

# **DEED OF VARIATION**

**WIESLAW ZIOLKOWSKI**

**and**

**MERRILEE ANN ZIOLKOWSKI**

**("the Trustee")**

## **THE ZIOLKOWSKI SUPERANNUATION FUND**

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**THE ZIOLKOWSKI SUPERANNUATION FUND**

**DEED OF VARIATION**

**THIS DEED** is made on 7th June 2007  
**BY:**

**WIESLAW ZIOLKOWSKI**  
and  
**MERRILEE ANN ZIOLKOWSKI**  
("the Trustee")

**WHEREAS:**

- A. **THE ZIOLKOWSKI SUPERANNUATION FUND** (the "Fund") was established by Deed dated 17 February 1999 (the "Deed").
- B. Rule 6.14 of the Deed provides that the Trustee may at any time amend all or any of the provisions of the Deed.
- C. The Trustee desires to amend the Deed in the manner set out in the Schedule, which amendment is in accordance with the requirements of Rule 6.14 of the Deed.

**NOW THIS DEED WITNESSES AS FOLLOWS:**

- 1 The Trustee amends the Deed by substituting the clauses set out in the Schedule for clauses and provisions of the Deed.
- 2 The Trustee agrees to maintain the Fund that was established by the Deed.
- 3 The Trustee confirms that it holds the assets of the Fund on the trusts specified in the Deed as amended by this Deed.

**EXECUTED AS A DEED***The Trustee*

**SIGNED SEALED AND DELIVERED** by the said  
**WIESLAW ZIOLKOWSKI** in the presence of:

)   
 ) .....  
 ) **WIESLAW ZIOLKOWSKI**

..... Witness

**SIGNED SEALED AND DELIVERED** by the said  
**MERRILEE ANN ZIOLKOWSKI** in the presence of:

)   
 ) .....  
 ) **MERRILEE ANN ZIOLKOWSKI**

..... Witness

## SCHEDULE

### THE ZIOLKOWSKI SUPERANNUATION FUND

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## **THE ZIOLKOWSKI SUPERANNUATION FUND**

### **FUND ESTABLISHMENT**

#### **Fund an Indefinitely Continuing Superannuation Fund**

1. (1) The fund that is known and identified by the name **THE ZIOLKOWSKI SUPERANNUATION FUND** ("the Fund") is established as an indefinitely continuing superannuation fund.

#### **Fund Purpose**

- (2) The Fund is established and maintained solely for the purpose of providing old age pensions for Members in the event of their retirement or in the other circumstances approved under the Relevant Law.

### **DEFINITIONS AND INTERPRETATIONS**

#### **Definitions**

2. (1) Unless the contrary intention appears:

"**Accumulated Members Account**" in respect of a Member means his or her interest in the fund determined in accordance with this Deed.

"**Actuary**" means an actuary (if any) for the time being of the Fund appointed by the Trustee who is a Fellow or Accredited Member of the Institute of Actuaries of Australia.

"**Auditor**" means the auditor for the time being of the Fund appointed by the Trustee and who is an approved auditor under the Relevant Law.

"**Beneficiary**" means a person presently and absolutely entitled to receive a Benefit at the relevant time.

"**Benefit**" means any benefit payable by the Trustee out of the Fund pursuant to this Deed in respect of a Member.

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

"**Contributions**" means gross payments, deposits or contributions of money or other assets including Eligible Termination Payments to the Fund for and in



respect of Members prior to the deduction of any Taxation payable in respect of those Contributions.

**“Deed”** means this Deed, anything deemed to be included under the Relevant Law and any Rules made under this Deed.

**“Dependant”** means the spouse and children of a Member, any person with whom the Member has an interdependency relationship and any other person who, in the opinion of the Trustee in its absolute discretion, is or was at the relevant time wholly or partially dependent upon the Member for their maintenance and support.

**“Eligible Person”** means any person who is permitted to become a Member of the Fund pursuant to the Relevant Law.

**“Financial year”** means a period of twelve calendar months ending on 30 June or such other substituted annual balance date as the Trustee may determine, or any part of such a period that may occur at the commencement or termination of the Fund.

**“Fund”** means the entire Fund as constituted by this Deed and the Relevant Law.

**“Member”** means a person who has been admitted to membership of the Fund as provided in accordance with this Deed and who has not ceased to be a Member.

**“Participating Employer”** means any employer that by agreement with the Trustee is admitted to participate in the Fund.

**“Relevant Law”** means any requirements under the Superannuation Industry (Supervision) Act 1993 and any other present or future legislation and requirements of a Regulator:

- (a) Imposed on the Trustee; or
- (b) Which the Fund must satisfy to qualify as a Complying Superannuation Fund.

**“Reserve Account”** means the account established pursuant to this Deed.

**“Retirement Age”** means 70 years or any other age that the Trustee may determine in respect of a Member.

**“Reversionary Beneficiary”** means a dependant nominated by a Member and in default of a nomination by the Member, a dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Member.

**“Temporary Total Disablement”:**

- (a) has the same meaning as contained in any policy effected by the Trustee with an insurer for this purpose in respect of the Member and in force at the time of the Temporary Total Disablement of the Member; or
- (b) if there is no policy effected in respect of the Member for this purpose then such physical or mental incapacity of a temporary nature (whether due to ill-health accident or injury or other cause) that renders the Member incapable of continuing to be employed in the position of gainful employment in which the Member was employed immediately prior to the date of becoming incapacitated but does not include Total and Permanent Disablement and “Temporarily Totally Disabled” has a corresponding meaning.

All questions regarding whether or not the Member is Temporarily Totally Disabled are determined by the Trustee and without limiting the generality of any of the foregoing the Trustee may determine not to provide any Temporary Total Disablement Benefits in respect of all or any Members.

**“Total and permanent disablement”**

- (a) has the same meaning which it has under any policy that the Trustee has obtained for the purpose of providing a benefit on a Member's total and permanent disablement; or
- (b) In the absence of any policy, or any relevant definition in such a policy, a Member may be deemed to suffer total and permanent disablement if he or she has, in the opinion of the Trustee (after having regard to such medical evidence as the Trustee considers appropriate) become incapacitated through illness, accident or injury to such extent as to render him or her unlikely ever to be able to resume his or her usual occupation or any occupation of a similar nature for which the Member is reasonably qualified by education, training or experience.

The decision of the Trustee is binding and conclusive.

**“Trustee”** means the Trustee or Trustees of the Fund.

## Rules of Interpretation

- (2) Unless the context indicates otherwise:-

- (a) words indicating the singular include the plural and vice versa;
- (b) words indicating a gender include the other gender;
- (c) references to a person are construed as references to an individual, firm, body corporate, club, association, government or governmental authority;
- (d) words and expressions used in this Deed have the same meaning as prescribed in the Relevant Law;
- (e) references to statutes or regulations (including any section thereof) include all statutes or regulations amending, consolidating or replacing any of them.

### **Headings**

- (3) Headings inserted in any clause are for convenience only and do not affect the interpretation of the Deed.

### **State Trustee Acts**

- (4) Unless the Trustee otherwise determines, to the extent that it is legally possible this Deed is not subject to the Trustee Act of the State or Territory in which this Deed is executed or any of its equivalents in any of the States or Territories of Australia.

## **GOVERNING LAW**

- 3. This Deed will be governed by or construed according to the law of the Commonwealth of Australia and, where applicable, the State in which the Trustee is resident.

## **COMPLIANCE WITH RELEVANT LAW**

### **Covenants and Operating Standards Incorporated in Deed**

- 4. (1) To the extent that they are not otherwise incorporated in this Deed, the covenants and the operating standards applicable to this Fund, as prescribed in the Relevant Law, are deemed to be incorporated in this Deed.

### **Severance**

- (2) In order to avoid any provision of this Deed being made invalid by law, the provisions must be read down or changed or severed to avoid the invalidity.

### **Relevant Law Applies Where Inconsistency**

- (3) Notwithstanding any other provision of this Deed, in the event of any inconsistency between the Relevant Law and the express provisions of this Deed, the Relevant Law prevails to the extent of the inconsistency.

### **Compliance with Relevant Law**

- (4) The Trustee must do or procure to be done all acts as are necessary for the Fund to comply with the Relevant Law and be a complying superannuation fund.

### **FUND TO BE A REGULATED SUPERANNUATION FUND**

- 5 The Trustee, whether original or substituted, is empowered to make any election required by the Relevant Law for the Fund to become a Regulated Superannuation Fund.

### **APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES**

#### **The Trustee**

6. (1) The Trustee must be appointed and comprised in compliance with the requirements of the Relevant Law relating to Funds with more than four members or self managed superannuation funds (as is appropriate to the number of Members).

#### **Equal Representation**

- (2) If required by the Relevant Law, the Trustee must put in place arrangements to facilitate equal representation of members.

#### **Resignation of Trustee**

- (3) A Trustee may cease to act as Trustee of the Fund if it resigns as Trustee after giving 30 days notice to Members or such lesser period as the Members agree, provided that a natural person who is a trustee of a self managed superannuation fund must cease to be a Trustee on ceasing to be a member of the Fund.

#### **Trustee to Appoint Replacement Trustee**

- (4) Where the Trustee is a constitutional corporation and that corporation resigns as Trustee of the Fund, the corporation must appoint a replacement Trustee but if the retiring Trustee is unable or unwilling to do so, a majority of Members must take such steps as are necessary to appoint a Trustee.

#### **Retiring Trustee to Execute Transfers**

- (5) Upon a change of Trustee, the retiring Trustee or Trustees must execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name of the new Trustee or Trustees.

**Disqualified Persons**

- (6) An individual trustee, a director of a corporate trustee or a corporate trustee that becomes a disqualified person must immediately cease to be a trustee or director, as the case requires.

**Death of Member**

- (7) If a Member of a self managed superannuation fund dies, the legal personal representative of that Member is an individual trustee or a director of a corporate trustee, as the case requires, in place of the Member during the period commencing when the Member died and ending when death benefits commence to be paid in respect of that Member.

**TRUSTEE'S POWERS OF MANAGEMENT****Trustee to Manage Fund**

- 7. (1) The Trustee must manage the Fund in compliance with the Relevant Law for the benefit of the members with full and complete power of management for the proper administration and maintenance of the Fund.

**Trustee Discretion**

- (2) The Trustee in the exercise of any powers conferred in it by this Deed or at law has an absolute and uncontrolled discretion as to their exercise, the exercise of which is final and binding provided that the Trustee must not discriminate against any person in such a manner as to infringe any law of the Commonwealth or a State or Territory in respect of discrimination.

**Trustee Powers**

- (3) In addition to the powers that it may have by law and which are otherwise granted by this Deed, the Trustee has the power to do all acts and things the Trustee may consider necessary or expedient for the administration, maintenance and preservation of the Fund and in the performance of its obligations under this Deed or at law and is not bound to provide a reason for any action it takes.

**Trustee Action Notwithstanding Interest**

- (4) All the powers and discretions conferred upon the Trustee by this Deed or by law may be exercised notwithstanding that the Trustee or, if the Trustee is a corporation, any Director may have a direct, indirect or personal interest (whether as a shareholder, director, member or partner of any company, organisation or partnership) in the manner or result of exercising such power or discretion or may benefit directly or indirectly as a result of the exercise of any

such power or discretion and details of that interest must be disclosed in the manner prescribed by the Relevant Law.

### **Delegation**

- (5) The Trustee may delegate to any person any of the powers, duties and discretions conferred on the Trustee under this Deed upon terms and conditions as the Trustee determines and the Trustee may vary, limit or revoke any delegation provided that any delegation may only be undertaken in accordance with the Relevant Law.

### **Professional Services by Trustee**

- (6) Any person who is an Accountant, Solicitor, Barrister, Investment Adviser, or other professional person and is also a Trustee or a director of a corporation acting as Trustee who is called upon or whose firm is called upon to perform any service in relation to the Fund is entitled to make a charge for professional services as he or she would have made had he or she not been a Trustee or a director of a company acting as Trustee.

## **REMUNERATION OF TRUSTEE**

8. Except where the Fund is a Self Managed Superannuation Fund, the Trustee is entitled to receive from the Fund remuneration for the establishment and administration of the Fund fees that are reasonable.

## **COSTS, CHARGES AND EXPENSES**

9. The Trustee will attend to payment out of the Fund, (or be indemnified and be entitled to be reimbursed out of the Fund) in respect of all costs, charges and expenses that it may reasonably and properly incur in the course of its office or in relation to the administration, management and preservation of the Fund.

## **LIMITATION OF LIABILITY**

### **Liability of Trustee**

10. (1) Subject to the Relevant Law providing otherwise, neither the Trustee nor any of its Directors or officers are liable for anything done or omitted to be done in relation to or in connection with any act or omission concerning the Fund and may be indemnified by the Fund in respect of all liability except if that person:
- (a) fails to act honestly; or
  - (b) intentionally or recklessly fails to exercise the degree of care and diligence

- that the person is required to exercise; or
- (c) incurs a monetary penalty under the Relevant Law.

### **Indemnity of Trustee**

- (2) The indemnity provided by sub-clause (1) extends to:
- (a) any payments made in good faith to any person whom the Trustee bona fide believes to be entitled although it may be subsequently found that the person was not in fact entitled.
  - (b) where the Trustee acts upon the opinion or advice of or statement of lawyers who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and upon reasonable grounds to be expert in relation to the matters upon which they are consulted.
  - (c) where any person or corporation failed to carry out any agreement made with the Trustee and the omission is on the part of that person or corporation.
  - (d) where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

### **Insurance**

- (3) The Trustee may effect insurance in respect of any potential cost or liability of the Trustee or a director, officer or employee of the Trustee, including a liability under an indemnity granted by the Trustee to one of its directors, officers or employees.

### **Members not Liable for Indemnity**

- (4) The Trustee is not entitled to indemnity reimbursement or payment of expenses from the Members or any of them or any other person entitled to a benefit from the Fund and the Members likewise are not to be personally liable for the debts of the Fund.

## **TRUSTEE SUBJECT TO DIRECTION**

### **Trustee may be Subject to Direction**

11. (1) Where the Fund is a Self Managed Superannuation Fund, the Trustee exercises its powers subject to any written direction signed by a Member in respect of:
- (a) a nominated beneficiary; and

- (b) investments, provided that the direction is not, in the opinion of the Trustee, inconsistent with the investment strategy determined under this Deed.

#### **Member may Nominate Beneficiary**

- (2) Where the Fund is not a Self Managed Superannuation Fund, a Member may, by a notice given to the Trustee, require the Trustee to provide any benefits in respect of the Member, on or after the death of the Member, to the legal personal representative or a dependent of the Member, provided that the Trustee gives to the Member information required by the Relevant Law for the purpose of understanding the right to require the Trustee to provide the benefits.

### **TRUSTEE MEETINGS**

#### **Trustee Meetings**

- 12 (1) The Trustees, or in the case of a constitutional corporation being Trustee, the directors:
- (a) may meet together for the dispatch of business;
  - (b) may adjourn and otherwise regulate their meetings as they think fit;
  - (c) may appoint a chairman for the time being or from time to time or of each meeting;
  - (d) may determine the quorum necessary for the transaction of business provided it is no less than two-thirds of Trustees or directors, as the case requires; and
  - (e) may act on any resolution approved by two-thirds of the Trustees or directors, as the case requires.

#### **Trustee Resolution where not a Corporation**

- (2) Where the Trustee is not a corporation, a resolution in writing, signed by all the Trustees for the time being, is as valid and effectual as if it had been duly passed at a meeting of the Trustees duly convened and held and any resolution may consist of several documents in like form, each signed by one or more Trustees.

### **ASSETS AND INVESTMENTS**

#### **Assets held on Trust**

13. (1) All assets of the Fund are to be held by the Trustee upon trust to be applied in accordance with the provisions of this Deed.



**Investment Strategy**

- (2) The Trustee must formulate and give effect to one or more investment strategies that have regard to the whole of the circumstances of the Fund and those strategies may be reviewed from time to time and must be formulated and effected in accordance with the Relevant Law.

**Fund Assets to be Invested**

- (3) All assets of the Fund received by the Trustee but not required to meet current payments must, in the absolute discretion of the Trustee, be invested in any manner or form that the Trustee may consider suitable that is in accordance with the investment strategy of the Fund as determined under sub-clause (3).

**Trustee Power to Deal with Investments**

- (4) The Trustee may deal with the investment of the assets of the Fund and any related documents as fully and effectively as a person with absolute legal and beneficial ownership of those assets.

**Trustee Empowered to Receive all Income etc**

- (5) Without limiting any other power, the Trustee is empowered to receive all income, moneys or increases in value on and from investments or assets or being entitled howsoever to other moneys or value and the income, moneys or value are to form part of this Fund.

**Name in which Assets Held**

- (6) Subject to the Relevant Law, any investments may be held in names including the name of a nominee (whether an individual or a corporation) as the Trustee may from time to time determine.

**Investment Choice**

- (7) The Trustee may in its absolute discretion determine to provide investment choice either generally or in respect of certain Members or Beneficiaries of the Fund and where the Trustee has determined to provide investment choice, the Trustee may permit a Member or Beneficiary to select or change investment strategy choices at times determined by the Trustee.

**Trustee may Invest Separately for a Member**

- (8) Notwithstanding any of the provisions of this Deed, the Trustee in its absolute discretion may undertake to invest separately in respect of certain Members or classes of Members of the Fund as determined from time to time and the Trustee must record on whose behalf such specific investments are made.

## **SUB-PLANS**

14. The Trustee may in respect of the Fund determine in its absolute discretion to make a sub-plan for the Fund in respect of a member or members of the Fund.

## **ADMISSION OF EMPLOYERS**

### **Employer Application**

15. (1) An employer wishing to contribute to the Fund in respect of a Member may apply for participation in the Fund by undertaking to be bound by the provisions of this Deed.

### **Participating Employer**

- (2) On acceptance by the Trustee of an application by an employer, the employer may be required to execute any agreements or acknowledgements as the Trustee may require in the form as the Trustee and the employer agree and upon the date agreed by the Trustee and employer or, if there is no such date, on acceptance of the executed application by the Trustee, the employer becomes a Participating Employer.

### **Participating Employer may Nominate Members**

- (3) A Participating Employer may nominate, by way of notice or by the payment of a Contribution, to the Trustee those of its employees as it may in its absolute discretion select to become Members of the Fund.

### **Employer Ceases as Participating Employer**

- (4) An employer ceases to be a Participating Employer and any powers that employer may have under the Deed terminate on the date that:
- (a) a deed of appointment placing the Participating Employer in receivership or under official management is executed by the appointer of that receiver or manager; or
  - (b) the Participating Employer permanently terminates its Contributions to the Fund by notice in writing to the Trustee.

## **MEMBERSHIP DISCLOSURE**

### **Disclosure to Members**

16. (1) Except as required by the Relevant Law, no Member or Dependant of a Member are entitled to obtain Fund information that in the opinion of the Trustee would be inappropriate to disclose.

### **Inspection of Documents**

- (2) A copy of this Deed and any other documents as required by the Relevant Law must be made available for inspection by any Member or Beneficiary at their request and unless otherwise required by the Relevant Law, it is sufficient to make a copy of this Deed or other documents available to the Member or Beneficiary for inspection at a place nominated by the Trustee.

### **Service**

- (3) Any information to be given under this Deed will be deemed to have been validly given if handed to the party to be served or if posted by prepaid post and duly addressed to the party to be served at the last known address of such party or by electronic communication.

## **MEMBERSHIP OF FUND**

### **Application for Membership**

- 17. (1) Any person may make application in writing to the Trustee to join the Fund and the Trustee may accept, accept subject to conditions that may be varied or removed or refuse any application for membership in its absolute discretion.

### **Participating Employer may Nominate Members**

- (2) The Trustee may at its sole discretion determine to admit an employee nominated by a Participating Employer or an applicant who is a Spouse of a person to membership of the Fund and that applicant may be required to complete an application for Membership.

### **Date of Membership**

- (3) A person becomes a Member from the date upon which the Trustee accepts his or her application and the application is deemed to be an agreement by the person to be bound by this Deed and an appointment by the Member of the Trustee as his or her attorney to do everything permitted by this Deed.

### **Member's right to interest under Deed**

- (3) No person whether as the Member or otherwise will have any claim right or interest to or in respect of the Fund or any contributions or any interest or any claim upon or against the Trustee or an employer except under and in accordance with the provisions of this Deed and the Relevant Law.

### **Members Ceases to be Member**

- (5) A person ceases to be a Member:

- (a) when he or she dies;
- (b) when the total amount of all amounts payable under the Deed in respect of his or her membership has been paid or transferred; or
- (c) when under the Deed any benefit payable to him or her or any person on his or her account ceases to be payable.

#### **Transfers to Fund**

- (6) The Trustee may, in consultation with the Actuary (if any), make such arrangements as it thinks proper with:-

- (a) the Member, or
- (b) any previous employer of the Member, or
- (c) the Trustees of any superannuation fund of which the Member was or is a Member, or,
- (d) any of them,

for any transfer of assets to the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the transfer of such assets to the Fund.

#### **Transfers from Fund**

- (7) Should the Member become eligible to join another Regulated Superannuation Fund the Trustee may, if requested by the Member and authorised by the Relevant Law, in lieu of part or all of any Benefit to which the Member may be entitled under this Deed, transfer to the trustees of the fund such portion of the assets of the Fund as the Trustee, if necessary acting on the advice of the Actuary (if any), considers equitable having regard to the Member's accrued benefit at the date of transfer.

### **EMPLOYER AND MEMBER TO PROVIDE INFORMATION**

#### **Information to be Provided on Request**

18. (1) Every employer, every Member and every person claiming a benefit may be required, from time to time, to give to the Trustee information and produce to it documents, as the Trustee considers are required for the purpose of putting this Deed into effect, and for arranging insurances for the purposes of the Fund.

#### **Trustee may refuse to Accept Contributions**

- (2) The Trustee need not verify any information given under this clause but may in its absolute discretion refuse to accept contributions or further contributions and

may refuse to pay benefits to or in respect of a Member or Beneficiary if information is not given by the employer, Member or Beneficiary, as the case may be.

#### **Members over 65 years**

- (3) A Member must inform the Trustee as soon as practical after the Member ceases to be employed on at least a part-time basis after age 65 years.

### **ARBITRATION**

19. Except where the Superannuation (Resolution of Complaints) Act 1993 applies, if any question or dispute arises with respect to the Fund or this Deed, and if the Trustee so requires, the question or dispute may be referred to a single arbitrator agreed to by the parties to the question or dispute, or in default of agreement, to an arbitrator appointed pursuant to the statutory provisions applicable to arbitration in the State or Territory of the Commonwealth of Australia in which this Deed was executed.

### **FUND RECORDS**

#### **Trustee to Keep Records**

20. (1) The Trustee must keep or cause to be kept a complete record of all persons who become Members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund and may establish and maintain any accounts it considers suitable.

#### **Record and Custody of Investments**

- (2) The Trustee must keep appropriate records and accounts in proper order, and make suitable arrangements for their custody and for custody of documents relating to the investments and must retain the appropriate records and accounts for the time and in the manner prescribed under the Relevant Law.

#### **Trustee Receipt**

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

#### **Each Member to have an Account**

- (4) The Trustee must establish an account in respect of each Member and such accounts as are considered necessary to which the Trustee must credit and debit amounts as the Trustee may from time to time determine.

## RESERVE ACCOUNT

### Trustee may Establish Reserve Account

21. (1) The Trustee may establish Reserve Accounts in respect of the Fund and may transfer to the credit of a Reserve Account any amount not credited to the Accumulated Accounts as earnings.

### Reserve Account separate from Other Accounts

- (2) Whilst any moneys are held in a Reserve Account, they do not form any part of any Accumulation Account or Pension Account and any income earned and expenses incurred by the Fund on the moneys held in a Reserve Account must be credited or debited to the Reserve Account.

### Use of Reserve Account

- (3) A Reserve Account may at the discretion of the Trustee be used for the following purposes:
- (a) To generally give effect to the reserving strategy established by the Trustee to smooth the investment earnings of the Fund;
  - (b) To provide for such contingencies as the Trustee determines;
  - (c) To augment the fund earning rate;
  - (d) To meet any Taxation payments payable by the Fund;
  - (e) To pay any expenses, charges, commission or brokerage payable by the Fund;
  - (f) To or for the benefit of a Member, Pensioner, Beneficiary or former Member including augmentation of the Accumulation Account or Pension Account on a basis that does not breach the Relevant Law; or
  - (g) For any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

## CONTRIBUTIONS

### Contributions by Employer

22. (1) Subject to this clause, if and so long as a Member is employed, or as otherwise authorised by the Relevant Law, a Participating Employer or other employer may contribute to the Fund in respect of the Member at a rate as may be agreed from time to time between the Participating Employer, the Member and the Trustee or as required by the Relevant Law.

### **Member Contributions**

- (2) The Trustee may accept contributions by or in respect of an Eligible Person that are not contributions by an employer.

### **Employer may Suspend or Reduce Contributions**

- (3) An employer may, from time to time, by notice in writing to the Trustee suspend or reduce the payment of contributions by it in respect of a Member.

### **Refund of Contributions for Period when Member not an Eligible Person**

- (4) As soon as reasonably possible after becoming aware that a Member has ceased to be an Eligible Person the Trustee must refund to the Member or to the other person any contributions made to the Fund by the Member or that person in respect of the Member since he or she ceased to be an Eligible Person, and for the purpose of determining the Member's interest in the Fund it is assumed that these contributions were not made to the Fund.

### **Trustee may Establish Separate Employer Account**

- (5) The Trustee may in respect of each Member establish a separate Employer Account to which is credited contributions made in respect of the Member by the employer plus interest on those contributions, less the costs of any policy of assurance effected in respect of the Member, and a proportionate share of the costs expenses and taxation of the Fund.

### **Splittable Contributions**

- (6) The Trustee may if requested by a Member roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse, that is equal to an amount of splittable contributions made in respect of that Member in a manner permitted by the Relevant Law.

## **BENEFITS**

### **Member entitled to Pension**

- 23. (1) A Member who may receive a benefit in circumstances approved under the Relevant Law is entitled to receive a Pension that can be supported by an amount equal to the Accumulated Members Account standing in his name as determined by the Trustee, when required, on the advice of the Actuary.

### **Trustee may Purchase Annuity**

- (2) The Trustee may, at the request of a person entitled, pay all or part of any benefit payable pursuant to the provisions of the Deed to such regulated

superannuation fund, or for the purchase of such annuity or pension (of any type and including a complying pension) as the person so entitled may request.

### **Benefit as a Lump Sum**

- (3) Unless the Member completes an application to receive part or all of his or her benefit as a lump sum, the benefit under this Deed will be paid as a pension.

### **Lump Sum may be Determined**

- (4) On the written application of a Member or dependant, the Trustee will determine the amount of the lump sum payable and will commute to a lump sum benefit the whole or any part of any pension payable from the Fund to a Member, former Member or dependant, as applicable, provided that:
- (a) the commutation of the benefit is permitted by the Relevant Law;
  - (b) the amount of the commuted benefit including the value of any remaining pension is permitted by the Relevant Law.

### **Amounts to be Preserved**

- (5) No amount that the Relevant Law requires to be preserved may be paid to a Member until his retirement from gainful employment at or after attaining the preservation age, his earlier death, total and permanent disablement, or in the other circumstances acceptable under the Relevant Law.

### **Payment of Death Benefit**

- (6) Except where a direction has been given under this Deed, any death benefit will be paid as the Trustee in its absolute discretion decides by way of purchased annuities, pensions (of any type) or other periodical payments (in each such case upon such terms as the Trustee may decide) or lump sum payments or any combination of such methods of payment, either:
- (a) to one or more of the Dependants of the Member and in proportions as the Trustee in its absolute discretion decides; or
  - (b) to the legal personal representative of a Member -

and may take into account any specific instructions as to the payment of the death benefit that are included in a beneficiary nomination by the former Member or the last Will of the former Member.



**Trustee may effect Policy of Insurance**

- (7) The Trustee may effect any policy or policies of insurance assurance or endowment in respect of a Member for the purpose of providing a sum or sums on death, disablement or sickness of a Member.

**Payment in Specie**

- (8) The Trustee may with the consent of a Member or Beneficiary to whom a Benefit is payable transfer investments of the Fund of equivalent value to the Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of this Deed provided however that the Trustee is satisfied that the transfer is permitted by the Relevant Law.

**PENSION CONDITIONS****Trustee and Member may Agree on Pension**

24. (1) Where a benefit is payable under this Deed by way of pension, the Trustee and the Member may agree that the pension be paid as one or more of the pensions provided by this Deed and in the absence of agreement, the Trustee may determine the basis on which the pension is paid and may apply all or part of a Member's Benefit to the purchase of an annuity that meets the requirements of the Relevant Law.

**Pension may not be Assigned**

- (2) Pensions payable to a person from the Fund must not be assigned or otherwise transferred by that person (except to the extent permitted by this Deed) and must not be mortgaged or encumbered in any manner.

**Pension may not be used as Security**

- (3) Neither the capital value of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.

**Pension Account**

- (4) The Trustee may in relation to Members being paid a Pension separate the assets of the Members into a Pension Account for the purpose of enabling the payment of all or part of any liability in relation to the payment of the Pension as those liabilities fall due.

## ALLOCATED PENSIONS

### Pension may be non-commutable or commutable

25. (1) An allocated pension (in this clause called “the pension”) may be a non-commutable allocated pension or a commutable allocated pension.

### Pension must be paid annually

- (2) The pension must be paid, at least, annually.

### Amount of Pension

- (3) The annual amount of the pension, except a payment by way of a commutation, must not be greater than nor less than any maximum or minimum amounts stated in the Relevant Law and the pension must comply with the requirements of the Relevant Law.

### Payment Dates

- (4) The pension may be paid on such dates and by installments of such amounts as the Trustee and the Member agree or, in the absence of agreement, as the Trustee determines and will cease to be payable if the Member's Benefit is reduced to nil.

### Commutation

- (5) (a) A person in receipt of a non-commutable pension may not commute the pension to a lump sum that is paid to the person unless either the purpose is permitted by the relevant law or before commutation the person has satisfied a condition of release referred to in the relevant law, in which case the person may commute in accordance with paragraph (b).
- (b) A person in receipt of a commutable pension may commute from time to time part or the whole of the pension to a lump sum payment on making a written application to the Trustee provided that the Trustee will only act on the written application to the extent that doing so will not breach the Relevant Law and must not commute any part of a pension unless the requirements of regulation 1.07A of the Superannuation Industry (Supervision) Regulations 1994 are satisfied.

### Pension to be Paid to Reversionary Beneficiary

- (6) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of a Member to whom the pension is being paid, a pension may be paid to one or more reversionary beneficiaries. The Trustee may pay the pension to any of the reversionary

beneficiaries as it, in its absolute discretion, determines.

#### **Reversionary Beneficiary Pension Conditions**

- (7) The amount and the terms and conditions of the pension paid to a reversionary beneficiary under this clause may, in accordance with the Relevant Law, be agreed on by the reversionary beneficiary and the Trustee, but in the absence of agreement, the amount and the terms and conditions of the pension will be determined by the Trustee.

#### **When Pension Ceases**

- (8) The pension payable under this sub-clause ceases to be payable:
- (a) if the Member's Benefit is reduced to nil; or
  - (b) on the death of the reversionary beneficiary.

#### **Pension on Death of a Member**

- (9) When, in respect of a deceased Member, the pension:
- (a) ceases to be payable to all of the Member's reversionary beneficiaries under paragraph(7); or
  - (b) is not payable because the Member has no reversionary beneficiary; or
  - (c) is not payable because the Trustee has determined to not pay the pension to any of the Member's reversionary beneficiaries -
- the balance of that Member's Benefit (if any) may be:
- (d) held by the Trustee on trust for the benefit of such one or more of the Member's Dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines; or
  - (e) paid to the Member's legal personal representative.

#### **Trustee may Determine who to receive the Pension**

- (10) If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may at its discretion pay the benefit to a person or persons selected by the Trustee.

## **MARKET LINKED PENSION**

### **Pension to be Paid at Least Annually**

26. (1) A market linked pension (in this clause called “the pension”) must be paid, at least annually, to the Member or to a reversionary beneficiary.

### **Period of Pension**

- (2) The period during which the pension may be paid is one of the periods allowed by the Relevant Law.

### **Amount of Pension**

- (3) The annual amount of the pension must be determined in accordance with the Relevant Law.

### **Commutation**

- (4) The Trustee must not permit a person in receipt of the Pension to commute part or the whole of the Pension to a lump sum payment unless permitted by the Relevant Law and all requirements of the Relevant Law are satisfied.

### **Pension Conditions**

- (5) The pension payable under this clause:
- (a) does not have a residual capital value; and
  - (b) if it reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
  - (c) if it is commuted, the commuted amount must not exceed the account balance immediately before the commutation.

### **Transfer of Pension**

- (6) The Trustee, at its discretion, may determine to transfer the pension only as permitted by the Relevant Law.

### **Assets Funding Pension may be held on Death**

- (7) If on the death of the Member or reversionary beneficiary, a pension is not transferred as provided in this clause, any assets of the Fund that were funding the pension will be held by the Trustee on trust for the benefit of:
- (a) such one or more of the Member's Dependents, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines; or
  - (b) paid to the Member's legal personal representative.

**Trustee may Determine who to receive the Pension**

- (8) If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may at its discretion pay the benefit to a person or persons selected by the Trustee.

**APPOINTMENT OF AUDITOR****Auditor Appointment**

- 27. (1) The Trustee must, when appropriate, appoint or remove an auditor to the fund.

**Audit to be Arranged**

- (2) The Trustee must each financial year make suitable arrangement for the audit of the accounts, books, relevant records and financial statements of the Fund in a manner that complies with Relevant Law, and within any time limits specified by Relevant Law.

**APPOINTMENT OF ACTUARY****Actuary Appointment**

- 28. (1) The Trustee may appoint an Actuary to the Fund.

**Actuarial Investigation**

- (2) The Trustee may whenever it considers it appropriate or when prescribed by Relevant Law call on the Actuary to undertake an investigation and to make a valuation of the assets and liabilities of the Fund and must provide him with such information as he requires for this purpose.

**AMENDMENT OF DEED****Trustee may Vary Deed**

- 29. (1) Subject to this clause, the Trustee may at any time by resolution, or by instrument in writing, add to, amend, alter, modify, rescind or vary either prospectively or retrospectively all or any of the provisions of the Deed including this clause.

**Member's right to Accrued Benefits may not be Reduced without Consent**

- (2) No reduction of the claim or right to an accrued benefit of a Member may be made without his or her prior consent in writing.

## TERMINATION OF FUND

### Fund to be Terminated

30. (1) The Fund will be terminated upon the happening of any of the following events:

- (a) if the Fund becomes a non-resident;
- (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund;
- (c) if there are no Members in the Fund;
- (d) upon the order of any Court of competent jurisdiction or when obliged so to do under the Relevant Law.

### Further Contributions not to be Received

(2) As from the closing date:-

- (a) no further contributions made by any employer or any Member will be accepted, other than arrears of contributions due at the closing date; and
- (b) arrears of contributions, if any, will be called in immediately.

### Application of Fund on Termination

(3) After the sale and realisation of the Fund the Trustee shall after paying costs of the Fund and its winding up distribute the monies as follows:

- (a) Where the proceeds of the assets of the Fund are required to be preserved under the Relevant Law, the Trustee shall notify each Member of this requirement and request them to nominate in writing within one month a fund approved under the Relevant Law for the receipt of the proceeds;
- (b) Where the proceeds are not required to be preserved under the Relevant Law, as directed by the Member or if a Member fails to make such a direction, in such manner as the Trustee, subject to the Relevant Law, determines is reasonable in all the circumstances.