner and whether solely or jointly with any other person as the Trustee may deem fit:

- 22.1.1 in land including all tenements and hereditaments corporeal and incorporeal of every kind and description and every estate and interest in land;
- 22.1.2 in personal property including choses in possession, choses in action, rights or privileges or concessions or authorities of every kind and description including, without limitation, bills of exchange, deposits, loans and also securities whether of the kind specified in paragraphs 92(1)(a) to (e) of the Corporations Law or otherwise; and/or
- 22.1.3 in money including currency of any country;

anywhere in the world and whether of a hazardous wasting or speculative nature or tangible or intangible present or future expectant or in reversion or contingent including property currently owned or held by a Trustee in its personal capacity or as trustee of any other trust fund or by a Beneficiary or an Employer and as if the Trustee were the sole absolute beneficial owner of the Fund. And for the avoidance of doubt it is declared that the Trustee may invest in any manner approved in writing by a majority of Members before or after the investment is made.

- 22.2 Nothing in the preceding sub-clause empowers the Trustee to apply any money or property of the Fund in such a proportion or in such a manner that would result in a contravention of any of a Superannuation Requirement.

23. Power to vary Investments

Subject to this Deed, the Trustee has power to reinvest and transpose in such proportions and in such manner as the Trustee may from time to time deem fit all moneys or property in which the Fund may from time to time be invested or applied.

24. Power to deal with Property

Subject to this Deed, the Trustee has power to purchase, take on lease, hire or licence, subscribe for or otherwise acquire, exchange, hold, use, work, build, construct, reconstruct, demolish, maintain, repair, renovate, replace, alter, extend, add to, develop, decorate, furnish, equip, improve, manage, partition (including pay moneys by way of equality of partition), subdivide, transfer, convey, reconvey, assign, surrender, let, lease, hire, license, take and grant options or rights in, pay premiums for, deal in, divide, consolidate, sell, dispose, alienate, mortgage, charge, pledge, release, discharge, turn to account or otherwise deal with any real or personal property which may from time to time be comprised in the Fund or in which the Fund or part thereof may or could be invested or applied at such times and in such manner and upon such terms and conditions as the Trustee deems fit.

25. Power to deal with Securities

The Trustee has power, where any securities (whether of the kind specified in paragraphs 92(1)(a) to (e) of the Corporations Law or otherwise) are comprised in the Fund, to exercise or to abstain from exercising any rights or privileges attaching to such securities as the Trustee deems fit. The Trustee may attend any meeting of security holders personally or by proxy representative or attorney and may vote for or against any resolution (or may abstain from voting) as the Trustee deems fit and notwithstanding that the Trustee or any person claiming by through or under the Trustee may have some material personal interest in the subject matter of such resolution PROVIDED ALWAYS THAT:

- 25.1 the Trustee is excused from attending any and all meetings of security holders and is further excused from the obligation of appointing any person the proxy representative or attorney of the Trustee to represent the Trustee at any such meeting;

- 25.2 the Trustee is responsible only for so much of the securities and the dividends income or other benefits therefrom as are actually transferred or paid to the Trustee; and
- 25.3 the Trustee is not obliged to enquire into or investigate the accounts, management, dealings or control of the body which issued the securities.

26. **Power to give Custody of Property**

The Trustee has power to permit any Beneficiary to occupy or have custody of or use of any real or personal property forming part of the Fund on such terms and conditions as the Trustee deems fit.

27. **Power to operate Bank Accounts**

The Trustee has power to solely or jointly with any person open an account or accounts in the name of the Trustee or of the Fund at any bank, authorised short term money market dealer, building society, credit union or other financial corporation trust or institution ("the Institution") chosen by the Trustee and conduct and operate such account as the Trustee deems fit in accordance with the customs, usages and practices of the Institution.

28. **Power to Borrow**

The Trustee has power to solely or jointly with any person borrow or raise money or obtain credit or accommodation from any person to the extent permitted by Section 67 of the SIS Act. No person lending or advancing money or giving credit or accommodation to the Trustee need be concerned to enquire as to whether the necessity for any borrowing or raising of money or obtaining of credit has arisen or exists or as to the purpose or purposes for which it is required or as to the application or use of the money borrowed or raised or credit obtained.

29. **Guarantees and Indemnities**

Subject to any Superannuation Requirement, the Trustee has power to solely or jointly with any other person guarantee indemnify and become liable (whether contingently or otherwise) upon such terms with or without remuneration or security as the Trustee deems fit in respect of the performance and discharge of contracts, debts, obligations and undertakings of all kinds by any person (including any Employer and any Beneficiary).

30. **Power to grant Security**

Where borrowing is permitted by Section 67 of the SIS Act, the Trustee has power to solely or jointly with any person secure the repayment of moneys borrowed or raised or credit obtained by the Trustee and payment of interest (if any) thereon or to secure any guarantee or indemnity given by the Trustee by granting a mortgage, bill of sale, lien, hypothecation, pledge or charge (fixed floating legal equitable or otherwise) over all or any part of the assets (both present and future) of the Fund and with or without granting any other form of security acknowledgment or collateral agreement as the Trustee deems fit and to vary, purchase, redeem or discharge any such mortgage, bill of sale, lien, hypothecation, pledge or charge. And for the avoidance of doubt it is declared that if the Trustee is a company it may grant a charge (fixed floating legal equitable or otherwise) over all or any part of the assets (both present and future) of the company and all or any part of the assets (both present and future) of the Fund held by it as Trustee and grant any other charge or security registrable under the Corporations Law.

31. **Power to Lend**

The Trustee has power to solely or jointly with any person lend, advance money and give credit or accommodation to any person (including a Trustee in its personal capacity and any Employer and any Beneficiary) for any purpose and upon such terms and conditions as to repayment of principal and payment of interest (if any) and generally and with or without security guarantee or collateral

agreement as the Trustee deems fit PROVIDED THAT the Trustee must not lend to any member of the Fund except in accordance with Section 65 of the SIS Act.

32. **Power to Insure**

The Trustee has power to take up acquire (including purchase by way of sale or accept by way of gift inter vivos or by Will) keep on foot renew amend vary mortgage charge pledge borrow against exchange forfeit surrender redeem sell and assign:

32.1 any Policy;

32.2 any policy of insurance of whatever nature against any risk or liability in respect of the property (both present and future) or administration of the Fund;

upon such terms and conditions the Trustee deems fit.

33. **Power to give Receipts**

The Trustee has power to give valid and effectual receipts and discharges for any money or property received by or on behalf of the Fund or otherwise relating to the administration of the Fund.

34. **Power to Contract**

The Trustee has power to make, enter into, execute and deliver such deeds agreements contracts memoranda instruments notes understandings or undertakings as the Trustee deems necessary or expedient to carry out any trust authority power or discretion exercisable by the Trustee.

35. **Power to act on Legal Advice**

The Trustee has powers:

35.1 to appoint any duly qualified legal practitioner or firm of legal practitioners as legal adviser to the Fund;

35.2 to procure, take, act and rely upon the advice or opinion of a solicitor barrister counsel or attorney at law in relation to the interpretation or effect of this Deed or any other document instrument or any law as to the administration of the Fund PROVIDED THAT nothing in this provision prohibits or impedes the Trustee or a Beneficiary from applying to any court for directions or concerning any matter of and incidental to the Fund;

35.3 to institute, carry on, prosecute, defend, join, appeal, settle, compromise, abandon, discontinue and enforce judgment of any suits, motions, actions, proceedings or arbitrations which affect or may affect the Trustee (as such) or the Fund; and

35.4 to refer any dispute involving the Trustee or the Fund, or any claim or demand by or against the Trustee or the Fund, to arbitration and observe and perform the award of the arbitrator.

36. **Power to determine Disputes**

The Trustee has power to determine all matters as to which any doubt difficulty or question may arise under or in relation to the execution of the trusts powers authorities and discretions of the Trustee and every such determination of the Trustee whether made upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Fund binds all persons interested therein.

37. Power to deposit Documents

The Trustee has power to deposit as security or for safe custody any document, instrument or writing belonging to or relating to the Fund with any person including any bank.

38. Power to Rollover certain Benefits

The Trustee has power to pay certain benefits to an Eligible Rollover Fund in accordance with the provisions of Part 24 of the SIS Act.

39. Power to use Nominees

The Trustee has power to permit any property comprised in the Fund to be held or registered in the name of some other person.

40. Power to create a Reserve

The Trustee has power to set aside and accumulate out of the capital or income of the Fund such sum or sums of money as the Trustee deems expedient for depreciation or amortisation or to meet any future Fund Expense actual or contingent.

41. Power to make Valuations

The Trustee has power to estimate and fix the value of any property comprised in the Fund or to employ such persons to make such valuation at such times and in such manner as the Trustee deems fit and any valuations so made bind all persons interested in the Fund.

42. Power to appropriate Property

The Trustee has power to appropriate any part of the Fund in the actual condition or state thereof in or towards the satisfaction or part satisfaction of the right of a Beneficiary to any Benefit as the Trustee deems fit.

43. Power to characterise Income and Capital

The Trustee has power to determine whether any property or any increase or decrease in the amount number or value of any property or any receipts or payments from or in connection with any property shall be treated as and credited or debited to capital or to income and to determine as between separate funds and separate parts or shares the allocation of receipts, expenses, losses and distributions.

44. Power to make Accounting Procedures

The Trustee has power to make rules and adopt procedures in relation to the calculation and rounding-off of Contributions, Benefits, income and expenses of the Fund.

45. Power over Debts

Subject to any Superannuation Requirement, the Trustee has powers:

- 45.1 to pay or allow any debt or claim on any evidence that the Trustee deems sufficient;
- 45.2 to accept any composition or any security for any debt or any property claimed;
- 45.3 to allow any time for payment of any debt;

45.4 to compromise, compound, abandon, surrender, submit to arbitration or settle any debt account claim or thing whatever relating to the Fund; and

45.5 to waive any right under any term of any agreement, contract or deed.

46. **Power to pay Fund Expenses**

The Trustee has power to pay any Fund Expense and taxation, duty or other government impost.

47. **Powers under SIS**

The Trustee has power to do anything that the Trustee considers necessary or desirable in order to satisfy the requirements of the SIS Act and SIS Regulations and to ensure that the Fund is a Complying Superannuation Fund and to refrain from doing anything that the Trustee considers would contravene or fail to comply with such requirements.

48. **Powers under the General Law**

In addition to the powers conferred on the Trustee under this Deed, the Trustee has the powers authorities and discretions by law equity or statute vested in or upon trustees generally to the extent not inconsistent with this Deed and any Superannuation Requirement, and if such powers authorities and discretions are inconsistent then they hereby varied so as to become consistent with this Deed and also the Trustee has power to do all things incidental to the effective exercise of any trust power authority or discretion conferred on the Trustee.

49. **Powers Independent**

Subject to this Deed or unless the context so requires, each power authority and discretion exercisable by the Trustee is not limited or to be read down by reference to any other power authority or discretion.

50. **Absolute discretion in the Exercise of Powers**

Subject to this Deed, the Trustee has in the exercise or non-exercise or partial exercise of each and every power authority or discretion exercisable by the Trustee an absolute and uncontrolled discretion as if the Trustee was the sole absolute beneficial owner of the Fund and the Trustee is not bound to give to any person any reason for or explanation of the exercise, non-exercise or partial exercise of any such power authority or discretion.

51. **Manner of Exercise of Powers**

The exercise of any trust authority power or discretion exercisable by the Trustee or the making of any decision or determination by the Trustee:

51.1 where the Trustee is a corporation may be exercised or made by a resolution of its Board of Directors or other governing body for the time being in the manner provided in the Memorandum and Articles of Association or other constituent documents of such corporation for the exercise of the powers of the Board of Directors or governing body;

51.2 where there are 2 or more Trustees may be exercised by an instrument in writing signed or executed by a majority of Trustees or by a resolution passed by majority at a meeting of Trustees; and

51.3 whether or not the Trustee is a corporation shall be sufficiently evidenced if noted in minutes kept by the Trustee of its proceedings as Trustee and signed as a true record by the Trustee or a director of the Trustee and the Board of Directors or other governing body of a Trustee being a corporation may resolve that the minute book of meetings of the Board of

Directors or other governing body of that corporation shall unless otherwise specified constitute the Trustee's minute book or may otherwise arrange for the recording of the business of the corporation in its capacity as Trustee as the Board of Directors or other governing body deems fit.

52. **Trustee may be interested in Dealings**

Subject to any Superannuation Requirement:

- 52.1 A Trustee and any director officer or shareholder of a Trustee being a corporation may exercise or concur in exercising any trust authority power and discretion exercisable by the Trustee notwithstanding that he or she or any 1 or more of the Beneficiaries may be personally interested in the mode or result of an exercise of any such trust authority power or discretion.
- 52.2 A Trustee, the partner of a Trustee and any director officer or shareholder of a Trustee being a corporation may be or become a director officer shareholder partner member or participant of or otherwise be personally interested in any corporation firm trust association undertaking or thing in which any moneys comprised in the Fund may be or are from time to time invested or applied AND no deed agreement contract memorandum instrument note understanding or undertaking engaged in or entered into by or on behalf of the Trustee or the Fund in which a Trustee the partner of a Trustee or any director officer or shareholder of a Trustee being a corporation is personally interested shall be avoided or affected thereby NOR is a Trustee the partner of a Trustee or any director officer or shareholder of a Trustee being a corporation liable to account to the Fund or to the Beneficiaries or any of them for any benefit profit advantage remuneration or reward received by him or her from or on account of his or her interest as aforesaid.
- 52.3 A Trustee may acquire and dispose of property, borrow and lend or otherwise deal with itself in its personal capacity or as trustee of any other trust fund in all respects as if there were 2 separate persons to such dealing.

53. **Validity of Dealings and Securities**

No person dealing with the Trustee need be concerned to enquire as to the adequacy of the powers of the Trustee in relation to such dealing or as to the proper exercise by the Trustee of any of the trusts powers authorities and discretions exercisable by the Trustee or as to the propriety or regularity of any transaction affecting the Fund or any of the assets thereof or to see to the application of any money or property paid or transferred to the Trustee or to any person at the Trustee's direction and in the absence of fraud on the part of any such person dealing with the Trustee such dealing shall be deemed so far as the safety and protection of such person is concerned to be within the powers of the Trustee and to be valid and effectual accordingly and the receipt of the Trustee or the receipt of any person paid or receiving a transfer as aforesaid at the direction of the Trustee shall effectually discharge any such person dealing with the Trustee from all liability in respect thereof. Without limiting the generality of the foregoing, no mortgage bill of sale lien hypothecation pledge charge or other security given or created by the Trustee to or in favour of any person over or in respect of the Fund or any part thereof is invalid by reason of any error or omission whether of law or fact on the part of the Trustee or its legal or other advisers or by reason of any breach of duty or trust whatsoever unless it shall be proved to have been committed made or omitted in personal conscious fraudulent bad faith by the Trustee to the actual knowledge of the person dealing with the Trustee.

DIVISION 7: MEMBERS

54. **Members**

A Member shall be bound by and take the benefit of this Deed as if an original party to this Deed. The Principal shall be the initial Member of the Fund upon execution of this Deed.

55. Admission of other Members

- 55.1 An Eligible Person may apply to become a Member of the Fund by completing a written application in such form with such information as the Trustee requires.
- 55.2 Upon receipt of an application the Trustee may accept or may decline the application. An application if not declined within 28 days shall be deemed to have been accepted by the Trustee.
- 55.3 An applicant whose application is accepted by the Trustee shall be admitted to membership of the Fund on a date determined by the Trustee or, if the Trustee makes no such determination as to a date, the date the completed application is received by the Trustee.
- 55.4 As soon as practicable after the admission of a person as a Member, the Trustee shall provide to the Member a written statement in the form together with such other information required under the SIS Regulations. The omission to give such statement or information to any Member shall not invalidate the membership of the Member concerned.

56. Cessation of Membership

A Member ceases to be a Member:

- 56.1 upon payment or transfer of all entitlements of that Member under this Deed;
- 56.2 upon the death of that Member; or
- 56.3 upon such date as required by a Superannuation Requirement.

57. Approval of Members

Wherever in this Deed or under a Superannuation Requirement a trust power authority or discretion exercisable by the Trustee is expressed to be subject to the approval of the Members, or a particular majority of Members, then such approval shall be conclusively deemed to have been given or made on production of:

- 57.1 a minute signed by the Chairman of a meeting of Members stating that at a duly called meeting of Members a resolution was duly passed in favour of such approval by a requisite majority of Members voting; or
- 57.2 an instrument containing a statement that the Members approve in terms set out in the instrument signed by the requisite number of Members, and for the purposes of this provision 2 or more separate instruments containing statements in similar terms shall together be deemed to constitute 1 instrument containing a statement in those terms.

Save where in this Deed or under a Superannuation Requirement a trust power authority or discretion exercisable by the Trustee is expressed to be subject to the approval of the Members, neither the Beneficiaries or any of them have any power or right to direct or interfere with the proper performance exercise or non-performance or non-exercise by the Trustee of any trusts powers authorities or discretions exercisable by the Trustee.

58. Meetings of Members

- 58.1 The Trustee may at any time and shall on receipt of a requisition in writing signed by the Principal or at least 4 Members call a meeting of the Members.
- 58.2 If the Trustee shall not within 21 days from receipt of a requisition of Members duly proceed to call a meeting the requisitionists or a majority of them may themselves call the

meeting but any meeting so called shall not be held after 3 months from the date of such receipt by the Trustee and a meeting called under this provision by the requisitionists shall be called in the same manner as nearly as practicable as that in which meetings are to be called by the Trustee.

- 58.3 A meeting of the Members shall be called by the Trustee giving not less than 21 days' notice to all the Members and the Auditor (if any) specifying the date time and place of and general nature of the business to be transacted at the proposed meeting provided that a matter requiring the approval of the Members or concerning which it is proposed the Members should direct the Trustee shall be specified in the notice calling the meeting at which it is proposed the approval or direction shall be given or made.
- 58.4 Notwithstanding the above provision if it is so agreed by a majority of Members a meeting of the Members may be called and held of which less than 21 days' notice has been given.
- 58.5 The accidental omission to give notice of a meeting to or the non-receipt of a notice of a meeting by any person entitled to receive a notice of such meeting shall not invalidate the proceedings at and of such meeting.
- 58.6 Four Members or 25% of Members (whichever is the lesser) present in person or by proxy or attorney shall be a quorum for a meeting of Members and no business shall be transacted at any meeting of the Members unless the requisite quorum is present at the commencement of and during the meeting. If within 15 minutes from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of Members shall be dissolved and in any other case it shall stand adjourned to the same day in the next week at the same time and place.
- 58.7 The Trustee or the Trustee's nominee is entitled to take the chair at a meeting of Members.
- 58.8 Each Member is entitled to 1 vote with the Chairman having a casting vote in the event of an equality of votes.
- 58.9 The Trustee may make and from time to time vary such regulations concerning the conduct of a meeting of Members not inconsistent with this Deed as the Trustee may determine.

DIVISION 8: EMPLOYERS

59. **Employers**

An Employer of the Fund shall be bound by this Deed as if an original party thereto.

60. **Employer's Contributions**

Any Employer of a Member may, with the consent of the Trustee and the Member concerned, make Contributions to the Fund:

- 60.1 on behalf of and in respect of such Member ("Employee Member"); and/or
- 60.2 the Dependant of such Employee Member provided that such Dependant is a Member of the Fund.

61. **Termination of Employer's Contribution**

If an Employer:

- 61.1 being an individual becomes an insolvent under administration within the meaning of the Corporations Law or dies; or

61.2 being a corporation becomes an externally-administered body corporate within the meaning of the Corporations Law; or

if a Member:

61.3 by notice to the Trustee states that the Employer intends not to make any further Contributions to the Fund; or

61.4 the Member ceases to be an employee of the Employer;

the Employer ceases to be an Employer of the Fund but the Trustee shall continue to hold the interests of the Beneficiaries and deal with same in accordance with this Deed.

DIVISION 9: FUND ACCOUNTS

62. Member Accounts

The Trustee shall establish and maintain an Member Account in respect of each Member.

63. Operation of Member Accounts

63.1 The Trustee shall credit a Member's Account with the following amounts:

63.1.1 any amount transferred into the Fund under this Deed on account of that Member;

63.1.2 any Contributions on account of that Member;

63.1.3 the proceeds of any Policy effected by the Trustee in respect of the Member or a Beneficiary on account of that Member and paid to the Trustee; and

63.1.4 an amount equal to such of the positive earnings of the Fund as are allotted by the Trustee from the Fund Account as hereinafter provided.

63.2 The Trustee shall debit a Member's Account with the following amounts:

63.2.1 any amount transferred out of the Fund under this Deed on account of that Member;

63.2.2 any other Benefit made to or in respect of the Member or a Beneficiary on account of that Member;

63.2.3 the costs of any Policy effected by the Trustee in respect of the Member or a Beneficiary on account of that Member;

63.2.4 such portion of any amount payable by way of taxation arising in respect of Contributions, transfers or income and profits of the Fund credited to the Member Account as the Trustee may determine;

63.2.5 such portion of Fund Expenses as the Trustee may determine; and

63.2.6 an amount equal to such of the negative earnings of the Fund as are allotted by the Trustee from the Fund Account as hereinafter provided.

64. Fund Account

The Trustee shall establish and maintain the Fund Account.

65. Operation of Fund Account

- 65.1 The Trustee shall credit to the Fund Account all income and profits of the Fund.
- 65.2 The Trustee shall debit the Fund Account with the following amounts:
- 65.2.1 any loss sustained on the disposal of any investment of the Fund;
 - 65.2.2 any Fund Expenses incurred which are not debited to a Member Account;
and
 - 65.2.3 any amount payable or which may become payable by way of taxation arising in respect of Contributions or income or profits of the Fund which amount is not debited to a Member Account.
- 65.3 Following the crediting and debiting of the Fund Account at the end of each Financial Year as provided above the Trustee shall determine the net earnings of the Fund for that Financial Year after taking into account any provision or reserve for future contingencies as the Trustee considers reasonable. The net earnings of the Fund may be negative.
- 65.4 Once the net earnings of the Fund is determined, the Trustee shall with effect on the last day of the Financial Year concerned debit the Fund Account and credit between Member Accounts an amount equal to those net earnings. The net earnings of the Fund shall be allotted to each Member Account in proportion to the amount standing to the credit of that Member Account at the beginning of the Financial Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Member Account since that date.
- 65.5 If a Member ceases to be a Member during the course of a Financial Year the Trustee shall allot to the former Member's Account a reasonable share of the estimated net earnings of the Fund for the period:
- 65.5.1 that begins at the end of the latest Financial Year; and
 - 65.5.2 that ends when the former Member ceased to be a Member.

66. Forfeiture Account

The Trustee shall establish and maintain the Forfeiture Account.

67. Operation of Forfeiture Account

- 67.1 The Trustee shall transfer to the credit of the Forfeiture Account any amounts forfeited by Beneficiaries pursuant to the provisions of this Deed.
- 67.2 Moneys held in the Forfeiture Account shall not form part of any Member Account and any income or profits derived by the Fund on the moneys then held in the Forfeiture Account shall be credited only to the Forfeiture Account.
- 67.3 The Trustee may pay or apply any moneys held in the Forfeiture Account in such manner as it may determine.

68. Accounting Records

The Trustee shall prepare, keep and retain such accounting records, documents and other statements required under a Superannuation Requirement.

69. Audit

The Accounts shall be audited by the Auditor.

70. Income and Expenses

70.1 The Trustee shall collect, receive and get in all dividends, interest, rent and other gross income and profits of the Fund.

70.2 The Trustee shall pay out of the gross income and profits of the Fund all Fund Expenses.

71. Taxation

71.1 The Trustee shall procure the payment of all taxation which is due and payable by the Fund to the relevant authorities within the required time for payment. The Trustee may arrange for that taxation to be paid on behalf of the Fund by an insurance company or other appropriate organisation.

71.2 The Trustee, or with the agreement of the Trustee, an insurance company or other appropriate organisation, shall deduct from any Benefit any taxation required by the Act to be deducted (or such taxation as in the opinion of the Trustee is required to be deducted) from a Benefit to be paid. A Beneficiary is entitled to receive only the net Benefit or payment after the deduction of taxation.

DIVISION 10: CONTRIBUTIONS**72. Source of Contributions**

Subject to any Superannuation Requirement, a Member, or (if applicable) an Employer may make a Contribution to the Fund.

73. No obligation to Contribute

In the absence of any agreement in writing to the contrary neither a Member nor an Employer is obliged to make a Contribution in any Financial Year. A Member remains a Member notwithstanding that no Contribution on account of that Member is made in any particular Financial Year.

74. Timing of Contributions

A Contribution by a Member or (if applicable) an Employer shall be deemed to be made in the Financial Year in which the money is paid or assets transferred to the Trustee.

75. Quantum of Contributions

Subject to this Deed, a Member or an Employer may make Contributions of such amount as each of them may respectively determine.

76. Manner of Contribution in Cash or Assets

Subject to any Superannuation Requirement, a Contribution may be made by cash or transfer of assets. In the case of transfer of assets, such assets must be of a kind in which the Trustee is authorised to invest under this Deed and the value attributed to such assets shall be the fair market value thereof as determined by the Trustee.

77. Allotment of Employer Contributions

An Employer who makes a Contribution to the Fund shall at the time specify to the Trustee those Members on whose behalf the Contribution is made and the amounts thereof to be allotted to each of those Members and in default the Employer shall be deemed to have made such Contribution on account of all the Members on whose behalf such Contribution was made equally.

78. Overriding Restriction on Contributions

Notwithstanding any other provision of this Deed, the Trustee shall refuse to accept all or part of any Contribution if in the opinion of the Trustee it is necessary to do so in order to ensure compliance by the Fund with a Superannuation Requirement.

79. Refund of Ineligible Contributions

If the Trustee at any time ascertains that a Contribution or portion of a Contribution has been accepted by the Fund from a Member or an Employer in breach of this Deed, the Trustee shall refund such Contribution or portion, less a reasonable share of expenses in respect of any Group Life Insurance which the Trustee has obtained in relation to the Member on whose account such Contribution was made, and reduce the Benefits held for the Beneficiaries concerned to those which the Trustee considers would have been held if such Contribution or portion had not been paid.

DIVISION 11: BENEFITS**80. Benefits Generally**

- 80.1 A Benefit is held by a Beneficiary subject to the provisions of this Deed.
- 80.2 Beneficiaries hold their Benefits in the Fund as tenants in common.
- 80.3 No Beneficiary or person claiming as or in respect or on behalf of a Beneficiary or legal personal representative of a Beneficiary may require any payment from the Fund except as may be expressly provided in the Deed.
- 80.4 A Benefit shall be preserved where and to the extent required by a Superannuation Requirement.

81. Type of Benefit Payable

- 81.1 If the Trustee of the Fund is not a Constitutional Corporation then:
- 81.1.1 a Benefit payable from the Fund must be paid in the form of a Pension and in accordance with this Deed; and
- 81.1.2 the Member to whom the Pension is payable may commute the whole or any part of the Pension to a lump sum in accordance with this Deed.
- 81.2 If the Trustee of the Fund is a Constitutional Corporation a Benefit payable from the Fund may be paid in the form of a Pension or a lump sum.

82. Retirement Benefit

A Member who retires at or after his or her Normal Retirement Age, or a Member who fulfils the criteria of the Superannuation Requirements for the payment of retirement Benefits is entitled to be paid, subject to this Deed, the amount standing to the credit of his or her Member Account.

83. Total and Permanent Disablement Benefit

A Member who becomes Totally and Permanently Disabled is entitled to be paid, subject to this Deed and the terms conditions and exclusions of the Policy, the amount standing to the credit of his or her Member Account.

84. Death Benefit

84.1 If a Member dies then the Dependant of the deceased Member and, if more than 1, in such proportions as the Trustee may determine, is entitled to be paid, subject to this Deed and the terms conditions and exclusions of the Policy, the amount standing to the credit of the deceased Member's Account PROVIDED THAT if in the opinion of the Trustee there is no Dependant of the Member as at the date of the death of the Member or if the Trustee considers it inappropriate to pay such Benefit to a Dependant then the Benefit may be paid to the legal personal representatives of the deceased Member.

84.2 A Member may from time to time by notice in writing to the Trustee in the form prescribed by the Trustee and signed by the Member nominate any 1 or more Dependants of the Member (each a "Nominated Beneficiary") to receive the Benefit payable upon the death of the Member. A Member may at any time by further notice in writing to the Trustee signed by the Member revoke, vary or substitute any Nomination previously made by the Member. A nomination is revoked if the Nominated Beneficiary ceases to be a Dependant of the Member.

84.3 The Trustee is not bound to act in accordance with a Nomination made by a Member but may consider it when making any payments under this Clause.

85. Early Release

85.1 A Member may in circumstances permitted by a Superannuation Requirement, request the Trustee for payment of a Benefit at any time notwithstanding that the Member has not satisfied the conditions for payment of a Benefit under this Deed.

85.2 A member requesting payment of a Benefit under the preceding subclause must provide the Trustee with such information as the Trustee requests or is required by a Superannuation Requirement.

85.3 Subject to any Superannuation Requirement, the Trustee may then pay any Benefit or part thereof to the Member upon such terms and conditions as the Trustee may require.

86. Payment of Pension

86.1 Where the Trustee is either:

86.1.1 required to pay a Pension by virtue of Clause 81.1; or

86.1.2 determines to pay a Pension by virtue of Clause 88;

then the Trustee and the Member concerned shall enter into an agreement relating to the terms, conditions and commutation of such Pension ("Pension Agreement").

86.2 The Pension Agreement shall contain such provisions to ensure that the relevant Pension being paid from the Fund satisfies the relevant Pension Standards.

86.3 Where a Benefit payable to a Member is payable in the form of a Pension, then the present value of instalments of such Pension shall be equal to such amount as the Trustee considers appropriate taking into account the credit of the Member Account from which the Benefit is

payable (or the amount represented by the proportion of such Member Account to which the Member is entitled, if less) PROVIDED THAT the present value of any Pension payable shall not exceed the amount of the credit in the particular Member Account.

87. Commutation of Pension to Lump Sum

- 87.1 The Trustee may on the written application of a Member concerned commute to a lump sum Benefit the whole or any part of a Pension payable to the Member, PROVIDED THAT in the opinion of the Trustee the commutation would not disadvantage the Fund, an Employer or Beneficiaries.
- 87.2 The Trustee may determine the amount of the lump sum payable (if any) in respect of a Pension being commuted.

88. Commutation of Lump Sum to Pension

- 88.1 The Trustee may on the written application of a Member concerned commute to a Pension, the whole or a portion of any lump sum Benefit payable to the Member, PROVIDED THAT in the opinion of the Trustee the commutation would not disadvantage the Fund, an Employer or Beneficiaries.
- 88.2 The Trustee shall determine the amount of the Pension payable in respect of a Pension being commuted in accordance with this Deed.

89. Payment of Benefits

Subject to this Deed, a Benefit payable from the Fund shall be paid at such place, in cash or such other manner and within such reasonable time as the Trustee may determine.

90. Transfer in Specie

The Trustee may with the consent of the Beneficiary to whom a Benefit is payable transfer investments of the Fund (including any Policy) of equivalent value to such Beneficiary in lieu of paying the whole or part of an amount otherwise payable under this Deed.

91. Forfeiture of Benefits

Subject to any Superannuation Requirement, a Beneficiary:

- 91.1 who assigns, charges, conveys, or attempts to assign or charge or convey any Benefit; or
- 91.2 who is declared insane or who is declared to be incapable of managing his or her own affairs; or
- 91.3 who does or attempts to do or suffers any act or thing or if any event happens whereby the Beneficiary would be deprived of the benefit of the Benefit or any part of it; or

automatically forfeits entitlement to all his or her Benefits unless the Trustee otherwise determines.

92. Unclaimed Moneys

- 92.1 Any amount payable to a Beneficiary:
- 92.1.1 who has reached the eligibility age for an age pension; and
- 92.1.2 to whom the Trustee determines that a benefit (other than a pension) is payable under this Deed; and

- 92.1.3 who has not applied to the Trustee to have the amount of the benefit paid; and
- 92.1.4 who the Trustee is unable to find despite having made reasonable efforts to do so;

is taken to be unclaimed money.

- 92.2 The Trustee must, within 28 days after the end of each half-year, give to the Commissioner a statement in accordance with Part 22 of the SIS Act of all unclaimed money in the Fund as at the end of that half-year, and must at the same time as the statement is given, pay to the Commissioner the total amount of unclaimed money shown on the statement.

93. Transfers from other Funds

- 93.1 A Member (an "Incoming Member") who was or is at any time a beneficiary under any other superannuation arrangement (including an Approved Deposit Fund) ("the Prior Fund") may in writing request the Trustee to receive from the trustee of the Prior Fund the whole or any part of the assets of the Prior Fund for the purpose of preserving the rights, entitlements and interests of the Incoming Member under the Prior Fund at the time of the receipt.
- 93.2 The Trustee may accept or may decline the request.
- 93.3 Such a receipt shall be subject to any relevant preservation requirement contained in any Superannuation Requirement which applies to the Prior Fund.
- 93.4 On any receipt of assets from the Prior Fund, if the Trustee so determines, the Incoming Member shall be deemed to have become a Member of the Fund on the date he or she became a member of the Prior Fund.
- 93.5 On any receipt of assets from the Prior Fund, the Trustee shall hold such assets as part of the Fund and reflect such rights, entitlements and interests in the Incoming Member's Member Account as the Trustee determines.

94. Transfers to other Funds

- 94.1 A Member (an "Outgoing Member") who joins or is eligible to join any other Complying Superannuation Fund or, as the case may be, an Approved Deposit Fund ("the Subsequent Fund") may in writing require the Trustee to transfer the whole or a part of the Outgoing Member's entitlement in the Fund to the Subsequent Fund.
- 94.2 The Trustee shall pay or transfer to the trustee of the Subsequent Fund an amount of cash or assets of the Fund of equivalent value to such amount as determined by the Trustee as an amount which reflects the whole or such part of the entitlement of the Outgoing Member in the Fund at the time of the request.
- 94.3 The Trustee may as a condition of transfer require that the Outgoing Member be entitled to such rights in the Subsequent Fund as it agrees with the trustee of the Subsequent Fund are just and equitable and, in particular, may require that such portion only of the amount transferred as the Trustee determines is to be regarded in the Subsequent Fund as being attributable to Contributions by the Outgoing Member.
- 94.4 The Benefit of an Outgoing Member in respect of whom an amount is transferred under this Clause shall be reduced by that amount. The receipt of the amount transferred by the trustee of the Subsequent Fund shall be a complete discharge to the Trustee in respect thereof and, except as provided in the preceding sub-clause, the Trustee is not responsible to see to the application of the amount transferred.

94.5 Where an Outgoing Member or former Outgoing Member has a Benefit in the Fund which forms part of the amount to be transferred to the Subsequent Fund and such Benefit is subject to a Superannuation Requirement relating to the preservation of Benefits, the Trustee shall as a condition of the transfer ensure that the provisions of the Subsequent Fund provide that if the Outgoing Member withdraws from the Subsequent Fund the Benefit must be preserved in accordance with any Superannuation Requirement.

95. **Benefits additional to other Benefits**

Any Benefits conferred upon a Member under this Deed are in addition to and not in substitution for any other provision which has been or may be made by the Member or an Employer for such Member whether by settlement or otherwise.

96. **Personal Representatives may receive Benefits**

A person becoming entitled to a Benefit by operation of law in consequence of the death or disability of a Member may upon such evidence being produced as may be required by the Trustee be paid and give a good discharge for all Benefits payable in respect of that Member.

DIVISION 12: TERMINATION

97. **Termination of the Fund**

- 97.1 Subject to any Superannuation Requirement, the Fund terminates upon the earliest of the following days:
- 97.1.1 such day as the Principal may specify by notice in writing to the Trustee; or
 - 97.1.2 if there is no Principal in office, such day as all the Members may specify by notice in writing to the Trustee; or
 - 97.1.3 if there is no Principal in office nor any Members, such day as the Trustee may by deed determine; or
 - 97.1.4 if the enactments or rules of law relating to perpetuities or imposing restrictions on accumulations of income apply to the Fund or to a portion of the Fund or to any Benefit, then the Fund or that portion of the Fund or those Benefits (as the case may be) shall terminate on the day before such enactments or rules of law would otherwise be infringed.
- 97.2 As and from the termination of the Fund the Trustee shall hold the Fund UPON TRUST for the Members absolutely in proportion to the amounts outstanding to the credit of their Member Accounts respectively on the date of termination. Any resulting trust to an Employer being hereby negated.
- 97.3 The Trustee shall as soon as practicable after the termination of the Fund give notice of the termination of the Fund to each Member.
- 97.4 After termination of the Fund:
- 97.4.1 no further Members or Employers shall be admitted;
 - 97.4.2 no further Contributions shall be accepted; and
 - 97.4.3 no Benefit shall be forfeited.

- 97.5 Upon termination of the Fund the Trustee shall, subject to any Superannuation Requirement, pay all Benefits under this Deed or, where required under a Superannuation Requirement, transfer all Benefits to a Complying Superannuation Fund, on account of the Members, in accordance with and subject to this Deed.
- 97.6 Notwithstanding the above trust for distribution:
- 97.6.1 the Trustee may retain out of and from the Fund such property and moneys necessary to pay satisfy and discharge all Fund Expenses actual or contingent but no part of the Fund shall be retained under this provision longer than the limitation period applicable to debts or claims aforesaid and any part of the Fund retained under this provision that is subsequently proved not to be required shall be distributed among the Members or their respective Dependents in accordance with this Clause; and/or
- 97.6.2 the Trustee may before making a distribution require a Member to deliver to the Trustee such form of receipt and discharge as the Trustee may require.
- 97.7 The distribution of the Fund in the manner provided in this Clause shall in the absence of personal conscious fraudulent bad faith of the Trustee with or without execution of any receipt constitute a full irrevocable and final discharge and release of and to the Trustee in respect of the Fund by the Beneficiaries and by each of them jointly and severally.

DIVISION 13: MISCELLANEOUS

98. Information to Parties

The Trustee shall provide such information at such time and in such form as required by a Superannuation Requirement to:

- 98.1 a Member;
- 98.2 an Employer;
- 98.3 the Commissioner; and
- 98.4 any other Person.

99. Information from Parties

Each Employer and Member must provide such information to the Trustee in relation to their participation in the Fund as the Trustee may request. The Trustee may without enquiry act upon any information provided and is not required to verify the same.

100. Amendments to this Deed

100.1 Amendment for a Superannuation Requirement

The Trustee with the consent of the Principal (if any is in office) may by deed amend this Deed, where the principal purpose of the amendment is to enable compliance by the Fund with any Superannuation Requirement.

100.2 General Power of Amendment

In addition to the power contained in the preceding sub-clause, the Trustee, with the consent of the Principal (if any is in office), may by deed amend this Deed (including this Clause)

PROVIDED THAT no amendment pursuant to this sub-clause shall be contrary to a Superannuation Requirement.

100.3 **Statutory Power**

The provisions of Section 35b of the Trustee Act, 1936 shall not apply to this Deed.

101. **Proper Law**

This Deed shall be governed by the laws of or applicable in South Australia.

102. **No Agency**

This Deed shall not constitute the relationship of principal and agent or of partners between the Trustee and any Member (as such) or between the Beneficiaries inter se and all income payable in accordance with the provisions of this Deed to Beneficiaries shall be payable to them separately and income received by the Trustee shall not be received or be construed as received by or on behalf of the Beneficiaries jointly.

103. **Severance**

Each and every provision of this Deed and each and every part thereof shall unless the context otherwise necessarily requires be read and construed as a separate and severable provision and as separate and severable parts thereof so that if any provision or part thereof is or becomes void or otherwise unenforceable for any reason then such provision or part thereof (as the case may be) shall not only be severed but the remainder shall be read and construed as if the severed provision or part thereof aforesaid had not been contained in this Deed notwithstanding any consequential alteration to the meaning or construction of that provision or this Deed that may result from the severance.

104. **Notices**

104.1 A notice to be given under this Deed shall be in writing signed by or on behalf of the person giving the notice and may be served personally or by post to the last known address of the addressee.

104.2 Every person not being a Member who by operation of law or other means whatsoever becomes entitled to any Benefit is bound by every notice which previously to his or her entitlement being derived has been duly given to the Member from whom such person derived his or her entitlement.

SECOND SCHEDULE

1. **Schedule**

The provisions contained in this Second Schedule shall form and be deemed to form part of the Deed.

2. **Interpretation**

In this Deed and for the purposes of the First Schedule the following definitions apply:

2.1 **Principal**

RAYMOND SIN KIEW GWEE and CHRISTINE GWEE

2.2 **Trustee**

TAYA PTY LTD

2.3 **Name of Fund**

TAYA PTY LTD SUPERANNUATION FUND

2.4 **Establishment of Fund**

On the execution of this Deed