

**CSM**  
**SUPERANNUATION FUND**  
**TRUST DEED**

**BETWEEN**

**Predote Pty Ltd ACN 073 829 660**

**("the Trustee")**

**AND**

**Computer Support and Maintenance Pty Ltd ACN 009 615 801**

**("the Employer")**

**JAMES NOONAN**  
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**THIS DEED** is made the 23<sup>rd</sup> day of May 1996

**BETWEEN** Predote Pty Ltd ACN 073 829 660 ("the Trustee")

**AND** Computer Support and Maintenance Pty Ltd ACN 009 615 801 ("the Employer")

**WHEREAS**

- A. The Employer has determined to provide an arrangement for the provision of superannuation benefits to its employees within the laws relating to superannuation in Australia, and so wishes to constitute a fund for that purpose.
- B. The Trustee has agreed to act as trustee of the fund established for those purposes of the Employer.

The parties covenant as follows:

1. **INTERPRETATION**

1.1 **Definitions**

Unless the context otherwise requires, in these presents:

- 1.1.1 "Actuary" means a fellow of the Institute of Actuaries of Australia or other suitably qualified person recognised as an Actuary pursuant to the Relevant Law or a firm of such persons who may for the time being be appointed by the Trustee to advise in relation to the Fund;
- 1.1.2 "Accumulated Credit" means in relation to a Member the total of the amount standing to the credit of the Member's Account and the Employer's Account;
- 1.1.3 "annuity" means a contract that provides for regular payments to an annuitant and which is deemed by the Relevant Law to be an annuity;
- 1.1.4 "Approved Deposit Fund" means an approved deposit fund within the meaning of the Relevant Law;
- 1.1.5 "Approved Superannuation Fund" means a superannuation fund which satisfies the standards which are prescribed for superannuation funds as to qualify them for the maximum taxation concessions available;

- 1.1.6 "Associated Employer" means any person or entity who or which the Trustee has accepted as an associated employer and for which position the person or entity has been nominated by the Employer;
- 1.1.7 "Auditor" means the Auditor for the time being appointed by the Trustee;
- 1.1.8 "Beneficiary" means a person presently entitled to receive a Benefit;
- 1.1.9 "Benefit" means any benefit payable to a Member pursuant to this Deed;
- 1.1.10 "Category" means the category of Membership being one of those categories specified in Schedule 1 to which a Member is admitted or transferred;
- 1.1.11 "Clause" means a clause in this Deed;
- 1.1.12 "Contributions" means payments to the Fund by or in respect of a Member pursuant to this Deed;
- 1.1.13 "this Deed" means these presents and any authorised alterations, amendments and modifications thereto;
- 1.1.14 "Dependant" means a spouse (including a person who has lived with the Member on a bona fide domestic basis as the husband or wife of the member) or child (including any adopted child, stepchild or ex-nuptial child) of a Member or any other person who the Trustee may in the exercise of its absolute discretion determine to be dependent either wholly or in part on the Member at the time of the happening of the event in respect of which the Trustee makes such determination or any person who has at such time a legal right to look to the member for support;
- 1.1.15 "Employee" means a person who is in the employment of an Employer and where the Employer is a company, a director of the company and includes any person being an eligible employee in relation to an Employer within the meaning of the Income Tax Assessment Act 1936 and in addition includes any person for whom the Employer may be required to provide so as to avoid a breach of any Prescribed Agreement or so as to avoid payment of the charge imposed by the Guarantee Act;
- 1.1.16 "Employer" means the Employer hereinbefore described, or any associated or connected person, firm or company carrying on a business in succession thereto, or in amalgamation therewith, and by agreement with the Employer who elects to assume the rights and obligations of the

Employer under this Deed and shall include any person, firm or company which is an Associated Employer;

- 1.1.17 "Employer's Account" means the account established and maintained pursuant to Clause 10.3;
- 1.1.18 "Foregone Benefits Account" means the account established and maintained pursuant to Clause 10.4;
- 1.1.19 "full time employment" in relation to an Employee means the Employee is gainfully employed for 30 hours or more weekly;
- 1.1.20 "Fund" means the Fund constituted by this Deed;
- 1.1.21 "gainful employment" in relation to an Employee means the Employee is employed for earnings including business income, bonuses, commissions, fees, gratuities, salary or wages and "gainfully employed" shall be similarly interpreted;
- 1.1.22 "Guarantee Act" means the Superannuation Guarantee (Administration) Act 1992;
- 1.1.23 "Member" means an Employee or a person who has been an Employee and who has satisfied all the requirements for membership of the Fund and who has been admitted to membership of the Fund as provided by Clause 11 and who has not ceased to be a Member in accordance with Clause 11.6. The term "Member" shall include former Employees who continue to have rights or contingent rights to benefit under the Fund;
- 1.1.24 "Member's Account" means the account established and maintained pursuant to Clause 10.2;
- 1.1.25 "part time employment" in relation to an Employee means the Employee is gainfully employed for 10 hours or more weekly but less than 30 hours weekly;
- 1.1.26 "pension" is a reference to a contractual obligation on the part of the Trustee to make regular payments to a pensioner that is deemed by the Relevant Law to be a pension;
- 1.1.27 "Permanent Incapacity or Permanent Invalidity" in relation to a member means ill health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of ill health, ever again to engage in gainful employment for which the Member is reasonably qualified by education training or experience;

- 1.1.28 "Prescribed Agreement" means any industrial agreement or award (including a consent award) that is certified or made by a Commonwealth or State Industrial Authority after 1 July, 1986;
- 1.1.29 "Relevant Law" means the Superannuation Industry (Supervision) Act 1993 ("SIS"), the Superannuation Industry (Supervision) Regulations and any other statute regulation or law relating to complying or regulated superannuation funds within the meaning of SIS;
- 1.1.30 "Responsible Authority" means any one or more of the Insurance and Superannuation Commissioner, the Commissioner of Taxation or any other governmental authority responsible for administering the laws regulations or any other rules governing the operation of or the availability of income tax concessions to superannuation funds and Approved Deposit Funds;
- 1.1.31 "Retirement" means the termination of employment of a member on or after the Member's attainment of the Retirement Age;
- 1.1.32 "Retirement Age" in relation to a Member means age 65;
- 1.1.33 "Salary" means salary, wages, commissions, bonuses, fees, allowances or gratuities paid to an Employee and includes other earning any payment made to an Employee by way of director's fees and any other amount which may be agreed between the Employer and the Employee from time to time;
- 1.1.34 "Tax" includes income tax, land tax, stamp duty, and any other tax impost or duty;
- 1.1.35 "Trustee" means the Trustee for the time being of the Fund whether original or substituted;
- 1.1.36 "year of income" in relation to the Fund means each year ending the 30th day of June or such other annual period as the Trustee may determine from time to time to be applicable.

## 1.2 **Plural and Gender of Words**

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

### **1.3 Headings to Clauses**

The headings in this Deed are inserted for convenience only and shall not affect its interpretation.

### **1.4 Defined Words**

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

### **1.5 Deed Governed by Law of State or Territory**

This Deed shall be governed and construed and shall take effect in accordance with the laws of the State or Territory of principal residence of the Employer. The parties hereto for the time being, Members and Beneficiaries shall accept the jurisdiction of the Courts of that State or Territory provided that, if this Deed or any rights of any person hereunder shall lawfully be affected by any law custom or practice of the Commonwealth of Australia or of any other State or Territory then this Deed shall have effect subject to that law custom or practice and the Trustee shall be empowered to determine and to adjust the rights Contributions and Benefits to and in respect of that person to the extent necessary to comply therewith.

### **1.6 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 dealing of the Employer with an Employee.

### **1.7 Acts of Parliament**

In this Deed a reference either generally or specifically to an Act of a Parliament of the Commonwealth of Australia or any State or Territory shall include any statutory modification, amendment to or re-enactment of such Act for the time being in force and any reference to any provisions thereof is to that provision so modified, amended or re-enacted and any such reference shall also include any rules, regulations and orders made pursuant to any such Act.

### **1.8 Severance and Reading Down**

1.8.1 If any provision of this Deed or any part thereof is void or invalid under the Relevant Law then such provision or part thereof shall be valid, binding and enforceable to the full extent permitted by the Relevant Law and shall be read down and severed accordingly.

1.8.2 Each and every provision of this Deed and each and every part thereof shall unless the context otherwise necessarily requires be read and construed as a separate and severable provision and as separate and severable parts thereof so that if any provision or part thereof is severed in accordance with subclause 1.8.1 then such provision or part thereof as the case may be shall not only be severed but the remainder shall be read and construed as if the severed provision or part thereof aforesaid had not been contained in this Deed notwithstanding any consequential alteration to the meaning or construction of that provision or this Deed that may result from the severance.

## **2. CONSTITUTION OF THE FUND**

### **2.1 Name of Fund**

The name of the Fund is CSM Superannuation Fund.

### **2.2 Establishment of Fund**

The Fund is established on the date of this deed.

### **2.3 Purpose of the Fund: Corporate Trustee**

Either:

2.3.1 the Trustee shall be a sole trustee which is a constitutional corporation within the meaning of the Relevant Law; or

2.3.2 where the Trustee is not so constituted the primary purpose of the Fund shall be to provide old age pensions for the Members of the Fund upon their retirement from employment with the Employer and for any other purposes which may be permitted under the Relevant Law from time to time.

### **2.4 Moneys Payable to Fund**

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 established by this Deed and shall comprise the following:

2.4.1 Contributions by Members;

2.4.2 Contributions by the Employer;

- 2.4.3 Interest, Rent, Dividends and any other form of income distribution arising from any investment and the accumulation thereof;
- 2.4.4 Profits and other benefits arising from any investment or on its sale and the accumulation thereof; and
- 2.4.5 Moneys, investments and other property (including in specie) transferred to the Fund from any other source or superannuation arrangement.

## 2.5 **Separate Accounts**

Separate accounts to the extent necessary or desirable for any purpose may be instituted and maintained for the purpose of managing, administering and applying the Fund.

## 3. **TRUSTEE**

### 3.1 **Number of Trustees**

3.1.1 There may be one or more Trustees appointed following nomination by agreement between the Members (or other organisation representing the interests of the Members) and the Employer or employers of those Members.

3.1.2 If at any time there is more than one Trustee, the expression "Trustee" where it appears in this Deed shall mean:

- (a) All the Trustees; and
- (b) A single Trustee;

as the case requires.

### 3.2 **Removal of Trustee**

3.2.1 The Employer shall have the right from time to time to remove any Trustee the power of removal herein being subject at all times to the Relevant Law.

3.2.2 A vacancy in the office of Trustee shall arise if a Trustee:

- (a) resigns the office by notice in writing to the Employer; or
- (b) is removed from office; or

- (c) otherwise becomes a disqualified person within the meaning of the Relevant Law.

### **3.3 Appointment of Trustees**

- 3.3.1 In accordance with Clause 2.3 the Trustee may be a sole trustee which is a constitutional corporation within the meaning of the Relevant Law.
- 3.3.2 A new Trustee or Trustees may be appointed from time to time in accordance with the provisions of Clause 3.1.1 **PROVIDED THAT** any Trustee appointed to be a Trustee shall be eligible to become and remain a Trustee in accordance with the Relevant Law.
- 3.3.3 In the event of a new Trustee being appointed to replace a Trustee who has vacated office pursuant to Clause 3.2.2 that new Trustee shall be appointed in accordance with the provisions of Clause 3.1.1 and within sixty (60) days of the vacancy occurring.

### **3.4 Fund vested in Trustee**

The Fund shall be vested in and held by the Trustee or any duly appointed nominee of the Trustee upon the terms and conditions and subject to the trusts, powers and authorities contained in this Deed and shall be managed, administered and applied by the Trustee in accordance with the provisions of this Deed.

### **3.5 Transfer of Assets**

Upon a change of Trustees the retiring Trustee shall execute all transfers, deeds or other documents necessary to transfer investments or money into the name of the new Trustee.

### **3.6 Powers of Trustee**

In addition to the powers which the Trustee might by law have and which are otherwise granted to the Trustee by the Deed the Trustee shall have the following powers:

- 3.6.1 To enter into and execute all contracts, deeds and documents and do all acts, matters or things which he may deem expedient for the purposes of securing the benefits to be provided by or from the Fund and for otherwise effectuating and carrying out the Trusts authorities, powers and discretions conferred upon the Trustee by this Deed;

- 3.6.2 To purchase or otherwise acquire and to sell or otherwise dispose of property rights or privileges which the Trustee is authorised to acquire or dispose of in such terms and conditions as it shall think fit;
- 3.6.3 To appoint and at its discretion remove or suspend the Actuary, Auditor, medical practitioner, investment managers, investment advisers, custodian trustees, administration managers, secretaries, clerks, agents and other servants or appoint them for permanent, temporary or special services as it from time to time thinks fit determine the powers and duties to be delegated to them and fix their salaries or emoluments and require security and such instances and to such amount as it may think fit and any person so employed or engaged shall be deemed for the purposes of this Deed to be employed or engaged by the Trustee;
- 3.6.4 To institute, conduct, defend, compound or abandon any legal proceedings concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;
- 3.6.5 To refer any claims or demand by or against the Fund to arbitration and observe and perform the awards;
- 3.6.6 To make and give receipts and releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- 3.6.7 To open bank accounts and to retain on current or deposit account at any bank such money as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- 3.6.8 To determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, released contracts and documents; and
- 3.6.9 To pay benefits out of the Fund to persons entitled thereto;
- 3.6.10 To take and act upon the advice and opinion of any legal practitioner whether in relation to interpretation of this Deed or any other document or statute or as the administration of the trusts hereof or upon the advice or opinion of any medical practitioner or any investment or financial adviser or any other professional person and whether obtained by them or not without being liable to any members or Dependants or legal personal representative in respect of any act done by them in accordance with such advice or opinion;
- 3.6.11 To make an election that the Fund is to become a regulated superannuation fund within the meaning of the Relevant Law;

**PROVIDED HOWEVER** that the Trustee in the exercise of any power hereby granted shall have regard to and conform with the Relevant Law **AND** where the Relevant Law authorises or permits the Trustee to do any act matter or thing the Trustee shall have power to do that act matter or thing notwithstanding any inconsistent provision or the absence of a specific power in this Deed and any such matter or thing shall be deemed to be incorporated in this Deed.

### 3.7 **Delegation**

The Trustee may from time to time delegate to any Director the right and power on behalf of the Trustee to sign, draw, accept, make, endorse, issue, discount or otherwise execute as the case may be all or any cheques or promissory notes, drafts, bills of exchange, bills of lading or other negotiable or transferable instruments all or any receipts for money paid to the Trustee and all or any other documents connected with the due administration of the Fund or with this Deed and may similarly delegate such rights and powers to the secretary or to any administrator or investment manager appointed by it.

### 3.8 **Liability**

3.8.1 Subject to subclause 3.8.3 the Trustee shall not incur any personal liability for anything done or omitted to be done by the Trustee as a Trustee except in respect of any fraud or willful misconduct of the Trustee.

3.8.2 The Trustee shall not in any circumstance be entitled to indemnity, reimbursement or recompense from any Member or Beneficiary and no Member of Beneficiary shall be liable for the debts or other obligations of the Fund.

3.8.3 Subclause 3.8.1 shall not apply to exclude the liability of a Trustee if to so exclude that Trustee's liability would be contrary to the Relevant Law.

### 3.9 **Indemnity**

3.9.1 The Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Fund against liabilities incurred by the Trustee in the execution or attempted execution or as a consequence of the failure to exercise any of the trust's authorities, powers and discretions hereof or by virtue of being a Trustee provided however the Trustee may not be indemnified where to be indemnified would be contrary to the Relevant Law.

3.9.2 A reference to “the Trustee” in Clause 3.9.1 shall be interpreted as including a reference to any person who is a director of the Trustee.

### **3.10 Trustee’s Discretion**

3.10.1 The Trustee or any Director or other officer of the Trustee may exercise or concur in exercising all powers, authorities and discretions conferred on them by this Deed or by law notwithstanding that they may have a direct or other personal interest in the mode or result of exercising any such power authority or discretion but any Director or officer as aforesaid may nevertheless abstain from acting except as a former party in any matter in which that person may be personally interested.

3.10.2 The Trustee in exercise of the powers, authorities and discretions vested in it by this Deed shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers, authorities and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.

## **4. DEED SUBJECT TO RELEVANT LAW**

Notwithstanding any other provision of this Deed to the extent to which the Relevant Law imposes any requirements that must be satisfied by the Fund or by the Trustee (in terms of being a regulated or complying superannuation fund) then those requirements shall be deemed to be incorporated into this Deed.

## **5. ASSETS EXPENSES AND INVESTMENTS**

### **5.1 The Assets**

The following property and the property for the time being representing the same and the income therefrom shall constitute the assets of the Fund namely:

5.1.1 Contributions;

5.1.2 Any assets transferred to the Trustee in accordance with sub-clause 11.3;

5.1.3 Any other moneys received or receivable by the Trustee for the purposes of the Fund.

### **5.2 Expenses of the Fund**

All the expenses of operation of the Fund incurred from time to time which are not paid by the Employer or an Associated Employer shall be paid out of the Fund.

### 5.3 Investments

So much of the moneys forming part of the Fund from time to time as shall not be required immediately for the payment of Benefits or other amounts authorised by this Deed, shall be invested as soon as practicable by and under the control and in the name of the Trustee, in any of the following investments:

- 5.3.1 Any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- 5.3.2 On deposit with any Bank, Company, Building Society, Trust, fund, person, financial institution or partnership with or without security and at the rate of interest and upon terms which the Trustee may deem expedient **PROVIDED HOWEVER** that any such deposit made with an Employer or Associated Employer shall only be made in accordance with the Relevant Law;
- 5.3.3 The purchase or acquisition of any shares, or stock rights and options for share or stock of any class or description and of all or any type of bonds, mortgages or debentures in or of any building society, trust or Fund or any company incorporated in any part of the world and whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and of any notes, options or other like securities issued by any of those companies or societies and whether secured or unsecured, registered or unregistered **PROVIDED HOWEVER** that any such investment capable of being interpreted as an investment in the Employer or any person associated with the Employer shall only be made in accordance with the Relevant Law;
- 5.3.4 The purchase or acquisition of any interest in such real or personal property of whatsoever nature and wheresoever situate;
- 5.3.5 The purchase or acquisition of any interest either jointly or in partnership or in any unit of interest;
- 5.3.6 Any securities or bonds of any government, semi-governmental body or public authority;
- 5.3.7 Any units of any common fund, property trust or unit trust including a pooled superannuation trust within the meaning of the Relevant Law;
- 5.3.8 Any options, hedging contracts, futures, contracts, interest swaps and other financial contracts that may from time to time be made available;

5.3.9 Any Bill of Exchange, Promissory Note or other negotiable instrument;

5.3.10 In underwriting or sub underwriting the subscription of the shares, stocks, notes, options or debenture of any corporation or of any other class of investment specified in this Clause 5.3;

5.3.11 Any policy of life insurance, assurance or endowment or annuity contract whether by proposal, purchase or otherwise and any choses in action, interest for life or any lesser terms or in reversion and howsoever arising;

**PROVIDED THAT** no moneys or assets of the Fund shall be invested contrary to the Relevant Law and in particular without limitation no moneys or assets of the Fund shall be invested on a non-arm's length basis, in unauthorised in-house asset investments (as that term is defined by the Relevant Law) in any loans to any Member or in an asset or property known to the Trustee to be owned by a Member.

#### 5.4 **Power to Sell and Vary Investments**

The Trustee shall have power as the Trustee deems fit to vary, replace, encumber or otherwise deal with such investments as fully and effectively as the person absolutely and beneficially entitled dealing with his own property may do so **PROVIDED THAT:**

5.4.1 The Trustee shall not invest in loans to Members; and

5.4.2 No investments shall be encumbered or charged otherwise than in accordance with Clause 5.5.

#### 5.5 **Borrowing**

The Trustee may borrow or raise money up to such amount as the Trustee thinks proper and may secure the payment or repayment thereof by charge or mortgage over all or any of the assets of the Fund or in such other manner as it shall think fit but only to obtain temporary finance by way of overdraft from such bank or institution as the Relevant Law may permit.

#### 5.6 **Reserves**

The Trustee shall, subject to first formulating and giving effect to a suitable strategy for their prudential management as required by the Relevant Law, have the power to create reserves within the Fund in order to avoid large fluctuations in investment returns to Members and to provide for any taxation payable by the Fund. For these purposes the Trustee shall have the power to appropriate, out of the investment income and capital profits (whether realised or unrealised)

made on the investments of the Fund, such amount as the Trustee, in its absolute discretion, determines. The Trustee shall have the power to appropriate from the said reserves such amounts at such times as the Trustee in its absolute discretion shall determine.

## **6. ASSOCIATED EMPLOYER**

### **6.1 Admission of Associated Employers**

The Trustee shall admit to the Fund any Associated Employer the admission of which has been approved for admission as an Associated Employer by the Employer and which has agreed in writing to be bound by this Deed. The Trustee may make such arrangements as it shall think fit with an Associated Employer regarding the terms upon which its Employees are to be admitted to Membership of the Fund.

### **6.2 Retirement of Associated Employers**

The participation in the Fund of an Associated Employer may be terminated:

6.2.1 by the Associated Employer by notice in writing to the Trustee;

6.2.2 by the Employer by notice in writing to the Associated Employer;

6.2.3 On termination of participation pursuant to Clause 6.2.1 or 6.2.2:

6.2.3.1 The Trustee with the agreement of the Associated Employer in question shall specify a date (hereinafter called "the retirement date") upon which the Associated Employer (hereinafter called "the retiring employer") shall retire;

6.2.3.2 The retiring employer and its Employees who are Members shall forthwith pay all arrears if any of contributions up to the retirement date;

6.2.3.3 Benefits which become payable on or before the retirement date shall continue to be payable out of the Fund;

6.2.3.4 The interest in the Fund of the Associated Employer and its Employees who are Members shall be ascertained by the Trustee after considering the advice of the Actuary and dealt with in such manner not inconsistent with the Relevant Law as the Trustee and Associated Employer determines.

## **7. APPOINTMENT OF AUDITORS AND OFFICERS**

### **7.1 Auditor**

The Trustee shall appoint the Auditor to the Fund who shall have such qualifications as may be prescribed by the Relevant Law and may remove any such Auditor.

### **7.2 Statement of Assets and Income**

The Trustee shall in each year of income cause to be prepared an income and expenditure account and statement of assets of the Fund in accordance with standard accounting practice and subject to the requirements and preferences of any applicable accounting standards which accounts shall be audited by the Auditor within such time as may be prescribed by the relevant law. The Auditor shall have access to all papers, accounts and documents connected with the Fund and shall report in writing to the Trustee the result of such audit. A copy of the income and expenditure account and statement of assets shall be sent by the trustee to the Employer. Every member shall be entitled to receive a copy of the income and expenditure account and statement of assets of the Fund in accordance with the Relevant Law.

## **8. INFORMATION AND RECORDS**

### **8.1 Trustee to Provide Information to Members**

The Trustee shall supply such information and reports and provide copies of any documents and records to the Members as may be required by the Relevant Law or requested by the Member, which may include information reports, documents or records.

8.1.1 for new or prospective Members of the Fund;

8.1.2 on termination of a Member's membership of the Fund;

8.1.3 concerning any event in relation to the Fund that the Trustee believes that the members would reasonably expect to be informed of;

8.1.4 relating to the Fund generally in respect of each Fund Year; and

8.1.5 that the Trustee believes the Members would reasonably need for the purpose of understanding their individual benefit entitlements under the Fund.

## **8.2 Trustee's Records**

The Trustee shall:

- 8.2.1 keep and retain for at least ten (10) years minutes of all Trustee meetings at which matters affecting the Fund have been considered;
- 8.2.2 keep and retain for at least ten (10) years a record of all changes of Trustee or Directors of the Trustee of the Fund and the consents of such Directors and/or Trustees to their appointment; and
- 8.2.3 keep and retain so long as they are relevant and in any event for at least ten (10) years copies of reports that have been given to all Members or all Members of a particular Class.

## **8.3 Records to be Kept in Accordance with Relevant Law**

The Trustee shall also keep or cause to be kept such other accounts and records as are required for the proper operation of the Fund and to ensure compliance with the Relevant Law.

## **9. ADMINISTRATION**

### **9.1 Income Tax**

- 9.1.1 If the Trustee becomes liable for any Tax in respect of any payment out of the Fund it may deduct the amount of such Tax from such payment as it thinks proper. Nothing in this clause shall prejudice any other rights which the Trustee may have to deduct Tax from any payment out of the Fund.
- 9.1.2 If the Trustee becomes liable for Tax in respect of the Contributions of any Employer to the Fund or the earnings of the Fund the Trustee may deduct such amount of Tax assessed out of the income of the Fund and if the income of the Fund from time to time is insufficient to make payment of the amount assessed the Trustee may debit the Employer's Account of each Member on a basis that the Trustee considers to be fair and reasonable so as to satisfy in full the Tax assessed.

### **9.2 Rights of Members**

No person whether he is a member or otherwise shall have any claim or other interest to or in respect of the Fund or any contributions or any interest therein or any claim upon or against the trustee or any employer except under and in accordance with the provisions of this Deed.

### **9.3 Inspection of Deed**

Every Member shall have the right to inspect a copy of this Deed at the office of the Employer during the Employer's usual business hours.

### **9.4 Members to give Information**

Every member claiming a Benefit shall from time to time give to the Trustee such information and produce to it such documents as the Trustee considers are required for the purpose of putting this Deed into effect.

### **9.5 Notices**

Any notice to be given under this Deed shall be deemed to have been validly given if handed to the party to be served or if posted by ordinary prepaid post and duly addressed to the party to be delivered at the last known address of such party.

### **9.6 Power of Attorney**

Each Member hereby irrevocably appoints the Trustee as attorney to execute and sign and effect all such deeds, instruments and things as the Trustee may consider necessary and desirable in order to carry out, exercise and give effect to this Deed and the powers, authorities and discretions vested in the Trustee hereunder.

## **10. ACCOUNTS**

### **10.1 General**

The Trustee shall establish the following accounts:

10.1.1 A Member's Account in respect of each Member;

10.1.2 A Foregone Benefits Account;

and the Trustee may establish:

10.1.3 An Employer's Account in respect of each Member.

### **10.2 Member's Account**

A Member's Account in which shall be recorded:

- 10.2.1 Contributions to the Fund by the Member;
- 10.2.2 Amounts transferred to or from any other superannuation fund in respect of the member pursuant to Clauses 11.3 or 11.4;
- 10.2.3 Amounts appropriated in accordance with Clause 10.5;
- 10.2.4 Amounts paid by way of a Benefit or applied in the purchase of an annuity in respect of the Member;
- 10.2.5 Amounts payable to the Fund or the Employer pursuant to Clause 14.3;
- 10.2.6 Contributions to the Fund by the Employer being contributions made in accordance with a Prescribed Agreement and/or in amounts that do not exceed the minimum amounts required by the Guarantee Act so that the charge imposed by the Guarantee Act is not payable;
- 10.2.7 Amounts transferred to or from the Foregone Benefits Account;
- 10.2.8 Amounts debited to pay premiums on any policy of life insurance effected to provide benefits on the death or disability of the Member;
- 10.2.9 Amounts credited arising from the proceeds of any policy of life insurance effected to provide benefits on the death or disability of the Member;
- 10.2.10 Any other amount which should be credited or debited to this account for the purposes of this Deed;
- 10.2.11 Any other amount which may be required to be vested for the benefit of the Member pursuant to the Relevant Law.

### **10.3 Employer's Account**

An Employer's Account in which shall be recorded:

- 10.3.1 Contributions to the Fund by the Employer in respect of the Member except to the extent that such contributions are pursuant to a Prescribed Agreement or are required to be vested for the benefit of the Member by the Relevant Law;
- 10.3.2 Amounts debited to this account to pay premiums on any policy of life insurance effected to provide benefits on the death or disability of the Member;

- 10.3.3 Amounts credited arising from the proceeds of any policy of life insurance effected to provide benefits on the death or disability of the Member;
- 10.3.4 Amounts transferred to or from the foregone Benefits Account;
- 10.3.5 Amounts transferred to or from any other superannuation fund in respect of the Member pursuant to Clauses 11.3 or 11.4;
- 10.3.6 Amounts debited to this account in respect of Tax payable by the Trustee pursuant to Clause 9.1.2;
- 10.3.7 Amounts paid by way of benefits from this account or applied in the purchase of an annuity in respect of the Member;
- 10.3.8 Amounts appropriated in accordance with Clause 10.5;
- 10.3.9 Any other amount which should be credited or debited to this account for the purposes of this Deed.

#### **10.4 Foregone Benefits Account**

The Trustee shall maintain a Foregone Benefits Account to which shall be credited any amount forfeited pursuant to Clauses 13.5, 13.7 or 14.4. The amount standing to the credit of the Foregone Benefits Account shall be applied by the Trustee within such period as may be prescribed by the Relevant Law or otherwise as and when the Trustee may determine, for:

- 10.4.1 The provision of benefits that other Members or their Dependants have rights to receive from the Fund; or
- 10.4.2 The provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Responsible Authority is satisfied is reasonable having regard to all the circumstances; or
- 10.4.3 Any other purpose that may be permitted by the Relevant Law or by the Responsible Authority from time to time including the making of a payment to the Employer (provided that the Trustee must give a notice in writing to all the Members advising of the Trustee's intention to make any payment to the Employer prior to making such a payment).

#### **10.5 Application of Income/Loss and Unrealised Gains/Loss**

10.5.1 The Trustee shall appropriate an amount comprising income or losses of the Fund and an amount representing unrealised profits or losses on a revaluation pursuant to Clause 10.6 after account has been taken of tax payable or paid (if any) pursuant to Clause 9 in respect of a member to or in respect of whom a Benefit is payable and shall apportion that amount between the Employer's Account and the Member's Account in respect of that Member in the same proportions as the balance standing to the credit of the Member's Account and the Employer's Account in respect of that Member at that time and shall transfer such amounts to the Employer's Account and the Member's Account in respect of that Member. Such amount shall be determined by the Trustee as the member's reasonable share in the income and capital growth of the Fund in respect of the period since the end of the previous year of income and if deemed appropriate by the Trustee the Trustee shall be entitled to debit the Employer's Account or Member's Account in respect of any Member to account for any losses incurred by the Fund or any unrealised losses further to a re-valuation pursuant to Clause 10.6.

10.5.2 As at the end of each Fund Year the Trustee shall appropriate the balance of the income or losses of the Fund together with any amount representing unrealised profits or losses on a revaluation pursuant to Clause 10.6 after account has been taken of Tax payable or paid (if any) pursuant to Clause 9 and after expenses incurred pursuant to Clause 5.2 have been taken into account and after any transfers have been made pursuant to Clause 10.5.1 and shall apportion such balance and shall transfer such apportionments to the Employer's Account and Member's Account in respect of each Member other than those Members referred to in Clause 10.5.1. The method of apportionment shall be determined by the trustee so as to be convenient of application and is to be equitable between all the members having regard to the mean of the balances of those accounts at the beginning and end of the relevant fund year and to any other factors the Trustee may consider relevant whether generally or in the case of a particular Member. Any small balance remaining either credit or debit after the apportionment has been made shall be carried forward.

10.5.3 Notwithstanding this Clause 10.5 the rate of increase of benefits vested in any Member shall be less than the rate, that, if the Fund were immediately terminated after the vesting, would have the effect of reducing the amount of the assets of the Fund so that those assets would be insufficient to pay the minimum benefit (having regard to the vesting standards) required to be paid to all other Members.

## 10.6 Revaluations/Solvency

The property of the Fund may be revalued by the Trustee at the end of each Fund Year and at such other times as the Trustee may consider appropriate and on such basis as the Trustee determines **PROVIDED THAT** the timing and

basis of such revaluations is in accordance with the relevant Law and **PROVIDED FURTHER THAT** revaluations are undertaken and amounts are debited and credited to Member's Member Accounts and Employer Accounts (and the Forfeited Benefits Account if necessary) as may be required to ensure the maintenance of the solvency of the Fund in accordance with the Relevant Law.

## 11. ENTRANCE TO FUND

### 11.1 Eligibility

Any Employee who is invited by the Employer to participate in the Fund in a particular Category being a Category referred to on Schedule 1 and who makes application for admission within the time specified in such invitation shall be eligible for admission as a Member of the Fund in the Category so specified. If the invitation does not specify a Category of membership it shall be deemed to have specified Category A.

### 11.2 Membership

11.2.1 An Employee who applies to become a Member shall make and deliver to the Employer in such form as the Trustee may prescribe a statement in writing or a statutory declaration as required by the Trustee as to any matter relating to his eligibility to become a Member including membership of any other Approved Superannuation Fund or interest under any Approved Deposit Fund or rollover annuity within the meaning of the Relevant Law. A Member shall at any time or whenever from time to time so requested by the Trustee furnish such further statement or statutory declaration as the Trustee requires and the Employer shall forward every such statement in writing or statutory declaration to the Trustee.

11.2.2 Each Member shall without being called upon by the Trustee so to do give prompt notification to the Trustee in writing if he becomes a Member of any other fund or acquires an interest of a kind referred to in Clause 11.2.1 or if any other circumstance occurs which may effect membership or eligibility to contribute to the Fund.

11.2.3 An Employee shall become a Member in the Category specified by the Employer (or failing such specification in Category A) from the date when an application has been received and approved by the Trustee.

11.2.4 The Employer may by notice in writing to the Trustee alter a Member's Category **PROVIDED THAT:**

11.2.4.1 no alteration of category which would increase the Member's obligation to contribute to the Fund shall be made unless the Member consents thereto in writing; and

11.2.4.2 the alteration shall take effect subject to the condition that it shall not reduce the Member's Benefit below the amount that would have been paid if the Member's service had terminated immediately prior to such alteration.

### **11.3 Transfer from Another Fund**

The Trustee may with the consent of the Employer make such arrangements as it thinks proper with any Employee or any previous employer of the Employee or the Trustees of any Superannuation Fund of which the Employee was or is a member of any of them for any transfer of assets or moneys to the Fund and may make such arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the admission of such Employee to membership of the Fund **PROVIDED THAT** if a Superannuation Fund from which such assets or moneys are transferred is one in which the payment of benefits is required by the Relevant Law to be deferred until the attainment of a particular age or the occurrence of a specified event then the Employee shall not be entitled to receive from the Fund any part of a benefit that is attributable to those assets or moneys at a date earlier than the Relevant Law permits.

### **11.4 Transfer to Another Fund**

If a Member becomes eligible to join another Approved Superannuation Fund the Trustee may if requested by the Member in lieu of part or all of any other benefit to which the Member may be or become entitled under this Deed transfer to the Trustees of such Approved Superannuation Fund such portion of the assets or moneys of the Fund not exceeding such amount as the Trustee considers equivalent in value to the benefit being provided to or for the Member to the extent that such benefit has accrued pursuant to the provisions of this Deed **PROVIDED THAT** any assets or moneys of the Fund to be so transferred which are required to be preserved within the Fund in accordance with Clause 13.6 hereof shall only be transferred if the Trustee is able to satisfy itself that there is an equivalent preservation requirement for those assets or moneys in the transferee fund.

### **11.5 Withdrawal from Service for Up to Two Years**

Notwithstanding any other provision of this Deed but subject at all times to the provisions of the Relevant Law the Trustee may at the request of a Member whose employment has been terminated but who has not retired from the work force and with the consent of the Employer retain the membership of the Member in the Fund for any period up to two years (and any such longer period

as may be permitted by the Relevant Law and as may be necessary to satisfy any Prescribed Agreement obligation or so as to enable the Employer to continue contributing to avoid the payment of any charge imposed by the Guarantee Act) from the point in time at which the Member was last employed on a part time or full time basis and may during such period accept contributions by or in respect of the Member.

#### 11.6 Cessation of Membership

A person ceases to be a Member in the event that the total amount of all the amounts payable under this Deed in respect of the Member's membership in the Fund have been paid.

### 12. CONTRIBUTIONS

#### 12.1 Member Contributions

12.1.1 A Member shall from the date of joining the Fund in any Category contribute to the Fund at such rate if any as is applicable to the Category in which the Member has joined as set out in Schedule 2.

12.1.2 Unless the Member and the Employer agree otherwise each Member's own contributions shall be deducted from the remuneration from time to time paid to the Member by the Employer. The Employer shall pay the Member's contributions so deducted to the Trustee before the end of the twenty eight (28) day period beginning immediately at the end of the month in which the deduction was made, or within such other period as may be required under the Relevant Law.

#### 12.2 Employer Contributions

12.2.1 The Employer agrees with the Trustee to contribute to the Fund in respect of each Member at such rate as is applicable to the Member's category as set out in Schedule 2.

12.2.2 An Employer may at any time and from time to time by one month's notice in writing to the Trustee and any affecting Member cease or suspend payment of or reduce the contributions payable by the Employer in respect of any such Member **PROVIDED THAT** upon any such cessation or suspension or reduction of contributions in respect of a Member the Member shall be entitled to either cease or reduce the Member's contributions (if any) as the Member chooses.

12.2.3 Should the amount determined under Clause 12.2.1 in respect of a member together with any contributions made by the Member at any time be in the opinion of the Trustee in excess of the amount that may in

accordance with the Relevant Law be accepted into the Fund without endangering the status of the fund as an Approved Superannuation Fund the Employer's contribution may be reduced or not accepted by the Trustee to the extent of the excess.

### 12.3 **Limitation of Contributions**

Notwithstanding any other provision of this Deed, the Trustee shall not accept any contribution whether by the Employer, a Member or any other person in respect of a Member having reached the Retirement Age unless permitted by the Relevant law.

## 13. **BENEFITS**

### 13.1 **Retirement**

If a member should retire from employment with the Employer on or after reaching the Retirement Age the Benefit payable shall, subject to Clause 13.7 be the total of the Employer's Account and Member's Account in respect of the Member and the Trustee may:

13.1.1 Pay to the Member the Benefit in a lump sum; or

13.1.2 Apply the Benefit to the purchase of an annuity or annuities in the name of and for the benefit of the Member; or

13.1.3 Apply the Benefit to the payment of a pension for the benefit of the Member in accordance with Clause 14.1;

**EXCEPT THAT** in the event that sub-clause 2.3.2 of this Deed applies the Trustee may only apply the Member's benefit to or for the benefit of the Member in accordance with sub-clauses 13.1.2 or 13.1.3.

### 13.2 **Voluntary and Compulsory Payment of Benefits**

In the event that a Member becomes entitled to be paid a Benefit the Member, subject to the Relevant Law, may elect not to be paid and the Trustee may, from that time, in its absolute discretion apply the Member's Benefit either in whole or in part (having regard to any request or direction that may have been made by the Member) to or for the benefit of the Member at any time in any one or both of the ways specified in Clause 13.5 if sub-clause 2.3.1 applies or if sub-clause 2.3.2 applies and the Member's age is less than the Retirement Age but otherwise in one or both of the ways specified in sub-clauses 13.1.2 or 13.1.3 **EXCEPT THAT** the Member's Benefit must be applied in full after the occurrence of any of the following events:

13.2.1 When having reached age 65 but not age 70 the Member ceases gainful employment on either a full-time or a part-time basis;

13.2.2 When the Member has attained age 70 and is not gainfully employed on a full-time basis; or

13.2.3 When the Member dies, in which case the Member's Benefit may be paid in accordance with clause 13.4.

### 13.3 **Permanent Incapacity or Permanent Invalidity**

A Member whose employment with the Employer is terminated on the grounds of Permanent Incapacity or Permanent Invalidity shall be entitled to a Benefit being, subject to Clause 13.7, the total of the Employer's Account and the member's Account in respect of the Member and the Trustee may:

13.3.1 pay to the Member the Benefit in a lump sum; or

13.3.2 Apply the Benefit to the purchase of an annuity or annuities in the name of and for the benefit of the Member; or

13.3.3 Apply the Benefit to the payment of a pension for the benefit of the Member in accordance with Clause 14.1.

### 13.4 **Death**

13.4.1 If a Member dies whilst in the employment of the Employer the Benefit payable shall, subject to Clause 13.7, be the total of the Employer's Account and the member's Account in respect of the Member and the Trustee may:

(a) Pay to the Dependants of the deceased Member or the member's legal personal representative/s the Benefit in a lump sum; or

(b) Apply the Benefit to the purchase of an annuity or annuities in the name of and for the benefit of the Dependants of the deceased Member; or

(c) Apply the Benefit to the payment of a pension for the benefit of the Dependants of the deceased Member in accordance with Clause 14.1;

**PROVIDED ALWAYS** that if the deceased member shall have more than one Dependant then the Trustee may in the Trustee's absolute discretion pay or apply the Benefit payable in respect of that member to the Dependants or any

one or more of them exclusive of the other or others in such proportions as the Trustee shall deem fit **PROVIDED FURTHER** that the Trustee may in the Trustee's absolute discretion determine to pay the whole or any remaining portion of the Benefit payable in respect of such deceased Member to the legal personal representative/s of the deceased member and **PROVIDED FURTHER** that the Trustee may in its absolute discretion increase the Benefit payable to either the Dependants or legal personal representatives of the deceased Member by an amount equivalent to such amount (if any) which is a taxation deduction to the Fund by reason of the application of section 279D of the Income Tax Assessment Act.

13.4.2 Notwithstanding the provisions of subclause 13.4.1, the Trustee and a Member may agree in writing that, upon that Member's later death while a member of the Fund, the Member's death benefit shall be any insurance carried by the Trustee on the life of the Member and that the amount accumulated in the Member's account shall be regarded as a foregone benefit in accordance with clause 10.4 and neither the Member nor any person claiming through the Member shall have any interest in or right to that accumulated amount except as required by the Relevant Law.

### 13.5 **Benefit on Termination of Employment for any Other Reason**

If a Member shall voluntarily leave the employment of the Employer before reaching Retirement Age for any other reason and other than upon transfer of employment to an Associated Employer or shall at any time be dismissed from employment with the Employer for any reason the Trustee may:

13.5.1 Subject to Clause 13.6 and 13.7 pay a lump sum to the Member which shall be the total of the Member's Account in respect of the member and that proportion referred to in Schedule 3 (having regard to the Member's Category) of the Employer's Account in respect of the member **PROVIDED THAT** the Trustee may in its absolute discretion decide to increase the Benefit to an amount not exceeding the Accumulated Credit **AND** any amount standing to the credit of the Member's Employer's Account which has not then become payable and which is not required to be preserved in accordance with Clause 13.6 shall be forfeited by the Member and shall be credited by the Trustee to the Foregone Benefits Account.

13.5.2 Subject to Clauses 13.6 and 13.7 determine to pay the amount of the Benefit determined in accordance with Clause 13.5.1 as a pension to the Member in accordance with Clause 14.1 **PROVIDED THAT** the Trustee may in its absolute discretion pay in addition the amount or any portion thereof standing to the credit of that member's Employer's Account as a pension to that member and any amount which has not been allocated to the provision of pension or has not been preserved in

accordance with Clause 13.6 shall be forfeited by the Member and shall be credited by the Trustee to the Foregone Benefits Account.

### **13.6 Preservation**

Where the Relevant law determines that payment of all or part of a Benefit pursuant to Clause 13.5 shall not be made to a Member prior to that Member attaining a particular age or upon the occurrence of a specified event then that portion of the Benefit shall be preserved in the fund for so long as is required by the Relevant law unless otherwise transferred in accordance with Clause 11.4 **PROVIDED THAT** no such transfer shall be made unless the same restrictions on payments to the member are imposed by the fund to which the transfer is made by the Fund. If the Member dies prior to payment or transfer of the Benefit or part thereof so retained then it shall be paid in accordance with Clause 13.4 as if the member had died in service. A Benefit or part thereof, the payment or transfer of which is deferred hereunder, shall continue to participate in the earnings of the Fund as if constituted in the Member's Account.

### **13.7 Limitation of Member's Benefit**

Notwithstanding the scale of vesting of benefits (if any) that applies to a Member in accordance with Schedule 3 and notwithstanding any other provision of this Deed no Member's vested entitlement under this Deed shall exceed the Member's pension reasonable benefit limit ("prbl") within the meaning of the Income Tax Assessment Act (1936) and the Income Tax Regulations other than benefits which are comprised of member financed benefits or mandated employer financed benefits (within the meaning of the Relevant Law) in respect of the Member and in the event that the benefits accumulated in the Member's Member Account and Employer Account exceed the prbl that excess shall be held as a non-vested accumulation in respect of the member and when the Member's benefit becomes payable or available to be applied for the Member's benefit the Trustee may in its absolute discretion pay that excess in whole or in part for the benefit of that member and to the extent that the said excess is not paid to the Member the excess shall be forfeited as against the Member and applied to the Foregone Benefits Account in accordance with Clause 10.4.

### **13.8 Unrestricted Non-Preserved Benefits**

In the event that any unrestricted non-preserved benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member being benefits transferred to the fund in accordance with Clause 11.3 or otherwise such benefits notwithstanding any other provision of this Deed may be paid to the Member in accordance with the requirements of Clause 13.2 of this Deed.

## 14. PAYMENT OF BENEFITS

### 14.1 Benefits Payable by Pension

The payment of Benefits as a pension pursuant to Clauses 13.1.3, 13.3.3, 13.4.3 and 13.5.2 may be payable as follows:

14.1.1 A pension may be payable monthly in arrears or on such other terms as determined by the Trustee upon application from the Member **PROVIDED THAT** a payment is made at least annually and in such amounts as determined by the Trustee having regard to:

14.1.1.1 the amount of the Benefit able to be applied to the payment of a pension;

14.1.1.2 the period for which the pension is likely to be paid;

14.1.1.3 whether or not provision is made for residual or commuted lump sums being payable or for a reversionary beneficiary receiving pension payments;

14.1.1.4 standards being prescribed whereby non-commuted payments in any year or income must not be larger or smaller in total than certain prescribed amounts so that the pension payable is able to be deemed for the purposes of the Relevant Law as a pension; and

14.1.1.5 any other matters that the Trustee in its absolute discretion deems relevant.

14.1.2 A pension may be payable on such other basis and from such portion of the benefits funded hereunder as the Trustee may determine whether the agreement of the Member having regard to matters such as the level of benefits, the Member's pension and lump sum reasonable benefit limit, the guidelines imposed by the Relevant Law for superannuation pensions, whether or not a residual capital value and commutation of entitlement are to be paid or payable and whether there shall be a reversion of entitlement to a Dependant in the event of death of the member and upon commencing to pay a pension in accordance with this clause 14.1 the Trustee shall minute in writing the various features which it has adopted for the pension to be paid.

14.1.3 An entitlement to pension payments hereunder shall not be capable of being transferred assigned or paid to a person other than a reversionary beneficiary on the death of a Member or of another reversionary beneficiary.

14.1.4 The capital value of a pension and the income from it cannot be used as security for a borrowing.

#### 14.2 **Benefits Payable by Lump Sum**

Subject to clause 13.2, the payment of Benefits as a lump sum pursuant to Clauses 13.1.1, 13.3.1, 13.4.1 and 13.5.1 shall be payable on the day on which the Member's employment is terminated or at such other time thereafter as close to the date as is reasonably practicable and the Trustee in lieu of paying a lump sum may pay or apply the Member's Benefit either in whole or in part as an annuity or pension as otherwise provided herein.

#### 14.3 **Moneys Owing to Fund or the Employer**

Where a Member at the time of ceasing to be a Member owes any moneys to the Fund or to the Employer, including any Contributions paid in advance by the Employer on the Member's behalf to the Trustee and not recovered by the Employer by deduction from the Member's wages or salary, the Trustee may deduct from any Benefit payable to or in respect of the member, moneys (including any costs of any prosecution or civil proceedings and interest on those moneys and costs at the compound rate of interest of five per centum (5%) per annum) and pay such moneys to the Fund or to the Employer as the case may be, with priority to the Fund **PROVIDED THAT** at all times such payment is authorised by the Relevant Law.

#### 14.4 **Forfeiture of Benefits**

##### 14.4.1 Any Member or Beneficiary:

14.4.1.1 who assigns or charges or attempts to charge any Benefit; or

14.4.1.2 whose Benefit whether by voluntary act, operation of law (other than pursuant to the provisions of the Bankruptcy Act, 1966) or otherwise becomes payable to or vested in any other person, company, government or other public authority; or

14.4.1.3 who, in the opinion of the Trustee, commits any fraud or is in relation to the Employer or the fund guilty of dishonesty, defalcation or serious misconduct; or

14.4.1.4 who (subject to reasonable enquiries having been made by the Trustee) cannot be located and whose Dependants cannot be located by the Trustee during a period of six (6) years after a payment was last made to the Member

by the Employer or by the Trustee, or who dies and no grant of probate or Letters of Administration shall have been made in respect of the estate of such member within twelve (12) months of the date of such Member's death;

shall forfeit his or her benefit comprising the credit to the member in both the Member's account and the Employer's account of the Member or Beneficiary and the amount so forfeited shall be applied to the foregone Benefits Account in accordance with Clause 14.4.2 **PROVIDED THAT** this sub-clause 14.4.1 shall not have the effect of forfeiting any entitlement or benefit of a Member where the Member has already become presently entitled to that entitlement or benefit as against the Trustee.

14.4.2 The Trustee shall credit all amounts forfeited in accordance with Clause 14.4.1 to the Foregone Benefits Account and such Benefits shall be applied in accordance with Clause 10.4.

**14.5 Benefits not Grounds for Increasing any Claim for Damages**

The Benefit to which a Member might claim to be entitled under this Deed shall not be used as grounds for increasing or as a means of assessing damages in any claim made or action brought by a Member against the Employer.

**14.6 Deduction of Tax from Benefit**

The Trustee may deduct from any Benefit or payment under this Deed any tax or duty payable from or in respect of the same whether by the Beneficiary, the Fund or the Trustee in its capacity hereunder, and shall thereupon pay the said tax or duty to the Relevant Authority. The beneficiary shall be entitled to receive only the net Benefit after the deduction has been made.

**14.7 Benefits Other Than in Cash**

14.7.1 The Trustee may at the request of the Member or Beneficiary to whom the Benefit is payable and with the agreement of the Employer transfer existing life assurance policies on the life of the Member of equivalent value to such Member or Beneficiary in lieu of paying the whole or part of the amount otherwise payable under Clause 13. The policies so transferred shall be only such existing life assurance policies on the life of the Member as the Trustee, the Employer and the Member or Beneficiary shall agree.

14.7.2 The Trustee may at the request of the Member or Beneficiary to whom the Benefit is payable and with the agreement of the Employer transfer assets of the Fund in specie to such Member or Beneficiary where such assets are equivalent in value to the Benefit payable **PROVIDED**

**THAT** the payment of a benefit by way of a distribution in specie is authorised at the time by the Relevant Law.

#### **14.8 Place of Payment**

Benefits are payable at the principal office for the time being of the Employer. The Trustee may forward to a Member a Benefit at the postal address last notified to the Trustee or in any other manner as the Trustee at the request of the Beneficiary may approve.

#### **14.9 Notice**

Every Beneficiary or person to whom a Benefit is payable on behalf of or for the Benefit of a Beneficiary shall when the Benefit becomes payable and immediately after any change in principal place of residence so notify the Trustee in writing of same and any notice or other correspondence sent by the Trustee to a Beneficiary or other such person shall be deemed validly served upon such Beneficiary or other such person forty-eight (48) hours after such notice or correspondence was posted by the Trustee or the delegate of the Trustee to the address noted in the records of the fund as being that of the Beneficiary or other such person.

#### **14.10 Payments to Others on Behalf of a Beneficiary**

When any Beneficiary is under the age of eighteen years or suffers from any mental or physical ill health or incapacity, the Trustee may pay all or part of any Benefit to any other person to be held in trust for application on behalf of the Beneficiary or to the Dependants of such Beneficiary and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment due to the Beneficiary.

#### **14.11 Receipt for Benefit**

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

### **15. ALTERATION OF THE DEED**

#### **15.1 Alteration of the Deed**

The Trustee with the agreement of the Employer may at any time by deed amend all or any of the provisions of this Deed but no amendment shall be made which detrimentally affects the existing rights of any Members without the written consent of such Members **PROVIDED ALWAYS** that no amendment introduced primarily for the purpose of securing exemption or relief from

liability for income tax under the provisions of the Income Tax Assessment Act 1936 shall be deemed to be detrimental to interest of the Members.

## **15.2 Relevant Law**

The Trustee may not alter, amend, add to, delete or modify any of the provisions of this Deed if such amendment would be contrary to the Relevant Law.

## **16. WINDING UP**

### **16.1 Termination of Trust**

The Trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

16.1.1 If the Employer decided that it will permanently cease contributing to the Fund and no other Employer takes the Employer's place as employer;

16.1.2 If an order is made or an effective resolution is passed for the winding up of the Employer other than for the purpose of amalgamation or reconstruction and no other employer takes the Employer's place as employer; or

16.1.3 If there are no Members in the Fund and the Trustee resolves to terminate the Fund.

### **16.2 Notice**

Upon the trusts hereof ceasing and terminating in accordance with Clause 16.1 the Trustee shall give notice in writing to each Employer and the Members (if any) that the Fund shall be wound up on a specified date (hereinafter called "the closure date"). As from the closure date the following shall apply:

16.2.1 no further Contributions shall be made by an Employer or any Member other than arrears of Contributions due to the closure date and liability to make further Contributions shall cease and determine;

16.2.2 arrears of Contributions if any shall be called in and demanded immediately.

### **16.3 Benefits and Winding Up**

Upon these trusts ceasing and terminating in accordance with Clause 16.1 the Trustee subject to Clause 16.6 shall make such provision out of the fund after payment of any expenses and liabilities and the amount standing to the credit in each Member's Accumulated Credit shall be determined and shall vest in the Member notwithstanding any provision herein to the contrary whether in Clause 13.5 or otherwise and shall continue to accumulate in accordance with the provisions of this Deed and shall in all other respects be held and applied in accordance with the provisions of this Deed.

### **16.4 Surplus**

If at any point in time after the Employer or the Trustee resolve to terminate the Fund the Trustee is able to isolate any part of the Fund as not being comprised within a Member's Accumulation Credit then subject to Clause 16.6 and provided no other provision of this Deed applies such amount may be paid or applied by the Trustee for any of the Following purposes:

16.4.1 Any Members; or

16.4.2 Any former Members; or

16.4.3 Any Dependants of any such Members or former Members;

16.4.4 The legal personal representatives (in their capacity to such) of any such Members former Members or Dependants of such Members; or

16.4.5 Any Employer provided any such payment is made in accordance with the Relevant Law (and provided that the trustee shall first give a notice in writing to all the Members advising them of its intention to make a payment to the Employer prior to the Trustee making any such payment).

### **16.5 Cessation of Service**

Subject to Clause 14.7 the payments to be provided under Clauses 16.3 and 16.4 shall be in cash, life assurance policies or otherwise as determined by the trustee but shall not be payable to or for the benefit of a Member unless and until he ceases to be in service or unless the Relevant Law otherwise provided that a benefit is able to be paid.

## **16.6 Preserved Amounts**

If any payment of Benefits provided under Clauses 16.3 and 16.4 is otherwise required in accordance with the Relevant Law or Clause 13.6 to be deferred until the attainment of a particular age or the occurrence of a condition of release (within the meaning of the Relevant Law) then the Member shall not be entitled to receive from the Fund any part of the Benefit which is required to be so deferred and the Trustee shall make any of the following arrangements with respect to the Benefits required to be deferred:

16.6.1 Transfer the benefits to another Approved Superannuation Fund nominated by the Member if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the occurrence of a condition of release;

16.6.2 Purchase a Rollover Annuity within the meaning of that term in Section 27A(1) of the Income Tax Assessment Act 1936 nominated by the Member with benefits commencing no earlier than the particular age or on the occurrence of a condition of release; or

16.6.3 Transfer the Benefit to an Approved Deposit Fund nominated by the Member if that Fund does not permit the payment of the Benefit prior to the attainment of the particular age or the occurrence of a condition of release.

## **17. DISPUTE**

17.1 If any question or dispute shall arise with respect to the Fund or the construction or meaning of this Deed and if the Trustee so requires, the question or dispute shall be referred to a single independent expert agreed to by the parties to the question or dispute, but in default of an agreement to an expert or experts appointed by the President of the Law Society for the time being of the State or Territory of principal residence or incorporation of the Employer.

17.2 If any question or dispute shall arise with respect to the nomination referred to in Clause 3.1.1 the question or dispute shall be referred to a single independent expert agreed to by the parties but in default of agreement to an expert or experts appointed by the President of the Law Society for the time being of the State or Territory of principal residence or incorporation of the Employer and the nomination of a Trustee by such expert or experts shall be deemed to be a nomination for the purposes of Clause 3.1.1.

**EXECUTED** as a Deed

The common seal of Predote Pty Ltd )  
was hereto affixed in the presence of: )

*Kangaroo Flinders* )  
..... )  
a Director )

*[Signature]* )  
..... )  
and a Director / Secretary )



The common seal of Computer Support )  
and Maintenance Pty Ltd was hereto )  
affixed in the presence of )

*Kangaroo Flinders* )  
..... )  
a Director )

*[Signature]* )  
..... )  
and a Director / Secretary )





## **SCHEDULE 2**

### **Contributions**

	<b>Employer</b>	<b>Member</b>
A	As agreed between the Employer and the Member	As agreed between the Employer and the member
B	% of Salary	% of Salary
C	% of Salary	% of Salary

or such other amount in any case as the Employer and the Member may agree.

**SCHEDULE 3**

**Withdrawal Benefits - Proportion of Employer Contribution  
Account Payable**

Category A: 100%

Categories B and C:

Complete Years of Plan Membership:

	<b>B</b>	<b>C</b>
	<b>Proportion</b>	<b>Proportion</b>
1	%	%
2	%	%
3	%	%
4	%	%
5	%	%
6	%	%
7	%	%
8	%	%
9	%	%
10	%	%
11	%	%
12	%	%
13	%	%
14	%	%
15	%	%
16	%	%
17	%	%
18	%	%
19	%	%
more than 20	%	%

