

COPY

**SUPERANNUATION  
TRUST DEED**

**James Razzi**  
Superannuation Support Services

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**THIS DEED OF AMENDMENT** is made on the Date of Execution specified in Schedule A BY the person named in Schedule A as the Trustee (the "Trustee").

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**WHEREAS:**

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- A. By a trust deed made on the Date of the Original Deed specified in Schedule A (which Deed may have been amended by the deeds referred to in Schedule A, herein after called the "Deed") a superannuation fund known by the name set forth in Schedule A was established for the purpose of providing benefits for the Eligible Persons who may be admitted as Members of the Fund and for the dependants of such Eligible Persons so admitted.
- B. The Trustee is the present Trustee of the Fund.
- C. The Trustee desires by this Deed to alter the Deed in accordance with the power to vary the Deed under the provision referred to in Schedule A.
- D. The parties confirm that the formal requirements to vary the Deed, if any, referred to in Schedule A have been duly completed and confirm the amendments herein by execution of this deed.

**NOW THIS DEED WITNESSES** that with effect from the Date of Execution specified in Schedule A the Deed is amended by the removal of the existing clauses and Schedules in their entirety and their replacement by the following clauses and Schedules provided that to the extent this Deed is inconsistent with the power to vary, this Deed shall be read down accordingly.

**ESTABLISHMENT**

1. This Fund was established on the Date of the Original Deed specified in Schedule A as amended by the amending deeds referred to in Schedule A and shall from the Date of Execution specified in Schedule A be governed by the provisions of this Deed. The Fund may be operated as any type of Fund permitted by the Relevant Requirements, including without limitations a Self Managed Fund, non-excluded fund, Small APRA Fund or any other type of Approved Benefit Arrangement.

**DIVISIONS**

2. This Deed is divided into Division A and Division B. Division A shall govern the management and administration of the Fund and Division B shall govern the amount of contributions into the Fund and of the Benefits payable out of the Fund.

**COVENANTS**

3. The Trustee covenants to continue to hold the Fund in accordance with the Deed, as amended, and to continue to perform and observe the covenants, trusts and conditions of this Deed.

**ADMINISTRATION**

4. The Trustee shall generally administer the Fund and carry out the requirements of this Deed so as to comply with or satisfy the Relevant Requirements relating to superannuation funds with the intent that Taxation in respect of the Fund shall be minimised to the full extent possible and contributions to the Fund are tax deductible for the Contributor to the full extent possible

## **DIVISION A**

### **MANAGEMENT AND ADMINISTRATION**

#### **INTERPRETATION - Definitions**

5. In this Deed unless the Trustee determines otherwise or the context otherwise requires:

"Accumulation Account" means, in relation to a Beneficiary, the account established and maintained in the Fund for that Beneficiary pursuant to clause 11.

"Act" means the Tax Act, the SIS Act, the Superannuation Entities (Taxation) Act 1987 (formerly known as the Occupational Superannuation Standards Act 1987), the Superannuation Contributions Tax (Assessment and Collection) Act 1997 (Cth) and any other law of the Commonwealth of Australia or applicable State and/or Territory including, where applicable, any determination, ruling or guideline made by a Responsible Authority with which the Fund and/or the Trustee must comply in order to maintain concessional Taxation treatment in respect of the Fund or in order to obtain what the Trustee considers to be any other relevant concession or to avoid what the Trustee considers to be a relevant penalty or imposition.

"Actuary" means a person who is a Fellow of the Institute of Actuaries of Australia and "the Actuary" means the Actuary to the Fund appointed pursuant to clause 14 from time to time.

"Approved Benefit Arrangement" means a superannuation fund, Approved Deposit Fund, Eligible Roll-over Fund, Eligible Annuity, Small Holdings Accounts Reserves or such other approved fund which complies with the Act.

"Approved Deposit Fund" means an Approved Deposit Fund as defined pursuant to section 27A(1) of the Tax Act.

"Approved Superannuation Agreement" means, in relation to a Beneficiary, any agreement entered into by the Employer under which the Employer agrees to pay contributions to the Fund and which is ratified by a decision handed down by an Industrial Authority or such other agreement not necessarily ratified as aforesaid but which is declared by the Employer to be an Approved Superannuation Agreement for the purposes of the Deed.

"Approved Trustee" has the same meaning as that term is defined in the Relevant Requirements.

"Auditor" means the person appointed from time to time by the Trustee as Auditor to the Fund pursuant to clause 14.

"Beneficiary" means an Eligible Person who has been admitted as a participant in the Fund provided that such Eligible Person has not ceased to be a Beneficiary pursuant to sub clause 17(d) hereof.

"Beneficiary's Contributions" means the amount contributed by or on behalf of a Beneficiary pursuant to sub clause 40(b) and 40(c) hereof or deemed to have been contributed by a Beneficiary in accordance with sub-clause 19(e) hereof.

"Beneficiary's Vested Contributions" means Beneficiary's Contributions together with Net Earnings compounded annually on those Contributions.

"Benefit" means any amount paid or payable by or on behalf of the Trustee out of the Fund pursuant to this Deed to or in respect of a Beneficiary.

"Class" means the Class of Beneficiary in accordance with clauses 43 and 49.

"Commencing Date" means the Commencing Date referred to in Schedule A.

"Commissioner" means the Insurance and Superannuation Commissioner appointed under the Insurance and Superannuation Commissioner Act 1987, or the relevant delegate of the Australian Prudential Regulation Authority, Australian Taxation Office, Australian Securities & Investment Commission or any other body regulating a superannuation fund, or a person for the time being appointed as acting or any authorised delegate of the bodies.

"Compulsory Contributions" means contributions made by an Employer pursuant to the Superannuation Guarantee (Administration) Act 1992 or any other Act which requires compulsory contributions to be made at a specified rate.

"Contributor" means the Employer in the case of a Beneficiary in respect of whom the Employer and/or Participating Employer makes or is required to make contributions and in the case where Beneficiaries make or are required to make contributions on their own behalf or on behalf of another Eligible Person, shall also mean all such Beneficiaries and includes any other person eligible to contribute a Fund.

"Corporate Trustee" means a company eligible to act as a trustee of a regulated superannuation fund in accordance with the SIS Act.

"Deed" means this trust deed as amended from time to time.

"Dependant" means, in relation to a Beneficiary or former Beneficiary, any one or more of the following;

- (a) the Spouse, widow or widower of the Beneficiary or former Beneficiary;
- (b) any child of the Beneficiary or former Beneficiary including any step-child, adopted child and any child of the Beneficiary or former Beneficiary.
- (c) any other person, who in the opinion of the Trustee, is at the relevant date wholly or partially financially dependent upon the Member.

"Division" means Division A or Division B of this Deed, and any other Divisions of this Deed that may be added from time to time.

"Eligible Annuity" shall have the same meaning as ascribed in Section 27A(1) of the Income Tax Assessment Act 1936.

"Eligible Person" means any person who is eligible to be a beneficiary of a superannuation fund for the purposes of the Act.

"Eligible Spouse" means, in relation to a deceased Pensioner, the surviving spouse of the Pensioner.

"Employee" means a person who is employed by an Employer (whether participating in the Fund or not) within the meaning of the Act including an officer of a company.

"Employer" means any employer of an Employee who is a Beneficiary of the Fund.

"Excluded complaint" means a complaint about a decision of the Trustee that is not covered by the Superannuation (Resolution of Complaints) Act 1993.

"Excluded Fund" means a superannuation fund with less than 5 Members and which otherwise satisfies the requirements of an "excluded fund" as determined by the SIS Act and after 8 October 1999 includes a reference to a Self Managed Fund.

"Financial Year" means a period of twelve months ending on the 30th June or such other date allowed under the Relevant Requirements or as otherwise approved by the Responsible Authority.

"Founder" means the company, person, firm or other organisation described as such in Schedule A hereto.

"Fund" means the Fund referred to in Schedule A which is established by the Original Deed as amended from time to time.

"Fund Year" means a period of twelve months ending on the 30th June, or such other date as the Trustee from time to time may determine.

"Guardian" means -

- (a) the Founder, or
- (b) a person while appointed by the Founder in writing to act as Guardian for the purpose of this Deed, or
- (c) ~~if the Founder is not an Employer, Beneficiary or Contributor, then it shall~~ mean all the Contributors or a majority of them excluding any Employer which is not a Participating Employer.

"Independent Trustee" means a single corporate Trustee appointed following nomination by agreement between a majority of the beneficiaries of the Fund and the employer or employers of those beneficiaries.

"Industrial Authority" means any board, court, tribunal, body or person having authority to exercise any power of conciliation or arbitration in relation to industrial disputes under Commonwealth or State legislation.

"Net Earnings" means earnings (which may be negative) allocated annually to the particular accounts in accordance with sub-clause 11(e) hereof and the Fund Earning Rate described therein adjusted in accordance with sub-clause 11(f), if applicable, or in accordance with sub-clause 11(g) hereof as appropriate.

"Nominated Dependant" means a Dependant nominated by a Beneficiary as the Nominated Dependant.

"Normal Retirement Date" means the date on which a Member attains the age of 65 years or, subject to the Relevant Requirements, such other date which the Trustee, with the consent of the Employer, agrees to be the particular Member's retirement date.

"Participating Employer" means any Employer that is admitted to participation in the Fund pursuant to sub clause 32(a) hereof.

"Pension" includes a Benefit payable by instalments out of the Accumulation Account of a Beneficiary or former Beneficiary in accordance with the Relevant Requirements, whether such instalments be equal or unequal.

"Pensioner" means a Beneficiary or former Beneficiary who is entitled to be paid a Pension and, in the case of a deceased Beneficiary or former Beneficiary, includes a Reversionary Beneficiary.

"Preservation Age" means the earliest age at which the Relevant Requirements allow a Preserved Payment to be paid.

"Preservation Condition" means, in respect of a Member, at least one of the following:

- (a) the attainment of the Preservation Age and retirement from the workforce;
- (b) retirement from the workforce before the Member attains his or her Normal Retirement Date by reason of permanent incapacity or permanent invalidity; or
- (c) such other circumstances approved from time to time by the Relevant Requirements.

"Preserved Payment" means a Benefit which must be preserved within an Approved Benefit Arrangement (including this Fund) until a Preservation Condition is satisfied.

"Productivity Payment" means a payment made to the Fund by an Employer or the reclassification of an existing Benefit of a Beneficiary by the Trustee with the consent of the Employer which payment or reclassification takes place pursuant to or as a result of:

- (a) an agreement between the Employer and the Beneficiary with respect to the provision of superannuation benefits which is ratified certified or made by an Industrial Authority; or
- (b) a productivity award by an Industrial Authority;

and "Productivity Payment Benefit" means a Benefit arising from a Productivity Payment.

"Qualified Adviser" means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person considered by the Trustee in good faith to be capable of giving advice in relation to any matter or question, whether by virtue of formal qualifications or experience in business or otherwise howsoever.

"Qualifying Eligible Termination Payment" shall have the meaning ascribed in Section 27A(12) of the Income Tax Assessment Act 1936.

"Relevant requirement" means any requirement under an Act.

"Responsible Authority" means the Australian Prudential Regulation Authority (formerly known as the Insurance and Superannuation Commission), the Australian Taxation Office, the Australian Securities & Investment Commission and any other governmental authority or regulatory body or authorities or bodies responsible for the administration of superannuation funds from time to time.

"Reversionary Beneficiary" means a Dependant who is entitled to receive a Reversionary Pension.

"Reversionary Pension" means a pension payable to a Reversionary Beneficiary upon the death of a Member entitled to a pension pursuant to this Deed.

"Rollover Payment" means any payment made by or received by the Trustee at the request of a Beneficiary or former Beneficiary to or from an Approved Benefit Arrangement.



"Secretary" means the secretary of the Fund appointed by the Trustee pursuant to clause 14 hereof.

"Self-Employed Person" means an Eligible Person who is engaged in any business, trade, profession, vocation, calling or occupation for gain otherwise than as an employee.

"Self Managed Fund" means a self managed superannuation fund with less than 5 members and which otherwise satisfies the requirements of a "self managed superannuation fund" as determined by the SIS Act and prior to 8 October 1999 includes a reference to an "Excluded Fund".

"SIS Act" means the Superannuation Industry (Supervision) Act 1993 (Cth) and SIS Regulations means the regulations made pursuant to that Act.

"Small APRA Fund" means a fund with fewer than 5 members with an Approved Trustee and, where applicable, prior to 8 October 1999 included a reference to an Excluded Fund with an Approved Trustee;

"Special Leave" means any period of temporary absence of a Beneficiary from his or her employment (other than as a normal condition of employment) with or without pay and given with the approval of his or her Employer, provided that the Beneficiary has not resigned nor been dismissed by the Employer.

"Spouse" means:

- (a) a person legally married to a Beneficiary or Pensioner at any time; or
- (b) a person who, although not legally married to the Beneficiary or Pensioner, in the opinion of the Trustee lives with a Beneficiary on a genuine domestic basis as the husband or wife of the Beneficiary and in relation to a deceased Beneficiary the term "widow" or "widower" includes such a person.

"Superannuation Complaints Tribunal" or "Tribunal" means the Superannuation Complaints Tribunal established by the Superannuation (Resolution of Complaints) Act 1993.

"Tax Act" means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 and any other applicable legislation or any regulations promulgated in accordance with that Act.

"Taxation" includes income tax, capital gains tax, surcharge, levy, duty, pay-roll tax, land tax, stamp duty and any other tax or duty imposed, levied or charged by the Commonwealth of Australia, any State or Territory thereof or any foreign jurisdiction including any additional tax or similar penalty and "Tax" and "Taxes" shall have a similar meaning.

"Total and Permanent Disablement" means in relation to a Beneficiary having been absent from his current employment, business, trade, profession, vocation, calling or occupation through injury or illness for an uninterrupted period of six months or for such shorter period as in the circumstances the Trustee considers appropriate and in the opinion of the Trustee after consideration of medical evidence having become incapacitated to such extent as to render the Beneficiary unlikely ever to engage in or work for reward in any occupation or work for which he is reasonably qualified by education, training or experience.

"Trustee" means the Trustee or Trustees for the time being of the Fund whether the original Trustee or Trustees named in Schedule A hereto or additional or substituted Trustee or Trustees.

## **INTERPRETATION - General**

### **6. (a) Plural and gender of words**

In this Deed, unless inconsistent with the subject matter or context, words importing one gender shall include all other genders and words importing the singular number shall include the plural number and vice versa.

### **(b) Headings to Clauses**

The headings in this Deed are for convenience or reference only and shall not affect the interpretation of this Deed.

### **(c) Defined words**

For convenience, the first letters of words and expressions defined in this Deed are usually indicated by capital letters, but the absence or inclusion of a capital letter shall not alone imply that the word or phrase is used with a meaning different from or the same as that given by its definition.

### **(d) Statutory enactments**

References to any statutory enactment or regulations shall be construed as references to that enactment or regulations as amended, modified, re-enacted or re-made from time to time.

### **(e) Other Division subject to Division A**

The provisions of Division B shall, unless the context otherwise requires, be subject to the provisions of Division A.

### **(f) Jurisdiction**

Any provision of the Deed which is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Deed nor affect the validity or enforceability of the impugned provision in any other jurisdiction.

### **(g) References to documents**

References to any document, including this Deed, shall include references to that document as amended, modified or superseded from time to time.

### **(h) Disputes**

Any question or dispute arising in respect of the interpretation of the Deed shall, subject to the Relevant Requirements, be determined by the Trustee and such determination shall be final and binding upon all Beneficiaries;

### **(i) References to Deed**

References to any clause, division, paragraph or schedule in this Deed shall mean references to a clause, division, paragraph or schedule of this Deed unless the context otherwise requires.

## GENERAL PROVISIONS

### 7. (a) **Employer's powers not prejudiced**

Nothing in this Deed shall affect the powers of the Employer with regard to the remuneration, terms of employment or dismissal of an Employee or any other dealings between any Employer and an Employee. The existence or cessation of any actual or prospective or possible Benefit under the Fund shall not be grounds for claiming or increasing damages in any action brought against the Employer in respect of any termination of employment or otherwise.

### (b) **Exercise of Trustee's powers**

All powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of this Deed may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee:

- (i) where the Trustee is a company - by resolution of its directors or by any person or persons having the written authorisation of its directors to so act on their behalf; or
- (ii) where the Trustee consists of an individual or individuals - by meeting ~~of such persons where questions are to be decided by a majority of the~~ number of such persons holding the office of Trustee.

### (c) **Trustee not to be subject to direction**

The Trustee shall not be subject to direction and control other than in relation to those matters specified in the Relevant Requirements. If a provision of this Deed would otherwise be void because it :

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

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

### (d) **Work-related Claims**

Subject to sub-clause 7(a), nothing in this Deed shall in any way affect the right of a Beneficiary or his personal representative to claim damages or compensation under common law or under any Worker's Compensation legislation or any other statute in force governing compensation to a Beneficiary injured or killed by an accident arising out of or in the course of his employment with the Employer.

Any notice to be given under this Deed to any person will be deemed to have been validly given if handed personally to that person or posted by ordinary post to that person's last known address.

## PROPER LAW

8. This Deed shall, subject to the Relevant Requirements and the laws of the Commonwealth, be governed and construed and shall take effect in accordance with the laws of the State or Territory noted in Schedule "A" hereto (hereinafter called "the Proper Law State"). The Founder, the Trustee, the Beneficiaries and any other party or beneficiary to this Deed shall accept the jurisdiction of the Courts of that State or Territory.

## DISPUTES AND COMPLAINTS

9. If required by the Relevant Requirements, the Trustee must take reasonable measures to implement arrangements under which:
  - (a) Members may inquire or complain about the operation or management of the Fund in relation to that person; and
  - (b) inquiries or complaints so made will be dealt with in the manner and time period set by the Relevant Requirements.

## FUND ASSETS

10. The gross assets of the Fund shall consist of all the cash, investments and other property for the time being held by or on account of the Trustee upon the trusts of this Deed and shall be established and maintained by:
  - (a) **Transfers**  
The amount, if any, standing or transferred to the credit of the Fund;
  - (b) **Beneficiary Contributions**  
Such contributions (if any) as the Beneficiaries make to the Fund at any time in accordance with the provisions of this Deed less any costs, taxes and charges;
  - (c) **Employer Contributions**  
Such contributions as any Employer makes to the Fund at any time in accordance with the provisions of this Deed less any costs, taxes and charges;
  - (d) **Earnings**  
Interest, accretions, distributions of income arising from any investment and the accumulation thereof less any costs, taxes and charges;
  - (e) **Profits**  
Profits (less losses) and other benefits arising from any investment and the accumulation thereof less any costs, taxes and charges;
  - (f) **Rollover Payments**  
Moneys or investments as approved by the Trustee transferred to the Fund as a Rollover Payment.
  - (g) **Superannuation guarantee shortfall components**  
Any superannuation guarantee shortfall component received.
  - (h) **Other**  
Any other asset or amount that the Fund obtains.

## ACCUMULATION ACCOUNTS

### 11. (a) **Separate Beneficiary Accounts**

The Trustee shall establish an Accumulation Account in respect of each Beneficiary for each Class of which he is a Beneficiary.

### (b) **Credits**

The following amounts may be credited to the appropriate Accumulation Account of the Beneficiary according to the Class to which they relate:

- (i) any amount paid into the Fund in respect of the Beneficiary as a Rollover Payment;
- (ii) any Contributions paid in respect of the Beneficiary by a Contributor;
- (iii) any amount transferred from the Death and Disablement Reserve account;
- (iv) such positive earnings as are determined by the Trustee in accordance with sub-clause (e), (f) or (g) below;
- ~~(v) such forfeited amounts as are allocated to but not paid directly to the Beneficiary pursuant to sub-clause 22(c) hereof; and~~
- (vi) such other amount as the Trustee determines.

### (c) **Debits**

The following amounts shall be debited to the appropriate Accumulation Account of the Beneficiary according to the Class to which they relate:

- (i) any amount paid out of the Fund in respect of the Beneficiary as a Rollover Payment;
- (ii) any other Benefit payments made to or in respect of the Beneficiary;
- (iii) such negative earnings as shall be determined by the Trustee in accordance with sub-clause (e),(f) or (g) below;
- (iv) such amount as is forfeited pursuant to Clause 22;
- (v) costs and fees specifically incurred in relation to a specific beneficiary;
- (vi) such equitable proportion of any amount payable by way of Taxation in respect of contributions or earnings or arising as a result of a Roll over Payment; and
- (vii) such other payments as the Trustee from time to time determines.

(d) **Unallocated Death and Disablement Reserve**

The Trustee shall establish a death and disablement reserve account.

The death and disablement reserve shall be made up of:

- (i) any contributions made by the Employer to the reserve; and
- (ii) such positive earnings as are determined by the Trustee in accordance with sub-clause (e) below, less
  - A. any amount paid out of the Reserve to the Accumulation Account of a Beneficiary on the Death or Disablement of that Beneficiary; and
  - B. such negative earnings as shall be determined by the Trustee in accordance with sub-clause (e) below.

(e) **Income Account**

- (i) The Trustee shall establish an Income Account for the Fund to which shall be credited all net income and net profits of the Fund each year and credits arising out of adjustments pursuant to sub-clause (f) below.
- (ii) The Income Account shall be debited with the following:-
  - A. any loss sustained on the disposal of any investments of the Fund;
  - B. any costs, taxes or charges incurred pursuant to sub-clause 13(e) or 18(f) hereof;
  - C. any debits arising out of adjustments pursuant to sub-clause (f) below.
- (iii) Following the crediting and debiting of the Income Account as specified in paragraphs (e)(i) and (e)(ii) above, at the end of each Fund Year, or at such other time as required, the Trustee shall, unless it determines otherwise, determine at its discretion the earning rate (which may be negative) for the Fund after taking into account such provision or reserve for future contingencies and adjustments under paragraph (iv) and sub-clause (g) below as the Trustee shall consider reasonable (hereinafter called "the Fund Earning Rate"). The Trustee shall, unless it determines otherwise, then allocate to each Accumulation Account and the Death and Disablement Reserve the earnings in accordance with the Fund Earning Rate.
- (iv) The amount distributed as the earnings of the Fund pursuant to paragraph (e)(iii) above shall, subject to the Trustee determining otherwise, be allocated to each Accumulation Account and the Death and Disablement Reserve in proportion to the amount standing to the credit of that Accumulation Account or the Death and Disablement Reserve at the beginning of the Fund Year in respect of which the distribution is being made, an appropriate adjustment being made for amounts (if any) credited or debited to the Accumulation Account or the Death and Disablement Reserve since that date.

- (v) Any amount remaining in the Income Account after distribution of earnings pursuant to paragraph (e)(iv) above shall be transferred to the Equalisation Account.

(f) **Adjustment**

In determining the amount standing to the credit of a Beneficiary's Accumulation Account at the time a Benefit is calculated or becomes payable in respect of that Beneficiary, the Trustee may make such adjustment (if any) on account of earnings, profits and losses arising since the end of the preceding Fund Year as it shall at its discretion decide and the Income Account shall be debited or credited accordingly.

(g) **Specific Investments**

The Trustee may undertake to invest separately in respect of certain Beneficiaries or certain Classes of Beneficiaries of the Fund as determined by the Trustee from time to time. The Trustee shall record on whose behalf such specific investments are made for the purposes of making up a Beneficiary's Accumulation Account for each Class. In such an event the income and profits (less losses) arising from such specific investments and any costs or charges applicable to such specific investments which are incurred pursuant to sub-clause 18(f) hereof shall not be allocated to the Income Account. The income and profits (less losses) arising from specific investments applicable to ~~any particular Accumulation Account shall be allocated directly to that~~ Accumulation Account which shall also be debited with the appropriate proportion of any costs or charges applicable to such investments which are incurred pursuant to sub-clause 18(f) hereof.

## FUND RECORDS

12. (a) **Receipt and payment of moneys**

All moneys of the Fund shall be lodged as soon as practicable to the credit of an account in the name of the Fund kept with a Bank or other financial institution as determined from time to time by the Trustee ("the Bank Account").

(b) **Issue of receipts**

A receipt given on behalf of the Fund by the Trustee or by the Secretary 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 shall be a sufficient discharge to the person by whom the moneys are paid.

(c) **Records, Accounts and Audit**

The Trustee shall:

- (i) keep account of all moneys received for and disbursed from the Fund and of all dealings in connection therewith;
- (ii) collect, and pay promptly into the Bank Account of the Fund, all moneys from time to time due to the Fund;
- (iii) maintain and cause to be maintained such records and accounts and in such form and for such period as shall be necessary to satisfy the requirements of this Deed and in particular Clause 4 hereof and such other records and accounts as the Trustee considers to be necessary to comply with the requirements of the Act.

**(d) Audit**

The records and accounts of the Fund shall be audited by an Auditor and the Auditor shall have access to such papers accounts and documents connected with the Fund as the Trustee considers should be accessible to him and the Auditor shall certify to the Trustee the result of such audit in writing.

**(e) Trust Deed**

A copy of this Deed shall be made available for inspection by any Beneficiary on the request of that Beneficiary and it shall be sufficient for the purposes of this sub-clause to make a copy of this Deed available to the Beneficiary for inspection at the address notified by the Trustee at a time arranged with the Trustee.

**(f) Information for Trustee**

Any Beneficiary or Contributor participating in the Fund shall, as and when requested by the Trustee, give to the Trustee all information in its power or possession which may in the opinion of the Trustee be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by a Contributor or a Beneficiary pursuant to this Deed and shall not be required to verify such information.

**(g) Disclosure and Reporting Requirements**

The Trustee shall provide to Beneficiaries and to the Responsible Authority such information in relation to the conduct of the Fund and Benefits payable from the Fund as shall be required by the Responsible Authority from time to time.

## **FUND TRUSTEE - VACANCY, APPOINTMENT, REMOVAL AND REPRESENTATION**

**13. (a) No equal representation**

If the Fund is an Excluded Fund, or, after 8 October 1999 a Self Managed Fund:

- (i) the Fund shall be administered by at least one Trustee;
- (ii) the Trustee of the Fund may be one or more individuals or a Corporate Trustee.
- (iii) The power to appoint a Trustee is vested in the Guardian but subject to paragraph (a)(vii) hereof, during any period which the Fund is a Self Managed Fund (including any period that it can continue to be recognised as such a fund despite any permissible breach of the rules relating to the definition of a Self Managed Fund) each individual trustee and/or each director of a Corporate Trustee shall:
  - A. satisfy any eligibility criteria prescribed by the Relevant Requirements; or
  - B. satisfy such alternative test that is permitted by the Relevant Requirements covering such situations as:
    - (1) single Beneficiary Self Managed Funds;



- (2) if a Beneficiary has died;
  - (3) if a Beneficiary suffers from a legal disability (including a person under a legal disability due to age);
  - (4) if a Beneficiary has appointed a legal personal representative under a power of attorney or other instrument or act recognised by the Relevant Requirements; or
- C. satisfy such other requirements permitted by the Relevant Requirements or a Responsible Authority.
- (iv) The Trustee shall cease to be Trustee if it is so notified by the Guardian in writing.
- (v) Without limitation no person shall hold the office of Trustee if:
  - A. he is or becomes bankrupt or makes an assignment to or composition with his creditors;
  - B. he is disqualified from office by operation of law;
  - C. that person in the case of a Beneficiary under Part III of Division B hereof is the Beneficiary or a relative of the Beneficiary as defined in Section 6(1) of the Income Tax Assessment Act 1936 unless otherwise allowed by the Responsible Authority;
  - D. he dies;
  - E. he resigns from the position by notice in writing to the Guardian;
  - F. he is suspended or removed by the Responsible Authority.
  - G. if the Fund is a Self Managed Fund and an individual trustee or a Corporate Trustee can no longer qualify with the requirements of being a trustee of such a fund (unless that person or company can continue in office by compliance with guidelines of a Responsible Authority or otherwise in accordance with the Relevant Requirements for any extended period; or
  - H. if the Fund is a Small APRA Fund if the Approved Trustee can no longer satisfy the requirements of being a trustee of a Small APRA Fund unless the Trustee can continue in office by compliance with guidelines of a Responsible Authority or otherwise in accordance with the Relevant Requirements for any extended period.
- (vi) Upon ceasing to be a Trustee pursuant to the terms of the Deed such retiring Trustee shall perform every act and do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records books and other memoranda held by such retiring Trustee in relation to the Fund to the remaining or the new Trustee.
- (vii) If for any reason there is at any time no Trustee of the Fund the Guardian may appoint a temporary Trustee with the full powers of a Trustee until such time as a Trustee is appointed in accordance with paragraph (a) (iii) above.

(b) **Other Funds**

In the case of any other Fund other than a Public Offer Fund:

- (i) the Trustee of the Fund shall be one or more of the following:
  - A. the Trustee specified in this Deed if it complies with the Relevant Requirements;
  - B. a Corporate Trustee, the board of which shall consist as to one-half their number consisting of Beneficiary Representatives and as to one-half consisting of Employer Representatives, with provision for the appointment of an Independent Director;
  - C. Individual Trustees of which one-half shall consist of Beneficiary Representatives and of which one-half shall consist of Employer Representatives, with provision for the appointment of an Independent Trustee;
  - D. subject to the Relevant Requirements and the Trustee's discretion to determine otherwise, during any period which the Fund is a Small APRA Fund (including any period that it can continue to be recognised as such a fund despite any permissible breach of the rules relating to a Small APRA Fund) the Trustee shall:
    - (1) be an Approved Trustee authorised to act as trustee of the Fund; or
    - (2) satisfy such other requirements permitted by the Relevant requirements or a Responsible Authority;
  - E. such other Trustee as shall comply with the Relevant Requirements,

**PROVIDED THAT** within 90 days of the number of Beneficiaries exceeding four (or such other number of Beneficiaries specified under the Relevant Requirements), such action as is necessary shall be taken to ensure that a trustee is appointed pursuant to the above paragraphs.

- (ii) the power to appoint a Trustee is vested in the Guardian **PROVIDED THAT** the exercise of such power is subject to the succeeding provisions of this clause.
- (iii) Without limitation no person shall hold the office of Trustee or of Director of a corporate entity which is a trustee if:
  - A. he is or becomes bankrupt or makes an assignment to or composition with his creditors;
  - B. he is disqualified from office by operation of law;
  - C. that person in the case of a Beneficiary under Part III of Division B hereof is the Beneficiary or a relative of the Beneficiary as defined in Section 6(1) of the ITA Act unless otherwise allowed by the Responsible Authority;
  - D. he dies;
  - E. he resigns from the position by notice in writing to the Guardian;

- F. he is suspended or removed by the Responsible Authority;
  - G. any circumstance prescribed by the Act exists which prohibits the person from holding office as Trustee or Director or permits the removal of a Trustee or a Director and in the event that the removal of a Trustee or a Director is permitted if the Guardian removes the Trustee or the Director.
- (iv) Upon ceasing to be a Trustee pursuant to the terms of this Deed such retiring Trustee shall perform every act and do everything necessary to vest the Fund in the remaining or new Trustee and shall deliver all records books and other memoranda held by such retiring Trustee in relation to the Fund to the remaining or the new Trustee.

**(c) Appointment and Removal of Beneficiary Representative**

- (i) Whenever it is necessary for the purpose of sub paragraphs (b)(i) C or (b)(i) E of this Clause to appoint a person to represent the Beneficiaries ("the Beneficiaries' Representative") either:

- A. if the Trustee is a corporate entity - as a Director; or
- B. if the Trustee are individuals - to be an individual Trustee,

the appointment shall be made in accordance with the provisions of ~~this sub clause (c) and the number of persons appointed shall be the same number of persons as are appointed by the Employers.~~

- (ii) Subject to the succeeding provisions of this sub clause (c) the appointment of a Beneficiaries' Representative shall be made in accordance with the following procedure:

- A. the person representing the Employers as a Director or an Individual Trustee ("the Employers' Representative") shall publish a written notice to the Beneficiaries calling for nominations to be made of persons to be considered for appointment as the Beneficiaries' Representative and any such nomination shall be made within such period as is specified in the notice;
- B. if only one person is so nominated and that person is willing to act as the Beneficiaries' Representative then that person shall be appointed by the Guardian as the Beneficiaries' Representative;
- C. if more than one person is so nominated and only one of the persons nominated is willing to act as the Beneficiaries' Representative then that person shall be appointed by the Guardian as the Beneficiaries' Representative and if more than one of the persons nominated is willing to act as the Beneficiaries' Representative then the Employers' Representative shall conduct a survey of the Beneficiaries or by any other appropriate means determine which of those persons is nominated with the support of a majority of the Beneficiaries and that person shall be appointed by the Guardian as the Beneficiaries' Representative **PROVIDED THAT** in the event of equal support for more than one of the persons the Guardian shall determine the nominee who is to be appointed as the Beneficiaries' Representative and shall appoint that person.

- (iii) It is a condition for eligibility for a person to be nominated and appointed as a Beneficiaries' Representative that he is in fellowship with those Christians known as Brethren and who are defined as such in Clause 4 of the deed dated 19<sup>th</sup> January 1994 and made between B.W. Parker, R.W. Sanderson, S.J. Pringle, S.R. Reoch and S.W. Jensen which established the Norman Park Education Trust and if a Beneficiaries' Representative ceases to satisfy this condition he may be removed by the Guardian from being a Beneficiaries' Representative.
- (iv) Subject to paragraphs (b) (iii) and (c)(iii) of this Clause, a Beneficiaries' Representative can only be removed if a Beneficiary gives the Employers' Representative written notice that the Beneficiary wishes that the Beneficiaries' Representative be removed and the Employer's Representative establishes by a survey of the Beneficiaries or by any other appropriate means that the notice has the support of a majority of the Beneficiaries and in that event the Beneficiaries' Representative shall be removed by the Guardian.
- (v) If at a particular time there is for any reason no Employers' Representative then the functions of the Employers' Representative under the provisions of this sub clause (c) shall be exercised by the Guardian.
- (vi) If it is necessary to appoint a Beneficiaries' Representative and no nominations are received from the Beneficiaries within the time specified in the notice calling for nominations the Guardian may appoint a temporary Beneficiaries' Representative with full powers of a Beneficiaries' Representative until such time as a Beneficiaries' Representative is appointed in accordance with the provisions of this sub clause (c).
- (vii) A certificate signed by the Guardian stating that a Beneficiaries' Representative ceased to satisfy the condition specified in paragraph (c)(iii) above shall be conclusive evidence of what is stated.

**(d) Appointment and Removal of Employer Representative**

- (i) Where it is necessary for the purposes of sub paragraphs (b)(i) C or (b)(i) E of this Clause to appoint a person to represent the Employers ("the Employers' Representative") either:
  - A. if the Trustee is a corporate entity - as a Director; or
  - B. if the Trustee are individuals - to be an individual Trustee,
 the power of appointment is vested in the Guardian but, subject to paragraph (d)(iii) an Employers' Representative shall only be appointed following nomination by agreement between any participating Employer or Participating Employers and the number of persons to be so appointed shall be the same number of persons as are appointed by the Beneficiaries.
- (ii) The Employers' Representative shall cease to be the Employers' Representative if it is so notified by the Guardian in writing.
- (iii) If for any reason there is at any time no Employers' Representative the Guardian may appoint a temporary Employers' Representative with the full powers of an Employers' Representative until such time as an Employers' Representative is appointed in accordance with paragraph (d)(i) above.

(e) **Management of the Fund**

For the purposes of managing administering and applying the Fund the Trustee shall be empowered to administer manage and deal with the Fund in such manner as it shall in its absolute discretion think fit but having due regard to the intents specified in clause 4 hereof.

(f) **Resolutions of the Trustees**

The Trustee may make rules and procedures for:

- (i) the manner of convening a meeting;
- (ii) the conduct of a meeting;
- (iii) voting at a meeting; and
- (iv) other matters concerning a meeting which it considers appropriate or which are necessary to comply with the Relevant Requirements.

(g) **Decisions of Trustees**

Except as otherwise expressly provided for in this Deed, all questions arising at a Trustee's meeting shall be determined by resolution and no such resolution and no such question shall be effective unless carried by a vote in favour of the decision:

- (i) where Equal Representation is not required, by a simple majority of Trustees; or
- (ii) where Equal Representation is required, by a majority of not less than two-thirds of the total number of individual trustees or, in the case of a Corporate Trustee, the total number of directors in office for the time being,

**PROVIDED THAT** a written resolution signed by not less than two-thirds of the trustees in office (or the directors of a Corporate Trustee) for the time being shall be as effective as a resolution passed at a meeting of Trustees duly convened and held. A copy of such written resolution shall be given to each Trustee who was not a signatory thereto as soon as reasonably practicable after it is made.

(h) **Delegation by other Trustees**

If the Fund is administered by more than one Trustee such Trustees may by resolution authorise any limited number of the Trustees or other specified persons to sign or endorse cheques and to sign all documents and forms relating to the Fund and to the investments forming part of the Fund and the moneys payable thereunder in connection with the Fund.

(i) **Indemnity**

No person being a Trustee or any other person authorised by the Trustee to act in respect of the Fund shall be under any personal liability in respect of any loss or breach of trust relating to the Fund unless the same shall have been due to his own dishonesty **AND** the Trustee or such other person shall be indemnified by the Fund against all liabilities incurred by it in the execution or attempted execution or in respect of the non-execution of the trusts authorities powers and discretions contained in this Deed and may use any

moneys for the time being in the hands of the Trustee for the indemnity and generally for the payment of all proper legal and other costs charges and expenses of administering or winding up the Fund and otherwise of performing its duties under this Deed **AND FURTHER THAT** this indemnity shall apply to any payment made on the death of a member to any person whom the Trustee bona fide believes to be entitled thereto.

(j) **Exercise of Powers Authorities and Discretions**

In the exercise of the powers authorities and discretions vested in the Trustee by this Deed the Trustee shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers authorities or discretions from time to time and at any time or may refrain from exercising all or any of those powers authorities or discretions from time to time or at all and its decisions as to the interpretation and effect of this Deed shall be final and binding.

(k) **Trustee may act through an Agent**

- (i) The Trustee shall not be bound in any case to act personally but shall, **SUBJECT TO** fulfilling any requirements of the Act, be at full liberty to appoint an investment manager or a solicitor accountant or other agent or a secretary to transact all or any business of whatsoever nature required to be done in connection with the Fund (including the receipt and payment of money) and shall be entitled to be allowed and to be paid out of the Fund all remuneration charges and expenses incurred in respect of the appointment of and the work performed by such investment manager, solicitor, accountant, other agent or secretary.
- (ii) The Trustee may at any time revoke add to or vary the terms of appointment of an investment manager or of a solicitor, accountant or other agent or secretary and may appoint another company, firm or person to act as investment manager or as solicitor, accountant or other agent or as secretary in respect of the Fund or a part of it.

(l) **General Powers of the Trustee**

In addition to the powers which may by law be conferred upon or which are otherwise granted to the Trustee by this Deed the Trustee shall have the following powers:-

- (i) To settle compromise or submit to arbitration any claims matters or things relating to this Deed or to the rights of the Beneficiaries or any other persons making any claims upon the Fund;
- (ii) To commence carry on and defend proceedings relating to the Fund or to the rights of any Beneficiaries or former Beneficiaries under the Fund;
- (iii) To borrow money for the purpose of securing temporary finance only in accordance with relevant requirements of the Act;
- (iv) To retain the services of such professional or other advisers in relation to the management administration or investment of the Fund and to pay out all expenses properly incurred and incidental to the management and administration and investment of the Fund;

- (v) To indemnify or to undertake to indemnify any person in respect of any claim, matter or thing relating to the Fund or to the rights of any Beneficiary or former Beneficiary in respect of the Fund;
- (vi) To deduct all taxes, duties, expenses, and other costs and outgoings from any Benefit payable to or in respect of any Beneficiary and pay only the residual amount in respect of such benefit to such Beneficiary;
- (vii) to complete any election or perform any act as required by the Relevant Requirements including changing the status of the Fund from a Self Managed Fund to a Small APRA Fund, a non-excluded fund or some other type of fund approved by the Relevant Requirements; or
- (viii) Generally to do all acts, things and matters as the Trustee may consider necessary or expedient for the proper and due administration maintenance and preservation of the Fund in performance of its obligations pursuant to the terms of this Deed.

(m) **Statutory covenants**

**NOTWITHSTANDING** any other provisions of this Deed the Trustee covenants:-

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- (i) to act honestly in all matters concerning the Fund;
  - (ii) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
  - (iii) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Beneficiaries;
  - (iv) to keep the money and other assets of the Fund separate from any money and assets, respectively:
    - (a) that are held by the Trustee personally; or
    - (b) that are money or assets, as the case may be, of an employer-sponsor, or an associate of an employer-sponsor, of the Fund;
  - (v) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
  - (vi) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including but not limited to, the following:
    - (a) the risk involved in making and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
    - (b) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;

- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
- (d) the ability of the Fund to discharge its existing and prospective liabilities;
- (vii) if there are any reserves of the Fund-to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (viii) to allow Beneficiaries access to any information or any documents which disclosure is prescribed by the Relevant Requirements;
- (ix) such other covenants that are required to be complied with from time to time by the Trustee of a regulated superannuation fund of the type which the Fund is at the relevant time.

## **APPOINTMENT OF AUDITOR, SECRETARY AND ACTUARY**

### **14. (a) Appointment of Auditor**

The Trustee shall if necessary appoint a person or firm to be the Auditor on such conditions having regard to Clause 4 hereof as it shall determine.

### **(b) Secretary and Actuary**

In addition, the Trustee from time to time may appoint persons or firms to the position of Secretary or Actuary on such conditions as it determines and may appoint such other persons or consultants as it considers desirable for the proper management of the Fund.

### **(c) Removal**

The Trustee may cancel the appointment of any person appointed pursuant to this clause.

## **VARIATION IN BENEFITS**

### **15. Compulsory Superannuation**

Where at any time an obligation is imposed upon the Contributor to make compulsory contributions to a superannuation fund which is established by Federal, State or Territory legislation and is administered by a body or authority established by statute and which provides retirement, death or disablement benefits in respect of Beneficiaries of the Fund then the Contributor may forthwith reduce its Contribution to the Fund by the amount being paid to the other fund in respect of the Beneficiaries who are also Beneficiaries of the other fund and the Contributor may consult the Actuary in respect of the amount of the reduction in Contributions to be made to the Fund.



## TRUSTEE'S POWERS OF INVESTMENT AND SALE

### 16 (a) **Authorised Investments**

Subject to the Relevant Requirements, so much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed shall be invested as soon as practicable by and under the control and in the name of the Trustee in any of the following investments having regard to the requirements of clause 4 hereof:

- (i) any type of investment for the time being authorised by any of the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds; or
- (ii) on deposit with or on loan to any Bank or financial institution on the normal terms and conditions of their borrowings; or
- (iii) in loans or other investments with or without security to any person including a Participating Employer either for interest or otherwise provided that the fund shall at all times comply with the requirements of the Act.

### (b) **Power to sell and vary investments**

Subject to the Relevant Requirements, the Trustee shall have power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

## PARTICIPATION IN FUND

### 17. (a) **Nomination**

Subject to any requirement imposed by an Industrial Authority or the Responsible Authority, a Participating Employer shall nominate such of its Employees as it shall in its absolute discretion determine for participation in the Fund. An Eligible Person in respect of whom there is no Participating Employer shall nominate himself for membership of the Fund. Such nomination shall be made to the Trustee in writing and shall be accompanied by a completed Application Form in the form of Schedule B annexed hereto or in such other form as the Trustee shall from time to time determine.

### (b) **Admission**

Upon receipt of the nomination and a completed application in the appropriate form the Trustee may determine whether or not to admit the applicant to participate in the Fund.

A Beneficiary shall be deemed to have joined on a date determined by the Trustee or the date of the completed application whichever is the earlier.

### (c) **Beneficiaries to provide information**

Every Beneficiary shall, when requested by the Trustee, furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund including, without limitation, information regarding that person's:

- (i) age, health and address;
- (ii) participation or benefits in other superannuation or like funds; and
- (iii) information required for the purposes of complying with the Relevant Requirements.

If a Beneficiary fails to comply with the provisions of this clause, the Trustee may suspend the payment of any Contribution in respect of that Beneficiary or withhold any Benefit in respect of that Beneficiary until he does comply.

Where a Beneficiary furnishes information required pursuant to this Deed, affecting or likely to affect the Benefits payable to or in respect of the Beneficiary, and the information supplied is incorrect or misleading, or any relevant information is deliberately withheld, the Trustee may in its absolute discretion alter the said Benefits to amounts that would have applied had full and accurate information been supplied.

**(d) Cessation of Participation**

A person shall cease to be a Beneficiary of the Fund on the payment of the whole of the Benefit in accordance with the provisions of the Deed.

## **CONTRIBUTIONS TO FUND**

**18. (a) Beneficiary's Contributions**

No contribution shall be made to the Fund by a Beneficiary under Part II of Division B hereof.

Contributions to the Fund by a Beneficiary under Part III of Division B hereof shall be such amount as may be agreed between the Employer or the Beneficiary and the Trustee from time to time.

**(b) Contributions during Special Leave**

In the event of a Beneficiary taking Special Leave, the Trustee shall consult with the Contributor regarding the payment of contributions in respect of the Beneficiary during the said Special Leave and then shall advise the Beneficiary in writing of the conditions which will apply in respect of Benefits and Contributions both during and after the period of Special Leave.

**(c) Employer's Contributions**

The Employer or, if there is more than one Employer participating in the Fund, the Employers, shall, with the approval of the Trustee determine the Contributions payable by each Employer in respect of Beneficiaries of all Classes on and from:-

- (i) the date on which this Deed is deemed to come into effect;
- (ii) the date the Beneficiary joins the Fund;
- (iii) the date of any change in the Beneficiary's Class;
- (iv) the date of each actuarial investigation (if any);

- (v) each date on which any variation is made to this Deed which has a significant effect on the Benefits or the Contributions; and
- (vi) such other dates as the Trustee may decide.

The contributions payable by an Employer shall be paid to the Trustee free of all deductions at least once each year in such manner and at such time as shall be agreed upon between the Trustee and the Employer **PROVIDED THAT** any Compulsory Contribution or contribution paid pursuant to a determination of an Industrial Authority shall be paid as required by the Act or that determination.

(d) **Designation of Class Entitlements**

Where a Contributor makes a Contribution in respect of a Beneficiary and the Beneficiary is a Beneficiary of more than one Class in accordance with Clause 43 and/or 49 hereof (as appropriate) the Contributor shall designate in relation to which Class or Classes the Contribution is being made on behalf of that Beneficiary and the specific amounts to be allocated by the Trustee to the appropriate Accumulation Account or Accounts applicable to that Class or those Classes.

(e) **Interest on Contributions**

~~The Trustee may require the Contributor to pay interest on any of its Contributions which are in arrears at a rate determined by the Trustee.~~

(f) **Administration Costs**

The Trustee will be entitled to be reimbursed from the Fund for all costs, expenses and other outgoings incurred by it in acting as Trustee of the Fund and in its administration including, but not without limitation:

- (i) all costs, charges and expenses incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund (including commissions, brokerage, bank charges, financial institutions and stamp duties and bank accounts debits tax);
- (ii) fees and expenses of the Auditor;
- (iii) all Taxation paid or payable in connection with the Fund on any account whatsoever;
- (iv) all fees, wages and expenses of any barrister, solicitor, accountant, Actuary, fund manager, administration manager, investment manager, agent, consultant or expert from time to time engaged by the Trustee in the discharge of its duties under this Deed;
- (v) all costs, expenses and outgoings incurred or to be incurred in relation to the preparation and distribution of any periodic or other report or document in relation to the Fund;
- (vi) all and any administrative costs in respect of postage, telephone and like disbursements; and
- (vii) all and any expenses in connection with the maintenance of accounting records and the preparation of any accounting, taxation or other returns or advices,

**PROVIDED HOWEVER THAT** the Trustee is authorised to accept Contributions in respect of the costs of the establishment and conduct of the Fund from the Founder, Employer, Guardian and/or a Contributor.

## **TRANSFERS TO AND FROM OTHER FUNDS**

### **19 (a) Transfers to other Funds**

Where a Beneficiary joins or is eligible to join any other Approved Benefit Arrangement and the Beneficiary requests that the whole or a part of his entitlement in the Fund be transferred to the Approved Benefit Arrangement the Trustee, with the approval of the Beneficiary's Employer (if applicable), shall pay to the Trustee of the Approved Benefit Arrangement an amount (hereinafter called the "Transferred Amount") as determined by the Trustee which amount reflects the whole or such part of the entitlement of the particular Beneficiary in the Fund at the time of the request for the transfer as the Beneficiary has requested be transferred and the Trustee may at its discretion obtain the advice of a Qualified Adviser in the calculating of same.

### **(b) Application of Transferred Amount**

The Trustee may require that the former Beneficiary be entitled to such reasonable rights in the Approved Benefit Arrangement as it shall agree with the trustee of the Approved Benefit Arrangement are just and equitable.

### **(c) Benefits Cease**

A former Beneficiary in respect of whom his whole entitlement in the Fund is paid as the Transferred Amount under this Clause and his Dependants shall not be entitled to any other Benefit and the receipt of the Transferred Amount by the proper officer of the Approved Benefit Arrangement shall be a complete discharge to the Trustee of all liabilities to and in respect of that former Beneficiary and except as provided in sub-clause (b) above, the Trustee shall have no responsibility to see to the application of the Transferred Amount.

### **(d) Preserved Payment Transfers**

Where a Beneficiary or former Beneficiary has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Approved Benefit Arrangement the Trustee shall ensure that the provisions of the Approved Benefit Arrangement provide that if a Beneficiary wishes to leave the Approved Benefit Arrangement the amount of the Preserved Payment Benefit must be preserved in another Approved Benefit Arrangement until such time as the Relevant Requirements allow for the release of such benefits.

### **(e) Transfers from other Funds**

Where a Beneficiary is or was a member of or is or was a Beneficiary under any other superannuation arrangement including an Approved Deposit Fund or Eligible Annuity the Trustee may by resolution and at its absolute discretion take over or acquire by transfer or otherwise from the trustee of the other superannuation arrangement or Approved Deposit Fund or Eligible Annuity the whole or any part of the assets of such superannuation arrangement with the intent of preserving the rights entitlements and interest of any of the existing Beneficiaries of such superannuation arrangement at the time of takeover or acquisition. The Trustee shall hold the same as part of the

Fund and reflect such rights entitlements and interests in the particular Beneficiary's Accumulation Account as it shall determine and, if the Trustee so determines, the Beneficiary shall be deemed to have been a Beneficiary of the Fund on the date he became a member or a Beneficiary of the original fund from which the benefit was transferred PROVIDED THAT where such Transfer incorporates an amount which was paid to the credit of the Beneficiary as a Preserved Payment no Benefit representing such amount shall be payable pursuant to this Deed until the attainment by the Beneficiary of the age of 55 years or such other age or in such other circumstances acceptable to the Responsible Authority.

## **STATUTORY BENEFIT SCHEME**

20. Where a scheme having government support or recognition whether in the Commonwealth of Australia or any State or Territory thereof or any place with which the activities of the Contributor are or may for the time being be concerned (hereinafter called the "Statutory Scheme") provides, or will provide, Beneficiaries, and/or their Dependants with benefits which in the sole opinion of the Trustee are of a similar nature to any Benefit provided under this Deed, the Trustee, with the consent of the Contributor and after seeking the advice of a Qualified Adviser, may alter or vary in any way whatsoever the provisions of this Deed in relation to the Contributor without regard to the provisos to clause 35 hereof.

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## **BENEFIT PAYMENT RESTRICTIONS**

21. (a) **NOTWITHSTANDING** anything expressed or implied to the contrary in this Deed:
- (i) no benefit or other amount shall be paid or provided from the Fund to or in respect of any person in any circumstances, of any amount or in any manner or form which in the opinion of the Trustee will prejudice the granting or continuance of any concessions for or in respect of the Fund under the Act or cause the Fund not to be in compliance with what the Trustee believes to be a relevant requirement of the Act; and
  - (ii) no amount shall be deducted from any benefit and no part of any benefit shall be forfeited for any reason where, in the opinion of the Trustee, to do so would prejudice the granting or continuance of a concession or cause any non compliance referred to in the preceding paragraph (i).
- (b) In order to ensure compliance with sub-clause (a) of this clause -
- (i) where a benefit must be preserved the Trustee shall preserve that benefit either within or (where applicable with the consent of the Beneficiary) without the Fund, in such manner and form, by way of such arrangements and subject to such conditions as will ensure such compliance; and
  - (ii) in any case the Trustee may take such action as it sees fit to ensure such compliance or preservation of a benefit as aforesaid, including without limitation adjusting the amount or terms of payment of benefits in such manner, to such extent and by way of such arrangements as it considers appropriate;

and any decision by the Trustee for the purposes of this Clause shall be final and binding on all interested persons.

## FORFEITURE OF BENEFITS

### 22. (a) Conditions of Forfeiture

Subject to the Relevant Requirements, any Beneficiary, former Beneficiary or after his death, any of his Dependants or his personal representatives:

- (i) who assigns or charges or attempts to assign or charge any Benefit;
- (ii) whose Benefits whether by his own act, operation of law or otherwise become payable to or vested in any other person, company, government or other public authority;
- (iii) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs;

shall forfeit entitlement to all his Benefits and, in the case of a Beneficiary, he shall cease to be a Beneficiary of the Fund.

### (b) Accumulation Account Residue

Any Beneficiary or former Beneficiary who has been paid all Benefits which the Trustee considers should be paid to him pursuant to the provisions of Division B hereof and who still has a residual amount standing to the credit of his Accumulation Account shall forfeit such amount forthwith and such amount shall be dealt with as a forfeited Benefit.

### (c) Application of Forfeited Benefits

The Trustee may pay or apply any Benefits which have been forfeited under this Clause in one or more of the following ways:

- (i) to or for the benefit of the former Beneficiary or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine and the Trustee's decision shall be final **PROVIDED HOWEVER** that where the former Beneficiary is and remains an Eligible Person any payments so made shall be limited to the relief of hardship of the former Beneficiary or of his Dependants; or
- (ii) if the former Beneficiary was an Employee, to or for the benefit of other Beneficiaries of the Fund who have rights to receive Benefits from the Fund and who are or were Employees of the same Contributor or for their Dependants on a basis that the Trustee considers reasonable having regard to all the circumstances in which Benefits may be paid, in lieu of Contributions which were otherwise payable by the Employer of those Beneficiaries or the Beneficiary to the Fund; or
- (iii) to repay to the Employer all or some Contributions (with Net Earnings thereon) made by it to the Fund in respect of a Beneficiary whose entitlements to all his Benefits under the Fund have been forfeited; or
- (iv) to a separate account to be called the Equalisation Account established in accordance with the provisions of sub-clause (d) below.

**PROVIDED HOWEVER THAT** forfeited benefits may not be applied in any manner or form which in the opinion of the Trustee will prejudice the

granting or continuance of any concessions for or in respect of the Fund under the Act or cause the Fund not to be in compliance with what the Trustee believes to be a relevant requirement of the Act.

(d) **Equalisation Account**

- (i) The Trustee shall have power at any time to establish an Equalisation Account of the Fund and may transfer to the credit of the Equalisation Account any forfeited Benefits or any amounts remaining in the Income Account pursuant to paragraph 11(e)(v) hereof.
- (ii) Whilst any funds are held in the Equalisation Account they shall not form any part of any Beneficiaries Accumulation Account and any income derived by the Fund on the moneys held in the Equalisation Account shall be credited to the Equalisation Account.
- (iii) The Trustee shall keep a record of forfeited Benefits in respect of Beneficiaries who are Employees together with details of net earnings thereon.
- (iv) The Equalisation Account is to be used by the Trustee to stabilise the investment earnings of the Fund and to provide for future contingencies as the Trustee considers reasonable and accordingly the Trustee shall have the discretion to deal with the assets of the ~~Equalisation Account in accordance with the provisions of sub-clause (c) above~~ and payments from the Equalisation Account can be made by the Trustee at its discretion for any of the purposes specified in the said sub-clause (c) above.

(e) **Distribution to Contributor**

Subject to the Relevant Requirements, if there remains no person entitled to any Benefits forfeited hereunder or held in the Equalisation Account or Death and Disablement Reserve after dealing with the same in accordance with this clause any amount remaining shall be paid to the Contributor and/or the Contributor's nominee at the discretion of the Trustee.

## CONVERSION OF PENSION TO LUMP SUM

23. (a) **Application to Convert**

On the written application of a Beneficiary the Trustee may pay to the Beneficiary from the Fund the total amount standing to the credit of his Accumulation Account or Accounts at the time of his request **PROVIDED THAT** any cost incurred in converting the pension to a lump sum may be deducted from the relevant Beneficiary's Accumulation Account or Accounts prior to payment.

(b) **Trustee's Decision Final**

The decision whether or not any lump sum shall be paid or provided shall be in the absolute discretion of the Trustee.

## PENSION PAYMENT CONDITIONS

### 24. (a) Amount of Pension

**SUBJECT TO** Clause 23, the annual Pension payable shall be determined by the Trustee in consultation with the Beneficiary or Former Beneficiary after obtaining advice from a Qualified Adviser and shall be within any minimum or maximum limit laid down in the Act.

### (b) Method of Payment

The Pension shall be payable in such manner and on such conditions as the Trustee and Beneficiary shall determine, and shall be payable by instalments which may be equal or unequal and on such dates as the Trustee determines after consultation with the person to whom the Pension is payable **PROVIDED THAT** the total annual pension payable pursuant to sub clause (a) of this Clause is paid within the Fund Year.

### (c) Variation of Pension Payable

Any Pension payable pursuant to the provisions of this Deed shall, if required by the Relevant Requirements be varied from time to time by such amount as the Trustee in its absolute discretion considers appropriate **PROVIDED HOWEVER** that the varied pension payable is within the limits required by the Relevant Requirements in respect of the type of pension being paid.

### (d) Dependant Pension

After the death of a former Beneficiary who was at the time of death still in receipt of a pension pursuant to the provisions of this deed, the Trustee may, unless requested by the spouse of the former Beneficiary in writing, pay to the spouse a pension which pension shall not exceed an amount which is in accordance with the Relevant Requirements **PROVIDED THAT** if the spouse makes such a request the Trustee shall consider the request in its absolute discretion.

### (e) Death of Beneficiary

In the event that a Beneficiary to whom a Pension is being paid dies whilst there is still an amount standing to the credit of the Beneficiary's Accumulation Account or Accounts, the balance of such Accumulation Account or Accounts shall be dealt with in accordance with Clause 47 or 51 whichever is relevant **PROVIDED HOWEVER** that in the event that this is not in accordance with the Relevant Requirements the balance of such Accumulation Account or Accounts shall be dealt with in accordance with Clause 22 as though it was a forfeited benefit or as otherwise required by the Relevant Requirements.

## COMMUTATION OF PENSION

### 25. (a) Conditions of Commutation

Following the written request of a person who is in receipt of a pension in accordance with Clause 24 hereof, the Trustee may in its absolute discretion commute to a lump sum Benefit the whole or any part of a Pension payable from the Fund to that Beneficiary or former Beneficiary, as applicable, **PROVIDED THAT:-**



- (i) the commutation of the pension is permitted by the Relevant Requirements;
- (ii) the amount of the commuted Benefit including the value of any remaining Pension shall be subject to the provisions of Clause 21 and be limited to the amount standing in the Beneficiary or former Beneficiary's Accumulation Account or Accounts;
- (iii) where any amount remains in the Fund after all the Beneficiary's entitlements have been paid out the amount so remaining shall be dealt with in accordance with Clause 22 hereof as a Forfeited Benefit;

**PROVIDED FURTHER** that in the opinion of the Trustee the commutation would not be to the disadvantage of the Fund, the Employer or the Beneficiaries and that the commutation is acceptable to the Responsible Authority.

**(b) Qualified Adviser to Determine Benefit**

The Trustee after obtaining the advice of a Qualified Adviser shall determine the amount of the lump sum payable in respect of the pension being commuted.

~~The Trustee may instruct the Qualified Adviser in furnishing his advice as aforesaid, to regard the state of health of the person receiving or to receive the Pension being partially or wholly commuted as being unaffected by any significant impairment and to make such other assumptions as the Trustee determines in its absolute discretion and the Trustee may act upon the advice so obtained.~~

## **TRANSFER IN SPECIE**

### **26. Transfer of Investments**

The Trustee may with the consent of a Beneficiary to whom a Benefit is payable transfer investments of the Fund of equivalent value to such Benefit in lieu of paying the whole or part of the amount otherwise payable pursuant to the provisions of Division B hereof **PROVIDED HOWEVER** that the Trustee is able to receive from the Relevant Authority, if required, an acknowledgment that such transfer will not cause the Fund to fail to satisfy the Relevant Requirements of the Act.

## **PAYMENT OF BENEFITS ON DEATH**

### **27. (a) Benefit payable on the Death of a Beneficiary leaving Dependants**

Where this Deed provides for the payment of a Benefit on the death of a Beneficiary leaving Dependants, the Trustee shall in its absolute discretion pay the Benefit to the Nominated Dependant of the former Beneficiary but in the event that there is no Nominated Dependant or the Trustee considers it inappropriate to pay the Benefit to any Nominated Dependant the Trustee shall in its absolute discretion pay the Benefit to such one or more of the former Beneficiary's Dependants in the manner, at the times, by the instalments and in such proportions between them, if more than one, as the Trustee may from time to time in its discretion determine.

(b) **Benefit payable on the death of a Beneficiary leaving no Dependants**

Where this Deed provides for the payment of a Benefit on the death of a Beneficiary and the Beneficiary leaves no Dependants, the Trustee shall pay the Benefit to his legal personal representative, or, if there is no legal personal representative, to such relatives of the former Beneficiary as appear to the Trustee to be entitled to share in his estate, provided that if there be no such relatives, the Benefit may be paid to such person or persons as the Trustee in its absolute discretion determines or failing any such determination the Benefit shall be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with sub-clause 22(c) hereof.

**PAYMENT TO OTHERS ON BEHALF OF BENEFICIARIES**

28. When any Beneficiary is under the age of 18 years or when in the opinion of the Trustee it would be in the best interest of the Beneficiary, the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary and/or his Dependants and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of the Beneficiary. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

**DEDUCTION OF TAX FROM BENEFITS PAYABLE**

29. The Trustee shall deduct from any Benefit payable to any Beneficiary pursuant to this Deed any Taxation payable from or in respect of it and shall thereupon pay the said Taxation to the relevant authorities.

The Beneficiary shall be entitled to receive only the net Benefit or payment after the deduction of Taxation has been made **PROVIDED HOWEVER** that if the Trustee receives a refund of all or any of that Taxation paid by it then the Trustee shall pay the full amount of such refund to the Beneficiary and/or his nominee.

**PAYMENT OF BENEFITS**

30. (a) **Address for Payment of Benefits**

The Trustee may forward the Benefits to the postal address or bank account last notified to the Trustee in accordance with sub-clause (b) of this clause or to such other place as the Trustee shall determine.

- (b) **Notification of Address**

Every Beneficiary, or person to whom a Benefit is payable on behalf of or for the benefit of a Beneficiary, shall notify the Trustee in writing at the time the Benefit becomes payable and immediately after he changes residence of:

- (i) his place of residence and its full postal address; and
- (ii) the bank account (if any) to which he requests that the Benefit be paid.

(c) **Receipt for Benefits**

Any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in the form from time to time required by the Trustee.

**ROLLOVER PAYMENTS**

31. Where a Beneficiary or former Beneficiary wishes to effect a Rollover Payment in respect of all or any of his entitlement in the Fund he shall make a request to the Trustee in writing nominating the person to whom the payment is to be made and the amount to be applied as the Rollover Payment. The Beneficiary or former Beneficiary shall additionally complete and execute a Rollover Payment Notification together with such other documents as shall be required to enable the Rollover Payment to be effected and for it to be recorded by the Responsible Authority.

**ADMISSION AND CESSATION OF PARTICIPATING EMPLOYER**

32. (a) **Admission of Participating Employer**

- (i) If the Founder is an employer the Founder shall be deemed to be a Participating Employer. Any other employer who wishes to become a Participating Employer of the Fund shall make application to the Trustee in a form and on terms and conditions acceptable to the Trustee.
- (ii) Upon receipt of an application pursuant to paragraph 32 (a) (i) hereof the Trustee, as directed by the Guardian, may admit any such applicant as a Participating Employer of the Fund.
- (iii) The Trustee shall establish and maintain a register of Participating Employers of the Fund substantially in the form of Schedule C of this Deed and shall enter details of admission of each Participating Employer to the Fund in this register.
- (iv) The entry of admission details in the register and executed by the Trustee and the Participating Employer shall be conclusive evidence of the due admission of the Participating Employer to the Fund.

(b) **Cessation of Participating Employer**

In the event of:

- (i) in the case of a Participating Employer being a company (including a company in the capacity of a trustee):
  - A. the Participating Employer, going into liquidation (whether voluntary or compulsory) **EXCEPT** for the purpose of reconstruction or amalgamation if the new or amalgamated company agrees with the Trustee to take the place of the Participating Employer under this Deed and to assume the obligations placed on the Participating Employer in respect of the Fund by this Deed;
  - B. the Participating Employer entering into any composition or scheme of arrangement under any Commonwealth, State or Territory Companies legislation;

- C. an official manager or receiver or receiver and manager of the Participating Employer being appointed;
  - D. the directors of the Participating Employer resolving at a meeting of the Directors that the Participating Employer terminate its contributions to the Fund;
  - E. the Guardian notifying the Trustee that the Participating Employer cease to be a Participating Employer **PROVIDED THAT** if the Guardian consists of more than one Contributor then a majority of Contributors may give such notification to the Trustee;
  - F. the Participating Employer voluntarily ceasing to be a Participating Employer by notice in writing to the Trustee; or
- (ii) in the case of a Participating Employer being a natural person (including such a person in the capacity of a trustee):
- A. the Participating Employer becoming bankrupt, committing any act of bankruptcy, calling a meeting of creditors, entering into an assignment for the benefit of or composition or arrangement with creditors or in any other way taking advantage of or seeking relief under any Act relating to bankruptcy or insolvency;
  - B. the Guardian notifying the Trustee that the Participating Employer cease to be a Participating Employer **PROVIDED THAT** if the Guardian consists of more than one Contributor then a majority of Contributors may give such notification to the Trustee;
  - C. the Participating Employer voluntarily ceasing to be a Participating Employer by notice in writing to the Trustee;

that Participating Employer shall thereupon cease to be a Participating Employer and to be entitled to make contributions to the Fund on behalf of its Employees.

## TERMINATION OF CONTRIBUTIONS

### 33. (a) Termination of Employer's Contributions

Subject to sub-clause (b) below, the Employer's Contributions shall terminate where:

- (i) the Employer goes into liquidation (except for the purposes of amalgamation or reconstruction); or
- (ii) the Employer voluntarily terminates its Contributions by notice in writing to the Trustee.

### (b) Transfer of the Employer's Business

If the Employer (hereinafter called the "Former Employer") is amalgamated with or disposes of its undertakings to another Employer (hereinafter called the "New Employer") and if the Former Employer and the New Employer so agree contributions shall be deemed not to have terminated but the

Beneficiaries who are Employees of the Former Employer shall become Employees and Beneficiaries with the New Employer and the New Employer may make future Contributions in respect of those Beneficiaries.

(c) **Application and notice of Termination**

Termination of Contributions by the Employer pursuant to the provisions of paragraph (a) (i) above shall apply in respect of all the Beneficiaries in respect of whom the Employer contributes. A notice given by the Employer pursuant to the provisions of paragraph (a) (ii) above may, as stated in the notice, apply to all of the Beneficiaries in respect of whom the Employer contributes or any Beneficiary or section or Class of Beneficiaries in respect of whom the Employer contributes. The notice shall be given to take effect on a date to be agreed upon between the Employer giving the notice and the Trustee but not more than 1 year from the date of such notice.

(d) **Employees not to be admitted**

No employees of the Employer shall be admitted as Beneficiaries where the Employer's Contributions in respect of all of its Employees who are Beneficiaries have been terminated or suspended.

(e) **Termination of other Contributions**

Contributions by persons other than an Employer shall terminate where:

- (i) the Contributor voluntarily terminates the making of contributions by notice in writing to the Trustee; or
- (ii) the Contributor is not the Guardian and the Trustee in its absolute discretion determines that contributions by that Contributor should be terminated and so notifies the Contributor in writing and any such notice of termination shall take effect from the date specified in the notification not being a date prior to the date of the notification and;

where contributions in respect of a Beneficiary terminate by virtue of the operation of paragraphs(i) or (ii) of this sub clause the Trustee may direct the Beneficiary to make arrangements to transfer all of his benefits to another Superannuation arrangement in accordance with sub-clause 19(a) hereof and if so directed the Beneficiary shall make such arrangements within the time specified by the Trustee.

## **PROVISION FOR BENEFICIARIES FOLLOWING TERMINATION OF CONTRIBUTION BY PARTICIPATING EMPLOYER**

34. (a) **Cessation of Participation in Fund**

Subject to clause 33 hereof, when a Participating Employer terminates contributions to the Fund in respect of Employees the Trustee shall hold in respect of each Beneficiary who is such an Employee of the Participating Employer (hereinafter called the "Ceasing-Beneficiary") as at that date, that portion of the assets of the Fund which the Trustee, in accordance with clause 46 hereof, shall determine to be held in the Fund in respect of that Ceasing-Beneficiary.

The Trustee may obtain the advice of a Qualified Adviser regarding the computation of the appropriate amount.

**(b) Provision for Ceasing-Beneficiary**

The Trustee shall immediately deal with such of the Ceasing-Beneficiary's Accumulation Account as shall be determined in accordance with Clause 46 hereof (the "Appropriated Benefit") in any one or more of the following ways as may be decided by the Trustee in its absolute discretion, but subject to the condition applying to transfers in clause 19 hereof:

- (i) Where the Ceasing-Beneficiary is a Beneficiary of any other superannuation arrangement, and so requests, by transfer of the Appropriated Benefit to the trustee thereof; or
- (ii) By applying the Appropriated Benefit for the Ceasing-Beneficiary (either from the Fund or by paying it to a trustee company or similar body) to provide benefits in respect of him which, in the opinion of the Trustee, are of a similar type to those provided by this Deed in respect of him; or
- (iii) By paying the Appropriated Benefit to the Ceasing-Beneficiary on his ceasing to be an Employee or to the appropriate persons referred to in clause 27 hereof, on his death;

**PROVIDED THAT** if the Guardian so directs the Trustee shall deal with the Appropriated Benefit so as to ensure that all the Accumulated Benefits are transferred out of the Fund.

**(c) No further claims against the Fund**

A Ceasing-Beneficiary in respect of whom an Appropriated Benefit has been applied under the provision of sub-clause (b) above, or who the Trustee determines has no Appropriated Benefit shall have no right to resort to or claim against the Fund

otherwise than in respect of his Appropriated Benefit as determined in accordance with sub-clause (a) above.

**(d) Disposal of residual assets**

If there remains no person entitled to any payment from an Appropriated Benefit or from the Fund including the Death and Disablement Reserve, any residual assets then remaining shall be dealt with pursuant to the provision of sub-clause 22 (e) hereof.

**(e) Ceasing-Beneficiary to transfer benefits**

Where an Employee of a Participating Employer is a Ceasing-Beneficiary, the Trustee may direct the Ceasing-Beneficiary to make arrangements to transfer all of his Benefits to another Superannuation arrangement in accordance with sub-clause 19 (a) hereof, and if so directed the Ceasing-Beneficiary shall make such arrangements within the time specified by the Trustee.

## **VARIATION OF TRUST DEED**

35. The provisions of this Deed may be added to, amended, altered, modified or varied (hereinafter called "variation") from time to time by the Trustee on the following bases:-

**(a) Class of Variation**

All variations shall be classified as being of an administrative or management nature unless the variation affects the rights or entitlements of Beneficiaries or their Dependants to receive Benefits in which case it shall be classified as a significant variation.

**(b) Administrative Variation**

Where a variation is considered by the Trustee to be of an administrative or management nature the same may be effected by an oral declaration or written resolution of the Trustee and a certified copy of minutes of a meeting of the Trustee confirming any such oral declaration or a certified copy of any such written resolution shall, if required by the Relevant Requirements, be sent to the Responsible Authority within 28 days of the variation being effected.

**(c) Significant Variation**

Where a variation affects the rights or entitlements of Beneficiaries or their Dependants to receive Benefits or where the Trustee elects to effect a variation other than as referred to in sub-clause (b) above, then a variation of this Deed shall be prepared and executed by the Trustee then, if required by the Relevant Requirements, sent to the Responsible Authority within 28 days of the variation being effected and the same shall be available for inspection by any Beneficiary in accordance with the provisions of sub clause 12(e) hereto.

**(d) Notice**

On any variation being effected the Trustee shall within 28 days of the variation advise the Beneficiaries of the Fund of the variation and the effect of the variation on their entitlements.

**(e) Limitation on Variation**

No variation shall:

- (i) have the effect of varying the main purpose of this Deed;
- (ii) authorise the making of any payment to any Beneficiary of the Fund except as specifically provided in this Deed;
- (iii) materially reduce or adversely affect the value of the interest in the Fund of any Beneficiary without the consent of the Responsible Authority.

**WINDING-UP OF FUND****36. (a) Power to Terminate**

The Trustee may, at any time and in accordance with the provisions of this clause, terminate the whole or any part of the Fund whether in respect of all Beneficiaries or some Beneficiaries or a particular Class of Beneficiary. If the whole Fund is to be terminated, references in this clause to a part of the Fund shall include references to the whole of the Fund.

**(b) Notice of Termination**

The Trustee shall give written notice to each Employer or Participating Employer and all Members affected by a termination of a part of the Fund and the date upon which such termination shall be effective.

**(c) Application of Fund Assets**

When the period of termination notice has expired, the Trustee shall not admit any further Employees as Beneficiaries of that part or Class of the Fund which has been terminated ("the Closed Class") and the assets of the Closed Class, as determined by the Trustee acting on the advice of a Qualified Adviser, shall be applied by the Trustee:

- (i) first, in paying the costs and expenses of winding-up the Closed Class and any Taxation levied against that Closed Class;
- (ii) second, in dividing the balance among the remaining Beneficiaries of that Closed Class in accordance with the Benefits which would have been payable under the Deed had they ceased to be Beneficiaries at the date of termination specified in the termination notice under sub-clause 36(b). In the event that the balance is less than the total of those Benefits, the balance shall instead be divided in such proportions as the Trustee shall determine; and
- (iii) third, in such manner determined in the Trustee's absolute discretion, including without limitation, the following:
  - (A) repatriating or transferring any remaining balance to the Employers or Participating Employers including the Employers or Participating Employers of Beneficiaries in that Closed Class in such proportions as a Qualified Adviser shall determine, provided that such repatriation or transfer shall not reduce or affect any Benefit accrued to or vested in a Beneficiary to the date of such repatriation or transfer and provided further that such repatriation or transfer shall be in accordance with the Relevant Requirements;
  - (B) increasing or improving the Benefit of any Beneficiary or membership Class in a manner which is just and equitable between each Beneficiary and each membership Class as the case may be;
  - (C) reducing or offsetting the accrued or prospective obligation of an Employer or Participating Employer to contribute to the Fund in respect of a particular Beneficiary or membership Class; or
  - (D) in any other manner or form permitted from time to time by the Relevant Requirements or with the prior written consent of the relevant Beneficiaries.

**(d) Notification of Change in Benefits**

As soon as practicable, the Trustee shall notify the affected Beneficiaries, Dependants or personal representatives, as the case may be, of the manner and the extent to which their Benefits are or will be affected and shall pay or transfer from the Fund the Benefits to which they have become respectively entitled.



(e) **Benefit Payment on Retirement**

- (i) No payment shall be made to a Beneficiary under this clause while that Beneficiary continues to be an Employee unless such payment is permitted by the Relevant Requirements or permitted by the Responsible Authority.
- (ii) If the Trustee is permitted to pay or transfer all or that part of such Benefit to or on behalf of a Beneficiary by the Relevant Requirements, the Trustee may at a Beneficiary's request and subject to the provisions of clause 19 transfer the Benefit in respect of that Beneficiary to another Approved Benefit Arrangement.
- (iii) Subject to the foregoing, a Benefit for a Beneficiary who continues to be an Eligible Person shall continue to be held by the trustee under the trusts of the Fund for the benefit of that Beneficiary, or upon a Beneficiary's death, his or her Dependants.

## **OCCUPATIONAL SUPERANNUATION STANDARDS**

37. (a) **Import of Superannuation Standards**

~~The Relevant Requirements as in force from time to time are deemed to be included in the Trust Deed. In particular, during any period the Fund has 5 or more Beneficiaries, the Trustee shall comply with the following specific obligations:~~

- (i) ~~the Trustee must take reasonable steps to ensure that there is in place sufficient arrangements to handle Beneficiaries enquiries and complaints in respect of the operation or management of the Fund within the prescribed time period;~~
- (ii) ~~the maintenance of equal Employer and Beneficiary trustee representation and procedures for complying with the Relevant Requirements in respect thereof; and~~
- (iii) ~~the Trustee must formulate and give effect to an investment strategy.~~

During any period the Fund is an Excluded Fund, the Trustee shall not be required to comply with those provisions and covenants in this Deed and/or the Relevant Requirements which do not apply to an Excluded Fund.

If the Fund becomes a Public Offer Fund, the Trustee shall comply with any applicable provisions of the Relevant Requirements.

The Relevant Requirements shall be included in the Deed on a prospective basis from the date the Relevant Requirement commenced to operate. However, the Trustee may decide that the Relevant Requirements shall apply on a retrospective basis or in an amended way, either in whole or in part.

(b) **Paramount Effect**

Clause 37(a) shall have a paramount effect and shall be deemed to prevail and have priority over the Deed to the extent of any inconsistency. The express provisions contained in the Deed will be read down to the extent of any inconsistency to ensure the Fund complies with the Relevant Requirements.

**(c) Trustee's Additional Powers & Indemnity**

The Trustee is empowered to do any act, matter or thing which is necessary or desirable to ensure the Trustee and the Fund comply with the Relevant Requirements. In addition, the Trustee shall not be taken to be in breach of the Deed or be in breach of trust if it does anything or fails to do or not to do anything which it is required or directed to do or not to do to comply with the Relevant Requirements including:

- (i) following any lawful request provided by a Responsible Authority;
- (ii) following any lawful request or order made by the Superannuation Complaints Tribunal; or
- (iii) as otherwise required by law.

**(d) Deletion of Relevant Requirements**

If and when the whole or part of a Relevant Requirement ceases to apply to the Fund by law or for any other reason, the Relevant Requirement shall, to the extent of that non-application, be deemed to be deleted and excluded from the Deed. The Trustee can determine that the non-enforcement by the Responsible Authority is sufficient evidence of the Relevant Requirement ceasing to have application to the Fund.

## **DIVISION B**

### **CONTRIBUTIONS AND BENEFITS**

#### **PART I - General**

#### **APPLICATION OF PART**

38. The provisions of this Part apply to Parts II and III of this Division.

#### **DEFINITIONS**

39. For the purpose of this Division:

"Mandated benefit entitlement" means a Class of Beneficiaries whose entitlements arise from Productivity payments or Compulsory Contributions;

"Normal Retirement Age" means the age of 65 years for both males and females or such other age as is acceptable to the Responsible Authority and as the Trustee with the consent of the Contributor shall determine.

#### **CONTRIBUTION PAYABLE**

- 
40. (a) The Employer with the approval of the Trustee, shall contribute to the Fund at such a rate as may be advised by the Employer to the Trustee from time to time.
- (b) No contributions shall be made by a Beneficiary except in the case of "F" Class participants in which case contributions shall be at such a rate to be agreed upon by the Trustee and the Beneficiary from time to time.
- (c) Subject to satisfying the Relevant Requirements, Beneficiaries may make contributions on behalf of other Eligible Persons who shall be admitted as "F" Class participants at such a rate to be agreed upon by the Trustee and the Beneficiary from time to time.

#### **PERSONS TO WHOM BENEFITS ARE PAYABLE**

41. Subject to the provisions of this Deed, the Trustee shall pay the Benefits referred to herein to the following person or persons:

(a) **Death**

Where the Benefit or balance of the Benefit is payable following the death of the Beneficiary or former Beneficiary the payment shall, subject to paragraph (d) below, be made in accordance with the provisions of Clause 27 hereof;

(b) **Rollover Payment**

Where the Benefit or balance of the Benefit is payable as a Rollover Payment it shall be made in accordance with the provisions of this Deed to the trustee of the other fund or arrangement;

(c) **Disablement**

Where the Benefit or balance of the Benefit is payable following the disablement of a Beneficiary the payment shall be made to the Beneficiary;

(d) **Pension**

Where the Benefit or balance of the Benefit is payable as a Pension it shall be paid in accordance with the provisions of Clause 24 hereof;

(e) **Other**

In all other cases, to the Beneficiary.

## **PART II - Employees of Participating Employers**

### **APPLICATION OF PART**

42. The Benefits available under Part II of this Division shall apply to Beneficiaries who are Employees of a Participating Employer and who have been nominated by the Employer for Benefits under this Part. The provisions of this Part shall apply only to such Beneficiaries.

### **BENEFICIARIES CLASSIFICATION**

43. (a) **Classes of Beneficiaries**

Notwithstanding anything hereinbefore contained there shall be five classes of beneficiaries under this Part which shall be designated:

- |                         |   |                                       |
|-------------------------|---|---------------------------------------|
| "A" Class Beneficiaries | - | Non-vested pension entitlement;       |
| "B" Class Beneficiaries | - | Partially vested pension entitlement; |
| "C" Class Beneficiaries | - | Fully vested pension entitlement;     |
| "D" Class Beneficiaries | - | Mandated benefit entitlements;        |
| "E" Class Beneficiaries | - | Transferred benefit entitlement.      |

(b) **Original Class**

All Beneficiaries who have been nominated for Benefits under this Part upon joining the Fund in accordance with the provisions hereof shall be and become "A" Class Beneficiaries (the "Original Class") unless otherwise nominated by the Employer when a nomination for participation is made pursuant to sub-clause 17 (a) hereof and shall remain Beneficiaries of the Original Class unless and until the Trustee makes a written nomination for a Beneficiary to become a Beneficiary of an additional or alternative Class and the Trustee obtains a written consent from the Employer to the nomination of the Beneficiary to an additional or alternative Class when the Beneficiary shall be and become a Beneficiary of the Class into which he is nominated

**PROVIDED HOWEVER** that the Beneficiary shall also remain a Beneficiary of the Original Class unless the Employer nominates otherwise.

(c) **Reclassification**

A Beneficiary shall be capable of reclassification to any other Class (including, if appropriate, a Class subject to Part III hereof) at any time in like manner **PROVIDED HOWEVER** that any Benefits forming part of the Beneficiary's Accumulation Account which have been vested in that Beneficiary during such time as that Beneficiary was a Beneficiary of another Class of the Fund shall be retained as an entitlement of the Beneficiary to the extent that the entitlement was vested in the Beneficiary at the time he was a Beneficiary of the other Class when such reclassification took place.

(d) **Transfer of Accumulation Account**

Upon the reclassification of a Beneficiary as a Beneficiary of another Class the Trustee may with the consent of his Employer transfer all or any of the Beneficiary's other Accumulation Accounts to the new Class subject to the provisions in sub-clause (c) above.

(e) **Designation of Class**

If a Beneficiary is reclassified to another Class and that Beneficiary remains a ~~Beneficiary of more than one Class then at the time at which any Contribution~~ to the Fund is made the Contributor shall designate the Class to which the Contribution is attributable in accordance with sub-clause 18(d) hereof and in the event that the Contributor makes no such designation the Trustee at its discretion shall make such designation **PROVIDED HOWEVER** that any Productivity Payment or Compulsory contribution is to be automatically designated a Contribution attributable to the "D" Class and that any amount transferred to the Fund pursuant to sub-clause (e) of Clause 19 hereof shall automatically be attributable to and remain in the "E" Class.

(f) **Nomination at discretion of Trustee or Employer**

The Trustee and the Employer shall subject as hereinbefore provided have absolute and unfettered discretion as to the making of a nomination and the granting of a consent to a Beneficiary becoming a Beneficiary of a different Class or more than one Class, and neither the Trustee nor the Employer shall be required to give any reasons thereof.

## **BENEFITS PAYABLE ON RETIREMENT**

### **44. All Classes**

Where a Beneficiary retires from his employment at or after the Normal Retirement Age, or, where upon attaining the age of 65 or such other age at which the Responsible Authority has declared benefits may be made payable, the trustee receives a written request by a Beneficiary, he shall be entitled to be paid a pension in accordance with Clause 24 **PROVIDED HOWEVER** the value of the pension shall not exceed in aggregate the amounts standing to the credit of the Beneficiary's Accumulation Account or Accounts.

## DISABLEMENT

### 45. Total and Permanent Disablement

In the event that a Beneficiary of any Class subject to this Part shall become in the opinion of the Trustee Totally and Permanently Disabled as defined in clause 5 hereof then such Beneficiary upon being notified by the Trustee of the fact that the Trustee has formed such an opinion shall be paid (to the extent acceptable to the Responsible Authority where the Benefit includes any Preserved Payment Benefit) by the Trustee a pension in accordance with the provisions of clause 24 **PROVIDED HOWEVER** that the value of the pension paid to the Beneficiary as determined by a Qualified Adviser shall not exceed in aggregate the total of the following amounts:

#### (a) "A" Class Beneficiaries

In respect of a Beneficiary's "A" Class Accumulation Account:-

- (i) the Beneficiary's Vested Contributions in relation to his "A" Class Accumulation Account;
- (ii) the proceeds of any additional benefit being provided by the Employer in relation to his "A" Class Accumulation Account and which is received as a result of the Total and Permanent Disablement of the Beneficiary;
- (iii) such further portion of the balance of the Beneficiary's "A" Class Accumulation Account as the Trustee shall determine.

#### (b) "B" Class Beneficiaries

In respect of a Beneficiary's "B" Class Accumulation Account:-

- (i) the Beneficiary's Vested Contributions in relation to his "B" Class Accumulation Account;
- (ii) an amount equivalent to a percentage of the balance of the Beneficiary's "B" Class Accumulation Account as at the date of his Total and Permanent Disablement (not including the proceeds of any additional benefit received as a result of the Total and Permanent Disablement of the Beneficiary) such a percentage being determined by the length of time such Beneficiary has been a Beneficiary of the Fund. The percentage of the balance of the Beneficiary's "B" Class Accumulation Account to be taken into account for the value of the Pension payable to the Beneficiary is as set out in the second column of Schedule D of this Deed opposite the number of years specified in the first column of Schedule D as the number of years for which the Beneficiary has been a Beneficiary of the Fund as at the date of his Total and Permanent Disablement;
- (iii) the proceeds of any additional benefit being provided by the Employer in relation to his "B" Class Accumulation Account and which are received as a result of the Total and Permanent Disablement of the Beneficiary;
- (iv) such further portion of the balance of the Beneficiary's "B" Class Accumulation Account as the Trustee shall determine.

(c) **"C", "D", & "E" Class Beneficiaries**

in respect of a Beneficiary's "C", "D" and "E" Class Accumulation Account, the full amount standing to the credit of the Beneficiary's "C", "D" and "E" Class Accumulation Account as at the date of his Total and Permanent Disablement.

(d) **Preserved Payment Benefits**

Any Preserved Payment Benefits held by the Trustee which are unable to be paid to the Beneficiary shall be dealt with in accordance with sub-clause 19 (d) hereof.

## LEAVING SERVICE

46. In the event of any Beneficiary of any Class under this Part II, subject to clause 34 hereof, ceasing to be employed by the Employer prior to the Normal Retirement Age for any reason other than death or Total and Permanent Disablement, the Trustee shall pay (to the extent acceptable to the Responsible Authority where the Benefit includes any Preserved Payment Benefit) to the Beneficiary a pension in accordance with the provisions of clause 24 **PROVIDED HOWEVER** that the value of the pension paid to the Beneficiary as determined by a Qualified Adviser shall not exceed in aggregate the total of the following amounts:

---

(a) **"A" Class Beneficiaries**

In respect of a Beneficiary's "A" Class Accumulation Account:-

- (i) the Beneficiary's Vested Contributions in relation to his "A" Class Accumulation Account;
- (ii) such further portion of the balance of the Beneficiary's "A" Class Accumulation Account as the Trustee shall determine.

(b) **"B" Class Beneficiaries**

In respect of a Beneficiary's "B" Class Accumulation Account:-

- (i) the Beneficiary's Vested Contributions in relation to his "B" Class Accumulation Account;
- (ii) an amount equivalent to a percentage of the balance of the Beneficiary's "B" Class Accumulation Account as at the date of his ceasing to be employed by the Employer such percentage being determined by the length of time such Beneficiary has been a Beneficiary of the Fund. The percentage of the balance of the Beneficiary's "B" Class Accumulation Account to be taken into account for the value of the Pension payable to the Beneficiary is as set out in the second column of Schedule D of this Deed opposite the number of years specified in the first column of Schedule D as the number of years for which the Beneficiary has been a Beneficiary of the Fund as at the date of his ceasing to be employed by the Employer;
- (iii) such further portion of the balance of the Beneficiary's "B" Class Accumulation Account as the Trustee shall determine.

(c) **"C", "D", & "E" Class Beneficiaries**

in respect of a Beneficiary's "C", "D" and "E" Class Accumulation Account, the full amount standing to the credit of the Beneficiary's "C", "D" and "E" Class Accumulation Account as at the date of his ceasing to be employed by the Employer.

(d) **Preserved Payment Benefits**

Any Preserved Payment Benefits held by the Trustee which are unable to be paid to the Beneficiary shall be dealt with in accordance with sub-clause 19 (d) hereof.

## **PAYMENT ON DEATH**

47. On the death of a Beneficiary of any Class subject to this Part whilst the Beneficiary is still a Beneficiary hereof prior to the Normal Retirement Age the Trustee shall pay to the Dependants and/or the legal personal representative of the former Beneficiary in accordance with clause 27 hereof the following amounts:

(a) **"A" Class Beneficiaries**

in respect of a Beneficiary's "A" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:-

- (i) the Beneficiary's Vested Contributions in relation to his "A" Class Accumulation Account;
- (ii) the proceeds of any additional benefit provided by the Employer in relation to his "A" Class Accumulation Account and which is received as a result of the death of the Beneficiary;
- (iii) such further portion of the balance of the Beneficiary's "A" Class Accumulation Account as the Trustee shall determine.

(b) **"B" Class Beneficiaries**

in respect of a Beneficiary's "B" Class Accumulation Account a lump sum Benefit equal to the total of the following amounts:-

- (i) the Beneficiary's Vested Contributions in relation to his "B" Class Accumulation Account;
- (ii) an amount equal to a percentage of the balance of the Beneficiary's "B" Class Accumulation Account as at the date of his death (not including the proceeds of any additional benefit received as a result of the death of the Beneficiary) such percentage being determined by the length of time such Beneficiary has been a Beneficiary of the Fund. The percentage of the balance of the Beneficiary's "B" Class Accumulation Account to be paid to the Beneficiary is as set out in the second column of Schedule D of this Deed opposite the number of years specified in the first column of Schedule D as the number of years for which the Beneficiary has been a Beneficiary of the Fund as at the date of his death;
- (iii) the proceeds of any additional benefit being provided by the Employer in relation to his "B" Class Accumulation Account and which is received as a result of the death of the Beneficiary;



- (iv) such further portion of the balance of the Beneficiary's "B" Class Accumulation Account as the Trustee shall determine.

(c) **"C", "D" or "E" Class Beneficiaries**

in respect of a "C", "D" or "E" Class Beneficiary of the Fund a lump sum Benefit equal to the total of the full amounts standing to the credit of the Beneficiary's "C", "D" or "E" Class Accumulation Accounts as at the date of death.

### **PART III - Employees of Non Participating Employers and Self-Employed Persons**

#### **APPLICATION OF PART**

48. The Benefits available under Part III of this Division shall apply only to Beneficiaries who are:

- (a) Employees of any Employer who is not a Participating Employer and which agrees to make contributions to the Fund for the benefit of the Employee who is a Beneficiary in one or more of the classes described in Clause 49 hereof;

- (b) Self-Employed Persons; and

- (c) Employees in respect of whom no Employer makes contributions;

and who have made application to become a Beneficiary and have been accepted for Benefits by the Trustee.

#### **BENEFICIARY CLASSIFICATION**

49. (a) **Classes of Beneficiaries**

There shall be two additional classes of Beneficiaries under this Part which shall be designated:

"F" Class Beneficiaries - Fully vested pension entitlement;

"G" Class Beneficiaries - Mandated benefit entitlement;

- (b) **Original Class**

All Beneficiaries who have nominated for Benefits under this Part upon being accepted by the Trustee for Benefits under this Part shall be and become "F" Class Beneficiaries (the "Original Class") unless the nomination for participation made pursuant to sub-clause 17 (a) hereof otherwise specifies and shall remain beneficiaries of the Original Class unless and until the Trustee makes a written nomination for a Beneficiary to become a Beneficiary of an additional or alternative Class and the Trustee obtains a written consent from the Beneficiary to the nomination of the Beneficiary to an additional or alternative Class when the Beneficiary shall be and become a Beneficiary of the Class into which he is nominated **PROVIDED HOWEVER** that the Beneficiary shall also remain a Beneficiary of the Original Class unless the Trustee nominates otherwise.

(c) **Reclassification**

A Beneficiary shall be capable of reclassification to any other Class of this Part at any time in like manner **PROVIDED HOWEVER** that any Benefits forming part of the Beneficiary's Accumulation Account which have been vested in that Beneficiary during such time as that Beneficiary was a Beneficiary of another Class of the Fund shall be retained as an entitlement of the Beneficiary to the extent that the entitlement was vested in the Beneficiary at the time he was a Beneficiary of the other Class when such reclassification took place.

(d) **Transfer of Accumulation Account**

Upon the reclassification of a Beneficiary as a beneficiary of another Class the Trustee may with the consent of the Beneficiary transfer all or any of the Beneficiary's other Accumulation Accounts to the new Beneficiary Class subject to the proviso in sub-clause (c) above **PROVIDED HOWEVER** that no such transfer shall result in any portion of an "F" or "G" Class Accumulation Account becoming payable to the Beneficiary except in accordance with the provisions of this Part.

(e) **Designation of Class**

If a Beneficiary is reclassified to another Beneficiary Class and that Beneficiary remains a Beneficiary of more than one Class then at the time at which any Contribution to the Fund is made the Contributor shall designate the Class to which the Contribution is attributable in accordance with sub-clause 18 (d) hereof and in the event that the Contributor makes no such designation the Trustee at its discretion shall make such designation **PROVIDED HOWEVER** that any Productivity Payment or Compulsory contribution is to be automatically designated a Contribution attributable to the "G" Class.

## **BENEFITS PAYABLE ON RETIREMENT**

50. (a) **All classes**

Where a Beneficiary retires from his business, trade, profession, vocation, calling, occupation or employment for gain:

- (i) at or after the age of 55 years, or such other age required pursuant to the Relevant Requirements;
- (ii) by reason of Total and Permanent Disablement as defined in clause 5 hereof; or
- (iii) in other circumstances acceptable to the Responsible Authority;

the Trustee shall pay a pension in accordance with the provisions of Clause 24 **PROVIDED HOWEVER** that the value of the pension paid to the Beneficiary as determined by a Qualified Adviser shall not exceed in aggregate the amount standing to the credit of the Beneficiary's Accumulation Account as at the date of his retirement.

(b) **Attainment of age 70**

Notwithstanding the provisions of paragraph (a) above the Pension Benefit of a Beneficiary shall commence to be paid to him, not later than his attainment of the age of 70 years unless otherwise allowed by the Responsible Authority.

**PAYMENT ON DEATH**

51. On the death of a Beneficiary of any Class subject to this Part prior to retirement pursuant to Clause 50 hereof the Trustee shall pay to the Dependents of the former Beneficiary in accordance with Clause 27 hereof a lump sum Benefit equal to the total of the amounts standing to the credit of the Beneficiary's "F" and "G" Class Accumulation Accounts as at the date of death.
-

IN WITNESS WHEREOF these presents were duly executed on the Date of Execution specified in Schedule A of this Deed

INDIVIDUALS AS TRUSTEE

SIGNED SEALED AND DELIVERED

by the said **STUART WILLIAM JENSEN**  
in the presence of:-

  
.....

  
.....

SIGNED SEALED AND DELIVERED

by the said **MARGARET JENSEN**  
in the presence of:-

  
.....

  
.....



**SCHEDULE A**

**DATE OF  
ORIGINAL DEED:  
(COMMENCEMENT DATE)**

**1<sup>ST</sup> JUNE 1986**

**DATE OF  
AMENDMENTS:**

*20th April 2000*

**POWER OF  
VARIATION:**

**CLAUSE 35**

**FOUNDER:**

**STUART WILLIAM JENSEN**

**TRUSTEE:**

**STUART WILLIAM JENSEN  
MARGARET JENSEN**

**NAME OF FUND:**

**ROOF & BUILDING SERVICE (QLD.) PTY LTD  
SUPERANNUATION FUND**

**DATE OF  
EXECUTION:**

*20th April 2000*

**PROPER LAW STATE:**

**QUEENSLAND**



**SCHEDULE B**

**BENEFICIARY APPLICATION**

TO: The Trustee of the Roof & Building Service (Qld.) Pty Ltd Superannuation Fund

I, the undersigned, being eligible hereby apply to become a Beneficiary of the Fund. I agree and undertake as follows:

- (a) I will be bound by the Trust Deed governing the Fund as it is or may be varied from time to time.
- (b) I will upon request make full disclosure in writing of any benefits I have received, may receive or may be entitled to receive from any other Superannuation Fund, Approved Deposit Fund, RollOver Annuity or Employer.
- (c) I understand the terms and conditions of the Trust Deed and more particularly the terms and conditions of the Deed concerning Benefits payable.
- (d) I will notify the Trustee if at any time I cease to be gainfully employed.
- (e) I consent to the Trustee acting as Trustee of the Fund.
- (f) I declare that at the time I was given this application for Participation in the Fund I was also given advice in writing about the benefits to which I would be entitled, the method of determining that entitlement and the conditions relating to those benefits.
- (g) I am eligible to become a Beneficiary and am not disqualified under the SIS Act.

Name: \_\_\_\_\_

Date of Birth: \_\_\_\_/\_\_\_\_/\_\_\_\_ Date of Employment: \_\_\_\_/\_\_\_\_/\_\_\_\_

Occupation: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant's signature: \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_





**SCHEDULE C.**

### PARTICIPATING EMPLOYERS ADMITTED TO THE FUND

[illegible]



**SCHEDULE D.**

**PERCENTAGE VESTING SCHEDULE**

<b>NUMBER OF YEARS COMPLETED AS AN BENEFICIARY OF THE COMPANY</b>		<b>PERCENTAGE AMOUNT OF THE BENEFICIARY'S ACCUMULATION ACCOUNT PAYABLE TO BENEFICIARY</b>
Up to	2	
	4	
	6	
	8	
	10	
	12	
	14	
	16	
	18	
	20	
	22	
	24	
	26	
	28	
	30	
	32	
	34	
	36	
	38	
	39	
40 AND OVER		



**James Razzi**

Superannuation Support Services

180 Research Road, North Warrandyte 3113. Telephone (03) 9844 1574 Fax (03) 9844 1491