

# **SUPERANNUATION TRUST DEED**

**The Super Superannuation Fund**

**Strategic Clarity Pty Limited**

**ACN 083 682 820**

**(Trustee)**

**Date: 1 July 2004**

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**DEED** made at Sydney the 1<sup>st</sup> day of July 2004.

**BY STRATEGIC CLARITY PTY LIMITED ACN 083 682 820 ("Trustee")**

## **RECITALS**

- A. The Trustee wants to establish a superannuation trust fund to provide superannuation benefits for persons who become members of the fund.
- B. The Trustee has agreed to act as the first trustee of the fund constituted by this deed.

## **THIS DEED WITNESSES**

### **1. THE FUND**

#### **1.1 Name of the Fund**

The trust fund constituted by this Deed is called The Super Superannuation Fund ("**Fund**").

#### **1.2 Objects of the Fund**

The Fund consists of all money (including contributions to the Fund and investments for the time being representing the same) from time to time held by or on account of the Trustee pursuant to this Deed who holds the same on trust for the objects and the purposes of this Deed.

#### **1.3 Purpose of Paying Old-Age Pensions**

If, at any time, the Trustee is not a Constitutional Corporation, the primary purpose of the Fund is, for so long as that situation prevails, the payment of old-age pensions in accordance with the requirements of these Rules.

### **2. GOVERNING LAW**

This Deed is governed by and construed according to the laws of New South Wales.

### **3. DATE OF COMMENCEMENT**

The Fund was constituted on 1 July 2004.

### **4. THE TRUSTEE**

The expression the "Trustee" includes replacement or additional trustees.

### **5. INTERPRETATION**

#### **5.1 General**

- (a) This Deed will be read and construed on the basis that the provisions of the Act and the regulations made thereunder are incorporated into the Deed to the extent that they impose requirements on the Trustee or are required by the Act to be so incorporated but this Deed is not to be so read or construed and no provision or regulation shall be so incorporated if to do so would constitute a breach of the power granted by Rule 24 to amend the provisions of this Deed. Where there are any inconsistency between a

provision in this Deed and a provision in the Act or regulations which is so incorporated, the latter shall prevail over the former.

- (b) If the whole or part of any Rule is judged to be invalid for any reason, the invalidity shall not affect the validity or operation of the remainder of this Deed and the invalid Rule or part of a Rule is deemed to have been deleted from this Deed.
- (c) Headings are for convenience only and do not affect the interpretation of the Deed.
- (d) Words denoting one gender include other genders and words denoting the singular number include the plural number and vice versa.
- (e) The word “includes” in any form is not a word of limitation.
- (f) A reference to any document (including this Deed) is to that document as varied, notated, ratified or replaced from time to time.

## 5.2 Definitions

In this Deed:

**“Act”** means the Superannuation Industry (Supervision) Act, 1993 (C’th) and regulations, declarations or orders made or issued thereunder or any replacement or additional legislation in respect of the regulation of superannuation funds. Any reference in this Deed to the provisions or requirements of the Act includes provisions or requirements which must be complied with in order to obtain the maximum taxation concessions available in respect of superannuation.

**“Beneficiary”** has the meaning attributed to it in the Act.

**“Constitutional Corporation”** has the meaning attributed to it in the Act.

**“Deed”** means this Deed and any amendment made to it from time to time.

**“Dependant”** means the Spouse, widow, widower or child or a Member or any other person who, in the opinion of the Trustee, was dependent on the Member at the relevant date or who, in the opinion of the Trustee, the Member had a legal or moral obligation to support at the relevant date.

**“Employer”** means a Member’s employer who makes contributions to the Fund and in relation to a particular Member means the employer of that person at the relevant time.

**“Employer Sponsored Member”** means a Member whose Employer is contributing to the Fund at the relevant time.

**“Member”** means a person who the Trustee has admitted as a member of the Fund. A person shall cease to be a Member when the whole of that person’s benefit entitlement under the Deed has been paid or when the Member dies.

**“Member’s Account”** means the account maintained by the Trustee in accordance with Rule 9.

**“Member’s Benefit”** is the amount standing to the credit of the Member’s Account.

**“Participating Employer”** means an Employer who has been admitted by the Trustee, in accordance with Rule 27, to be a participant in the Fund.



**“Permanently Disabled” and “Permanent Disablement” means:**

- (i) any disablement which, in the opinion of the Trustee, has rendered the Member unlikely to ever again engage in gainful employment for which the Member is reasonably qualified by training, education or experience; or
- (ii) where any part of the benefit payable on permanent disablement is insured, the definition of permanent disablement or permanent and total disablement contained in the policy document evidencing the contract of insurance,

provided that, for the purposes of payment of a Preserved Benefit, the Trustee shall only regard a Member as being permanently disabled or incapacitated in the circumstances provided for in the Act in relation to the payment of such a benefit.

**“Policy Committee”** has the meaning given to it in Rule 18.

**“Preserved Benefit”** means the whole or any part of any benefit which is required by the Act to be preserved for the Member in the Fund or in another fund or superannuation arrangement until the Member has retired from the workforce and attained the age prescribed in the Act as being the preservation age for that Member, or until the Member’s earlier death or Permanent Disablement or payment of the benefit in other circumstances as are permitted by the Act.

**“Regulator”** means the relevant body appointed by an Act of Parliament to regulate superannuation funds.

**“Rules”** mean the provisions of this Deed and any alteration to, addition to or variation thereof made from time to time.

**“Spouse”** means the spouse of a Member and includes a person who, although not legally married to a Member, lives with the Member on a genuine domestic basis as the husband or wife of the Member and includes a person who, in relation to a Member, comes within the definition of “spouse” in the Act.

**“Strategy”** means an investment strategy established in accordance with Rule 6.

## **6. STRATEGIES**

### **6.1 Strategies**

The Trustee may divide the Fund into strategies and determine what forms of investment are to apply to each Strategy. If the Trustee does so, contributions to the Fund are allocated to the Strategies to which the Member or the Member’s Employer has requested that the contributions be allocated. A Member has an interest in each Strategy into which contributions and other amounts have been paid for the Member.

### **6.2 Establishment of Strategies**

The Trustee may establish a Strategy by resolving to establish it and naming it. The Trustee may change the name of a Strategy.

### **6.3 Allocation of Assets and Liabilities to Strategies.**

The Trustee must maintain the records of the Fund to identify which assets and liabilities are attributed to a Strategy and credit income and outgoings to the Strategy to which they are, in the opinion of the Trustee, attributable.

### **6.4 Variation and Mergers of Strategies**

After notifying Members of affected Strategies of its intention to do so, the Trustee may merge two or more Strategies into one, split a Strategy into a larger number of Strategies or terminate a Strategy.

### **6.5 Switching of Strategies**

A Member may request the Trustee to switch amounts between one Strategy and another. The Trustee has an absolute discretion to decide whether to give effect to such a request.

## **7. ADMISSION OF MEMBERS**

### **7.1 Admission of Members**

- (a) Persons who wish to become Members may apply for membership by completing the application form provided by the Trustee.
- (b) When the Trustee accepts the application, the person making the application becomes a Member.
- (c) If the application is refused, the Trustee will advise the applicant accordingly and refund contributions.

### **7.2 Applicants to Provide Information**

All applicants for membership of the Fund must provide the Trustee with the information that the Trustee requires, including proof of their correct age.

### **7.3 Deemed Membership**

The Trustee may accept a person selected by an Employer as a Member without requiring the person to complete a membership application form in accordance with Rule 7.1, if the Employer has made an application for membership in respect of the person and has provided the Trustee with the information that the Trustee requires, including the name, address and age of the person.

### **7.4 Acceptance of Applications**

On acceptance of a person as a Member, that person is bound by this Deed in all respects as if he or she were an original party to this Deed. The Trustee shall, as soon as practicably advise the Member in writing that he or she has been accepted as a Member and provide to the Member any other information as is required by the Act.

### **7.5 Register of Members**

The Trustee must maintain a register of Members.

## **8. CONTRIBUTIONS**

### **8.1 Employer Contributions**

- (a) An Employer, or any other person authorised by the Act to make contributions to the Fund, may contribute to the Fund.
- (b) At the time of paying the contributions to the Trustee, the Employer shall advise the Trustee of the amount of the contribution in respect of each Member.

### **8.2 Member Contributions**

A Member or a Member's Spouse may contribute to the Fund for the Member or the Member's Spouse.

### **8.3 Payment on Behalf of a Member**

The Employer may pay, on behalf of a Member, contributions that are payable by the Member and any contributions so paid by the Employer shall, if the Trustee is so advised, be deemed to be contributions made by the Member.

### **8.4 Refusal to Accept Contributions**

The Trustee must refuse to accept contributions in respect of a Member and shall refund any contributions made where:

- (a) the contribution is being made by a person other than a person permitted by the Act to contribute to the Fund; or
- (b) the acceptance of the contributions is contrary to the requirements of the Act.

### **8.5 Crediting of Contributions**

If the Trustee has established Strategies, contributions shall be allocated to Strategies in accordance with Rule 6.1.

## **9. ACCOUNTS**

### **9.1 Members' Accounts**

The Trustee must maintain for each Member a Member's Account to which is credited contributions in respect of that Member, investment earnings, insurance proceeds and other amounts that the Trustee determines to credit to the Member's Account and to which is debited fees, expenses, taxation, insurance premiums, benefits paid and other amounts that the Trustee determines to debit to the Member's Account.

### **9.2 Allocation of Interim Earning Rate**

The Trustee may allocate to the Member's Account of a Member, in respect of whom a benefit is being paid, an interim earning rate determined by the Trustee to apply from the date in respect of which an allocation to that account was last made to the date on which the benefit is being paid.

### **9.3 Reserve Account**

The Trustee may credit such amounts as it thinks fit to a Reserve Account and may make payments out of that Account or may transfer amounts from that Account to Members' Accounts.

### **9.4 Other Accounts**

The Trustee may establish and administer such other accounts that the Trustee determines to be appropriate.

## **10. FEES AND CHARGES**

### **10.1 Trustee Fees and Charges**

The Trustee may charge and be paid from the Fund such fees and charges as the Trustee, from time to time, determines, including management charges, contribution charges, exit fees, switching charges, benefit payment charges and charges for commutation of pensions. The Trustee may, from time to time, vary the fees and charges, including for a particular Member or group of Members.

### **10.2 Payments to Advisers**

The Trustee may, out of fees and charges that are levied, make payments to advisors for introducing Members and Employers to the Fund and may make payments for such other purposes as the Trustee determines.

## **11. INVESTMENTS**

### **11.1 Investment Power**

Subject to the provisions of the Act and provided investments are made on an arm's length basis, the Trustee may invest the whole or any part of the moneys or assets of the Fund and each Strategy in any investments of any kind, including derivatives, which the Trustee, in its absolute discretion, determines.

### **11.2 Investment Strategy**

The Trustee must, from time to time, formulate and give effect to an investment strategy or strategies in accordance with the requirements of the Act.

### **11.3 Variation of Investments**

The Trustee has power to vary, transpose and replace the investments in such manner as it determines and is not responsible for any loss occasioned by so varying, transposing or replacing.

### **11.4 Appointment of Investment Managers**

The Trustee may appoint investment managers to invest the assets of the Fund. The agreements with the investment managers must comply with the requirements of the Act.

## **11.5 Custodians**

The Trustee may appoint custodians to hold assets of the Fund on behalf of the Trustee.

## **12. POLICIES OF INSURANCE AND ANNUITIES**

- (a) The Trustee may, in its absolute discretion, apply any part of the Fund in the payment of premiums of a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest or in payment of the consideration for an annuity.
- (b) The Trustee may effect the policies or annuities with a company on the terms and conditions and for the periods of time that the Trustee determines. The Trustee has the power to accept an assignment of a policy of life, disability or accident insurance or of any annuity on such terms as the Trustee determines.
- (c) The Trustee has the power to continue the policies or annuities for such periods of time that the Trustee determines and to discontinue or surrender the policies or annuities.

## **13. RECORDS, ADMINISTRATION, ACCOUNTS AND AUDITING**

### **13.1 Records**

The Trustee must keep accounts, records and copies of resolutions which correctly record and explain the transactions and financial position of the Fund.

### **13.2 Administrator**

The Trustee may appoint a company or person as the administrator of the Fund to maintain records and administer the Fund on behalf of the Trustee.

### **13.3 Auditor**

The Trustee will appoint an auditor or a registered company auditor (as required by the Act) to conduct an annual audit of the records and accounts of the Fund and certify to the Trustee whether the fund complies with the relevant requirements of the Act.

## **14. FORFEITURE OF BENEFITS**

**14.1** A Member who has not yet become entitled to be paid a benefit shall cease to be entitled or contingently entitled to the Member's Benefit at the discretion of the Trustee if:

- (a) in its opinion the Member has attempted to assign, alienate, charge or encumber all or part of his or her Member's Benefit;
- (b) the Member is declared mentally ill or becomes liable to have his or her affairs dealt with under the laws relating to mental health; or
- (c) the Member's whereabouts cannot be traced by the Trustee after making reasonable enquiries.

**14.2** The Trustee will apply the amount so forfeited for the benefit of the Member or such of the Member's Dependants as the Trustee, in its absolute discretion, determines, or in whatever manner the Trustee determines to be appropriate.

## **15. MEMBER'S RIGHTS TO BENEFITS AND STATEMENTS**

### **15.1 Rights of Members**

The rights of the Members and their Dependants to receive benefits from the Fund are those set out in this Deed.

### **15.2 Statements to Members**

The Trustee must provide to the Members, or cause the Members to be provided with, statements, notices, documents and information in accordance with the requirements of the Act.

## **16. ENQUIRIES AND COMPLAINTS**

The Trustee must take reasonable steps to ensure that arrangements are in force under which Members and Beneficiaries can make enquiries and complaints.

## **17. TRUSTEE: APPOINTMENT AND REMOVAL**

### **17.1 Eligibility for Appointment as a Trustee**

Unless, under Rule 1.3 the primary purpose of the Fund is the provision of old-age pensions (within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900), the Trustee must be a Constitutional Corporation and must meet the requirements of the Act.

### **17.2 Ceasing to Act as Trustee**

A Trustee ceases to be a Trustee if:

- (a) it resigns from the office of Trustee; or
- (b) it goes into liquidation or a receiver is appointed of it;
- (c) it enters into administration; or
- (d) the Trustee is disqualified from being a trustee of a superannuation fund by the operation of an Act of Parliament; or
- (e) it is removed in accordance with a procedure provided for in the Act.

### **17.3 Appointment of Replacement Trustee**

- (a) A Trustee that resigns, is disqualified or is removed must appoint, by deed, a replacement Trustee.
- (b) If the Trustee is placed in receivership, liquidation or administration, the receiver, liquidator or administrator has the power by deed to appoint a replacement Trustee or Trustees.

- (c) If the receiver, liquidator or administrator (if any) or a Trustee that resigns or is disqualified fails to appoint a replacement Trustee within 60 days after a vacancy occurs, the administrator of the Fund (if any) may, by deed, appoint a replacement Trustee but if the administrator fails to appoint a replacement Trustee within 90 days after a vacancy occurs, a majority of the Participating Employers (if any) or, if they fail to make an appointment, a majority of the Members have the power by deed to appoint a replacement Trustee.
- (d) If a Trustee is removed in accordance with a procedure provided for in the Act, a replacement Trustee may be appointed in accordance with that procedure.

#### **17.4 Appointment of Additional Trustee**

The Trustee or Trustees may appoint, by deed, an additional Trustee.

### **18. POLICY COMMITTEES**

The Trustee will, if required by the Act, appoint a Policy Committee representing Members or a group of Members, on such basis as the Trustee determines and in accordance with the requirements of the Act, to advise the Trustee on issues related to those Members.

### **19. POWERS AND DISCRETIONS OF TRUSTEE**

#### **19.1 Powers**

The Trustee shall have complete management and control of the Fund and shall, in addition to the powers otherwise granted by this Deed and conferred on trustees by statute and general law, exercise any of the following powers:

- (a) to pay out of the Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund;
- (b) to pay out of the Fund expenses incurred in:
  - (i) administration of the Fund;
  - (ii) having the accounts of the Fund audited;
  - (iii) having taxation returns and Government returns prepared;
- (c) to enter into all contracts and deeds on behalf of the Fund as the Trustee considers necessary for the administration of the Fund.
- (d) to delegate (by power of attorney or otherwise) to any person or company any of the powers duties and discretions vested in the Trustee on the terms and conditions that the Trustee, in its absolute discretion, determines;
- (e) to take and act on the advice of a barrister, solicitor, accountant, actuary, superannuation consultant or any other adviser in relation to the administration of the Fund and pay out of the Fund the fees payable to these advisers;

- (f) to commence, carry on and defend any legal proceeding that the Trustee, in its absolute discretion, determines to undertake the proper administration of the fund or to protect the rights of Members;
- (g) to open and maintain such bank accounts as the Trustee determines;
- (h) to sell the assets of the fund by private sale or public auction, for cash or on terms and in such other manner and on such other terms as the Trustee determines;
- (i) to borrow any sum of money for the purposes permitted by the Act and secure the repayment of that money in the manner and upon such terms and conditions and at such rate of interest as the Trustee determines and, in particular, by charging or mortgaging all or any of the assets of the Fund. No lender is to be concerned to enquire as to whether the necessity for any such borrowings has arisen or as to the purpose for which it is required or as to the application of money borrowed.
- (j) to elect that the Fund become a regulated superannuation fund under the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (k) to act on a direction given by a Court, the Regulator or the Superannuation Complaints Tribunal established under the Superannuation (Resolution of Complaints) Act, 1993 (C'th);
- (l) to comply with covenants of trustees imposed by the Superannuation Industry (Supervision) Act, 1993 (C'th);
- (m) to do those things permitted or required by the Act; and
- (n) generally do all such things and perform such acts as the Trustee, in its absolute discretion, determines to be appropriate in the administration of the Fund and the performance of its obligations under this Deed.

## **19.2 Discretions**

In administering the Fund and in exercising the trusts, powers and authorities vested in it, the Trustee has an absolute and uncontrolled discretion at all times to exercise or refrain from exercising the trusts, powers and authorities.

## **20. LIABILITY OF TRUSTEE AND MEMBERS**

### **20.1 Liability of Trustee**

The Trustee and its directors and employees are not liable for any acts or omissions other than those that are:

- (a) dishonest; or
- (b) attributable to an intentional or reckless failure to exercise the degree of care and diligence required of a trustee.



## **20.2 Members' Liability**

The Members (other than in their capacities as Trustees) are not liable for any action taken or omitted in administering the Fund.

## **21. TRUSTEE'S AND DIRECTORS' INDEMNITY**

The Trustee and each of the directors and employees of the Trustee shall be indemnified out of the Fund against all liabilities incurred by them as a result of any action taken or omitted in administering the Fund other than in the circumstances stated in Rule 20.1 and have a lien on the Fund for this indemnity. The Trustee and the directors and employees of the Trustee shall not be indemnified out of the Fund for any penalty imposed on them under the Act.

## **22. TRUSTEE AS MEMBER'S ATTORNEY**

Each Member irrevocably appoints the Trustee as his or her attorney to execute and sign all deeds and instruments and do all things the Trustee decides to be necessary or desirable in administering the Fund.

## **23. AVAILABILITY OF DEED**

### **23.1 Inspection of Deed**

A copy of this Deed shall be kept by the Trustee and be available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Member or a Beneficiary.

### **23.2 Providing copy of Deed**

If required by the Act, the Trustee will, on the written request of a person who is, or was within the preceding 12 months, a Member or a Beneficiary, provide that person with a copy of this Deed.

## **24. AMENDMENT OF DEED**

### **24.1 Variation of Deed**

The Trustee may, at any time by deed, amend all or any of the provisions of this Deed. The new provisions have the same validity and effect as if they had been originally contained in the Deed and are subject to being amended in like manner. No amendment can be made if it breaches the requirements of the Act or if it has the effect of reducing the amount of a benefit calculated on the basis of contributions to the Fund and earnings on those contributions, that has accrued, or become payable to a Member, before the date of the amendment unless:

- (a) the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund; or
- (b) the reduction is required to enable the Fund to comply with the Act;
- (c) the Member so affected approves in writing of the reduction; or
- (d) the Regulator approves in writing of the reduction.

## **24.2 Notification to Members**

As soon as practicable after a provision of the Deed is amended, the Trustee must, if required by the Act, give to the Members written advice that complies with the Act.

## **25. TRANSFER OF BENEFIT FROM ANOTHER FUND OR RETIREMENT SAVINGS FUND**

Where a Member requests that an amount standing to his or her credit or an asset in another superannuation fund or in a retirement savings account (RSA) or in approved deposit fund be transferred to the Fund, the Trustee may accept the transfer of this amount or asset to the credit of the Member in the Fund or in the Strategies advised to the Trustee by the Member.

## **26. TRANSFER OF BENEFIT TO ANOTHER FUND OR RSA**

### **26.1 Transfer to Another Fund or RSA**

(a) Subject to Rule 26.3, the Trustee may, on receiving the written request of a Member (unless the transfer is to a successor fund within the meaning of the Act), transfer the whole or part of the Member's Benefit to the trustees of another superannuation fund which the Trustee is satisfied complies with the Act or to a financial institution to be credited to a RSA nominated by the Member or, provided termination of employment has occurred, transfer the benefit to an approved deposit fund which the Trustee is satisfied complies with the Act. The Trustee may transfer, without the Member's consent, the whole or part of the Member's Benefit to such a fund if the Trustee is satisfied that it is a successor fund to the Fund.

(b) The transfer of the Member's Benefit, or part of the Member's Benefit, is a complete discharge to the Trustee in respect of any liability to that Member and persons claiming through that Member in relation to the amount so transferred. The Trustee may deduct from the amount to be transferred the amount of any taxation that is calculated by the Trustee to be payable in respect of the Member's Benefit.

### **26.2 Purchase of Annuity**

The Trustee may, on receiving the written request of a Member, apply any part of a benefit that the Member is entitled to be paid, in payment of the consideration for an annuity.

### **26.3 Preserved Benefits**

A transfer of any Preserved Benefit pursuant to Rule 26.1 shall only be made if it is a condition of the transfer that the amount of any Preserved Benefit transferred must not be paid from the transferee fund prior to the Member retiring from the workforce and attains the age prescribed in the Act as being the preservation age for that Member, except in the event of the Member's death or Permanent Disablement or in such other circumstances as are permitted by the Act.

### **26.4 Transfer to Eligible Roll-over Fund**

Where a benefit (other than a pension) has become payable under these Rules and the benefit has not been paid, the Trustee may, if permitted to do so by the Act and must, if required to do so by the Act, pay the benefit to an eligible roll-over fund (as defined in the Act) in the manner and circumstances prescribed by the Act.

## **27. ADMISSION OF PARTICIPATING EMPLOYERS TO FUND**

The Trustee may admit a Participating Employer as a contributor to and a participant in the Fund by completing the form provided by the Trustee. A Participating Employer so admitted is bound by the provisions of the Deed in the same way the Participating Employer would be if it had been an original party to the Deed.

## **28. WITHDRAWAL OF PARTICIPATING EMPLOYERS FROM FUND**

A Participating Employer ceases to be a contributor to and a participant in the Fund:

- (a) from the effective date of a written notice that it gives to the Trustee of its intention to cease to be a Participating Employer; or
- (b) with effect from the date it becomes bankrupt or is placed in liquidation or ceases to carry on a business.

## **29. BENEFIT PAYABLE ON RETIREMENT OR ATTAINING AGE 65**

Subject to the provisions of these Rules, the amount of the Member's Benefit shall be paid:

- (a) to a Member who retires from the workforce and attains age 55, or such other age prescribed in the Act as being the preservation age for that Member, or who retires from any gainful employment after attaining age 60;
- (b) to a Member on attaining age 65 who requests payment of the benefit;
- (c) to a Member when required to be paid in accordance with the Act.

## **30. BENEFIT PAYABLE ON DEATH**

### **30.1 Benefit Payable on Death**

If a Member dies before payment or commencement of payment of a benefit under Rule 29, the amount of the Member's Benefit shall be paid to the Member's legal personal representative or to one or more of the Member's Dependants, in such shares and proportions as the Trustee, in its absolute discretion, determines. The Trustee shall take account of any nomination of beneficiaries made by the Member, but is not bound by it unless the nomination is in the form of a binding direction given in accordance with the requirements of the Act, in which case, the Trustee will pay the benefit in accordance with that direction, if it is still current and valid at the date of the Member's death.

### **30.2 Payment other than to Dependant or Legal Personal Representative**

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, if permitted by the Act, pay the benefit to a person or persons selected by the Trustee or in any other manner.

## **31. BENEFIT PAYABLE ON DISABLEMENT**

### **31.1 Permanent Disablement Benefit**

Subject to the provisions of these Rules, if, before a benefit is paid or commences to be paid under Rule 29, a Member becomes Permanently Disabled, the Member's Benefit shall be paid to the Member or, if the Member is unable to manage his or her own affairs, to a trustee for the Member or to any of the Member's Dependants, in such proportions as the Trustee, in its absolute discretion, determines.

### **31.2 Temporary Disablement Benefit**

Subject to any limitations imposed by the Act, if, before to a benefit becoming payable under Rule 31.1, the proceeds of a temporary disablement insurance policy on the life of the Member becomes payable, the proceeds of the policy shall be paid to the Member or, if the Member is unable to manage his own or her own affairs, to any of the Member's Dependants and in such proportions as the Trustee, in its absolute discretion, determines.

## **32. BENEFIT PAYABLE TO AN EMPLOYER SPONSORED MEMBER ON TERMINATION OF EMPLOYMENT BEFORE RETIRING AGE**

- (a) If the employment by the Employer of an Employer Sponsored Member is terminated before age 60 otherwise than in the circumstances referred to in Rules 30 and 31 and he Member's new employer does not make any contributions to the Fund on his or her behalf, the Member's Benefit shall, if the Member has attained the age prescribed in the Act as being the preservation age for that Member, and is retiring from the workforce, the Member's Benefit will be paid to the Member.
- (b) If the Member has not attained the age prescribed in the Act as being the preservation age for that Member, or, having attained that age, has not retired from the workforce, the Trustee shall pay to the Member only that part of the Member's Benefit which is not a Preserved Benefit. The balance of the Member's Benefit will be retained in the Fund until it is paid in accordance with this Deed, subject to the provisions of these Rules.

## **33. BENEFIT PAYABLE ON THE GROUNDS OF FINANCIAL HARDSHIP**

The Trustee may, in its absolute discretion and if permitted by the Act, pay part or all of the Member's Benefit to a Member who is not entitled to be paid a benefit under the balance of these Rules, if the Trustee is satisfied that the Member would suffer financial hardship if part or the whole of his or her benefit is not paid to the Member.

## **34. BENEFIT PAYABLE IN OTHER CIRCUMSTANCES**

The Trustee may, in its absolute discretion, pay part or all of the a Member's Benefit to a Member, or another person, in the circumstances provided for in the Act, notwithstanding the restrictions imposed by these Rules.

## **35. PAYMENT OF UNCLAIMED MONEY**

The Trustee shall treat a benefit as unclaimed money and pay it in accordance with the requirements of the Act if:

- (a) the benefit (other than a pension) has become payable under this Deed; and
- (b) the person to whom the benefit is payable has reached the eligibility age for an age pension prescribed by the Act; and
- (c) the person to whom the benefit is payable has not applied to the Trustee to have the amount of the benefit paid to him or her; and
- (d) the Trustee is unable to pay the benefit because the Trustee, after making reasonable efforts to find the person to whom the benefit is payable, is unable to do so; or
- (e) the Act permits the payment to be made.

### **36. DEFERMENT OF PAYMENT OF BENEFIT**

At the request of the Member and with the consent of the Trustee the payment of any benefit payable under these Rules may be deferred until the Member requests payment of the benefit. That deferred benefit will, however, be paid in the event of the Member's death or Permanent Disablement or when required by the Act to be paid.

### **37. PAYMENT OF BENEFITS TO MINORS**

Where a person to whom benefits are payable under this Deed is a minor, the Trustee may pay the benefit to a trustee or to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

### **38. MODE OF PAYMENT OF BENEFITS**

#### **38.1 Lump Sum or Pension**

The benefits payable under the Rules shall, in the discretion of the Trustee, be paid in a lump sum or by way of pension or a combination of the two unless any part of the benefit is required by the Act to be paid by way of lump sum or pension. A benefit that is payable under Rule 29 shall (subject to any permitted commutations by Members and beneficiaries to lump sums) be paid by way of a pension that is an old-age pension within the meaning of Section 51(xxiii) of the Commonwealth of Australia Constitution Act, 1900 if the Trustee is not, at the time the benefit becomes payable, a Constitutional Corporation.

#### **38.2 Transfer in Specie**

The Trustee may, at the request of the recipient of a benefit and, if required under the Act, with the approval of the Regulator, pay benefits by transferring in species, assets of equivalent value to the benefit payable.

### **39. PENSION CONDITIONS**

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

Where a benefit is payable under the Rules by way of pension, the Trustee and the Member may agree that the pension be paid as a lifetime pension in accordance with Rule 40 or as a fixed term pension in accordance with Rule 41 or an allocated pension in accordance with Rule 42. In the absence of agreement, the Trustee shall determine the basis on which the pension is paid.

### **39.2 No Assignment or Encumbrance**

- (a) Pensions payable from the Fund must not be assigned or otherwise transferred by the person in receipt thereof (except to the extent permitted by the Rules) and must not be mortgaged or encumbered.
- (b) Neither the capital value (if any) of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.

### **39.3 Annuities**

The Trustee may, in its absolute discretion, (including where an old-age pension is required to be paid) provide pensions payable under these Rules by applying a Member's Benefit to the purchase of an annuity that meets the requirements of the Act.

### **39.4 Imputation Credits**

The Trustee may, in its absolute discretion, debit amounts to the accounts of Members to whom current pensions are not being paid and credit corresponding amounts to the accounts of Members to whom current pensions are being paid to compensate the latter for not obtaining the benefit of dividend imputation credits on investments in the form of shares in companies.

## **40. LIFETIME PENSIONS**

### **40.1 Pension Complies with Act**

- (a) A lifetime pension shall be paid, at least, annually throughout the life of the Member.
- (b) A lifetime pension shall comply with the requirement of the Act in relation to such pensions.

### **40.2 Pension Amount**

Subject to meeting the requirements of the Act in relation to the amount of pension payments, the annual amount of a lifetime pension shall be determined by the Trustee and shall be paid by instalments of such amounts and on such dates as the Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.

### **40.3 Indexation**

Subject to meeting the requirements of the Act in relation to pension increases, the amount of a lifetime pension shall be increased annually by the amount (if any) agreed on by the Trustee and the Member or, in the absence of agreement, as the Trustee determines.

### **40.4 Commutation of Pension**

- (a) A person in receipt of or entitled to a lifetime pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.

- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by the Act.
- (c) If the pension is commuted under this Rule 40.4, the amount payable must not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding Rules 40.4(a) and 40.4(b), if part or the whole of the lump sum amount is a Preserved Benefit, the Trustee shall deal with that benefit in accordance with the requirements of the Act.

#### **40.5 Pension Payable to Reversionary Pensioner on Death of Member**

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of the Member, a pension be paid to a reversionary pensioner or pensioners.
- (b) The amount of the reversionary pension shall be the amount agreed on by the Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.
- (c) The reversionary pension shall only be paid for the period and on the term permitted by the Act.

#### **40.6 Payment to Reversionary Pension or Legal Personal Representative**

- (a) Subject to Rule 40.5, in the event of the death of a Member entitled to a lifetime pension, within 10 years after the commencement date of the pension, the Trustee shall pay to a reversionary pensioner of the deceased Member or, if there is not a surviving reversionary pensioner, to the deceased Member's legal personal representative, an amount equal to the total payments that the Member would have received, had the Member not died, from the date of death until 10 years after the commencement date of the pension.
- (b) Subject to Rule 40.5, in the event of the death of a Member entitled to a lifetime pension, within 10 years after the commencement date of the pension, if there is a reversionary pensioner who dies within that 10 year period, the Trustee shall pay to the reversionary pensioner's legal personal representative an amount determined by the Trustee not exceeding the difference between:
  - (i) the sum of the amounts that would have been payable to the deceased reversionary pensioner in the period of 10 years; and
  - (ii) the sum of the amounts paid to the deceased reversionary pensioner.
- (c) If a legal personal representative of a deceased Member or reversionary pensioner is not appointed within 3 years after the date of death (or such longer period as the Trustee determines), any assets of the Fund which were funding the lifetime pension shall be treated as forfeited benefits and applied by the Trustee in accordance with Rule 14.

- (d) No benefit is payable in respect of a Member who dies more than 10 years after the commencement date of a pension if the deceased Member does not have a reversionary pensioner to whom a pension is paid or payable under Rule 40.5. Any assets of the Fund which were funding the lifetime pension shall be treated as forfeited benefits and applied by the Trustee in accordance with Rule 14.

## **41. FIXED TERM PENSIONS**

### **41.1 Pension Complies with Act**

- (a) A fixed term pension must be paid, at least, annually for a fixed term agreed on by the Member and the Trustee.
- (b) A fixed term pension must comply with the requirements of the Act in relation to fixed term pensions.

### **41.2 Pension Amount**

Subject to meeting the requirements of the Act in relation to the amount of pension payments, the annual amount of a fixed term pension will be determined by the Trustee and shall be paid by instalments of amounts and on dates as the Trustee and Member agree on or, in the absence of agreement, as the Trustee determines.

### **41.3 Indexation**

Subject to meeting the requirements of the Act in relation to pension increases, the amount of a fixed term pension shall be increased annually by the amount (if any) agreed on by the Trustee and the Member, or, in the absence of agreement, as the Trustee determines.

### **41.4 Commutation of Pension**

- (a) A person in receipt of or entitled to a fixed term pension may make a written application to the Trustee requesting the Trustee to commute part or all of the pension to a lump sum payment.
- (b) The Trustee may, in its discretion, agree to the commutation request and pay the lump sum amount calculated by the Trustee, but only in the circumstances and manner permitted by the Act.
- (c) If the pension is commuted under this Rule 41.4, the amount payable shall not be greater than the benefit that was payable before the commutation.
- (d) Notwithstanding Rules 41.4(a) and 41.4(b), if part or the whole of the lump sum amount is a Preserved Benefit, the Trustee shall deal with that benefit in accordance with the requirements of the Act.

### **41.5 Pension Payable to Reversionary Pensioner on Death of Member**

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that, in the event of the death of the Member, a pension shall be paid to a reversionary pensioner or pensioners.



- (b) The total amount of the reversionary pension or pensions shall be the amount that would have been payable to the deceased Member, had the deceased Member not died, apportioned between the reversionary pensioners on the basis agreed by Trustee and the Member or, in the absence of agreement, the amount determined by the Trustee.

#### **41.6 Payment to Legal Personal Representative**

- (a) The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine, that in the event of the death of a Member and if there is not a surviving reversionary pensioner, the Trustee shall pay to the deceased Member's legal personal representative, an amount equal to the pension payments that the Member would have received, had the Member not died. The Trustee may commute those payments to a lump sum payment of an amount calculated by the Trustee.
- (b) If a pension is paid to a reversionary pensioner who dies within the fixed term for which the pension is payable, the Trustee may either pay to another reversionary pensioner or to the deceased Member's legal personal representative an amount equal to the pension payments that the Member would have received, had the Member not died. the Trustee may commute those payments to a lump sum payment of an amount calculated by the Trustee.
- (c) If a legal personal representative of a deceased Member (to whom an amount is payable under Rule 41.6(a) or (b)) is not appointed within 3 years after the date of death (or such longer period as the Trustee determines), any asset of the Fund which were funding the pension shall be treated as forfeited benefits and applied by the Trustee in accordance with Rule 14.

### **42. ALLOCATED PENSIONS**

#### **42.1 Allocated Pension**

- (a) An allocated pension must be paid, at least, annually.
- (b) The annual amount of an allocated pension must not be greater than or less than any maximum or minimum amounts stated in the Act and the pension must comply with the requirements of the Act.

#### **42.2 Paid until Member's Account is Exhausted**

An allocated pension shall be paid on such dates and by instalments of such amounts as the Trustee and the Member agree on or, in the absence of agreement, as the Trustee determines and shall cease to be payable if the Member's Benefit is reduced to nil.

#### **42.3 Commutation of Pension**

A person in receipt of an allocated 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. The Trustee will only act on the written application to the extent that doing so will not breach the Act.

#### **42.4 Benefit Payable to Allocated Pension Reversionary Pensioners**

- (a) 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 an allocated pension is being paid, a pension may be paid to one or more reversionary pensioners. The Trustee shall pay an allocated pension to such of the reversionary pensioners as it, in its absolute discretion, determines.
- (b) The amount and the terms and conditions of the allocated pension paid to a reversionary pensioner under this Rule shall be agreed on by the reversionary pensioner and the Trustee, but in the absence of agreement, the amount and the terms and conditions of the allocated pension shall be determined by the Trustee.
- (c) Notwithstanding Rule 42.4(b), if the allocated pension has to be paid on some other basis for the Fund to comply with the Act, it shall be paid on that basis.
- (d) The annual amount of the allocated pension must not be greater than nor less than any maximum or minimum amounts stated in the Act.
- (e) The allocated pension payable under this Rule 42.4 ceases to be payable:
  - (i) if the Member's Benefit is reduced to nil; or
  - (ii) on the death of the reversionary pensioner.

#### **42.5 Payment to Member's Dependants**

- (a) When, in respect of a deceased Member, an allocated pension:
  - (i) ceases to be payable to all of the Member's reversionary pensioner under Rule 42.4(e); or
  - (ii) is not payable because the Member has no reversionary pensioners; or
  - (iii) is not payable because the Trustee has determined to not pay an allocated pension to any of the Member's reversionary pensioners,the balance of that Member's Benefit (if any) shall be:
  - A. held by the Trustee on trust for the benefit of one or more of the Member's Dependants, to be paid in a lump sum in shares and proportions as the Trustee, in its absolute discretion, determines; and/or
  - B. paid to the Member's legal personal representative.
- (b) When deciding to whom to pay a death benefit, the Trustee shall take account of any nomination of beneficiaries made by the Member, but shall not be bound by it.
- (c) 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, if permitted by the Act, pay the benefit to a person or persons selected by the Trustee.

- (d) Subject to Rule 42.5(c), if a grant of probate or letters of administration is not made in respect of the estate of the Member within 3 years after his or her death (or such longer period as the Trustee determines), the benefit payable under this Rule 42.5 shall be treated as a forfeited benefit and shall be applied in the manner provided for in the Act or, in the absence of any such provision, shall be applied by the Trustee in accordance with the provisions of Rule 14.
- (e) If payment of all or part of the benefit payable under this Rule 42.5 does not comply with the requirements of the Act, the proportion of the benefit that does not so comply shall be treated as a forfeited benefit and shall be applied by the Trustee in accordance with the provisions of Rule 14.

#### **43. DEDUCTION OF TAXATION**

The Trustee may deduct from any benefit payable the amount of any taxation that is calculated by the Trustee to be payable in respect of the Member's Benefit.

#### **44. DISSOLUTION OF THE FUND**

##### **44.1 Dissolution of the Fund**

- (a) The Trustee may resolve to wind up the Fund at any time.
- (b) When the last remaining person who has a benefit entitlement is paid the benefit, the Trustee shall wind up the Fund.

##### **44.2 Amount Remaining in the Fund**

If any amount remains in the Fund after all of the Members' entitlements to benefits have been paid, the amount so remaining shall be paid to the former Members or their Dependents or the Participating Employers in such proportions as the Trustee determines, prior to the winding-up of the Fund.

##### **44.3 Perpetuity Period**

The trusts constituted by this Deed endure for the longer of 80 years and the period (if any) which is allowed by law for the duration of the trusts established by this Deed.

**EXECUTED** as a deed.

SIGNED on behalf of  
**STRATEGIC CLARITY PTY  
LIMITED ACN 083 682 820**  
by:

.....  
(Secretary)



.....  
(Director)

## APPENDIX "A"

### APPLICATION FOR MEMBERSHIP OF THE SUPER SUPERANNUATION FUND (“the Fund”)

1. I, Reginald James Fowler  
of 1B Randall Drive Salamander Bay NSW 2317  
(Date of Birth: 03/10/1946) apply for membership of the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining it, in the event of my retirement, death or disablement, the method of determining those benefits and any conditions relating to those benefits.
3. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the trust deed governing the Fund.

#### 4. NOMINATION OF BENEFICIARIES

Whilst I acknowledge the discretion the Trustee of the Fund has to determine who the benefit is paid to, I nominate the following persons to receive the benefit payable by the Trustee in the event of my death:

PERSON	RELATIONSHIP	PERCENTAGE
PAMELA BRENA FOWLER	WIFE	100 %
		%
		%

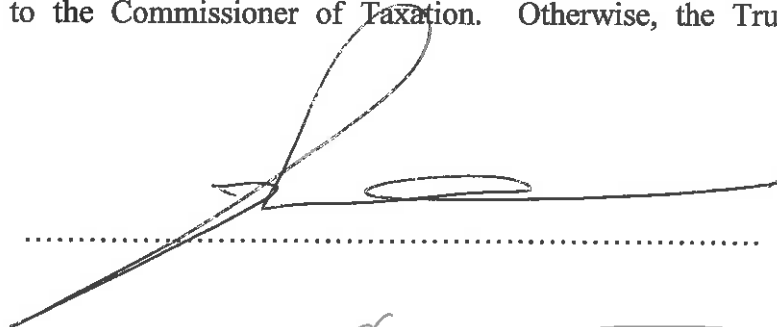
5. What is your tax file number 116 460 962

The Trustee of a superannuation fund is required to tell you the following things before you provide it with your tax file number. Your tax file number is confidential, and you should know the following things before you decide to provide it:

- the Trustee can collect your tax file number under the Superannuation Industry (Supervision) Act 1993 and under the Superannuation Contributions Tax (Assessment and Collection) Act, 1997.
- If you do provide your tax file number to the Trustee, it will only be used for legal purposes. This includes finding or identifying your superannuation benefits where other information is insufficient, calculating tax on deductible contributions made on your behalf and on any eligible termination payment you may be entitled to, and providing information to the Commissioner of Taxation. These purposes may change in the future.

- It is not an offence if you choose not to quote your tax file number. But, if you don't tell the Trustee your tax file number, either now or later, you may pay more tax on your superannuation than you have to (you may reclaim the extra tax through the taxation assessment process). It may also be more difficult to find your benefits in the future, to pay you any superannuation benefits you are entitled to, or to amalgamate or find any other benefits for you. These consequences may change in the future.
- If you provide your tax file number to the Trustee, it may be provided to the Trustee of any other superannuation fund or to a retirement savings account provider to which your benefits are transferred in the future. The Trustee will not pass your tax file number to any other fund or provider if you inform it, in writing, that you don't want it to pass it on. The Trustee will also give it to the Commissioner of Taxation. Otherwise, the Trustee will treat it as confidential.

Applicant's Signature: .....



Witness: .....



Date: .....

1/7/24.....

## APPENDIX "A"

### APPLICATION FOR MEMBERSHIP OF THE SUPER SUPERANNUATION FUND

(“the Fund”)

1. I, Pamela Brena Fowler  
of 1B Randall Drive Salamander Bay NSW 2317  
(Date of Birth: 25/06/1948) apply for membership of the Fund.
2. I have been advised in writing of the benefits which I will be entitled to receive from the Fund on joining it, in the event of my retirement, death or disablement, the method of determining those benefits and any conditions relating to those benefits.
3. In consideration of my admission to membership, I agree to abide by and be bound by the provisions of the trust deed governing the Fund.

#### 4. NOMINATION OF BENEFICIARIES

Whilst I acknowledge the discretion the Trustee of the Fund has to determine who the benefit is paid to, I nominate the following persons to receive the benefit payable by the Trustee in the event of my death:

PERSON	RELATIONSHIP	PERCENTAGE
		%
REGINALD JAMES FOWLER	HUSBAND	<u>100%</u> %

5. What is your tax file number 117 382 962

The Trustee of a superannuation fund is required to tell you the following things before you provide it with your tax file number. Your tax file number is confidential, and you should know the following things before you decide to provide it:

- the Trustee can collect your tax file number under the Superannuation Industry (Supervision) Act 1993 and under the Superannuation Contributions Tax (Assessment and Collection) Act, 1997.
- If you do provide your tax file number to the Trustee, it will only be used for legal purposes. This includes finding or identifying your superannuation benefits where other information is insufficient, calculating tax on deductible contributions made on your behalf and on any eligible termination payment you may be entitled to, and providing information to the Commissioner of Taxation. These purposes may change in the future.

- It is not an offence if you choose not to quote your tax file number. But, if you don't tell the Trustee your tax file number, either now or later, you may pay more tax on your superannuation than you have to (you may reclaim the extra tax through the taxation assessment process). It may also be more difficult to find your benefits in the future, to pay you any superannuation benefits you are entitled to, or to amalgamate or find any other benefits for you. These consequences may change in the future.
- If you provide your tax file number to the Trustee, it may be provided to the Trustee of any other superannuation fund or to a retirement savings account provider to which your benefits are transferred in the future. The Trustee will not pass your tax file number to any other fund or provider if you inform it, in writing, that you don't want it to pass it on. The Trustee will also give it to the Commissioner of Taxation. Otherwise, the Trustee will treat it as confidential.

Applicant's Signature: .....



Witness: .....



Date: .....

1/7/04

APPENDIX "B"

APPLICATION FOR PARTICIPATION BY EMPLOYER

To: The Trustee of The Super Superannuation Fund (the "Fund")

Strategic Clarity Pty Limited ACN 083 682 820

(the "Participating Employer") applies to participate in the Fund and to include employees of the Participating Employer as members of the Fund and in consideration of the acceptance of the Participating Employer as a participant in the Fund, the Participating Employer undertakes to contribute to the Fund and be bound by the trust deed governing the Fund as if it were originally named therein.

DATED this 1st day of July 2004.

To be signed by company applicant:

SIGNED on behalf of  
STRATEGIC CLARITY PTY  
LIMITED ACN 083 682 820  
by

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)  
)  
)



Director.....

Director/Secretary.....