

COPY

*Amended*

**SUPERANNUATION  
TRUST DEED**

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**James Razzi**  
Superannuation Support Services



**THE  
TRUST DEED**

**FOR THE**

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



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

**RECITALS:**

- A. By a trust deed made on the Date of the Original Deed specified in Schedule A (which Deed may have been amended from time to time, hereinafter 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 said Deed in accordance with the power to vary the Deed under the provisions of the 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 and shall from the Date of Execution specified in Schedule A be governed by the provisions of this Deed as hereafter amended unless the Deed is subsequently amended

**COVENANTS**

- 2. 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**

- 3. 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

## **INTERPRETATION**

### **4. Definitions**

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

"Accumulation Account" means, in relation to a Member, the account established and maintained in the Fund for that Member pursuant to clause 10.

"Act" means the Tax Act, the SIS Act, the Superannuation (Government Co-contribution for Low Income Earners) Act 2003, the Family Law Act, the SGA Act, the Trustee Act, the Surcharge Acts, the Superannuation Entities (Taxation) Act 1987, the Superannuation Contributions Tax (Assessment and Collection) Act 1997 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 13 from time to time.

"Approved Benefit Arrangement" means another Complying 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 Member, 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.

"Auditor" means the person appointed from time to time by the Trustee as Auditor to the Fund pursuant to clause 13.

"Beneficiary" includes a Member, Dependant or other person presently and absolutely entitled to receive a Benefit under this Deed.

"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 Member or Beneficiary.

"Binding Death Benefit Nomination" means an instruction by the Member in accordance with the Relevant Requirements that will stipulate how death benefits are to be allocated. Such nomination will be binding on the Trustees provided that payment is allowable by the Relevant Requirements.

"Child Contribution" means a contribution on behalf of a Member by a parent, grandparent or other relative of that member as allowed under the Relevant Requirements.

"Co-Contribution Act" means the Superannuation (Government Co-Contribution for Low Income Earners) Act 2003.

"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.

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

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

"Condition of Release" means the satisfaction of any event in relation to a Member that allows the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Relevant Requirements.

"Contributions" means gross payments to the Fund by Members, Spouses of Members, Employers, the Federal Government and other persons in respect of Members in accordance with the provisions of this Deed prior to the deduction of any Taxation payable in respect of those amounts.

"Contributor" means the Employer in the case of a Member in respect of whom the Employer and/or Participating Employer makes or is required to make contributions and in the case where Members make or are required to make contributions on their own behalf shall also mean all such Members and includes the Federal Government and 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 Member, Beneficiary or former Member, any one or more of the following:

- (a) the Spouse, widow or widower of the Member, Beneficiary or former Member;
- (b) any child of the Member, Beneficiary or former Member including any step-child, adopted child and any child of the Member, Beneficiary or former Member;
- (c) a person who is, or was at the time of death of the Member, Beneficiary or former Member, in an interdependency relationship with the Member, Beneficiary or former Member as defined in the Act;
- (d) any other person, who in the opinion of the Trustee, is at the relevant date wholly or partially financially dependent upon the Member.

"Disqualified Person" has the meaning ascribed to that term in the SIS Act.

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

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

"Eligible Roll-over Fund" means a fund established under Part 24 of the SIS Act eligible to receive benefit transfers.

"Employee" means a person who is employed by an Employer or Participating Employer within the meaning of the Act including an officer of a company.

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

"Family Law Act" means the Family Law Act 1975.

"Fund" means the Fund referred to in Schedule A that 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.

"Gainfully Employed" means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and includes:

- (a) "full-time" if gainfully employed for at least 30 hours each week;
- (b) "part-time" if gainfully employed for at least 10 hours and less than 30 hours each week; or;
- (c) "part-time basis during a Financial Year" if the person has worked at least 40 hours in a period of not more than 30 consecutive days in that financial year; and
- (d) any other meaning of "Gainfully Employed" under the Act.

"Government Contribution" means a co-contribution made by the Commonwealth of Australia on behalf of a Member under the Co-Contribution Act.

"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.

"Insurance Policy" means any policy of assurance or insurance, including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy and includes any policy covering any two or more of the foregoing risks and also includes any policy which provides that Benefits shall be payable to the Trustee on the death or disablement of a Member.

“Investment Strategy” means an investment strategy as required by the Act.

"Member" 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 Member pursuant to sub-clause 16(d).

"Member's Contributions" means the amount contributed by or on behalf of a Member pursuant to clause 17 or deemed to have been contributed by a Member in accordance with sub-clause 18 (d).

"Nominated Beneficiary" means a person nominated in writing by a Member as the desired recipient of a Benefit that is or becomes payable following the death of that Member, and includes a person nominated in a Binding Death Benefit Nomination provided the nominated person is either a Dependant or legal personal representative of the Member or the nominated is otherwise acceptable to the Responsible Authority.

"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 that the Trustee may determine.

"Old Age Pension" means an old age pension as defined by the Act and paragraph 51(xxiii) of the Constitution of the Commonwealth of Australia.

"Participating Employer" means any Employer that is admitted to participate in the Fund pursuant to sub-clause 43(a).

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

"Pension Age" means 65 years or such other age at which a pension may, with the Trustee's approval, be paid by the Fund in accordance with the Relevant Requirements.

"Pension Account" means an account established in respect of a Pensioner under clause 31(a).

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

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

"Public Offer Fund" has the same meaning as ascribed to that term in the SIS Act.

"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 or assistance in relation to any matter or question, whether by virtue of formal qualifications or experience.

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

"Relevant Requirement" means any applicable requirement that must be complied with by a superannuation fund under the Act.

"Reserve Account" means the Account established in accordance with sub-clause 10(e).

"Responsible Authority" means the Australian Prudential Regulation Authority, 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.

"Retirement Age" means 65 years of age or such other age permitted by the Relevant Requirements.

"Reversionary Beneficiary" means a Beneficiary who was a Dependant of a deceased Pensioner at the time of the Pensioner's death and nominated by a Pensioner as a reversionary beneficiary and in default of a nomination by the Pensioner, a Dependant who is determined by the Trustee and is eligible to receive a Benefit upon the death of the Pensioner.

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

"Roll-over Payment" means any payment made by or received by the Trustee at the request of a Member or former Member to or from an Approved Benefit Arrangement.

"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 or otherwise gainfully employed for the purposes of the Act.

"Self Managed Fund" means a self managed superannuation fund as defined in Part 1 of the SIS ACT, or, 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".

“Shortfall Component” has the same meaning given to it in the Act.

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

"Spouse" means:

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

“Spouse Contribution” means a contribution on behalf of a Member by a Spouse of that Member as permitted under the Relevant Requirements.

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

“Surcharge” means any payment required to be made pursuant to the Superannuation Contributions Surcharge (Assessment and Collection) Act 1997 and the Termination Payments Surcharge (Assessment and Collection) Act 1997.

"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, subject to the Relevant Requirements:

- (a) if an Insurance Policy has been effected by the Trustee on a Member, the same meaning as contained in that Insurance Policy; or
- (b) if there is no Insurance Policy containing such a term effected in respect of a Member, then Total and Permanent Disablement in relation to a Member means physical or mental incapacity of such a degree that two registered medical practitioners acceptable to the Trustee have certified that in their opinion the Member is incapable of continuing to engage in any employment for which the Member 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 or any additional or substituted Trustee or Trustees.

## **INTERPRETATION - General**

### **5. (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. Any reference in this Deed to a provision of an enactment includes the relevant provision of the enactment as amended, modified or re-enacted or of any enactment in substitution for that provision.

### **(e) Jurisdiction**

Any provision of the Deed that 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.

### **(f) 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.

### **(g) Disputes**

The Trustee shall subject to the Relevant Requirements, determine any question or dispute arising in respect of the interpretation of the Deed and such determination shall be final and binding upon all Members;

### **(h) References to Deed**

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

(i) **Fund subject to Relevant Requirements**

This Deed must be read and construed as if all Relevant Requirements of the Act (including any relevant standards prescribed in the Act) with which the Fund or the Trustee must comply in order for the Fund:

- (a) to obtain and maintain the status of Self Managed Superannuation Fund; and
- (b) to qualify for concessional Taxation treatment or any other benefit or concession; and
- (c) to ensure that neither the Fund nor the Trustee becomes liable for any penalty or obligation for which they would not otherwise be liable;

are deemed to be included in this Deed.

(j) **Inconsistency between the Relevant Requirements and the Deed**

If there is any inconsistency between a provision of this Deed and a Relevant Requirement of the Act, the Relevant Requirement of the Act will prevail over the Deed to the extent of that inconsistency.

## **GENERAL PROVISIONS**

6. (a) **Election to be a Regulated Superannuation Fund**

The Trustee must as soon as practicable after the Commencement Date, and within any prescribed period stipulated by the Relevant Requirements, give to the Responsible Authority a written notice in the form prescribed by the Act irrevocably electing that the SIS Act apply.

(b) **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, 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.

(c) **Exercise of Trustee's powers**

All powers, rights, decisions, discretions, appointments and other authorisations of any nature or kind granted to or conferred upon 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 such Directors to so act on their behalf; or
- (ii) where the Trustee consists of an individual or individuals - by a meeting of such persons where questions are to be decided by the requisite majority of such persons holding the office of Trustee.

**(d) 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.

**(e) Trustee remuneration**

The Trustee is not entitled to receive any remuneration from the Fund or any person in relation to the performance of the normal activities of a trustee provided in relation to the Fund.

**(f) Trustee reimbursement**

The Trustee is entitled to be reimbursed from the Fund for and in respect of the following expenses:

- (i) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with investments of the Fund by or on behalf of the Trustee;
- (ii) all fees, wages and expenses of the Auditor, or any Actuary or Qualified Advisor from time to time engaged by the Trustee under this Deed;
- (iii) any Taxation paid or payable by the Trustee in connection with the Fund on any account whatsoever;
- (iv) all costs, charges and expenses 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 or the making available of any books or documents of the Fund;
- (v) any other costs, charges and expenses incurred or to be incurred in relation to the management and administration of the Fund.

**(g) Family Law matters**

Subject to clause 5(i), the Trustee must act in accordance with the following provisions of this clause in matters concerning the Family Law Act (for the purposes of the remainder of this clause "The Act"):

- (i) notwithstanding any other provisions of this Deed, the Trustee must act in accordance with any obligations imposed on the Trustee under the Act;
- (ii) the Trustee must comply with the Act in giving effect to a superannuation agreement made under the Act between a Member and a Spouse of that Member;
- (iii) whenever a splittable payment becomes payable in respect of a superannuation interest identified in the superannuation agreement referred to in clause 6(e)(ii) which is not an unsplittable interest:
  - (A) the Trustee must pay to the Spouse the amount calculated in accordance with the Act; and
  - (B) the Trustee must make a corresponding reduction in the Benefit entitlement of the Member.
- (iv) the payment made in accordance with an agreement referred to in clause 6(e)(ii) to the Spouse must, if required the Relevant Requirements, be made by the Trustee to a regulated superannuation fund, retirement savings account or any other vehicle acceptable to the Responsible Authority, for the benefit of the Spouse;
- (v) the Trustee must comply with any order made by a Court that imposes obligations on the Trustee under the Act.

**(h) Work-related Claims**

Subject to sub-clause 6(b) nothing in this Deed shall in any way affect the right of any person who may benefit under this Deed ("Beneficiary") or that person's 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 from or in the course of his or her employment with an Employer.

**(i) Privacy**

The Trustee must ensure the Fund complies with all relevant requirements of the Privacy Act to the extent that they are applicable to the Trustee or the Fund.

**PROPER LAW**

7. 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" ("the Proper Law State"). The Trustee, the Members and any other party or Beneficiary to this Deed shall accept the jurisdiction of the Courts of that State or Territory.

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## DISPUTE AND COMPLAINTS

8. 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

9. 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) **Contributions**  
Such contributions (if any) as the Contributors make to the Fund at any time in accordance with the provisions of this Deed less any costs, taxes and charges;
  - (c) **Earnings**  
Interest, accretions, distributions of income arising from any investment and the accumulation thereof less any costs, taxes and charges;
  - (d) **Profits**  
Profits (less losses) and other benefits arising from any investment and the accumulation thereof less any costs, taxes and charges;
  - (e) **Roll-over Payments**  
Moneys or investments as approved by the Trustee transferred to the Fund as a Roll-over Payment;
  - (f) **Superannuation guarantee shortfall component**  
Any superannuation guarantee shortfall component received;
  - (g) **Insurance Policy**  
Any proceeds (including bonuses) of any Insurance Policy held by the Fund; and
  - (g) **Other**  
Any other monies, assets, Insurance Policies, contracts of Annuity or investment which become subject to the trusts of this Deed.

## ACCUMULATION ACCOUNTS

### 10. (a) **Separate Member Accounts**

The Trustee shall establish an Accumulation Account in respect of each Member or Beneficiary.

### (b) **Credits**

The following amounts may be credited to the appropriate Accumulation Account:

- (i) any amount paid into the Fund in respect of the Member as a Roll-over Payment;
- (ii) any Contributions paid in respect of the Member by a Contributor;
- (iii) any Contributions made in respect of a Member by the Federal Government;
- (iv) such positive earnings as are determined by the Trustee in accordance with sub-clause (d), (f) or (g) below;
- (v) such forfeited amounts as are allocated to but not paid directly to the Member pursuant to sub-clause 22(c);
- (vi) the proceeds of any Insurance Policy effected on the life of the Member pursuant to sub-clause 15(d)(ix);
- (vii) any amounts in relation to the commutation of a Pension under this Deed; and
- (viii) such other amount as the Trustee may determine.

### (c) **Debits**

The following amounts shall be debited to the appropriate Accumulation Account:

- (i) any amount paid out of the Fund in respect of the Member or Beneficiary as a Roll-over Payment;
- (ii) any other Benefit payments made to or in respect of the Member or Beneficiary;
- (iii) such negative earnings as shall be determined by the Trustee in accordance with sub-clause (d), (f) or (g) below;
- (iv) such amount as is forfeited pursuant to clause 21 or clause 22;
- (v) any costs, Taxes, insurance premiums or fees incurred in relation to a Member, which has not otherwise been taken into account. Where any costs, Taxes, insurance premiums or fees relate to more than one Member the Trustee shall allocate an appropriate amount of same to the relevant Members; and
- (vi) such other amount as the Trustee determines.

### (d) **Income Account**

- (i) The Trustee shall establish an Income Account for the Fund to which shall, subject to clause 15(h)(iii), be credited with the following:
  - (A) all income, investment earnings and profits of the Fund in each Financial Year;
  - (B) any credits arising out of any adjustment made by the Trustee pursuant to clause 10(f);
  - (C) the proceeds (if any) of any policy or policies of insurance effected pursuant to sub-clause 15(d)(ix) that the trustee determines should not be credited to a Member's Accumulation Account; and
  - (D) any other amount as the Trustee may determine from time to time.
  
- (ii) The Income Account shall, subject to clause 15(h)(iii), 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 10(g) or 17(i);
  - (C) any debits arising out of adjustments pursuant to sub-clause (f) below;
  - (D) the cost (if any) of any Insurance Policy effected pursuant to sub-clause 15(d)(ix) that the trustee determines should not be debited to a Member's Accumulation Account;
  - (E) any amount transferred to the Reserve Account; and
  - (F) any other amount as the trustee may from time to time determine.
  
- (iii) Following the crediting and debiting of the Income Account as specified in paragraphs (d)(i) and (d)(ii) above, at the end of each Fund Year the Trustee shall, unless it determines otherwise, determine in its discretion the net earning rate (which may be negative) for the Fund after taking into account all costs, Taxes and charges and 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 the net earnings in accordance with the Fund Earning Rate.
  
- (iv) The amount distributed as the net earnings of the Fund pursuant to paragraph (d)(iii) above shall, subject to the Trustee determining otherwise, be allocated to each Accumulation Account in proportion to the amount standing to the credit of that Accumulation Account 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 since that date.

- (v) At any time during a financial year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the Fund for the purpose of applying that investment return in calculating the withdrawal Benefit of a Member at that time.
- (vi) Any amount remaining in the Income Account after distribution of earnings pursuant to paragraph (d)(iv) above shall be transferred to the Reserve Account.

(e) **Reserve Account**

- (i) The Trustee shall have the power to establish and maintain a Reserve Account that may be credited with the following:
  - (A) an amount transferred from the Income Account in accordance with sub-clause 10(d);
  - (B) any benefit forfeited in accordance with the provisions of clause 22;
  - (C) any other amount that, subject to the Relevant Requirements, the Trustee so determines.
- (ii) The Reserve Account may, at the discretion of the Trustee, be used for the following purposes:
  - (A) to give effect to any reserving policy established by the trustee;
  - (B) to provide for such future contingencies as the Trustee shall determine;
  - (C) to supplement the Fund Earning Rate;
  - (D) to debit the Reserve Account with any costs, Taxation and other charges payable in respect of the Fund;
  - (E) subject to the satisfying the Relevant Requirements, to or for the benefit of any Member, Pensioner, Beneficiary or former Member; and
  - (F) for any other purposes determined by the Trustee which is in accordance with the relevant Requirements.

(f) **Adjustment**

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

(g) **Specific Investments**

Subject to the Relevant Requirements, the Trustee may, pursuant to clause 15(h), undertake to make investments separately in respect of certain Members 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 Member's Accumulation Account. In such an event the income and profits (less losses) arising from such specific investments and any costs, Taxes and other charges applicable to such specific investments that are incurred pursuant to sub-clause 17(f) 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, Taxes and other charges applicable to such investments which are incurred pursuant to sub-clause 17(f).

## **FUND RECORDS**

### **11. (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 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; and
- (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 3 and such other records and accounts as the Trustee considers to be necessary to comply with the Relevant Requirements.

### **(d) Audit**

The records and accounts of the Fund shall be audited by an Auditor duly appointed by the Trustee in writing from time to time 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 or her and

the Auditor shall certify to the Trustee the result of such audit in writing. The appointment of the Auditor shall be on such terms as the Trustee may think fit and the Trustee may remove any Auditor and appoint another in his or her stead. However, no such appointment shall be made which would cause the Trustee to be in breach of clause 3.

(e) **Trust Deed**

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

(f) **Information for Trustee**

A Contributor and/or Member shall, as and when requested by the Trustee, give to the Trustee all information in its power or possession that 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 Member pursuant to this Deed and shall not be required to verify such information.

(g) **Disclosure and Reporting Requirements**

The Trustee shall provide to Members, the Responsible Authority or any other person required by the Relevant Requirements such information in relation to the conduct of the Fund and Benefits payable from the Fund as shall be required by the Relevant Requirements from time to time.

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

12. (a) **General provisions**

- (i) the Fund shall be administered by two or more individuals; or
- (ii) the Trustee of the Fund shall be a Corporate Trustee;
- (iii) Prior to being appointed as Trustee, the proposed Trustee must consent in writing to such appointment and where the proposed Trustee is a Corporate Trustee, each Director must consent in writing to such appointment.
- (iv) Subject to the Relevant Requirements and the Trustee's discretion to determine otherwise, 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 Member Self Managed Funds;
- (2) the death of a Member;
- (3) where a Member suffers from a legal disability (including a person under a legal disability due to age);
- (4) where a Member 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.

**(b) Appointment and removal of Trustee**

- (i) On the establishment of the Fund, the Trustee will comprise of the individuals or Corporate Trustee specified in Schedule A;
- (ii) Subject to clause 12(b)(i), the Members and any Participating Employers may appoint or remove any individual Trustee or Corporate Trustee by notice given in writing and in the event there are no Members remaining in the Fund and no Participating employer:
  - (A) where former Members survive, the former Members or the legal personal representatives of the former Members; or
  - (B) where no former Members survive, the legal personal representative of the former Members,
 must determine who will act as Trustee.

**(c) Compliance with SIS Act requirements**

During any period the Fund is a regulated superannuation fund under the SIS Act, the Fund must either have:

- (i) a Corporate Trustee continually appointed as Trustee to the Fund; or
- (ii) where individuals are appointed as trustees, the Fund must have the provision of old age pension benefits as its sole or primary purpose.

**(d) Change of Trustee**

Without limitation, a person shall immediately cease to act as a Trustee of the Fund if he:

- (i) is or becomes bankrupt or makes an assignment to or composition with his creditors;
- (ii) is disqualified from office by operation of law and/or the Relevant Requirements;
- (iii) being an individual trustee, dies;

- (iv) resigns from the position by notice in writing; or
- (v) being a Corporate Trustee, is placed into liquidation (whether voluntary or involuntary) or a receiver and/or manager is appointed;
- (vi) 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.

(e) **Transitional Arrangements**

- (i) 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(s) and shall deliver all records, books and other documentation held by such retiring Trustee in relation to the Fund to the remaining or the new Trustee.
- (ii) If for any reason there is at any time no Trustee of the Fund, the Member or Members participating in the Fund at this time, or the Responsible Authority, if authorised by the Relevant Requirements, are empowered to appoint a temporary trustee with the full powers of a trustee until such time as a Trustee is appointed in accordance with this Deed.

(f) **Meetings**

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 that 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 simple majority of Trustees. A written resolution signed by a Chair of the meeting will be prima facie evidence of an effective resolution passed at a meeting of the Trustee 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 individual 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**

The Trustee shall be indemnified out of 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, including any matter covered by clause 37(c), except for monetary penalties due to civil penalty orders under the SIS Act or where the Trustee has acted fraudulently or has failed to act honestly in a matter concerning the Fund.

Further, the Trustee is empowered to do any act, matter or thing that 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 anything that 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.

**(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 the Relevant Requirements, be at full liberty to appoint an investment manager, administrator, custodian, Qualified Adviser or other agent or person to transact all or any business 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, Taxes and expenses incurred in respect of the appointment of and the work performed by such person.
- (ii) The Trustee may at any time revoke, add to or vary the terms of appointment of any person referred to in sub-clause (m)(i) and may appoint another person to act in their place.

- (iii) The Trustee shall ensure that any agreement between the Trustee and any person in paragraph (i) is in accordance with the Relevant Requirements.
- (iv) The Trustee may, subject to the Relevant Requirements, have some or all of the Fund's assets held and/or registered in the name of such investment manager, administrator, custodian, Qualified Adviser or other agent or person as it determines.

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

In addition to the powers which may by law be conferred upon and 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 or the Tribunal any claims, matters or things relating to this Deed or to the rights of the Members or any other persons making any claims upon the Fund;
- (ii) to commence, carry on, defend and compromise proceedings relating to the Fund or the rights of any Members or former Members under the Fund;
- (iii) to borrow money for any purpose that is in accordance with Relevant Requirements, provided such borrowings are repaid in the time period specified in the Relevant Requirements;
- (iv) to retain the services of a Qualified Advisor or any other agent in relation to the management, administration or investment of the Fund and to pay out all expenses, charges and taxes 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 Member or former Member in respect of the Fund;
- (vi) to deduct all Taxes, duties, expenses or other costs and outgoings from any Benefit payable to or in respect of any Member or from any Contribution or transfer to the Fund or any income or accretion thereto, and to pay only the residual amount in respect of such Benefit to such Member; and
- (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 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 and the Relevant Requirements.

(m) **Statutory Covenants**

Notwithstanding any other provision in this Deed the Trustee covenants:

- (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 Members;
  - (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 is money or assets, as the case may be, of a Participating Employer, or an associate of a Participating Employer, 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 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;
  - (viii) to allow Members access to any information or any documents which disclosure to Members is prescribed by the Relevant Requirements; and
  - (ix) such other covenants that is required to be complied with from time to time by the Trustee of a regulated superannuation fund of the type that the Fund is at the relevant time.
- (n) **Trustee may be a director of a Participating Employer**

Subject to the Relevant Requirements, an individual Trustee or director of a Corporate Trustee may also be a Participating employer or a director of a Participating Employer.

#### **APPOINTMENT OF AUDITOR, ACTUARY AND OTHER QUALIFIED ADVISORS**

13. (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 3 as it shall determine.

(b) **Appointment of Actuary and other Qualified Advisors**

In addition, the Trustee may from time to time appoint persons or firms to the position of Actuary on such conditions as it determines and may appoint such other persons or Qualified Advisors, as it considers desirable for the proper management of the Fund. The Trustee shall ensure an Actuary and any other Qualified Advisors are appointed in accordance with the Relevant Requirements.

(c) **Removal**

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

#### **COMPULSORY SUPERANNUATION**

14. Where at any time an obligation is imposed upon a 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 Members 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 Members who are also Members of the other fund and the Contributor may consult a Qualified Adviser in respect of the amount of the reduction in Contributions to be made to the Fund.

#### **TRUSTEE'S POWERS OF INVESTMENT AND SALE**

15. (a) **General investment powers of the Trustee**

Subject to the Relevant Requirements, the Trustee may from time to time and in the name of or under the control of the Trustee or in the name of any nominee or by or through a trustee (whether or not such nominee or trustee shall be a nominee or trustee for the Trustee alone or for the Trustee and other persons) selected by the Trustee invest the whole or any part or parts of the moneys or assets of the Fund not required for any other purpose in any investment or manner of investment (whether in

Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment or manner of investment for the Fund and which complies with the Investment Strategy and the Act.

**(b) Specific investment powers of the Trustee**

The Trustee may invest in the any of the following:

- (i) any investment from time to time authorised by the laws of the Commonwealth of Australia or any of its States or Territories for the investment of trust moneys;
- (ii) on deposit with any bank, financial institution or with any dealer authorised or approved by the Reserve Bank of Australia to operate in the official short term money market, or with any firm or company (including any one or more of the Employers) either with or without security;
- (iii) in the acquisition by original subscription or by purchase or otherwise of fully or partly paid shares, stock, stock options, debenture stock, bonds, notes (secured or unsecured) or other securities or obligations howsoever called in or of any company (including any one or more of the Employers);
- (iv) in the acquisition or purchase of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible), pooled superannuation trust or other scheme in the nature of a unit trust;
- (v) in the acquisition or purchase of any property (whether real or personal) or any interest in a business or property whether or not such business or property or interest in same is subject to any mortgage or charge and notwithstanding that such business or property or interest in business or property may be acquired or purchased for the profit which may be expected whether from resale or otherwise and that such business or property or interest in same is not producing income at the date it is acquired or purchased;
- (vi) in mortgages, or pooled mortgage investments over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise of existing mortgages; and
- (vii) in any Insurance Policy;

and the Trustee may vary or transpose or convert any such investments into or for another or others of the investments hereby authorised, provided that any investment is in accordance with the Relevant Requirements.

(c) **Underwriting of investments**

The Trustee may underwrite or sub-underwrite or join with others in underwriting or sub-underwriting the subscription of any of the investments authorised by clause 15(a) or (b) and may in the exercise of their powers of delegation under clause 12(h) give to any investment manager appointed pursuant to clause 12(k)(i) general authority to enter into and carry out underwriting or sub-underwriting agreements and the like whether for the Fund alone or for the Fund in conjunction with other funds and institutions. Any such arrangements shall be evidenced by a written agreement that shall comply with the Relevant Requirements.

(d) **Additional powers of investment**

Without in any way limiting the generality of the powers vested in the Trustee hereby and in particular under clause 12, the Trustee shall, subject to the Relevant Requirements, have the following additional powers and may exercise all or any of such additional powers at any time and from time to time and to such extent as may seem to the Trustee to be desirable:

- (i) to acquire any of the investments referred to in clause 15(a) alone or in partnership or association with any person;
- (ii) to institute, prosecute and execute legal proceedings of any kind in any court, tribunal or other forum, including but not limited to proceedings to recover possession of any property or to sue for and recover rent or damages or to enforce any contract with power to abandon, settle, compromise and release any such proceedings when deemed expedient;
- (iii) to pay and discharge out of the Fund such money as the Trustees may think proper to expend in repairing, painting, altering, rebuilding, improving, and generally maintaining any property (whether freehold or leasehold) or premises for the time being comprising part of the Fund and all rates, taxes, costs, charges, insurance premiums, expenses and outgoings of whatever nature payable in connection with the maintenance, upkeep and management of such property or premises;
- (iv) to lease or sub-lease any property (whether real or personal) comprising the Fund or any part or parts thereof for such period or periods at such rent or rents and with such powers rights and privileges and subject to such terms and conditions and stipulations as the Trustee may consider expedient and to accept surrenders of or otherwise determine such leases or sub-leases;
- (v) to sell or otherwise dispose of any property comprising the Fund or any part or parts thereof at such price or prices and upon such terms and conditions and stipulations and subject to such restrictions or rights and in such manner and by such means as the Trustee may consider expedient and upon any such sale or apart there from to grant easements and other rights;
- (vi) to guarantee and to give indemnities in respect of any obligation assumed or undertaken or to be assumed or undertaken by a nominee or trustee selected by the Trustees pursuant to clause

15(a) in connection with any investment hereby authorised made or to be made by the Trustee in the name of such nominee or by or through such trustee provided that where such nominee or trustee holds or will hold such investment for the Trustee and other persons the guarantee or indemnity given or granted by the Trustee pursuant to clause 12(l)(v) shall not exceed the liability attaching to the Trustees' proportionate interest in the investment held or to be held by the nominee or trustee as aforesaid;

- (vii) to give all such undertakings and enter into such contracts and incur all such obligations relating to the Fund or any part or parts thereof as the Trustee thinks fit;
- (viii) to employ such Qualified Advisors, managers, staff and servants and engage same as may be considered necessary or desirable;
- (ix) to effect Insurance Policies to provide for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender, vary or assign or otherwise deal with any such policy as the Trustee thinks fit; and
- (x) to give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any investment, property or other interest comprising part of the Fund.

(e) **Compliance with the Relevant Requirements**

Notwithstanding anything expressed or implied to the contrary in this Deed:

- (i) the moneys and assets of the Fund shall be invested in such manner and form as in the opinion of the Trustee will not prejudice the granting or continuance of any concession in respect of the Fund under the Act or cause the Fund to be in breach of any Relevant Requirement; and
- (ii) no loans shall be made out of the Fund to any Member or related party of the Fund other than those loans that are permitted under the Relevant Requirements. The Trustee may only make such loans that the Trustee considers do not adversely affect the granting or continuance of any relevant concession or cause the Fund or the Trustee to be liable for a penalty or obligation for which it would not otherwise be liable.

(f) **Investment Strategy**

The Trustee must formulate and give effect to one, or more investment strategies, if required, that have regard to the whole of the circumstances of the Fund, such strategies may be reviewed as required and must be formulated in accordance with the Relevant Requirements.

(h) **Member investment choice**

- (i) Without limiting the obligations and powers vested in the Trustee under the preceding provisions of this clause, the Trustee may:

- (A) establish one or more investment strategies;
  - (B) nominate which assets will be subject to each particular investment strategy; and
  - (C) in the absolute discretion of the Trustee, offer Members the opportunity of having amounts held in one specific investment strategy.
- (ii) Where a Member is given an opportunity in accordance with clause 15 (h)(i)(A), the Trustee must provide the Member such information as is required under the Relevant Requirements.
  - (iii) Where the Trustee establishes one or more investment strategies under clause 15(h), it must:
    - (A) establish a sub-account within the income account established under clause 10(d) in respect of each strategy; and
    - (B) debit and credit to each sub-account any amounts including costs and other charges or Taxation specifically attributable to each strategy as the Trustee, in its discretion, determines.
  - (iv) Where the Trustee establishes a sub-account under clause 15(h)(iii), it must:
    - (A) determine a Fund Earning Rate in respect of each sub-account;
    - (B) allocate the earnings of the Fund to each sub-account in accordance with the policy established in clause 10(d) as if a reference in that clause to Accumulation Account is a reference to a specific sub-account.
  - (v) To the extent allowable under the Relevant Requirements, where an Employer contributes to the Fund in respect of a Member, the employer may give directions to the Trustee regarding the investment strategy or strategies that are acceptable in respect of those Members for whom it contributes.

## **PARTICIPATION IN FUND**

### **16. (a) Nomination**

- (i) An Employer or Participating Employer shall nominate such of its Employees, as it shall determine, for participation in the Fund. An Eligible Person in respect of whom there is no Participating Employer shall nominate himself or herself 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 or in such other form as the Trustee shall from time to time determine.

- (ii) Notwithstanding paragraph (i), where a completed application for membership is not provided, the payment of a contribution by or in respect of a person shall be deemed to constitute an application for membership of the Fund in respect of that person.

**(b) Admission**

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

A Member 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) Members to provide information**

Every Member 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) membership or benefits in other superannuation or like funds; and
- (iii) information required for the purposes of complying with the Relevant Requirements.

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

Where a Member furnishes information required pursuant to this clause, which affects or is likely to affect the Benefits payable to or in respect of the Member, and the information supplied is incorrect or misleading, or any relevant information is deliberately withheld, the Trustee may in its absolute discretion, subject to the Relevant Requirements, 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 Member of the Fund on the happening of any one of these events: -

- (i) when the Member ceases to be an individual Trustee or, where the Fund has a Corporate Trustee a director of that Corporate Trustee;
- (ii) on the death of the Member;
- (iii) the date on which payment of all the Member's Benefit has been made to the Member or to an Approved Benefit arrangement on behalf of the Member; or

- (iv) the date when the Benefit payable to or on behalf of a Member cease to be payable.

## **CONTRIBUTIONS**

### **17. (a) Member's Contributions**

Contributions to the Fund by a Member shall be such amount and paid in such manner and at such times as each of them in their absolute discretion determines, and, subject to the Relevant Requirements, may be credited to the Member's own account or the account of their Spouse.

### **(b) Employer's Contributions**

The Employer, or if there is more than one Employer participating in the Fund, the Employers, may determine the contributions payable by each Employer in respect of Members in their employ.

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 Relevant Requirements or that determination.

### **(c) Other Contributions**

Subject to compliance with the Relevant Requirements, the Trustee may accept any other contributions to the Fund made by or on behalf of a Member, including any Child Contribution, Government contribution or Spouse Contribution.

### **(d) Contributions may be in cash or assets**

Subject to compliance with the Relevant Requirements, contributions may be paid in cash or by transfer of an asset to the Fund provided the assets transferred comply with the requirements of clause 15 of this Deed.

### **(e) No obligation to contribute**

Neither a Member or Employer has any obligation to contribute to the Fund, and, a Member may remain a Member of the Fund notwithstanding the absence of any Contributions paid on the Member's behalf.

### **(f) Limitation of Contributions**

The Trustee must not accept any Contribution that contravenes the Relevant Requirements.

### **(g) Spouse and other Contribution**

The Trustee may, with the consent of a Member, accept contributions made to the Fund in respect of the Member by any other person including but not limited to:

- (i) Contributions or co-contributions in any form by a Government permitted by the Relevant Requirements; and
- (ii) Contributions by any person in respect of a Member who is under the age of majority permitted by the Relevant Requirements.

(h) **Contribution splitting**

After the end of each Financial Year, the Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member in the previous year, with the split amount transferred to the benefit of the Member's Spouse provided the contribution is split in a manner and form that is permitted by the Relevant Requirements.

(i) **Administration costs**

All costs, Taxes, charges and expenses incurred in connection with the preparation, establishment, maintenance, administration, operation or winding up of the Fund shall be borne and paid by the Fund, and the Trustee shall indemnify the Employer and/or a Contributor in respect of any costs which are properly incurred by the Employer and/or a Contributor in connection with the above named expenses of the Fund. The Trustee is however, authorised to accept contributions in respect of the costs of the establishment and conduct of the Fund from the Employer and/or a Contributor.

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

18. (a) **Transfers to other Funds**

Where a Member joins or is eligible to join any other Approved Benefit Arrangement (the "Other Fund") and the Member requests that the whole or a part of his entitlement in the Fund be transferred to the Other Fund, the Trustee, shall with the Member's consent, pay to the Trustee of the Other Fund an amount (the "Transferred Amount") as determined by the Trustee, such amount shall reflect the whole or such part of the entitlement of the particular Member in the Fund determined by the Trustee at that time and the Trustee may at its discretion obtain the advice of a Qualified Advisor in calculating the amount.

(b) **Transfer to other Funds without Member consent**

In accordance with the Relevant Requirements, the Trustee may, and, where obligated by the Relevant Requirements, the Trustee must:

- (i) transfer a Member's Benefit entitlement or roll-over a Member's or Beneficiary's Benefit to an Eligible Roll-over Fund; and
- (ii) provide the Trustee of the Eligible Roll-over Fund any information that may be required to be given under the Relevant Requirements.

(c) **Benefits cease**

A former Member and his or her Dependants in respect of whom his whole entitlement in the Fund is paid as the Transferred Amount under

this clause shall not be entitled to any other Benefit and the receipt of the Transferred Amount by the Other Fund shall be a complete discharge to the Trustee of all liabilities to and in respect of that former Member and except as provided in sub-clause (a) above, the Trustee shall have no responsibility to see to the application of the Transferred Amount.

**(d) Preserved Payment transfers**

Where a Member or former Member has Preserved Payment Benefits in the Fund which form part of the Transferred Amount to be paid to the Other Fund, the Trustee shall ensure that the provisions of the Other Fund provide that if a Member wishes to leave the Other Fund:

- (i) the amount of the Preserved Payment Benefit must be preserved in another Approved Benefit Arrangement; or
- (ii) the Preserved Payment Benefit will be released in circumstances which comply with the Relevant Requirements.

**(e) Transfers from other Funds**

Where a Member is or was a member of an Approved Benefit Arrangement, the Trustee may take over or acquire by transfer or otherwise from the trustee of the other Approved Benefit Arrangement the whole or any part of the moneys or assets of such Approved Benefit Arrangement in respect of any of the existing Members of such Approved Benefit Arrangement. The Trustee shall hold the same as part of the Fund and reflect such rights, entitlements and interests in the particular Member's Accumulation Accounts and, if the Trustee so determines, the Member shall be deemed to have been a Member of the Fund on the date he or she became a member of the other Approved Benefit Arrangement.

**(f) Compliance with the Relevant Requirements**

The Trustee must comply with the Relevant Requirements in relation to Benefits or amounts which the Relevant Requirements:

- (i) require to be transferred to an Eligible Roll-over Fund; and
- (ii) treats as unclaimed moneys and requires same to be paid to the Commissioner,

and the Trustee is not required to obtain the Member's consent in transferring moneys under this sub-clause unless the Relevant Requirements require otherwise.

## **STATUTORY BENEFIT SCHEME**

19. 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 (the "Statutory Scheme"), provides, or will provide, Members 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 may, with the consent of the Contributor and after seeking the advice of a Qualified Advisor, alter or vary the provisions of this Deed in relation to the Contributor without regard to the provisos in clause 46.

## **BENEFIT PAYMENT RESTRICTIONS**

### **20. Compliance with the Relevant Requirements**

(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; 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 paragraph (i).

(b) **Benefits to be preserved**

In order to ensure compliance with clause (a):

- (i) where a Benefit must be preserved, the Trustee shall preserve that benefit either within or (where applicable with the consent of the Member) in another Approved Benefit Arrangement, 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, 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.

## **MONEYS OWING TO FUND OR AN EMPLOYER**

21. Where a Member at the time he or she ceases to be an Employee owes any moneys to an Employer or the Fund (including costs of any prosecution or civil proceedings together with interest on those moneys) or if the Member has committed any fraud upon the Employer or the Fund or is guilty of dishonesty, defalcation or serious misconduct such that moneys are owing to the Employer or the Fund, the Member shall be deemed to have forfeited his right to receive a sum equivalent to the said moneys owing to the Fund or the Employer (as the case may be) from that part of the Benefit payable which does not represent Member's vested contributions or a Productivity Payment Benefit or any other part that would cause the Fund to be in breach of a Relevant Requirement and the Trustee shall:

(a) **Fund**

if the said moneys are owed to the Fund, retain the amount in the Fund;  
or

(b) **Employer**

if the said moneys are owed to the Employer, retain the amount in the Fund or, if the Relevant Requirements permit, pay the amount to the Employer or as the Employer directs.

**FORFEITURE OF BENEFITS**

22. (a) **Conditions of forfeiture**

Subject to any Relevant Requirement, and to the maximum extent permitted by law, any Member, former Member or, after his death, any of his Dependants or personal representatives:

- (i) who assigns or charges or attempts to assign or charge any Benefit;
- (ii) whose Benefits whether by his or her own act, operation of law or otherwise, become payable to or vested in any other person, company, government or other public authority;
- (iii) who commits an act of bankruptcy, becomes bankrupt or insolvent;
- (iv) who for any reason is unable personally to receive or enjoy the whole or any portion of his or her Benefits or, in the opinion of the Trustee, is incapable of managing his or her affairs;
- (v) who, in the opinion of the Trustee, commits any fraud or is guilty of dishonesty, defalcation or serious misconduct; or
- (vi) subject to sub-clause 18(f), who (subject to reasonable enquiries having been made) is a former Member who cannot be located by the Trustee during a period of 2 years after a member statement was last sent to him or her by the Employer or the Trustee,

shall forfeit entitlement to all, or the maximum amount permitted by law of his Benefits and, in the case of a Member, shall cease to be a Member of the Fund.

(b) **Accumulation Account residue**

Subject to the Relevant Requirements, any Member or former Member who has been paid all Benefits that the Trustee considers should be paid to him or her pursuant to the provisions of this Deed and who still has a residual amount standing to the credit of his or her 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 shall hold and pay or apply any amounts that have been forfeited as aforesaid upon trust to make any payments pursuant to this clause and, subject to the Relevant Requirements, the Trustee may pay or apply any balance in one or more of the following ways:

- (i) to or for the benefit of the former Member 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. However where the former Member is and remains an Employee any payments so made shall be limited to the relief of hardship of the former Member or of his Dependants;
- (ii) if the former Member was an Employee, to or for the benefit of other Members 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 Members or the Member to the Fund;
- (iii) to repay to the Employer all or some Contributions (with Net Earnings thereon) made by it to the Fund in respect of a Member whose entitlements to all Benefits under the Fund have been forfeited; or
- (iv) to the Reserve Account.

**d) Reserve Account**

- (i) The Trustee has, pursuant to clause 10(e) the power at any time to establish a Reserve Account of the Fund and may transfer to the credit of the Reserve Account any forfeited benefits or any amounts remaining in the Income Account pursuant to sub-clause 10(d)(v).
- (ii) Whilst any funds are held in the Reserve Account they shall not form any part of any Accumulation Account and any income derived by the Fund on the moneys held in the Reserve Account shall, if required by the Responsible Authority, be credited to the Reserve Account.
- (iii) The Trustee shall keep a record of forfeited benefits in respect of Members together with details of net earnings, if any, thereon.
- (iv) The Reserve Account may to be used by the Trustee in any manner allowed pursuant to clause 10(e)(ii).

**(e) Distribution to Contributor**

Subject to the Relevant Requirements, if there remains no person entitled to any forfeited benefits held in the Reserve Account 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.

(f) **Administration**

The Trustee shall set a strategy for the management and deployment of amounts in the Reserve Account to ensure that any amounts in the Reserve Account shall be administered and managed in accordance with the Relevant Requirements.

**BENEFITS**

23. When a member becomes entitled to receive a Benefit from the Fund, the Member shall, within a reasonable time, provide to the Trustee written instruction to advise the Trustee which of the following options, excluding those that may not be available or not allowable by the Relevant Authority, the member has chosen in relation to their Benefit:

- (a) Subject to any limitations where the Trustee comprises two or more individuals, cash paid in a lump sum;
- (b) a Pension in one or more of the forms allowed by the Relevant Requirements;
- (c) the purchase of an Annuity;
- (d) the transfer of one or more assets from the Fund to the Member; or
- (e) any other basis permitted by the Relevant Requirements.

If the Trustee has not received written instruction from a Member within a reasonable time, the trustee will deal with the Benefit as required by the Relevant Requirements.

**RETIREMENT BENEFITS**

24. (a) **Entitlement**

The Member on reaching Retirement Age is entitled to receive a Benefit that shall comprise the amount standing to the credit of the Member's Accumulation Account.

(b) **Type of Benefit**

The Benefit shall be paid in accordance with the written advice provided by the Member pursuant to clause 23 provided that, if after a reasonable time no advice has been received, the Trustee may deal with the Benefit as required by the Relevant Requirements

(c) **Compulsory payment of Benefit**

The Trustee must commence to pay a Benefit to a Member pursuant to this clause:

- (i) as soon as practicable after the date on which the Member attains the age of 65 if the Member is not Gainfully Employed either on a full-time or part time basis;

- (ii) as soon as practicable after the date on which the Member attains age 70 if the Member is not Gainfully Employed full time; or
- (iii) as otherwise required under the Act.

## **DEATH BENEFITS**

### **25. (a) Benefit payable to Dependants or Legal Personal Representatives**

Subject to the Relevant Requirements, on the Death of a Member or Beneficiary who had Dependants, the Trustee must:

- (i) if required by a Binding Death Benefit Nomination given by a Member or Beneficiary to the Trustee, pay or apply the Benefit in accordance with that Binding Death Nomination; or
- (ii) if there is no Binding Death Benefit Nomination in force in respect of the Member or Beneficiary who has died, the Trustee shall pay the Benefit to one or more of the Member's or Beneficiary's Dependants and legal personal representatives in such manner, at such times, by such instalments and in such proportions between them as the Trustee may from time to time determine.

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

On the death of a Member who leaves no Dependants, the Trustee shall pay the Benefit to his or her legal personal representative or, if there is no legal personal representative, to such relatives of the former Member as appear to the Trustee to be entitled to share in his or her estate, provided that if there be no such relatives, the Benefit may be paid to such person or persons as the Trustee determines or failing any such determination the Benefit shall, subject to the Relevant Requirements, be absolutely forfeited and shall remain in the Fund to be dealt with in accordance with sub-clause 22(c).

### **(c) Entitlement**

The Death Benefit payable is:

- (i) The balance of the Member's Accumulation Account; and
- (ii) the proceeds (if any) of any Insurance Policy effected on the life of the Member pursuant to sub-clause 15(c)(ix).

### **(d) Type of Benefit**

Subject to any Binding Death Benefit Nomination in place, the Trustee in its discretion shall pay the Benefit in one or more of the manners permitted in clause 23.

### **(e) Binding Death Benefit Nomination**

- (i) The Trustee must provide to a Member wishing to make a Binding Death Benefit Nomination all the necessary information the Trustee believes the Member requires to understand the Member's rights to make such a nomination in accordance with the Relevant Requirements.
- (ii) Subject to clause 28, a Binding Death Benefit nomination provided in writing by the Trustee will be binding on the Trustee provided that:
  - (A) The nominated Beneficiary is the legal personal representative or a Dependant of the Member; and
  - (B) The form of the notice and the manner in which the Member completes it satisfies the Relevant Requirements.
- (iii) A Binding Death Benefit Nomination may be amended or revoked at any time by giving the Trustee a notice of such in accordance with the Relevant Requirements.
- (iv) Unless otherwise amended any Binding Death Benefit Nomination will cease to have effect at the end of three years after the day it was first signed or if amended the date of amendment.
- (v) If an item of information given by a Member in a Binding Death Benefit Nomination is not sufficiently clear to allow the Trustee to pay the Benefit, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the notice.

## **DISABLEMENT**

### **26. (a) Entitlement**

In the event that a Member shall become, in the opinion of the Trustee, Totally and Permanently Disabled as defined in clause 4, then such Member shall upon being notified by the Trustee of that fact, be paid by the Trustee:

- (i) The balance of the Member's Accumulation Account; and
- (ii) the proceeds (if any) of any Insurance Policy effected to cover total and permanent disablement of the Member pursuant to clause 15(c)(ix).

### **(b) Type of Benefit**

The Benefit shall be paid in accordance with the written advice provided by the Member pursuant to clause 23 provided that, if after a reasonable time no advice has been received, the Trustee may deal with the Benefit as required by the Relevant Requirements

## **LEAVING SERVICE**

27. (a) **Entitlement**

In the event of any Member 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 Member the balance of the Member's Accumulation Account.

(b) **Type of Benefit**

The Benefit shall be paid in accordance with the written advice provided by the Member pursuant to clause 23 provided that, if after a reasonable time no advice has been received, the Trustee may deal with the Benefit as required by the Relevant Requirements

### **COURT ORDERS**

28. If the Trustee receives a Court order or splitting agreement under the Family Law Act then, subject to satisfying the Relevant Requirements, the Trustee must, on the written request of the Spouse, Member or other acceptable person, pay or transfer to another fund nominated by the Spouse, any amount which becomes payable in respect of the Spouse under the Family Law Act arrangement and the receipt by the Spouse or the trustee of such other fund shall be a sufficient discharge of the trustee of its liability in respect of that Spouse.

### **OTHER BENEFITS**

29. Where the Member has satisfied a Condition of Release, other than those covered under clauses 24 to 28 the Trustee is permitted to pay the Member a Benefit. Subject to the satisfaction of the Relevant Requirements, the Trustee will determine the amount of the Benefit and the manner of payment.

### **LUMP SUM BENEFITS**

30 (a) **Entitlement**

Pursuant to clause 23, if a Member or Beneficiary has advised the Trustee in writing that all or part of a Benefit to which they are entitled is to be paid as a lump sum, and the lump sum is permitted under the Relevant Requirements, the Trustee shall pay the Benefit as a lump sum to the Member or Beneficiary or to another person acceptable under the Relevant Requirements. The amount to be paid shall not exceed the Member's entitlement established under clauses 24 to 29 of this Deed.

(b) **Commutation of a Pension**

On receipt of a written request from a Pensioner or Reversionary Beneficiary to commute a Pension to a lump sum, the Trustee shall commute all or part of a Pension Benefit to a lump sum provided that:

- (i) the commutation is permitted by the Relevant Requirements; and

- (ii) the commutation will not disadvantage the remaining Members, Beneficiaries, Pensioners or Reversionary Beneficiaries of the Fund.

Where the Trustee has commuted part of a Pension, the instalments applicable to the remaining balance held in the Fund will be adjusted by the Trustee to an amount considered appropriate.

## **PENSIONS – GENERAL PROVISIONS**

### **31. (a) Entitlement**

Where a Member or Beneficiary becomes entitled to receive a Benefit and, pursuant to clause 23, elects in writing to receive that Benefit in part or in full in the form of one or more types of pension contained in clause 31(b), the Trustee must establish one or more Pension Accounts in respect of the Member or the Beneficiary to which accounts the Trustee shall transfer amounts determined in accordance with clauses 24 to 29 of this Deed.

### **(b) Type of Pension**

For the purposes of clause 31(a) and subject to satisfying the Relevant Requirements, the Member or Beneficiary may request the Trustee to pay the Pension in any one or more of the following forms:

- (i) an Allocated Pension or Non-Commutable Allocated Pension in accordance with the conditions set out in clause 32;
- (ii) a Complying Life-Time Pension in accordance with the conditions set out in clause 33;
- (iii) a Complying Life Expectancy Pension in accordance with the conditions set out in clause 34;
- (iv) a Market Linked Pension in accordance with the conditions set out in clause 35;
- (v) a Flexi Pension in accordance with the conditions set out in clause 36; or
- (vi) any other form of Pension allowable under the Act.

### **(c) Pension Agreement**

Where the Trustee considers it necessary or desirable for the purposes of the Relevant Requirements, the Pension payable to the Member or Beneficiary should be recorded in writing (the "Pension Agreement") specifying any particular rules and requirements governing the Pension.

For the purposes of this Deed:

- (i) any Pension Agreement entered into must be read and construed in conjunction with and will be deemed to form part of this Deed but does not otherwise constitute an amendment to this Deed; and
- (ii) if there is any inconsistency between the requirements of the Pension Agreement rules and any provision of this Deed, the requirements of the Pension Agreement will prevail to the extent of that inconsistency; and
- (iii) if there is any inconsistency between the requirements of the Pension Agreement rules and the Relevant Requirements, the Relevant Requirements will prevail to the extent of that inconsistency.

**(d) Operation of Pension account**

The following amounts will be credited to the Pension Account of a Pensioner:

- (i) any amount transferred under clause 31(a);
- (ii) any amount received by the Fund in respect of a Pensioner as a transfer or Roll-over Payment which the Trustee considers appropriate to credit;
- (iii) the proceeds (if any) of any Insurance Policy effected by the Trustee in respect of a Pensioner pursuant to clause 15(c)(ix) which the Trustee considers appropriate to credit;
- (iv) such earnings of the Fund determined in accordance with clauses 10(d) and 15(h) of the Deed as the Trustee may determine to be equitable;
- (v) any credit arising out of any adjustments made in accordance with clause 10(f);
- (vi) any Shortfall Component paid in respect of the Pensioner;
- (vii) any amount of financial assistance determined by the Trustee to be appropriate to credit; and
- (viii) such other amounts as the Trustee shall from time to time determine.

The following amounts will be debited to the Pension Account of a Pensioner:

- (i) any amount transferred out of the Fund in respect of a Pensioner as a transfer or Roll-over Payment which the Trustee considers appropriate to credit;
- (ii) any payments made to or in respect of the Pensioner or Reversionary Beneficiary pursuant to the provisions of this Deed;

- (iii) the costs (if any) of any Insurance Policy effected by the Trustee in respect of a Pensioner pursuant to clause 15(c)(ix) which are not debited to the Member's Accumulation Account;
- (iv) such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the Pension Account of a Pensioner or arising as a result of a Roll-over Payment as the Trustee may determine;
- (v) such of the costs, charges and expenses of the Fund or of the Pension as the Trustee shall determine;
- (vi) such of the amount paid in respect of a Trustee indemnity as the Trustee shall determine;
- (vii) such proportion of any loss sustained on the disposal of any investments of the Fund as the Trustee shall determine;
- (viii) such negative earnings of the Fund determined in accordance with clauses 10(d) and 15(h) of the Deed as the Trustee may determine to be equitable;
- (ix) any amount transferred to the Member's Accumulation Account;
- (x) such other amounts as the Trustee determines from time to time.

(e) **Segregation of Pension assets**

The Trustee must, if required, in relation to each Pension:

- (i) segregate or set apart the assets which represent the Pension Accounts of the Members or Beneficiaries for the sole purpose of enabling the Fund to discharge the whole or part of any current or non-current liabilities in relation to the payment of Pensions as those liabilities fall due for payment; and
- (ii) constitute the segregated assets as segregated current and non-current pension assets within the meaning of section 273A and section 273B of the Tax Act and obtain such certificates in relation to the adequacy of the assets segregated or set apart to meet the current and non-current pension liabilities as the Trustee considers necessary for the purposes of the Tax Act or as the Relevant Requirements shall require.

(f) **General payment conditions**

The following conditions apply to the payment of any Pension from the Fund:

- (i) the Pension must be paid from the balance of the Pensioner's Pension account;
- (ii) the payment of the Pension required must be made at least annually;

- (iii) subject the Relevant Requirements allowing a transfer, the Pension must not be able to be transferred to another person; and
- (iv) the capital value of the Pension and the income derived from the pension must not be used as security for any borrowing unless allowed under the Relevant Requirements.

**(g) Variation of Pension**

The Trustee may, subject to any agreement with the Pensioner or Beneficiary, vary the Pension from time to time provided the variation complies with the Relevant Requirements and is in accordance with any actuarial advice that may be required to be obtained.

**(h) Limitation on Pension amount**

The total instalments of a Pension payable in respect of a Pensioner or Beneficiary must not exceed the balance of the Pensioner's or Beneficiary's Pension Account at the relevant time.

**ALLOCATED PENSIONS**

32. **(a) Entitlement**

Where an Allocated Pension is payable from the Fund, the following conditions will apply:

- (i) the Pension must be paid from the Pensioner's Pension Account;
- (ii) the Pension must be paid annually during the life of the Pensioner or of a Reversionary Beneficiary, and must fall within the limits prescribed by the Relevant Requirements;
- (iii) the Pensioner will advise the Trustee in writing of the amount of Pension to be taken in any one year, and provided such nominated amount is within the minimum and maximum level of Pension prescribed by the Relevant Requirements, the Trustee shall arrange for the payment of the nominated amount;
- (iv) the Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary beneficiary, or on such other terms as are permitted by the Relevant requirements; and
- (v) the capital value of the pension and the income from it cannot be used as security for a borrowing.

**(b) Limitation on Pension amount**

The total instalments of a Pension payable in respect of a Pensioner or Beneficiary must not exceed the balance of the Pensioner's or Beneficiary's Pension Account at the relevant time.

**(c) Reversionary Beneficiary**

If a Pensioner dies while still in receipt of an allocated Pension, the Trustee must commence to pay the Allocated Pension to any Reversionary Beneficiary. Any such Reversionary Beneficiary: -

- (i) must be a Dependant of the Pensioner at the time of the death of the Pensioner; and
- (ii) payments to the Reversionary Beneficiary must be in accordance with the Relevant Requirements.

**(d) Death of the Pensioner**

In the event of the death of a Pensioner while there is still an amount standing to the credit of the Pensioner's Pension Account, and where:

- (i) no Reversionary Beneficiary has been nominated; or
- (ii) the Reversionary Beneficiary has ceased to be a Dependant of the Pensioner at the time of the Pensioner's death,

the balance of such Pension Account shall be dealt with in accordance with the provisions of clause 25.

**(e) Commutation of Pension**

- (i) the Trustee may, on receiving a written application by the Pensioner or Reversionary Beneficiary or as otherwise determined by the Trustee, commute the whole or any part of an Allocated Pension payable to the Pensioner or Reversionary Beneficiary, provided such commutation is permitted by the Relevant Requirements;
- (ii) the amount of the commutation must not exceed the amount standing to the credit of the relevant Pension Account;
- (iii) where an amount remains in the Fund after the Trustee has paid the entitlements of all the Pensioners and Reversionary Beneficiaries, that remaining amount shall be dealt with as though it were a forfeited benefit in accordance with clause 22;
- (iv) subject to this clause and any other relevant provisions of this Deed, the Trustee must pay the amount of the commutation in respect of the Allocated Pension being commuted to:
  - (A) the Pensioner or Reversionary Beneficiary who made application for the commutation; or
  - (B) the estate of that Pensioner or Reversionary Beneficiary; or
  - (C) in any other manner allowed by the Relevant Requirements.
- (v) Following the commutation of part of an Allocated pension, the Trustee must, as it considers appropriate, reduce or adjust the total amount of the instalments of any Allocated Pension payable to the Pensioner or Reversionary Beneficiary.

## COMPLYING LIFE TIME PENSION

### 33. (a) Entitlement

Where a Complying Life Time Pension is payable from the Fund, the following conditions will apply:

- (i) the Pension must be paid from the Pensioner's Pension Account;
- (ii) the Pension must be paid annually during the life of the Pensioner or of a Reversionary Beneficiary, and must fall within the limits prescribed by the Relevant Requirements;
- (iii) the amount of the Pension in any year must be fixed, allowing for any variation only as specified by the Relevant Requirements;
- (iv) the Pension cannot have a residual capital value other than any amount calculated in accordance with the Relevant Requirements to:
  - (A) the estate of the Pensioner where the Pensioner dies within twenty years of the commencement of the Pension and there is no Reversionary Beneficiary;
  - (B) a Reversionary Beneficiary where the Pensioner dies within twenty years of the commencement of the Pension; or
  - (C) the estate of a Reversionary Beneficiary where the Reversionary Beneficiary dies within twenty years of the commencement of the Pension and there is no other Reversionary beneficiary.
- (v) if the Pension reverts, it does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion;
- (vi) the Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary to a subsequent Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Requirements;
- (vii) the capital value of the Pension and the income from it cannot be used as security for a borrowing.

### (b) Pension Account residue

In the event of the death of a Pensioner in receipt of a Complying Life Time Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and there is no Reversionary Beneficiary, the Trustee must ensure that any amount standing to the credit of the Pension Account after any payments made under clause 33(a)(iv) is either:

- (i) transferred to the Reserve Account established under clause 10(e);
  - (ii) dealt with in accordance with clause 22 as though it was a forfeited benefit; or
  - (iii) dealt with as otherwise permitted by the Relevant Requirements; or
  - (iv) dealt with in any combination of the above.
- (c) **Commutation of Pension**
- (i) the Trustee may, on receiving a written application by the Pensioner or Reversionary Beneficiary or as otherwise determined by the Trustee, commute the whole or any part of a Complying Life Time Pension payable to the Pensioner or Reversionary Beneficiary, provided such commutation is permitted by the Relevant Requirements;
  - (ii) a Complying Life Time Pension may only be commuted where the reversionary component does not exceed 100% of the Benefit that was payable before the commutation and one of the following applies:
    - (A) the commutation is made within six months after the commencement day of the Pension and it is not a commutation of a pension funded from the commutation of another Pension; or
    - (B) if the commutation is made to the benefit of a Reversionary Beneficiary on the death of the Pensioner, then within 20 years of the commencement of the Complying Life Time Pension, unless the Pensioner's life expectancy on the commencement of the complying life Time Pension is less than 20 years in which case, within that period;
    - (C) the Eligible Termination payment resulting from the commutation is transferred directly to the purchase of another Complying Life Time Pension or a Complying Life Expectancy Pension;
    - (D) the commutation is made to pay a Surcharge requirement;
    - (E) the commutation is to provide for an entitlement of a spouse where that entitlement is created under the Family Law Act;
    - (F) to cash an unrestricted non Preserved amount; or
    - (G) the Relevant Requirements otherwise permit the Complying Life Time Pension to be commuted.
  - (iii) where an amount remains in the Fund after the Trustee has paid the entitlements of all the Pensioners and Reversionary

Beneficiaries, that remaining amount shall be dealt with as though it were a forfeited benefit in accordance with clause 22;

- (iv) subject to this clause and any other relevant provisions of this Deed, the Trustee must pay the amount of the commutation in respect of the Complying Life Time Pension being commuted to:
  - (A) the Pensioner or Reversionary Beneficiary who made application for the commutation; or
  - (B) the estate of that Pensioner or Reversionary Beneficiary; or
  - (C) in any other manner allowed by the Relevant Requirements.

### **COMPLYING LIFE EXPECTANCY PENSION**

#### **34. (a) Entitlement**

Where a Complying Life Expectancy Pension is payable from the Fund, the following conditions will apply:

- (i) the Pension must be paid from the Pensioner's Pension Account;
- (ii) the Pension must be paid annually to the Pensioner or to a Reversionary Beneficiary throughout a period permitted by the Relevant Requirements;
- (iii) the amount of the Pension in the first year must be fixed;
- (iv) the amount of the Pension in a year other than the first year is not less than the amount in the immediately preceding year and does not exceed the previous amount by indexation only as specified by the Relevant Requirements for the payment of a Complying Life Expectancy Pension;
- (v) the Pension does not have a residual capital value;
- (vi) if the Pension reverts, it does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion;
- (v) the Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Requirements;
- (vi) the capital value of the pension and the income from it cannot be used as security for a borrowing.

#### **(b) Pension Account Residue**

In the event of the death of a Pensioner in receipt of a Complying Life Expectancy Pension while there is still an amount standing to the credit

of the Pensioner's Pension Account, and there is no Reversionary Beneficiary, the Trustee must, if the Pension is not commuted or transferred under clause 34(a), ensure that any amount standing to the credit of the Pension Account is either:

- (i) transferred to the Reserve Account established under clause 10(e);
- (ii) dealt with in accordance with clause 22 as though it was a forfeited benefit; or
- (iii) dealt with as otherwise permitted by the Relevant Requirements; or
- (iv) dealt with in any combination of the above.

(c) **Commutation of Pension**

- (i) the Trustee may, on receiving a written application by the Pensioner or Reversionary Beneficiary or as otherwise determined by the Trustee, commute the whole or any part of a Complying Life Expectancy Pension payable to the Pensioner or Reversionary Beneficiary, provided such commutation is permitted by the Relevant Requirements;
- (ii) a Complying Life Expectancy Pension may only be commuted where the commuted amount does not exceed the Benefit that was payable immediately before the commutation and one of the following applies:
  - (A) the commutation is made within six months after the commencement day of the Pension and it is not a commutation of a pension funded from the commutation of another Pension; or
  - (B) the commutation is paid on the death of the Pensioner to the benefit of a Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Pensioner; or
  - (C) the commutation is paid on the death of the Reversionary Beneficiary to the benefit of another Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to the estate of the Reversionary Beneficiary; or
  - (D) the commutation is paid on the death of both the Pensioner and the Reversionary Beneficiary where prescribed by the Relevant Requirements; or
  - (E) the Eligible Termination payment resulting from the commutation is transferred directly to the purchase of another Complying Life Expectancy Pension; or
  - (F) the commutation is made to pay a Surcharge requirement; or

- (G) the commutation is to provide for an entitlement of a spouse where that entitlement is created under the Family Law Act; or
  - (H) to cash an unrestricted non Preserved amount; or
  - (I) the Relevant Requirements otherwise permit the Complying Life Expectancy Pension to be commuted.
- (iii) where an amount remains in the Fund after the Trustee has paid the entitlements of all the Pensioners and Reversionary Beneficiaries, that remaining amount shall be dealt with as though it were a forfeited benefit in accordance with clause 22;
  - (iv) subject to this clause and any other relevant provisions of this Deed, the Trustee must pay the amount of the commutation in respect of the Complying Life Expectancy Pension being commuted to:
    - (A) the Pensioner or Reversionary Beneficiary who made application for the commutation; or
    - (B) the estate of that Pensioner or Reversionary Beneficiary; or
    - (C) in any other manner allowed by the Relevant Requirements.

**MARKET LINKED PENSION**

**35. (a) Entitlement**

Where a Market Linked Pension is payable from the Fund, the following conditions will apply:

- (i) the Pension must be paid from the Pensioner's Pension Account;
- (ii) the Pension must be paid annually to the Pensioner or to a Reversionary Beneficiary throughout a period permitted by the Relevant Requirements;
- (iii) the amount of the Pension in any year shall be determined as specified by the Relevant Requirements for the payment of a Market linked Pension;
- (iv) the Pension does not have a residual capital value;
- (v) if the Pension reverts, it does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion;
- (vi) the Pension cannot be transferred to any person other than if:

- (A) on the death of the Pensioner to one or more of the Dependants of the Pensioner or to the estate of the Pensioner; or
  - (B) on the death of the Reversionary Beneficiary, to one or more of the Dependants of the Reversionary Beneficiary or to the estate of the Reversionary Beneficiary; and
- (vii) the capital value of the pension and the income from it cannot be used as security for a borrowing.

**(b) Pension Account Residue**

In the event of the death of a Pensioner in receipt of a Market Linked Pension while there is still an amount standing to the credit of the Pensioner's Pension Account, and there is no Reversionary Beneficiary, the Trustee must, if the Pension is not commuted or transferred under clause 35(a), ensure that any amount standing to the credit of the Pension Account is either:

- (i) transferred to the Reserve Account established under clause 10(e);
- (ii) dealt with in accordance with clause 22 as though it was a forfeited benefit; or
- (iii) dealt with as otherwise permitted by the Relevant Requirements; or
- (iv) dealt with in any combination of the above.

**(c) Commutation of Pension**

- (i) the Trustee may, on receiving a written application by the Pensioner or Reversionary Beneficiary or as otherwise determined by the Trustee, commute the whole or any part of a Flexi Pension payable to the Pensioner or Reversionary Beneficiary, provided such commutation is permitted by the Relevant Requirements;
- (ii) a Flexi Pension may only be commuted where the commuted amount does not exceed the Benefit that was payable immediately before the commutation and one of the following applies:
  - (A) the commutation is made within six months after the commencement day of the Pension and it is not a commutation of a pension funded from the commutation of another Pension; or
  - (B) the commutation is paid on the death of the Pensioner to the benefit of a Reversionary beneficiary or, if there is no Reversionary Beneficiary, to one or more Dependants of the Pensioner or to the estate of the Pensioner; or

- (C) the commutation is paid on the death of the Reversionary Beneficiary to the benefit of another Reversionary Beneficiary or, if there is no Reversionary Beneficiary, to one or more Dependants of the Reversionary Beneficiary or to the estate of the Reversionary Beneficiary; or
  - (D) the commutation is paid on the death of the Pensioner or a Reversionary Beneficiary as a lump sum to an individual where the Trustee has made reasonable enquiries but been unable to locate a person mentioned in clauses 35(b)(iv)(B) or 35(b)(iv)(C); or
  - (E) the commutation is paid on the death of both the Pensioner and the Reversionary Beneficiary where prescribed by the Relevant Requirements; or
  - (F) the Eligible Termination payment resulting from the commutation is transferred directly to the purchase of another Market Linked Pension or Life Expectancy Pension; or
  - (G) the commutation is made to pay a Surcharge requirement; or
  - (H) the commutation is to provide for an entitlement of a spouse where that entitlement is created under the Family Law Act; or
  - (I) the minimum amount specified in the Relevant Requirements that must be paid in the financial year during which the Pension is being commuted has actually been paid; or
  - (J) to cash an unrestricted non Preserved amount; or
  - (K) the Relevant Requirements otherwise permit the Market Linked Pension to be commuted.
- (iii) where an amount remains in the Fund after the Trustee has paid the entitlements of all the Pensioners and Reversionary Beneficiaries, that remaining amount shall be dealt with as though it were a forfeited benefit in accordance with clause 22;
- (iv) subject to this clause and any other relevant provisions of this Deed, the Trustee must pay the amount of the commutation in respect of the Market Linked Pension being commuted to:
- (A) the Pensioner or Reversionary Beneficiary who made application for the commutation; or
  - (B) the estate of that Pensioner or Reversionary Beneficiary; or
  - (C) in any other manner allowed by the Relevant Requirements.

## **FLEXI PENSION**

### **36. (a) Entitlement**

Where an Flexi Pension is payable from the Fund, the following conditions will apply:

- (i) the Pension must be paid from the Pensioner's Pension Account;
- (ii) the Pension must be paid annually to the Pensioner or to a Reversionary Beneficiary throughout a period permitted by the Relevant Requirements;
- (iii) the amount of the Pension in any year must be fixed, allowing for any variation only as prescribed by the Relevant Requirements for the payment of a Flexi Pension;
- (iv) if the Pension reverts, it does not have a reversionary component greater than 100% of the Benefit that was payable before the reversion;
- (v) the Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Requirements; and
- (vi) the capital value of the pension and the income from it cannot be used as security for a borrowing.

### **(b) Commutation of Pension**

- (i) the Trustee may, on receiving a written application by the Pensioner or Reversionary Beneficiary or as otherwise determined by the Trustee, commute the whole or any part of a Flexi Pension payable to the Pensioner or Reversionary Beneficiary, provided such commutation is permitted by the Relevant Requirements;
- (ii) a Flexi Pension may only be commuted where the commuted amount does not exceed the Benefit that was payable immediately before the commutation;
- (iii) where an amount remains in the Fund after the Trustee has paid the entitlements of all the Pensioners and Reversionary Beneficiaries, that remaining amount shall be dealt with as though it were a forfeited benefit in accordance with clause 22.

## **OTHER PENSIONS**

37. Where the Relevant Requirements allow for the payment of a Pension other than a Pension of the type specified in clauses 32, 33, 34, 35 and 36, the Trustee is empowered to provide such Pension on the terms and conditions specified in the Relevant Requirements.

## **TRANSFER IN SPECIE**

### **38. Transfer of Investments**

The Trustee may, with the consent of a Member 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 provided that such transfer will not be made unless it is permitted by the Relevant Requirements. The Trustee shall ensure that where investments have been specifically acquired in respect of a particular Member that such investments are used firstly in satisfying any Benefit payable to such Member.

## **PAYMENT TO OTHERS ON BEHALF OF MEMBERS**

39. When any Member is under the age of 18 years or when, in the opinion of the Trustee, it would be in the best interests of the Member, the Trustee may pay all or part of any Benefit to any parent, guardian or any other person for application on behalf of the Member 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 Member. The Trustee shall not be bound or concerned to see to the application of the Benefit so paid.

## **DEDUCTION OF TAX FROM BENEFITS PAYABLE**

40. The Trustee shall deduct from any Benefit payable to any Member pursuant to this Deed any Taxation payable from or in respect of it and shall pay any Taxation to the Responsible Authority by the time period specified in the Act.

The Member shall be entitled to receive only the net Benefit or payment after the deduction of any Taxation has been made. If the Trustee receives a refund of all or any of that Taxation paid by it in respect of any Benefit that has been previously paid, the Trustee may pay such refund to the Member.

## **PAYMENT OF BENEFITS**

### **41. (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 paragraph (b) or to such other place as the Trustee shall determine.

### **(b) Notification of address**

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

- (i) his place of residence and full postal address; and

- (ii) the Approved Benefit Arrangements or bank account (if any) to which he requests the Benefit to be paid.

(c) **Receipt for Benefits**

The payment of the Benefit itself shall act as a full and final discharge of any obligation on the Trustee in respect of the Member. However, any person to whom a Benefit is payable shall, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

**ROLL-OVER PAYMENTS**

42. Where a Member or former Member wishes to effect a Roll-over 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 institution to whom the payment is to be made and the amount to be applied as the Roll-over Payment. The Member or former Member shall additionally complete and execute a Roll-over Payment Notification together with such other documents as shall be required to enable the Roll-over Payment to be effected and in accordance with the Relevant Requirements.

**ADMISSION AND CESSATION OF PARTICIPATING EMPLOYER**

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

- (i) Any 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 43(a)(i), the Trustee 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 the admission, departure and other relevant details regarding each Participating Employer to the Fund in this register.
- (iv) The entry of the admission details in the register and executed by the Participating Employer with the Trustee's prior written approval shall be conclusive evidence of the due admission of the Participating Employer to the Fund.

(b) **Cessation of Participating Employer**

A Participating Employer will cease to be a Participating Employer and shall no longer be entitled to make contributions to the Fund on behalf of its Employees from the time period set by the Trustee where:

- (i) A Participating Employer being a company (including a company in the capacity of a trustee):

- A. goes into liquidation (whether voluntary or compulsory) except for the purpose of reconstruction or amalgamation, and the new or amalgamated company does not agree with the Trustee to take the place of and to assume the obligations placed on the Participating Employer under this Deed; or
  - B. enters into any composition or scheme of arrangement under the corporations Law; or
  - C. an official manager or receiver or receiver and manager of the Participating Employer is appointed; or
  - D. the directors of the Participating Employer resolve at a meeting of the directors that the Participating Employer terminate its participation in respect of the Fund; or
  - E. voluntarily cease 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 becomes bankrupt, committing any act of bankruptcy, calls a meeting of creditors, enters 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 legislation relating to bankruptcy or insolvency; or
  - B. the Participating Employer voluntarily ceases to be a Participating Employer by notice in writing to the Trustee.

## **TERMINATION OF CONTRIBUTIONS**

### **45. (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 (the "Former Employer") is amalgamated with or disposes of its undertakings to another Employer (the "New Employer") and if the Former Employer and the New Employer so agree that contributions shall be deemed not to have terminated but the Members who are Employees of the Former Employer shall become Employees of

the New Employer and the New Employer may make future Contributions in respect of those Members to this Fund.

(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 Members 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 Members 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 Members where the Employer's Contributions in respect of all of its Employees who are Members have been terminated or suspended unless the Trustee otherwise approves.

(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 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),

where contributions in respect of a Member terminate by virtue of the operation of paragraphs (i) and (ii) the Trustee may direct the Member to make arrangements to transfer all of his Benefits to another Approved Benefit Arrangement in accordance with sub-clause 18(a) and if so directed the Member shall make such arrangements within the time specified by the Trustee. However, if the Member is an Eligible Person he may make application to continue participation in the Fund.

## **TERMINATION OF CONTRIBUTIONS BY A PARTICIPATING EMPLOYER**

45. (a) **Cessation of participation in the Fund**

Subject to clause 24, the Employees in respect of whom a Participating Employer contributes shall cease to be Members at the date of termination of Contributions by the Participating Employer to the Fund and the Trustee shall hold in respect of each Member who is an Employee of the Participating Employer (the "Ex-Member") as at that date that portion of the moneys or assets of the Fund which the Trustee, in accordance with clause 27, shall determine to be held in the Fund in respect of that Ex-Member.

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

**(b) Provision for Ex-Member**

The Trustee shall immediately deal with such of the ex-Member's Accumulation Account as shall be determined in accordance with clause 24 or clause 27 (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 18;

- (i) where an Ex-Member is a Member of any other Approved Benefit Arrangement and so requests, by transfer of the Appropriated Benefit to the trustee thereof;
- (ii) by applying the Appropriated Benefit for the Ex-Member (either from the Fund or by paying it to an Approved Benefit Arrangement to provide benefits which, in the opinion of the Trustee, are of a similar type to those provided by this Deed in relation to that Member;
- (iii) by paying the Appropriated Benefit to the Ex-Member on ceasing to be an Employee or on his or her death to the appropriate persons referred to in clause 25;
- (iv) where the ex-Member has applied to become a Member on the basis of his status as an Eligible Person, the Appropriated Benefit may be transferred to the Member's new accumulation account within the Fund; and
- (v) if the Ex-Member has retired from his or her employment at or after the Normal Retirement Age, or has attained the age of 65 or such other age at which the Responsible Authority has declared benefits may be made payable, and the trustee receives a written request by a Member, he or she shall be entitled to be paid a Benefit in accordance with clause 24, provided however that the value of the Benefit paid shall not exceed in aggregate the amounts standing to the credit of the Member's Accumulation Account or Accounts.

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

An Ex-Member in respect of whom an Appropriated Benefit has been applied under the provision of sub-clause (b) (i), (ii) or (iii) 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 or her Appropriated Benefit as determined in accordance with sub-clause (a).

**(d) Disposal of residual assets**

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

**(e) Ex-Member to transfer Benefits**

Where an Employee of a Participating Employer ceases to be a Member by virtue of sub-clause 45(a), the Trustee may direct the Ex-Member to make arrangements to transfer all of his or her Benefits to another Approved Benefit Arrangement in accordance with sub-clause 18(a), and if so directed the Ex-Member shall make such arrangements within the time specified by the Trustee.

## **VARIATION OF TRUST DEED**

### **46. (a) Amendment to be by deed or other written instrument**

The Trustee may at any time by deed or other written instrument alter, add to or delete any of the provisions of the Deed (including this clause) and any such alterations, additions and deletions shall be effective from the date on which the deed or other written instrument is executed or from such earlier or later date as is specified for that purpose in such deed or other written instrument provided that no such alterations, additions and deletions shall, subject to sub-clause 46(b) be made unless:

- (i) a Qualified Advisor certifies that in his or her opinion, such alterations, additions and deletions will not substantially prejudice the value of the benefits secured for or in respect of any Member by the contributions paid to the Fund prior to the date on which the Deed is varied; or
- (ii) any Members adversely affected by the amendment from the date the Deed is varied give their consent in writing to the variation.

### **(b) Conditions for amendment**

Notwithstanding the provisions of sub-clause 46(a), the Trustee may at any time by deed or other written instrument alter, add to or delete any of the provisions of the Deed (including this clause) in order to:

- (i) secure or better secure exemption, relief or concessions from or in respect of Taxation or any other governmental imposition for or in relation to the Fund, the income of the Fund, any benefit which is or may become payable from the Fund or the payment of such a benefit; and/or
- (ii) enable or better enable the Fund or the Deed to comply with any applicable present or future law, requirement or practice of or within the Commonwealth of Australia or any State or Territory thereof in relation to superannuation or like funds or benefits or otherwise whether a Relevant Requirement or not;

and any such alterations, additions and deletions shall be deemed not to substantially prejudice the value of the benefits secured for or in respect of any Member by the contributions paid to the Fund prior to the date on which the Deed is varied provided that no such alterations, additions and deletions may be affected if in the opinion of the Trustee it is contrary to the Relevant Requirements.

### **(c) Compliance with the Relevant Requirements**

Notwithstanding any provisions of sub-clause 46(a) and (b), no variation shall have the effect of amending sub-clause 12(c) unless such variation is permitted by the Relevant Requirements.

## **WINDING UP OF FUND**

### **47. (a) Termination**

The Fund must be wound up if:

- (i) there are no Members in the Fund and no Beneficiary with any interests in the Fund; or
- (ii) the Trustee for any reason resolves to wind up the Fund; or
- (iii) the Responsible Authority requires the Fund to be wound up.

### **(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**

On and from the date upon which the termination became effective:

- (i) no further contributions, other than contributions due on or before the date specified in the notice issued pursuant to clause 47(b) may be accepted in respect of any Members;
- (ii) the Trustee must pay out of the Fund any expenses incurred by or on behalf of the Fund;
- (iii) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (iv) the Trustee must otherwise continue to administer the Fund in accordance with the Deed;
- (v) if a surplus in the Fund remains after the payment of all Benefits to Members or their Dependants, the Trustee must distribute the surplus to or for the benefit of any Members or former Members, and Dependants of those Members or former Members, or the legal personal representatives of any such Members, former Members, or Dependants,
- (vi) the Trustee must take all other necessary steps to wind up the Fund in accordance with the Relevant Requirements.

### **(d) Notification of change in Benefits**

As soon as practicable, the Trustee shall notify the affected Members, 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.

Deed 04/06

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Deed 04/06



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 W JENSEN**  
in the presence of:-

.....  
*S. W. Jensen*  
.....

.....  
*Prima M. Talbot*  
*GPIC (S/D)*

**SIGNED SEALED AND DELIVERED**

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

.....  
*Margaret Jensen*  
.....

.....  
*Prima M. Talbot*  
*GPIC (S/D)*

**SIGNED SEALED AND DELIVERED**

by the said **HILTON P JENSEN**  
in the presence of:-

.....  
*H. P. Jensen*  
.....

.....  
*Prima M. Talbot*  
*GP (S/D)*

**SIGNED SEALED AND DELIVERED**

by the said **SCOTT A JENSEN**  
in the presence of:-

.....  
*S. A. Jensen*  
.....

.....  
*Prima M. Talbot*  
*GP (S/D)*



**SCHEDULE A**

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

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

**TRUSTEE:**

**STUART WILLIAM JENSEN  
MARGARET JENSEN  
HILTON PAUL JENSEN  
SCOTT ALAN JENSEN**

**NAME OF FUND:**

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

**DATE OF  
EXECUTION:**

*20<sup>th</sup> April, 2006*

**PROPER LAW STATE:**

**QLD**



**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 Member 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 Member and am not disqualified under the SIS Act.

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

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

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

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

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

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20





