

**PEARSON  
PARTNERS**

**COSTIN & TUCKER  
PRIVATE PENSION FUND**

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**THIS DEED OF TRUST** made on the Execution Date specified in Schedule A.

**PARTIES:**

1. The person named as Founder in Schedule A.

("The Founder")

2. The person named as the Trustee in Schedule A.

("The Trustee")

**RECITALS:**

- A. This Deed contains the governing rules of an indefinitely continuing superannuation fund ("the Fund") known by the name specified in Schedule A.
- B. This Deed provides that:
- (i) the Fund shall have the sole or primary purpose of providing Old-Age Pensions and shall have the ancillary purpose of providing other Benefits in the manner provided in this Deed; AND, OR IN THE ALTERNATIVE,
  - (ii) the Fund shall have a Corporate Trustee as the Trustee of the Fund.
- C. The Founder has requested the Trustee to act as the Trustee of the Fund and the Trustee has consented to act as the Trustee of the Fund.
- D. This Deed reflects the intention of the Founder and the Trustee that the Fund shall be a complying regulated superannuation fund within the meaning of the Act and will at all times comply with the Act in order that the Fund is eligible for concessional Taxation treatment.

**THE DEED WITNESSES:**

**PART A – DEFINITIONS AND INTERPRETATIONS**

**1. DEFINITIONS**

In this Deed unless the context requires a contrary meaning:

**“Accumulation Account”** means an account established and maintained for and on behalf of a Member as described in clause 36.

**“Act”** means:

- (a) the Income Tax Act as defined;
- (b) the SIS account as defined;
- (c) the Surcharge Acts as defined;
- (d) the RSA Act as defined;
- (e) all Regulations made pursuant to the abovementioned Acts; and
- (f) any other law of the Commonwealth of Australia (including, where applicable any declaration, determination, ruling or guideline made by any Responsible Authority pursuant to any powers vested in that Responsible Authority) with which the Fund or the Trustee must comply in order to obtain and maintain concessional Taxation treatment or any other concession in respect of the Fund or which relates to superannuation or any Benefit provided for under this Deed.

**“Actuary”** means a person who is approved under the Act to provide actuarial services to the Trustee in respect of the Fund.

**“Allocated Pension”** means an allocated pension as described in clause 53.13.

**“Annuity”** means an eligible annuity as defined in the Act.

**“Approved Deposit Fund”** means an Approved Deposit Fund as defined in the Act.

**“Approved Superannuation Entity”** means any superannuation entity, annuity or retirement savings account as defined in the Act (other than the Fund) into which or from which assets can be transferred into or from the Fund without contravening the Act.



**"Auditor"** means a person who is approved under to act as an auditor of the Fund without contravening the Act, and who is appointed from time to time by the Trustee as auditor of the Fund.

**"Balance Date"** means 30 June in each year or any other date that the Trustee may determine to be the balance date for accounting purposes in any particular year.

**"Beneficiary"** means any person, including but without limitation, a Member, Dependant or Pensioner:

- (a) who is presently and absolutely entitled to receive payment of a Benefit; or
- (b) who has a contingent right or mere expectancy to receive payment of a Benefit Entitlement subject to the occurrence of a Prescribed Event;

as provided in this Deed.

**"Benefit"** means any amount which is payable by the Trustee to a Beneficiary from the Fund pursuant to this Deed including:

- (a) a Retirement Benefit as described in clause 49;
- (b) an Early Resignation Benefit as described in clause 50;
- (c) a Death Benefit as described in clause 51; and
- (d) a Permanent Disability Benefit as described in clause 52.

**"Benefit Entitlement"** means any amount in the Fund which may become payable to a Beneficiary upon the occurrence of a Prescribed Event but which amount has not become absolutely and indefeasibly vested in that Beneficiary.

**"Commencement Date"** means the date of commencement of the Fund as specified in Schedule A.

**"Contributions"** means gross payments to the Fund (inclusive of any Taxation payable in respect of those payments) made as contributions by or on behalf of Members (including spouses of members) or by Employers in accordance with this Deed including any payment which is deemed to be a contribution pursuant to this Act.

**"Corporate Trustee"** means a Trustee of the Fund which is a company incorporated pursuant to the Corporations Law and which company complies with any relevant requirement of the Act.

**"Corporations Law"** means the Corporations Law as set out in the Corporations Law 1989 (Cth).

**"Deed"** means this Trust Deed as may be amended from time to time and includes any schedule, annexure or appendix to this Trust Deed.

**"Dependant"** means, in relation to a Member or any deceased Member any person who satisfies the description of any one or more of the following categories of persons:-

- (a) the spouse, widow or widower of the Member;
- (b) any child of the Member including any child of the Member born after the death of the Member;
- (c) any person who in the opinion of the Trustee is at the relevant time (or in the case of a deceased Member, was at the time of death of that Member) wholly or partially dependant on the Member for that person's maintenance and support or who has or had at the relevant time a legal right to maintenance and support from that Member; and
- (d) any other person who is a dependant as defined by the Act.

**"Determined Interest Rate"** means a rate of interest which the Trustee determines from time to time to be a fair rate to be applied for the purposes of the Fund, having regard to the returns achieved on the investments of the Fund and to such other matters as the Trustee considers in the Trustee's discretion to be relevant for the purposes of such determination.

**"Directors"** means the Directors for the time being of any Corporate Trustee or of any Employer, as the case requires, and **"Director"** means any one of them.

**"Eligible Person"** means a natural person who is:

- (a) for the time being Gainfully Employed;
- (b) a spouse as defined in the Act of a person referred to in (a) above; or
- (c) otherwise authorised by the Act to be a Member or to have Contributions made on behalf of that person.

**“Eligible Termination Payment”** has the same meaning as defined in the Act.

**“Employee”** means an Eligible Person who is Gainfully Employed with an Employer.

**“Employer”** means any Employer in whose services an Eligible Person is for the time being Gainfully Employed and includes without limitation an employer who is admitted by the Trustee to participate as an employer of the Fund pursuant to clause 40.

**“Employer Representative”** means a person nominated by an Employer or an organisation representing the interests of the Employer.

**“Equalisation Account”** means the account established pursuant to clause 38.

**“Execution Date”** means the date on which this Deed is established as specified in Schedule A.

**“Financial Year”** means a period of twelve months ending on the Balance Date.

**“Fixed Term Income Stream”** means a fixed term income stream as described in clause 53.15.

**“Founder”** means the party named as the Founder in this Deed or any person who subsequently assumes the capacity of the Founder pursuant to this Deed.

**“Gainfully Employed”** means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and which may be:

- (a) full-time if gainfully employed for at least 30 hours of each week; or
- (b) part-time if gainfully employed for at least 10 hours and less than 30 hours each week;

and includes any other meaning given by the Act to the expression “Gainfully Employed”.

**“Income Tax Act”** means the Income Tax Assessment Act 1936 (Cth) and includes any other Act of the Commonwealth of Australia which relates to that Act or taxation of income.

**“Income Account”** means the account established pursuant to clause 37.

**“Independent Director”** means a Director of a Corporate Trustee who:

- (a) is not a Member;
- (b) is not an Employer, an Associate of an Employer or an employee of same; and
- (c) is not, in any capacity, representing the interests of either an Employer or a Member.

**“Independent Trustee”** means an individual Trustee who:

- (a) is not a Member;
- (b) is not an Employer, an Associate of an Employer or an employee of same; and
- (c) is not, in any capacity, representing the interests of either an Employer or a Member.

**“Individual Trustee”** means a natural person, and if more than one, each of those natural persons, who is a Trustee.

**“Insurer”** means any insurer or assurer with whom the Trustee effects a Policy of Insurance in accordance with this Deed.

**“Investment Manager”** means a person appointed as an investment manager by the Trustee to manage the investments of the Fund in accordance with clause 27.

**“Investment Strategy”** means an investment strategy in a form required by the Act.

**“Lifetime Income Stream”** means a lifetime income stream as described in clause 53.14.

**“Member”** means any Eligible Person (including an Employee) who has been admitted to membership of the Fund in accordance with this Deed and who has not ceased to be a Member, and **“Membership”** means membership of the Fund.

**“Member’s Contributions”** means the Contributions contributed by or designated as having been contributed by a Member under clause 45.

**“Member Representative”** means a person nominated by the Members or a trade union or other organisation representing the interests of the Members.

**"Nominated Beneficiary"** means a person or persons nominated in writing by a Member or Pensioner as the desired recipient of a Benefit (if any) that is or becomes due and payable following the death of that Member or Pensioner, as the case may be and includes:

- (a) persons nominated in a binding beneficiary nomination made under clause 51.3; or
- (b) persons nominated under any other circumstances;

**PROVIDED THAT** such nominated persons are either Dependent or legal personal representatives of the Member or Pensioner.

**"Normal Retirement Age"** means the age of 65 years, or any other age permitted by the Act, that the Member (with the consent of the Trustee and the Employer of that Member (if any)) determines to be the normal age of retirement if the Member for the purposes of this Deed.

**"Old Age Pension"** means an old-age pension within the meaning of the Act and/or paragraph 51(xxiii) of the Constitution of the Commonwealth of Australia.

**"Pension"** means a Benefit provided by the Fund as a pension described in this Deed or as deemed by the Act, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and includes without limitation an Old-Age Pension, an Allocated Pension, a Lifetime Income Stream or a Fixed Term Income Stream.

**"Pensioner"** means a beneficiary who is in receipt of a Pension.

**"Pension Account"** means an Account established for a Pensioner in accordance with clause 53.

**"Policy of Insurance"** means any policy of insurance or assurance effected on behalf of a Member for the life, endowment, term, disablement, accident or sickness of a Member, whether effected as an individual policy or as a group policy, and includes a policy under which the proceeds will be payable to the Trustee.

**"Prescribed Event"** means any event described in this Deed the occurrence of which will cause a Benefit to become payable to a Beneficiary.

**"Preserved Benefit"** means all or any part of a Benefit or Benefit Entitlement which must be preserved in accordance with the preservation requirements of the Act.

**"Qualified Advisor"** means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person who the Trustee considers is capable of giving advice in relation to any matter that arises in connection with this Fund or Deed.

**"Related Party"** means a related party within the meaning of the Act.

**"Responsible Authority"** means the Australian Prudential Regulation Authority ("APRA"), Australian Securities and Investment Commission ("ASIC") the Australian Taxation Office ("ATO"), the Commissioner of Taxation and any other government or statutory authority or office which is responsible for administering or regulating all or any part of the Act.

**"Responsible Authority"** means a director, secretary or executive officer as defined by the Corporations Law of a Corporate Trustee.

**"Rollover Payment"** means any payment of a Member's Benefit or Benefit Entitlement made by the Trustee to any Approved Superannuation Entity or received by the Trustee on behalf of a Member from any Approved Superannuation Entity, by way of rollover, and shall include the rollover of all or any part if an Eligible Termination Payment.

**"RSA Act"** means the Retirement Savings Account Act 1996 (Cth) and includes any other Act of the Commonwealth of Australia which relates to that Act or retirement savings accounts.

**"SIS Act"** means the Superannuation Industry (Supervision) Act 1993 (Cth) and any other Act of the Commonwealth of Australia which relates to that Act or superannuation or the superannuation industry.

**"Spouse"** means a husband, wife, defacto spouse or any other form of spouse recognised by law and within the meaning of the Act.

**"Surcharge Acts"** means the Superannuation Contributions Surcharge (Assessment and Collection ) Act 1997 (Cth) and the Termination Payments Surcharge (Assessment and Collection) Act 1997 (Cth) and any other Act of the Commonwealth of Australia which relates to those Acts or the subject matter of those Acts.

**"Taxation"** means any tax, surcharge, or duty paid and payable or allowable taxation deduction by the Trustee on behalf of the Fund or any Member or by any Beneficiary in respect of any Benefit or Contribution including, but without limitation, income tax, capital gains tax, payroll tax, land tax, tax on Eligible Termination Payments, surcharge pursuant to the Surcharge Acts and stamp duty.

**"Tax File Number"** means a tax file number within the meaning of the Act.

**“Total and Permanent Disability”** in relation to a Member:

- (a) has the same meaning as contained in any Policy of Insurance effected in respect of the Member and in force at the time of the total and permanent disability; or
- (b) if there is no Policy of Insurance which defines “total and permanent disability”, or a substantially similar form of disability means the physical or mental incapacity of a Member which is of such a degree that the Trustee is of the opinion after consideration of medical evidence from two registered Medical Practitioners that the Member is incapable of continuing to engage in any employment for which the Member is reasonably qualified by education, training or experience.

and the expression **“Totally and Permanently Disabled”** has a corresponding meaning.

**“Trustee”** means the party named as the Trustee in this Deed or any person who subsequently assumes the role of the Trustee of the Fund under this Deed.

**“Vested Benefit”** means any part of a Benefit which is required by the Act to be vested in and payable to a Beneficiary.

## **2. INTERPRETATION**

In this Deed, unless the context otherwise requires:-

- (a) Headings and underlinings are for convenience only and do not affect the interpretation of this Deed;
- (b) Words importing the singular include the plural and vice versa;
- (c) Words importing gender include any gender;
- (d) An expression importing a natural person includes any company, partnership, joint venture, association, trust or other body corporate;
- (e) A reference to any thing includes a part of that thing;
- (f) A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party annexure, exhibit and schedule to, this Deed;

- (g) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying consolidation or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (i) A reference to a party to any document includes that party's successors or permitted assigns;
- (j) A covenant or agreement on the part of two or more persons binds them jointly or individually;
- (k) A reference to "\$" or "Dollars" means the lawful currency of the Commonwealth of Australia;

### **3. FUND SUBJECT TO REQUIREMENTS OF THE ACT**

#### **3.1 Deemed Incorporation of Relevant Act Provisions**

Notwithstanding anything expressed or implied in this Deed to the contrary, this Deed shall be read and construed on the basis that all relevant requirements of the Act (including any relevant standards prescribed in the Act from time to time) with which the Fund or the Trustee must comply in order for the Fund;

- (a) to obtain and maintain the status of a complying regulated superannuation fund; and
- (b) to qualify for concessional Taxation treatment or any other relevant 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 incorporated and deemed to be incorporated into this Deed.

#### **3.2 Trustee to Comply with Act**

Notwithstanding anything expressed or implied in this Deed to the contrary, to the extent that any relevant requirements of the Act impose obligations upon the Trustee, the Trustee must comply with those obligations.



### **3.3 Inconsistency**

If there is any inconsistency between a provision of this Deed and a relevant requirement of the Act, the latter shall prevail over the former to the extent of that inconsistency.

## **4. GOVERNING LAW**

This Deed shall be governed by and construed in accordance with the laws of the State or Territory of Australia in which this Deed is executed and all interested persons accept the jurisdiction of the Courts of that State or Territory.

## **PART B – THE FUND**

## **5. FUND VESTED IN TRUSTEE**

The Fund shall be vested in the Trustee and held by the Trustee upon trust for the Beneficiaries subject to the trusts, powers, authorities, discretions and obligations contained in this Deed.

## **6. COMPOSITION OF THE FUND**

The Fund shall consist of all cash, investments, and other property held by or on account of the Trustee pursuant to this Deed, including but without limitation;

- (a) Contributions made by the Fund by any Member pursuant to this Deed;
- (b) Contributions made to the Fund by any Employer pursuant to this Deed;
- (c) any other moneys or assets (including Rollover Payments) paid or transferred to the Trustee pursuant to this Deed;
- (d) income arising from investments of the Fund;
- (e) any accretions to or profits arising from investments of the Fund;
- (f) any other distribution (from a family trust or otherwise), dividend or gift paid to and accepted by the Trustee as an accretion to the Fund;
- (g) the proceeds (including bonuses) of any Policy of Insurance received by the Fund; and
- (h) any other monies property or investments which are or become held by or on account of the Trustee subject to the trusts of this Deed.

**7. ELECTION TO BE REGULATED SUPERANNUATION FUND**

**7.1 Trustee to Give Notice of Election**

The Trustee shall on or as soon as practicable after the Commencement Date (and within the prescribed period required by the Act) give to the relevant Responsible Authority a written notice signed by the Trustee and in the form prescribed by the Act irrevocably electing that the Act is to apply to the Fund.

**7.2 Pension Fund and/or Corporate Trustee**

At all times the fund shall have:

- (a) the sole or primary purpose of providing Old-Age Pensions (notwithstanding that the Fund may also provide ancillary Benefits as specified in this Deed); **AND OR IN THE ALTERNATIVE,**
- (b) a Corporate Trustee as defined in this Deed as a Trustee of the Fund which is a company incorporated pursuant to the Corporations Law and which company complies with any relevant requirement of the Act.

**7.3 No Amendment to Change Purpose**

Notwithstanding any other provision in this Deed to the contrary, no amendment shall be made to this Deed which amendment would have the effect, whether expressly or by implication, that the Fund no longer has or will not continue to have;

- (a) the sole or primary purpose of providing Old-Age Pensions; **AND IN THE ALTERNATIVE,**
- (b) a Corporate Trustee as defined in this Deed.

**7.4 If the Fund is to be "Self-Managed"**

- (a) The Trustee may make a resolution that the Fund is, and/or shall operate as, a "self-managed fund" within the meaning of the Act ("a Self-Managed Fund"). The Trustee may later revoke such a resolution.
- (b) If a resolution referred to in paragraph (a) above is made, then:
  - (i) the Trustee must procure and ensure that any relevant requirements of the Act for a Self-Managed Fund are satisfied and complied with, including any requirement as to the composition or structure of the Trustee and/or the Members or the relationship between them; and

- (ii) to the extent that any such relevant requirements are required to be incorporated into this Deed, they shall be deemed to be so incorporated and shall prevail over any other inconsistent provision in this Deed.
- (c) Nothing in clause 7.4 restricts the Fund from existing and operating as a Self-Managed Fund if the Fund satisfies or is deemed to satisfy the requirements for a Self-Managed Fund as stipulated by the Act or the Responsible Authority.

#### **7.5 If Fund has Only One Member**

Subject to clause 7.4, if the Fund has only one Member, then the office of the Trustee may be held by, without limitation:

- (a) that Member as one of two or more Individual Trustees; or
- (b) a Corporate Trustee of which the Member is the sole director;

but must not be held by that Member as the only Individual Trustee.

#### **7.6 Tax File Number, Australian Business Number and Goods & Services Tax**

If required by the Act, the Trustee must on or as soon as practicable after the Commencement Date (and within any prescribed period required by the Act) make application on behalf of the Fund to the relevant Responsible Authority;

- (a) for a Taxation File Number;
- (b) for an Australian Business Number (ABN); and/or
- (c) for registration for Goods & Services Tax (GST).

### **PART C – THE TRUSTEE**

## **8. APPOINTMENT AND REMOVAL OF TRUSTEE**

### **8.1 Structure of the Office of Trustee**

Subject to this clause and clause 7, the office of the Trustee shall be held by:-

- (a) two or more Individual Trustees; or
- (b) a Corporate Trustee.

## **8.2 Additional Independent Trustee/Additional Independent Director**

Subject to clause 8.4, the Trustee may with the consent of the Founder, and shall if requested by the Founder, appoint:

- (a) where the Trustee comprises two or more individual Trustees – an additional Independent Trustee; or
- (b) where the Trustee comprises a Corporate Trustee – an additional Independent Director.

## **8.3 Equal Employer Representatives and Member Representatives**

If at any time, the Trustee does not comprise an additional Independent Trustee or an additional Independent Director, as the case may be, and if required by the Act:

- (a) where the Trustee comprises a group of two or more Individual Trustees, the group shall consist of equal numbers of Employer Representatives and Member Representatives; or
- (b) where the Trustee comprises a Corporate Trustee, the Board of Directors of the Corporate Trustee shall consist of equal numbers of Employer Representatives and Member Representatives.

## **8.4 Compliance with the Act**

The appointment or removal of any person or combination of persons to or from the office of the Trustee and the composition of persons holding the office of Trustee shall comply with the Act.

## **8.5 Founder and Members to Appoint and Remove Trustees**

Subject to compliance with the Act, the Founder with the approval of a Members' resolution, or the Members by resolution:

- (a) may appoint or remove any person as an Individual Trustee or any company as a Corporate Trustee or any person as a Director of any Corporate Trustee; and
- (b) must ensure that any vacancy in the office of the Trustee is filled in a manner and within the time (not being more than 90 days) required by the Act.

**8.6 Cessation from Office of Individual Trustees or Responsible Officers of Corporate Trustees**

A person shall cease to hold the office of an Individual Trustee or to hold the office of Responsible Officer of a Corporate Trustee:

- (a) upon the resignation of that person by notice in writing given to the Founder and upon all other Individual Trustees or Directors of a Corporate Trustee, as the case may be;
- (b) upon the removal of that person pursuant to clause 8.5 by notice in writing given to that person;
- (c) upon the date on which the appointment of that person is disqualified by reason of any relevant requirement of the Act;
- (d) upon the death of that person;
- (e) upon that person committing an act of bankruptcy or being declared a bankrupt or entering into any arrangement or composition with that person's creditors or becoming an insolvent under administration under or pursuant to the Bankruptcy Act 1966 (Cth) or any other law of the Commonwealth of Australia relating to insolvency;
- (f) upon that person being convicted of a criminal offence in respect of dishonest conduct; or
- (g) where a civil penalty order as defined by the Act is made in relation to that person.

**8.7 Cessation from Office of Corporate Trustee**

A company shall cease to hold the office of a Corporate Trustee:

- (a) upon the resignation of the company as Corporate Trustee by notice in writing given to the Founder, and if there are any Individual Trustees, to each of those Individual Trustees;
- (b) upon the removal of that company as Corporate Trustee pursuant to clause 8.5 by notice in writing given to the company;
- (c) upon the company being disqualified from holding office as Corporate Trustee by reason of any relevant requirement of the Act;

- (d) upon the appointment of a receiver, receiver and manager, official manager, administrator, agent for a mortgagee, provisional liquidator or liquidator in respect of its property or the approval by a court of a scheme of arrangement providing for its dissolution, or it entering into any other form of insolvency administration; or
- (e) where a Responsible Officer of the company has been disqualified from holding office pursuant to clause 8.6 or pursuant to any requirement of the Act at all times during the immediately proceeding period of 28 days.

#### **8.8 Trustee may be a Member**

An individual Trustee or Responsible Officer of a Corporate Trustee shall not be disqualified from also being a Member of from exercising rights or deriving any Benefits as a Member.

#### **8.9 Consent to Appointment**

A person must not be appointed as an Individual Trustee or as a Director of a Corporate Trustee unless the person has consented in writing to the appointment.

### **9. PROCEEDINGS OF TRUSTEE**

#### **9.1 Meetings**

The Trustee may meet, adjourn and regulate its meetings as the Trustee sees fit.

#### **9.2 Quorum for Meeting of Trustee**

- (a) A meeting of the Trustee shall only be competent to exercise any of the powers or discretions exercisable by the Trustee pursuant to this Deed if a Quorum is present.
- (b) The Quorum shall be the number of persons representing 75% in the number of:
  - (i) in the case of a Corporate Trustee, the total number of Directors of the Corporate Trustee; and
  - (ii) in the case of Individual Trustees, the total number of Individual Trustees.

### **9.3 Questions**

Except as provided in this Deed all matters affecting the Fund arising at a meeting of the Trustee shall be determined by resolution and no resolution shall be effective unless carried by a simple majority, or if the Act requires a particular majority, by that majority.

### **9.4 Resolutions**

- (a) A written resolution signed by a Chairperson of the Trustee shall be prima facie evidence of an effective resolution passed at a meeting of the Trustee duly convened and held.
- (b) A copy of such written resolution shall be given to each Individual Trustee or Director of a Corporate Trustee, as the case may be, who was not present at the Meeting at which that resolution was passed as soon as reasonably practicable after such resolution was made.

### **9.5 Deemed Attendances when not present in Person**

- (a) An Individual Trustee or a Director of a Corporate Trustee may participate in a meeting of the Trustee without attending such meeting in person by means of any suitable and appropriate communications equipment provided that all persons participating in the meeting can hear each other and such participation shall be deemed to constitute presence in person at such meeting.
- (b) A written resolution signed by all Individual Trustees or by all Directors of a Corporate Trustee shall be deemed to be a resolution duly made by the Trustee on the date that the resolution is signed by the last of the Individual Trustees or the last of the Directors of the Corporate Trustee as the case may be.

### **9.6 Appointment of Chairperson**

- (a) The Trustee may by resolution appoint a person holding office as an Individual Trustee or as a Director of a Corporate Trustee, as the case may be, to be the Chairperson of the Trustee.
- (b) The Chairperson shall hold office as Chairperson until:
  - (i) he retires as Chairperson by written notice given to the Trustee;
  - (ii) he ceases to be an Individual Trustee or a Director of a Corporate Trustee; or

- (iii) he is removed as Chairperson by a written resolution given to him pursuant to a resolution passed by the Trustee.

#### **9.7 Chairperson's Duty**

The Chairperson shall act as Chairperson of each meeting of the Trustee at which the Chairperson is present. If the Chairperson is not present in person at a meeting of the Trustee or if at the time of a meeting there is no Chairperson, a person shall be appointed by a resolution of the Trustee to act as Chairperson of that meeting.

#### **9.8 Voting Entitlement**

- (a) Each person holding office as an Individual Trustee or as a Director of a Corporate Trustee shall have one deliberative vote on any question.
- (b) The Chairperson and any Additional Independent Trustee or any Additional Independent Director, shall not have a casting vote on any question.

#### **9.9 Minutes of Meeting**

- (a) The Trustee shall keep or cause to be kept proper minutes of meetings of the Trustee which shall be entered in a book maintained for that purpose.
- (b) Without limitation to clause (a), the Trustee shall endeavour to ensure that all minutes of meeting of the Trustee:
  - (i) are dated;
  - (ii) are sufficiently detailed and accurate to record the nature of business discussed, the decisions of the Trustee and the reasons for those decisions;
  - (iii) identify any documents that have been presented to the Trustee and considered by the Trustee before the making of any decision; and
  - (iv) record attendance, non-attendance and voting at meetings, particularly in relation to any decision which needs a voting requirement other than that of simple majority.
- (c) The minutes of any meeting if signed by the Chairperson of such meeting or by the Chairperson of the next succeeding meeting shall be prima facie evidence of the matters stated therein.



- (d) The Trustee shall retain the Minutes of the Meeting for at least the minimum period required by the Act.

#### **9.10 Items for Consideration**

Subject to clause 9.1, the Trustee shall endeavour to ensure that meetings regularly consider, amongst other things, the following:

- (a) that Individual Trustees or Directors of a Corporate Trustee are not, or have not become, disqualified persons as defined in the Act;
- (b) that the Fund assets are reconciled to the accrued liabilities of the Fund;
- (c) the investment performance of the Fund, including the performance of any service providers to the Fund;
- (d) any claim for Death or Disability Benefits;
- (e) any complaints or inquiries made by Members;
- (f) any conflicts of interest; and
- (g) that the Trustee and the Fund are complying with the Act.

### **10. TRUSTEE'S DISCRETION**

#### **10.1 No Requirement to Give Reasons**

Unless otherwise expressly provided in this Deed or by the Act the Trustee shall in the exercise or non-exercise or partial exercise of each and every power exercisable by the Trustee not be bound to give any person any reason or explanation of the Trustee's exercise, non-exercise or partial exercise of any such power.

#### **10.2 Unfettered Discretion**

The Trustee shall have in the exercise or non-exercise or partial exercise of each and every power exercised by the Trustee an absolute and unfettered discretion and is not bound to act subject to the discretion and is not bound to act subject to the discretion of any other person unless otherwise provided by the Act.

### **10.3 Trustee's Decision Final**

If any dispute arises as to the interpretation of any provision of this Deed or as to the rights or obligations of a Member or the Trustee or any other person under this Deed, then (except as expressly provided to the contrary in this Deed and subject to any rights conferred to on a Member by the Act) the decision of the Trustee in relation to such a dispute shall be final and binding on all interested persons.

### **10.4 Exercise of Discretion by Person Other than Trustee**

To the extent that this Deed allows a discretion upon the Trustee to be exercised by the Founder or any other person, if so required by the Act, that discretion shall not be exercised without the consent of the Trustee.

## **11. PROTECTION AND INDEMNITY OF THE TRUSTEE**

### **11.1 Limitation of Liability – General**

Subject to clause 11.2, the Trustee shall not be liable for or in respect of any claim, liability, cost, loss or damage or expense whatsoever or howsoever incurred or arising out of any act or omission in connection with this Deed or the Fund or the exercise or performance of the Trustee's powers, discretions and duties.

### **11.2 Liability for Certain Conduct**

Clause 11.1 shall not exempt the Trustee from, and the Trustee shall be liable for, any claim, liability, cost, loss, damage or expense which is a result of an act or omission by the Trustee involving:

- (a) the Trustee failing to act honestly in any matter concerning the Fund;
- (b) the Trustee intentionally or recklessly failing to exercise, in relation to any matter affecting the Fund, the degree or care and diligence that the Trustee was required to exercise; or
- (c) the Trustee incurring liability for a monetary penalty under a civil penalty order.

### **11.3 Indemnity of Trustee**

- (a) The Trustee shall be indemnified out of the Fund for an in respect of all liabilities whatsoever or howsoever arising incurred by the Trustee in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in the Trustee pursuant to this Deed or by the Act.
- (b) This indemnity shall not extend to any liability of the Trustee arising in circumstances described in clause 11.2.

### **11.4 Indemnity of the Director**

If a Director of a Corporate Trustee incurs a liability in acting as a Director of the Trustee in respect of conduct or circumstances for which the Trustee is entitled to be indemnified out of the Fund, the Director shall also be indemnified out of the Fund in respect of such liability.

### **11.5 Lien on Fund to Satisfy Indemnity**

The Trustee shall have a lien on and may use any assets of the Fund for the purposes of satisfying the indemnity given to the Trustee provided that the existence of any lien shall not contravene the Act.

## **12. COVENANTS BY TRUSTEE**

The Trustee covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) 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 the property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interest of the Beneficiaries;
- (d) to keep money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of an Employer or an Associate of an Employer;

- (e) 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;
- (f) 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:
  - (i) the risk involved in making, holding and realising the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (g) if there are any monies in the Equalisation Account of the Fund – to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's Investment Strategy and the Fund's capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Beneficiary to access information or any documents which are prescribed by the Act; and
- (i) to comply with any other covenant that may from time to time be prescribed by the Act.

### **13. COVENANTS BY DIRECTORS OR A CORPORATE TRUSTEE**

If the Fund has a Corporate Trustee each of the Directors of the Corporate Trustee covenants to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out of the covenants described in clause 12.

On the basis that the Directors have participated in the passing of a resolution authorising the Trustee to execute this Deed, this clause shall be deemed to operate as if the Directors were parties to this Deed.

The reference in this clause to a reasonable degree of care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of a Director of the Trustee would exercise in the Trustee's circumstances.

#### **14. RECORDS OF CHANGES OF TRUSTEE/REPORTS TO MEMBERS**

##### **14.1 Changes of Trustee**

The Trustee must keep and retain for at least the minimum period required by the Act, up to date records of all changes of the Trustee, and changes of any Directors of any Corporate Trustee, of the Fund, and of all consents given by the Individual Trustees or Directors, as the case may be.

##### **14.2 Reports to Members**

The Trustee shall keep and retain so long as they are relevant and in any event for at least the minimum period required by the Act, copies of reports that were given to all Members if the reports were given under the Act or under this Deed and the Trustee shall, upon request, make those copies available for inspection by the Responsible Authority.

### **PART D – THE MEMBERS**

#### **15. ADMISSION OF MEMBERS**

##### **15.1 Eligible Person to Apply**

The Trustee may in its absolute discretion invite an Eligible Person to become a Member of the Fund and upon such invitation, the Eligible Person may apply to the Trustee to become a Member of the Fund.

##### **15.2 Application Form**

An application for membership shall be made by an Eligible Person completing a written application in such form as the Trustee shall from time to time determined. Without limiting the foregoing, the application form shall make provision for:

- (a) all information which is required by the Act to be provided by the applicant to the Trustee;
- (b) the applicant providing (if the applicant chooses to do so) the Tax File Number of the applicant and an acknowledgment in such form as is stipulated by the Act or the Responsible Authority; and

- (c) the nomination of a Nominated Beneficiary by the applicant.

### **15.3 Acceptance of the Application**

Upon the acceptance by the Trustee of an application for membership from the applicant, that applicant shall become a Member of the Fund on a date determined by the Trustee or, if the Trustee makes no such determination, on the date the application for membership is received by the Trustee.

### **15.4 Deemed Application**

Notwithstanding clause 15.3, if a completed application for membership is not provided by an applicant, the payment of a Contribution in respect of that applicant shall be deemed to constitute an application for membership and the acceptance by the Trustee of that Contribution shall be deemed to be acceptance of that applicant as a Member on the date that the Contribution is received and accepted by the Trustee.

### **15.5 Members Bound by Deed**

Every Member shall by virtue of the Member's application for membership be deemed to have consented to be bound by this Deed and shall be so bound from the date of admission as a Member.

### **15.6 Trustee to Notify Members of their Rights**

The Trustee must ensure that each Member is notified in writing of that Member's rights to receive Benefits from the Fund and of any other information and in the form and at times as may be necessary to satisfy the Act.

### **15.7 Trustee May Impose Conditions on Members**

Subject to this Deed, the Trustee may impose, remove or vary any conditions on the rights and duties of a Member as the Trustee may determine at any time.

### **15.8 Classification of Different Classes of Members**

- (a) The Trustee may classify the Members into different classes of membership with such rights and entitlements pertaining to each class as the Trustee may determine from time to time. The Trustee shall advise a Member of any class of membership to which that Member belongs and the rights and entitlements of that class and of any subsequent change to that class.

- (b) If the Trustee does not designate different classes of membership, there shall be one class of membership and the Members shall be classified as ordinary members.

## **16. MEETINGS OF MEMBERS**

### **16.1 Members May Convene Meetings**

The Members may call for a meeting of Members by a notice signed by at least one-half of the number of Members or ten Members, whichever is the lesser, which is served on the Trustee.

### **16.2 Trustee Convening Meeting**

The Trustee may at any time convene a meeting of Members and must convene a meeting of Members upon receiving a notice of request for a meeting from the Members pursuant to clause 16.1.

### **16.3 Notice of Meeting**

Where a meeting of Members is to be convened, the Trustee shall send a notice of meeting to each member specifying:

- (a) the date, time and place of the meeting;
- (b) details of all matters including the proposed resolutions to be considered at the meeting;
- (c) that a proxy be appointed to vote on behalf of the Member at the meeting provided that the Member lodges a form of proxy with the Trustee not later than 24 hours before the scheduled starting time of the meeting; and
- (d) must be accompanied by a form of proxy approved by the Trustee.

### **16.4 Service of Notice**

The Trustee shall cause the notice of meeting to be served on each Member at least ten days before the date of the meeting. Service may be effected personally or by prepaid post, and if by mail, notice shall be deemed to have been given 3 days after the date of posting.

### **16.5 Chairperson**

The Members shall at the commencement of the meeting appoint a Chairperson of that meeting.

#### **16.6 Quorum of Members**

A quorum for a meeting of Members shall be ten Members present in person or at least 75% in number of Members of the Fund, whichever is the lesser. If a quorum is not present within thirty minutes of the time appointed for the commencement of the meeting, the Chairperson of the meeting shall adjourn the meeting to the same time and place the following week and a quorum shall be the Members present in person or by proxy at the adjourned meeting.

#### **16.7 Voting**

Each Member shall be entitled to one deliberative vote and in the event of an equality of votes, the Chairperson shall not have a casting vote in addition to any vote of the Chairperson as a Member.

#### **16.8 Trustee to Oversee Meeting**

The Trustee shall as is necessary oversee the conduct of the meeting of Members and shall keep minutes of the meeting of the Members.

### **17. CESSATION OF MEMBERSHIP**

#### **17.1 Triggering Events**

A Member shall cease to be a Member of the Fund upon the first to occur of the following:

- (a) the date upon which payment of all Benefits or Benefit Entitlements in respect of that Member is made or dealt with by the Trustee to or on behalf of the Member;
- (b) the death of the Member;
- (c) such other date as the Trustee shall reasonably determine in accordance with any requirement of the Act.

#### **17.2 Member's Rights Not Affected**

The cessation of Membership of a Member shall not affect, exclude or restrict:

- (a) any rights or obligations of that Member which accrued prior to the date of cessation; and
- (b) any rights or obligations of that Member as a former Member on and from the date of cessation.



**18. MEMBERS PROVIDING INFORMATION TO TRUSTEE**

**18.1 Upon Request by Trustee**

Each Member shall upon request by the Trustee provide such information to the Trustee as the Trustee shall consider necessary or desirable for the purposes of any investigation or otherwise in connection with the Fund, including but not limited to, undergoing medical practitioner acceptable to the Trustee.

**18.2 Failure to Comply**

Where a Member fails to comply with the request by the Trustee pursuant to this clause, the Trustee may suspend the acceptance of any Contributions in respect of that Member or withhold any Benefits payable in respect of that Member or impose such other conditions on the continued membership of that member as the Trustee shall consider necessary or appropriate but subject to the requirements of the Act.

**18.3 Information Incorrect or Misleading**

Where a Member provides information to the Trustee which information 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 in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the Benefits in respect of that Member in such manner as is deemed necessary or appropriate by the Trustee but subject to the requirements of the Act.

**18.4 Tax File Numbers of Members**

- (a) The Trustee shall make provision for requesting the quotation of each Member's Tax File Number in such manner and form as is required by the Act or the Responsible Authority.
- (b) The Member is not obliged to comply with the request.
- (c) If a Member quotes their Tax File Number to the Trustee, the Trustee must record, retain and use and later destroy the record of the Tax File Number only in accordance with the requirements of the Act and the Responsible Authority.

## **18.5 Updated Information**

The Trustee shall on a regular basis as the Trustee sees fit give Members an opportunity to, and the Members may at any time, give the Trustee updated information about their details such as address, marital status, Dependents and/or Nominated Beneficiaries.

## **19. DISCLOSURE AND REPORTING TO MEMBERS**

### **19.1 General Requirement**

The Trustee shall from time to time provide to Members information in writing in relation to the conduct of the Fund, the Benefit Entitlements of Members, Contributions made or owing to the Fund, or such other matters as the Trustee may determine and as shall be required by the Act.

### **19.2 Specific Requirements**

Without limiting the generality of clause 19.1, the obligations of the Trustee to provide information shall include:

#### **(a) To Prospective Members**

The Trustee shall give to each person who becomes a Member all information that the Trustee reasonably believes that the Member would reasonably need for the purpose of understanding the main features of the Fund, the management and financial condition of the Fund and the investment performance of the Fund. The Trustee shall give such information as soon as practicable, and in any event within three months after the person becomes a Member.

#### **(b) For each Financial Year**

The Trustee shall give to each Member all information that the Trustee reasonably believes a Member reasonably needs for the purpose of understanding the Benefit Entitlements of the Member, the management and financial condition of the Fund and the investment performance of the Fund. Such information shall be given in respect of each Financial Year and as soon as practicable and in any event within six months, after the end of the relevant Financial Year.

(c) **Significant Events**

The Trustee shall give information to each member concerning any event in relation to the Fund that the Trustee reasonably believes that the Members would reasonably expect to be informed of. Such information should be given before the expected occurrence or as soon as practicable after the occurrence of the event, and in any case, within three months after the occurrence of the event. Such information should be accompanied by a statement containing details by which the Members may contact the Trustee.

(d) **Information on Request**

The Trustee shall give to a Beneficiary (including a Member) on request by the Beneficiary information that the Beneficiary reasonably requires for the purposes of:

- (i) understanding any Benefit Entitlements that the Beneficiary may have, has or used to have;
- (ii) understanding the main features of the Fund;
- (iii) making an informed judgement about the management and financial condition of the Fund;
- (iv) making an informed judgement about the investment performance of the Fund; and
- (v) understanding the particular investments of the Fund;

**PROVIDED THAT** the Trustee shall not be required to disclose internal working documents of the Fund or information or documents that would disclose or tend to disclose personal information of another person if, in the circumstances, the disclosure would be unreasonable, or trade secrets or other information having commercial value that would be reduced or destroyed by the disclosure, or information or documents in relation to which the Fund owes to another person a duty of non-disclosure.

The Trustee shall comply with a request to give information as soon as practicable, and in any event, the Trustee must make reasonable efforts to comply with the request within one month of receiving the request.

(e) **Cessation of Membership**

If a Member ceases to be a Member, the Trustee shall give to the Member (if the Member is alive) or if the Member is deceased, to each Beneficiary receiving a Benefit as a result of the death of the Member; all information that the Trustee reasonably believes such a person would reasonably need for the purpose of understanding the Benefit Entitlements of that person. Such information shall be given as soon as practicable after the Trustee becomes aware that the Member has ceased to be a Member, and in particular, the Trustee must make reasonable efforts to give the information within one month after becoming aware that the Member has ceased to be a Member.

(f) **Significant Events**

The Trustee shall give information to each Member concerning any event in relation to the Fund that the Trustee reasonably believes the Members would reasonably expect to be informed of. Such information shall be given before the expected occurrence, or as soon practicable after the occurrence, of the event, and in any case, within three months after the occurrence of the event. Such information shall be accompanied by a statement containing details by which the Members may contact the Trustee.

**19.3 Additional Information in Certain Circumstances**

- (a) The Trustee shall comply with all requirements of the Act in respect of the disclosure of information in certain circumstances including, but without limitation, information that must be provided to Members or the Responsible Authority if the Fund has five or more Members.
- (b) No Member or Dependant of a Member shall be entitled to obtain information pursuant to this clause which information would in the opinion of the Trustee to be inappropriate to disclose.
- (c) As soon as practicable after a Member ceases to be a Member of the Fund, the Trustee shall give to that former Member or the legal personal representatives of the former Member a written statement containing such information and details relating to the Benefits of the former Member as is required to be provided by any relevant requirement of the Act.

**PART E – ADMINISTRATION OF THE FUND**

**20. GENERAL POWERS OF THE TRUSTEE**

**20.1 Trustee has Complete Management and Control**

The Trustee shall have complete management and control of all proceedings, matters and things in connection with the Fund subject to this Deed and the requirements of the Act.

**20.2 Trustee May do all Acts in Exercise of Powers/Obligations**

Without limiting any other provision of this Deed, the Trustee may do all acts and things which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's powers and obligations under the Deed.

**20.3 Powers Additional to Powers Conferred Under the Act**

The powers conferred on or exercisable by the Trustee under this Deed are additional to and not in substitution for any and all powers conferred on or exercisable by the Trustee under the Act.

**21. SPECIFIC MANAGEMENT POWERS OF THE TRUSTEE**

Without limiting the generality of any other provisions of this Deed but subject to clause 23, the Trustee shall have the following powers:-

**21.1 Appoint and Pay Managers and Others**

To appoint, remove or suspend custodians, investment managers, administrators, clerks, agents, representatives, nominees and other servants and delegates, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, emoluments and charges;

**21.2 Legal Proceedings**

To institute, conduct, defend, compound or settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund, the Members or the Deed;

**21.3 Compound Debts**

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

**21.4 Arbitration**

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator;

**21.5 Receipts and Discharges**

To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;

**21.6 Bank Accounts**

To open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;

**21.7 Seek Advice**

To act on the advice of any Qualified Advisor (whether or not such advice or opinion was obtained by the Trustee) in relation to any matter concerning the Fund without being liable to any person in respect of anything done or omitted to be done by the Trustee in good faith based on such advice;

**21.8 Give Indemnity and Security**

To give undertakings and indemnities, enter into contracts, and incur obligations relating to the Fund as the Trustee thinks fit, including but without limitation, borrowing money, giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund and to secure such obligation by charge or mortgage or any other form of encumbrance over all or part of the Fund;

**21.9 Receive Distributions, Dividends & Gifts**

To receive any distribution (from a family trust or otherwise), dividend or gift which is tendered to the Fund;

**21.10 Maintain Property**

To repair, paint, alter, rebuild, improve and generally maintain any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

**21.11 To Pay Taxes and Rates**

To pay all rates, taxes, costs, charges, insurance premiums, expenses and outgoings of whatever nature payable in connection with the maintenance, upkeep and management of the property comprising of the Fund;

**21.12 Lease Property**

To lease or sub-lease any property (real or personal) forming part of the Fund for such period and at such rent and subject to such terms and conditions as the Trustee may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases;

**21.13 Sell Property**

To sell or otherwise dispose of any property forming part of the Fund at such price and upon such terms and conditions and in such manners as the Trustee may consider desirable;

**21.14 Undertakings and Contracts**

To give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit;

**21.15 Insurance and Premiums**

To effect Policies of Insurance or assurance 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, assign or otherwise deal with any such policy as the Trustee thinks fit;

**21.16 Proxies and Powers of Attorney**

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 property comprising part of the Fund;

**21.17 Purchase Annuity**

To purchase an Annuity to provide all or part of the Pension payable in respect of a Member and any such Annuity shall be in the name of the Trustee or, if the Trustee shall so determine, in the name of the former Member; or

**21.18 Insurance of Trustee and Directors**

To insure and keep insured any liability of the Trustee or any Directors of a Corporate Trustee or the liability of the Fund to indemnify or reimburse the Trustee or Directors, as the case may be.

**22. INVESTMENT OF THE FUND**

## 22.1 General Investment Powers of the Trustee

Subject to clause 23, the Trustee may from time to time and in the name of the Trustee or in the name of any nominee selected by the Trustee invest the whole or any part of the Fund 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 adheres to the Investment Strategy.

## 22.2 Specific Investment Powers of the Trustee

Without limiting the generality of the foregoing, the Trustee may invest the Fund in any one or more of the following:-

- (a) **authorised Trustee investments:** any investment from time to time authorised by the laws of the Commonwealth of Australia or any State or Territory of Australia for the investment of trust monies;
- (b) **on deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other person approved by the Responsible Authority or any Employer in any type of account either with or without security at such rate of interest and on such terms as the Trustee shall determine;
- (c) **acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, options, debentures, bonds, notes or other securities or obligations howsoever called in any company (including any Employer);
- (d) **acquisition of units:** in the acquisition of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible) or other scheme in the nature of a unit trust;
- (e) **acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased;
- (f) **acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property either by direct loan or by purchase at a discount or otherwise; or
- (g) **derivative transactions:** in derivative transactions but subject to clause 23.8.



### **22.3 Dealing with Investments as Beneficial Owner**

The Trustee may vary or transpose or convert or otherwise deal with any investment of the Fund as authorised by the Deed as fully and effectively as a person absolutely and beneficially entitled dealing with his own property may do.

### **22.4 The Trustee may have Interest in Investments**

- (a) The Trustee shall have the power and is authorised to make or vary any of the investments authorised under this Deed notwithstanding that the Trustee (including an Individual Trustee or Director of a Corporate Trustee) may directly or indirectly have an interest in or may benefit from the investment.
- (b) The Trustee and any Directors shall disclose details of any such interest in any investment in the manner which may be prescribed under the Corporations Law or the Act.

### **22.5 Policies of Insurance**

- (a) The Trustee may obtain Policies of Insurance on behalf of a Member to secure the Benefit of a Member.
- (b) A Member may request the Trustee to effect a Policy of Insurance and may specify the type of Policy of Insurance to be effected. The Trustee shall have no responsibility to the Member or the Dependents of the Member to effect such a Policy of Insurance.
- (c) The Trustee may debit the premiums for any Policy of Insurance to:
  - (i) the Income Account; or
  - (ii) the Accumulation Account of the Member for whom the Policy of Insurance is effected.

### **22.6 Prudent Investment Rules**

Subject to clause 23 and without limiting the matters that the Trustee may take into account when exercising a power of investment (including the matters contained in this Deed) the Trustee must, so far as they are appropriate to the circumstances of the Fund, have regard to:

- (a) the purposes of the Fund and the needs and circumstances of the Beneficiaries;

- (b) the desirability of diversifying the Fund's investments;
- (c) the nature of and risk associated with the existing investments and property of the Fund;
- (d) the need to maintain the real value of the capital or income of the Fund;
- (e) the risk capital or income loss or depreciation;
- (f) the potential for capital appreciation;
- (g) the likely income return and timing of income return;
- (h) the length of the term of the proposed investment;
- (i) the probable duration of the Fund;
- (j) the liquidity and marketability of the proposed investment during, and on the determination of the term of the proposed investment;
- (k) the aggregate value of the Fund;
- (l) the effect of the proposed investment in relation to the tax liability of the Fund;
- (m) the likelihood of inflation affecting the value of the proposed investment or property of the Fund;
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- (o) the results of review of existing trust investments.

## **23. COMPLIANCE WITH THE ACT – INVESTMENTS**

### **23.1 General Requirement**

The Fund must only be invested in a manner and form which will not cause the Fund to be in breach of any relevant requirement of the Act.

### **23.2 Borrowing by the Trustee**

The Trustee shall not borrow money or maintain an existing borrowing of money, regardless of whether or not such borrowing is secured against or in any way encumbers any part of the Fund, except in a manner and circumstances permitted by the Act.

### **23.3 Lending to Members**

The Trustee shall not allow any money of the Fund to be lent, or any financial assistance using the resources of the Fund to be given, to a Member or relative of a Member except in the manner and circumstances permitted by the Act.

### **23.4 Acquisition of Certain Assets from Members or a Related Party**

The Trustee must not intentionally acquire or allow to be acquired on behalf of the Fund an asset from a Related Party of the Fund except in the manner and circumstances permitted by the Act.

### **23.5 Investments to be Made at Arm's Length**

The Trustee must not invest or allow to be invested any money or other part of the Fund unless:

- (a) all parties to the relevant transaction are dealing at arm's length in respect of the transaction; or
- (c) if the parties are dealing with each other otherwise than at arm's length, the terms and conditions of the transaction are no more favourable than those which it would be reasonable to expect would apply if the parties were dealing with each other at arm's length.

### **23.6 Statement of Investment Strategy**

The Trustee shall if required by the Act formulate and prepare a statement of Investment Strategy which shall set out the investment objectives of the Fund and the policy to achieve those objectives and shall incorporate such other matters which are necessary for the Trustee and Fund to comply with the Act.

### **23.7 Member Investment Choice**

- (a) The Trustee may choose in the Trustee's absolute discretion to adopt and offer to Members (or a specific class of Members) a choice of two or more Individual Investment Strategies from which a Member (or a class of Members) may choose one Investment Strategy or a combination of Individual Investment Strategies ("Member Investment Choice").
- (b) The Trustee shall give directions to the Members (or each of the Members of the class of Members):
  - (i) identifying the investment objectives of each of the Investment Strategies;

- (ii) providing all information which the Trustee reasonably believes a person would reasonably need for the purpose of understanding the objectives, effect of, and any risk involved in, each of those Investment Strategies, as if each Investment Strategy offered was the Investment Strategy for the Fund as a whole;
  - (iii) providing full information of the range of directions that can be given by the Trustee and the circumstances in which they can be charged;
  - (iv) identifying the particular Investment Strategy the Trustee will adopt for a Member (or each Member of a class of Members) if no choice is made by the Member (or each Member of a class of Members), unless it is a condition of membership that the Member must choose a particular Investment Strategy or combination of Investment Strategies.
- (c) If determining two or more individual Investment Strategies to offer as a choice to Members, the Trustee must give proper consideration to:
  - (i) all matters contained in the Trustee's covenant is clause 12(f); and
  - (ii) the circumstances of the Fund as a whole in making the Member Investment Choice available as part of the Fund's Investment Strategy; and
  - (iii) a continued and regular monitoring of changes in circumstances of the Fund as a whole to assess whether it remains appropriate.
- (d) If the Trustee offers Member Investment Choice, the Trustee shall if required by the Act, advise the Responsible Authority of the number of Investment Strategies which are offered as choices.
- (e) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. In such event, the Trustee shall:
  - (i) give Members the opportunity to provide further directions to the Trustee; and
  - (ii) advise Members of the default Investment Strategy that will be adopted unless the Member instructs otherwise.

### **23.8 Derivative Transactions**

The Trustee may invest in derivative transactions provided that:

- (a) the proposed derivative transaction complies with an Investment Strategy of the Fund;
- (b) the Trustee has adopted an appropriate Risk Management Statement as may be required by the Act; and
- (c) if the derivative transaction involves the creation of a charge over the assets of the Fund, then the Trustee must prepare a Risk Management Statement if required by and in accordance with the Act.

### **23.9 Investments Involving "In-House Assets" or a Related Party**

Without limitation to clause 23.1, the Trustee must ensure that the value of the Fund's In-House Assets as determined in accordance with the Act does not exceed more than the allowable prescribed percentage of the Fund's total assets (calculated on market value) or contravene any other restriction stipulated by the Act which is applicable to such investments.

## **24. SPECIFIC INVESTMENTS OF A MEMBER**

### **24.1 Separate Investment for a Specific Member**

At the request of or with the approval of a Member, the Trustee may in its discretion invest all or any part of the amount standing to the credit of the Member's Accumulation Account by acquiring or entering into any investment separately and on behalf of the Member provided that such investment is undertaken within the Investment Strategy of the Fund.

### **24.2 Trustee to Record/Account Separately**

In such event, the Trustee shall record the investments attributable to the Member and all revenue and expenses in respect shall be credited or debited as the case may be directly to the relevant Member's Accumulation Account.

### **24.3 Variation to Such Investment**

The Trustee may accept or reject a proposal from any Member to vary any specific investment of that Member.

**25. VALUATION OF FUND**

Following each Balance Date and any other date which the Trustee considers appropriate or as may be required by any relevant requirement of the Act, the Trustee shall obtain a valuation of the Fund. The value so determined shall be reflected on the accounts of the Fund.

**26. DELEGATION BY TRUSTEE**

**26.1 Trustee's Right to Delegate**

Subject to clause 26.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person ("the Delegate") in such manner and upon such terms as the Trustee thinks fit.

**26.2 Variation/Revocation to Delegation**

The Trustee may vary or revoke any such delegation as the Trustee thinks fit and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

**26.3 Subject to Act**

The Trustee shall not make any delegation or allow any delegation to remain where such delegation contravenes the Act.

**26.4 Scope of Delegation**

The Delegate shall only perform such duties and shall only have such powers as the Trustee may from time to time determine and delegate to the Delegate.

**27. APPOINTMENT OF ACTUARY. AUDITOR, CUSTODIAN, INVESTMENT MANAGERS AND QUALIFIED ADVISORS**

**27.1 Actuary**

The Trustee shall if necessary appoint an Actuary to provide information or advice from time to time pursuant to this Deed.

**27.2 Auditor**

- (a) The Trustee shall appoint an Auditor to perform an audit of the Fund pursuant to this Deed and the Act.

- (b) The Trustee shall agree with the auditor on the scope of the audit to be conducted which should include:
  - (i) the Auditor's reporting obligations under the Act;
  - (ii) verification of the Fund's assets, their legal title and their valuation; and
  - (iii) verification of individual Member's Benefits or Benefit Entitlements.

### **27.3 Custodian**

The Trustee may appoint in writing on such terms as the Trustee sees fit a Custodian to carry out all or part of the custodial services on behalf of the Fund subject to compliance with the Act.

### **27.4 Investment Managers**

- (a) The Trustee may appoint in writing an Investment Manager to carry out the management functions of the investments of the Fund provided that such appointment is made and is fulfilled in accordance with this Deed and the Act.
- (b) If the Trustee enters into an agreement with an Investment Manager under which all or any part of the Fund will be placed under the control of the Investment Manager, the Trustee must ensure that the agreement contains adequate provisions to enable the Trustee to require the Investment Manager from time to time to provide appropriate information as to the making of, and return on, the investments and to provide such information as is necessary to enable the Trustee to assess the performance and capability of the Investment Manager in managing the investments of the Fund, and whenever it is necessary or desirable to do so, must require the Investment Manager to provide the information to the Trustee.
- (c) Without limiting the generality of the foregoing, the Trustee must use all reasonable endeavours to ensure that any agreement with an Investment Manager includes, as a minimum, the following obligations on the Investment Manager:
  - (i) to manage assets in accordance with set investment restrictions;
  - (ii) to keep the investment portfolio under review and to confer with and advise the Trustee regularly;
  - (iii) to exercise all due diligence and care;

- (iv) to have appropriately qualified staff in charge at all times;
- (v) to ensure that assets are vested in the Trustee (or a Custodian, if applicable) as soon as possible; and
- (vi) to provide upon request information to the Auditor of the Fund.

#### **27.5 Qualified Advisors**

The Trustee may from time to time appoint such Qualified Advisors as the Trustee considers fit and desirable for the proper management and administration of the Fund.

#### **27.6 Revocation of Appointment**

The Trustee may revoke and remove from office any person appointed to any position pursuant to this clause.

### **28. REMUNERATION OF TRUSTEE AND REIMBURSEMENT FOR ADMINISTRATION EXPENSES**

#### **28.1 Trustee's Right to Charge Fees**

- (a) If the Fund is a Self-Managed Fund, the Trustee shall not be entitled to charge professional fees or other remuneration in acting as the Trustee of the Fund or in connection with the management and administration of the Fund.
- (b) If the Fund is not a Self-Managed Fund the Trustee may only charge professional fees or other remuneration in acting as the Trustee provided that the Act does not prohibit the Trustee receiving such remuneration and such remuneration would not cause the Fund to be a public offer as defined in the Act.

#### **28.2 Indemnity and Reimbursement**

The Trustee shall be entitled to be indemnified by and reimbursed from the Fund for and in respect of:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;



- (b) all fees, wages and expenses of any Auditor, Actuary, Qualified Advisor, Investment Manager or Custodian from time to time engaged by the Trustee pursuant to this Deed;
- (c) all and any Taxation paid or payable by the Trustee in connection with the Fund and any Member on any account whatsoever;
- (d) all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund; and
- (e) any other costs, charges and expenses incurred or to be incurred in relation to the management or administration of the Fund.

## **29. ACCOUNTING RECORDS**

### **29.1 Form of Accounting Records**

The Trustee shall establish and maintain accounting records in such form as shall:

- (a) correctly record and explain the transactions and financial position of the Fund;
- (b) enable the annual accounting statements to be prepared in accordance with clause 30;
- (c) enable the annual returns of the Fund to be prepared and lodged in accordance with the Act;
- (d) enable those accounting records to be conveniently and properly audited in accordance with this Deed and if required by the Act.

## **30. ACCOUNTING STATEMENTS**

### **30.1 Preparation**

The Trustee shall in respect of each Financial Year prepare the following accounting statements in respect of the Fund:

- (a) a statement of financial position;
- (b) an operating statement;
- (c) such other accounting statements as may be specified by the Act.

**30.2 Signature**

The accounting statements shall be signed by or on behalf of the Trustee in such manner as may be specified in the Act or as otherwise permitted by law.

**30.3 Retention**

The Trustee shall retain the accounting statements for such period as required by the Act after the end of the Financial Year to which the accounting statements relate.

**31. AUDIT OF THE FUND**

**31.1 Audit to be Conducted each Financial Year**

If required by the Act, the accounting statements of the Fund prepared in respect of each Financial Year shall be audited by an Auditor duly appointed by the Trustee.

**31.2 Auditor to be Given Access to Documents/Information**

The Auditor shall on request be given by the Trustee access to the accounting records and accounting statements and other such documents and information connected with the Fund as may be necessary to enable the Auditor to complete the audit of those accounting statements.

**32. ANNUAL RETURNS ETC TO RESPONSIBLE AUTHORITY**

The Trustee shall in respect of each Financial Year and within the time prescribed by the Act give to the Responsible Authority:

**32.1 Annual Return**

An annual return in a form prescribed by the Act.

**32.2 Trustee Certificate**

A trustee certificate in a form prescribed by the Act.

**32.3 Audit Certificate**

The audit certificate given to the Trustee by the Auditor; and

**32.4 Other Documents/Information**

Any other documents or information which may be required by the Act, or are requested by the Responsible Authority, to be given to the Responsible Authority.

**33. COMPLAINTS PROCEDURE**

**33.1 If required by the Act**

The Trustee shall, if required by the Act, take all reasonable steps to ensure that there are at all times in force arrangements for complaints and enquiries by Members.

**33.2 Rights of Beneficiaries**

Beneficiaries shall have the right under any such arrangements to make enquiries into, or complaints about, the operation or management of the Fund in relation to the Beneficiary making the enquiry or complaint.

**33.3 Trustee to Deal within 90 Days**

Enquiries or complaints so made will be properly considered and dealt with by the Trustee within 90 days after they were made.

**34. NOTICE TO RESPONSIBLE AUTHORITY OF SIGNIFICANT ADVERSE EVENTS**

**34.1 Trustee's Responsibility to Notify**

If the Trustee becomes aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund, the Trustee must give written notice to the Responsible Authority setting out particulars of the event. The Trustee must do this no later than the third business day after becoming aware of the event.

**34.2 Meaning of Significant Adverse Effect**

For the purpose of this clause, an event has a significant adverse effect on the financial position of the Fund if, as a result of the event, the Trustee will not, or may not, at a time before the next annual report by the Trustee to the Members, be able to make payments to the Members as and when the obligation to make those payments arises.

**35. TRUSTEE TO DEAL WITH UNCLAIMED MONEY**

**35.1 Meaning of Unclaimed Money**

If:

- (a) a Member has reached Normal Retirement Age;
- (b) the Trustee determines that a Benefit (other than a Pension) is payable in respect of the Member in accordance with this Deed;
- (c) the Member has not applied to the Trustee to have the amount of the Benefit paid to that Member; or
- (d) the Trustee is unable to pay the Benefit to the Member because the Trustee, after making reasonable efforts to find the Member is unable to do so the amount payable to the Member is taken to be Unclaimed Money.

**35.2 Statement of Unclaimed Money**

The Trustee shall, within the period specified in the Act, give to the Responsible Authority a Statement in the approved form of any and all Unclaimed Money in the Fund as at the end of 30 June or 31 December in each Financial Year.

**35.3 Payment of Unclaimed Money to Responsible Authority**

The Trustee shall pay to the Responsible Authority, at the same time that the statement is given, the total amount of Unclaimed Money shown in the statement.

**PART F – ACCOUNTS**

**36. ACCUMULATION ACCOUNTS**

**36.1 Separate Member Accumulation Accounts**

The Trustee shall establish and maintain an Accumulation Account in respect of each Member:

**36.2 Credits to Accumulation Accounts**

The following amounts shall be credited to the appropriate Accumulation Account in respect of a Member to which they relate:

- (a) Contributions made to the Fund by an Employer in respect of the Member;
- (b) Contributions made to the Fund by or on behalf of the Member;

- (c) the proceeds of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee;
- (d) any amount transferred to the Fund from another Approved Superannuation Entity in respect of the Member;
- (e) any amount paid to the Fund as a Rollover Payment;
- (f) such income as determined by the Trustee and transferred from the Income Account
- (g) any amounts transferred from a Pension Account in respect of a Member;
- (h) such other income as are determined by the Trustee in respect of the income of the Fund; and
- (i) such other amounts as the Trustee shall from time to time determine.

### **36.3 Debits to Accumulation Accounts**

The following amounts shall be debited to the appropriate Accumulation Account of a Member to which they relate:

- (a) any Benefit paid to a Member or a Beneficiary in respect of the Member;
- (b) any amount paid out of the Fund in respect of the Member and transferred to another Approved Superannuation Entity;
- (c) the costs of any Policy of Insurance or Annuity effected in respect of the Member;
- (d) such proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity as the Trustee may determine;
- (e) such amount representing the reimbursement to the Trustee of such costs, charges or expenses incurred by the Trustee pursuant to this Deed or a proportion thereof as the Trustee may determine;
- (f) such amounts representing the payment by or reimbursement to, the Trustee for any surcharge payable pursuant to the Surcharge Acts in respect of a Member;

- (g) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- (h) any amount transferred from an Accumulation Account to a Pension Account for or in respect of a Member;
- (i) such other amounts as the Trustee shall from time to time determine.

### **37. INCOME ACCOUNT**

#### **37.1 Establishment**

The Trustee shall establish and maintain an Income Account for the Fund.

#### **37.2 Credits**

The Income Account shall be credited with the following:

- (a) all income and profits of the Fund in each Financial Year;
- (b) any credits arising out of any adjustment made by the Trustee pursuant to this Deed;
- (c) the proceeds of any Policy of Insurance where the Trustee determines that such proceeds should not be credited to a Member's Accumulation Account;
- (d) any distribution or dividend paid to the Fund and accepted by the Trustee;  
and
- (e) such other amounts as the Trustee may from time to time determine.

#### **37.3 Debits**

The Trustee shall debit the Income Account with the following amounts:

- (a) any loss arising from the disposal or dealing with any investment of the Fund;
- (b) any debits arising from an adjustment made by the Trustee pursuant to this Deed;
- (c) the cost of any Policy of Insurance where the Trustee determines that such costs should not be debited to a Member's Accumulation Account;

- (d) any amount representing the reimbursement to the Trustee of any costs or charges incurred by the Trustee pursuant to this Deed which amount is not otherwise debited to a Member's Accumulation Account;
- (e) any amount which is payable or may become payable by way of Taxation in respect of the Contributions or income of the Fund which are not otherwise debited to a Member's Accumulation Account;
- (f) any income transferred to the Equalisation Account; and
- (g) such other amount as the Trustee shall from time to time determine.

### **38. EQUALISATION ACCOUNT**

#### **38.1 Establishment**

The Trustee may at any time establish and operate an Equalisation Account as the Trustee sees fit.

#### **38.2 Credit**

The Trustee may transfer to the credit of the Equalisation Account an amount from the Income Account or the amount of any Benefit Entitlement forfeited pursuant to clause 57 or any reserves or any other amount which the Trustee so determines in the Trustee's discretion, but subject to the requirements of the Act.

#### **38.3 Amounts in Equalisation Account**

Any amount held in the Equalisation Account shall not form part of any Accumulation Account or Pension Account and any income derived by the Fund on monies held in the Equalisation Account shall be credited to the Equalisation Account from the Income Account.

#### **38.4 Purpose and Use Includes Reserves**

The Equalisation Account shall be used by the Trustee for the purpose of stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy or for dealing with forfeited Benefit Entitlements or for such other purposes in accordance with this Deed or the Act as the Trustee shall determine in its discretion. Without limitation to the foregoing, the Trustee shall have the right to create and operate separate Equalisation Accounts dealing with:

- (a) investment reserves;
- (b) contribution reserves;

- (c) miscellaneous reserves;
- (d) pension reserves; or
- (e) any other reserve that is allowable under the Act.

### **39. CALCULATION OF DETERMINED INTEREST RATE**

- 39.1** As soon as practicable following each Balance Date the Trustee shall determine the Determined Interest Rate in respect of each Financial Year.
- 39.2** The amount determined by the Trustee as the earnings of the Fund shall be allocated from the Income Account to each Accumulation Account and Pension Account in proportion to the amount standing to the credit of the respective account at the beginning of the Financial Year in respect of which a distribution is being made and after making an appropriate adjustment for any amounts credited or debited to the respective Account since that date.
- 39.3** Any amount remaining in the Income Account after distribution of the earnings of the Fund shall be transferred by the Equalisation Account.
- 39.4** In determining the amount standing to the credit of a Member's Accumulation Account or Pension Account at the time that a Benefit is calculated or becomes payable, the Trustee may make such adjustment up to the date of payment as the Trustee in its discretion considers equitable and in accordance with any relevant requirement of the Act.
- 39.5** If the Trustee makes an adjustment pursuant to this clause, the Income Account shall be debited or credited as may be appropriate.
- 39.6** The adjustment shall reflect the Determined Interest Rate.

## **PART G – THE EMPLOYER**

### **40. PARTICIPATION OF PERSONS AS EMPLOYERS**

#### **40.1 Application to Participate**

Any person in whose service an Eligible Person is for the time being Gainfully Employed may make application to the Trustee to be admitted as an Employer for the purposes of participating in the Fund.



**40.2 Approval by Trustee**

An application by a proposed Employer to participate shall be in such form as the Trustee shall from time to time determine and the acceptance or rejection of such application shall be at the discretion of the Trustee.

**40.3 Execution of Form of Admission**

Upon the acceptance by the Trustee of an Employer's application to participate in the Fund, the Trustee and the Employer shall execute a Form of Admission in such form as shall be determined by the Trustee from time to time. Upon execution the Employer shall be admitted as an Employer to the Fund subject to the terms and conditions of this Deed and the Form of Admission.

**40.4 Employer May Contribute**

Any Employer may make Contributions to the Fund on behalf of such of the Employees of the Employer who become Members.

**41. RECONSTRUCTION OR AMALGAMATION OF AN EMPLOYER**

In the event that an Employer is reconstructed or merges or amalgamates with another Employer;

**41.1 Form of Admission**

The Trustee may enter into a Form of Admission with the new Employer as the successor to the former Employer with the object of that new Employer participating in the Fund as an Employer pursuant to this Deed on terms and conditions as determined by the Trustee which protect the interests of the Members.

**41.2 Deemed Continuation of Service**

The transfer of service by a Member as an Employer of the former Employer to the service of a new Employer as a result of the reconstruction, merger or amalgamation shall be deemed to be a continuation of service by that Member for the purposes of that Member's entitlement to receive any Benefit from the Fund.

**41.3 Trustee to Continue Fund**

Subject to this Deed the Trustee shall continue to operate the Fund for the benefit of any new Members who service is not continued with the new Employer.

## **42. RELEASE OF EMPLOYER**

### **42.1 Right to Release**

The Trustee may release an Employer and its Employees who are Members from participation in the Fund upon such terms and the Trustee shall determine.

### **42.2 Consequence of Release**

Upon the release of an Employer, the Trustee shall ascertain and deal with the Benefit Entitlements and Benefits of the Employees of the Employer who are Members in such manner as the Trustee and the Employer shall consider equitable and subject to compliance with the Act.

## **43. APPOINTMENT OF RECEIVER**

**43.1** If at any time a receiver, receiver and manager, official manager or a voluntary administrator (hereafter called the "Receiver") is appointed to assume control over all or part of the assets of an Employer, then notwithstanding anything express or implied to the contrary in this Deed or in the instrument pursuant to which the Receiver has been appointed, all authorities, powers and discretions which are by this Deed vested in or exercisable by the Employer shall not vest in or be exercisable by the Receiver. For the duration of the appointment of a Receiver to the Employer, the authorities, powers and discretions of the Employer under this Deed shall be vested in and exercisable by the Trustee in the Trustee's discretion on behalf of that Employer and not by the Receiver.

**43.2** In the event that a Member has any indebtedness due and payable by the Member to the Trustee in any capacity or for any reason other than in connection with the Fund, the Trustee shall not allow any set-off to be made for that indebtedness against any Benefit or Benefit Entitlement of the Member.

## **44. LIQUIDATION OF EMPLOYER**

If an Employer shall for any reason whatsoever cease to carry on business or an order is made or an effective resolution passed for the winding up of the Employer (unless such winding up is for the purpose of reconstruction or amalgamation) the interest in the Fund of the Employer and such of its Employees who are members and their Dependents shall be determined by the Trustee and dealt with by the Trustee in such manner as the Trustee shall consider equitable for the Members of the Fund.

## **PART H – CONTRIBUTIONS TO THE FUND**

### **45. MEMBER CONTRIBUTIONS**

A Member may contribute to the Fund such amounts and in such manner as the Member may from time to time determine.

### **46. EMPLOYER CONTRIBUTIONS**

#### **46.1 Employer May Contribute**

An employer may contribute to the Fund in respect of a Member such amounts and in such manner as the Employer may from time to time determine.

#### **46.2 Contributions Pursuant to Agreement/Requirement**

If an Employer contributes to the Fund in respect of a Member pursuant to any agreement with that Member or requirement of the Employer under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer shall specify to the Trustee the amount of such Contributions and shall separately specify the amount of such Contributions (if any) made pursuant to clause 46.1.

### **47. PAYMENT OF CONTRIBUTIONS**

#### **47.1 No Obligation to Contribute**

In the absence of any agreement to the contrary, a Member shall not have any obligation to make a Contribution to the Fund and may remain a Member of the Fund notwithstanding that a Contribution is not made by or in respect of that Member.

#### **47.2 Contributions may be in Cash or other Assets**

Any Contribution made to the Fund by a Member or by an Employer shall be paid either in cash or by the transfer of an asset to the Fund (provided that the asset is an authorised investment pursuant to this Deed and the Investment Strategy) or as otherwise required by any relevant requirement of the Act.

#### **47.3 Acceptance of Contributions (including Spouse Contributions)**

The Trustee may accept any Contributions to the Fund made by or in respect of a Member, including without limitation, any Contribution made on behalf of a Member by a spouse of that Member which is permitted by the Act.

**47.4 Limitation on Accepting Contributions**

The Trustee shall refuse to accept any Contribution to the Fund by or in respect of a Member where the acceptance of the Contribution to the Fund would contravene a requirement of the Act or would prevent the Fund from complying with the Act.

**47.5 Refund of Ineligible Contributions**

If the Trustee shall determine that Contributions have been accepted by the Trustee on behalf of a Member in breach of this clause, the Trustee shall refund such Contributions and adjust any Benefit or Benefit Entitlement held for the Member to take account of the refunded Contributions in such manner as the Trustee considers appropriate.

**47.6 Employer to remit Contributions Promptly**

If an Employer is authorised to make a Contribution on behalf of a Member by deducting an amount from the salary or wages payable to the Member and the Employer makes such a deduction, the Employer must pay to the Trustee the amount of the deduction within the period of 28 days beginning immediately after the end of the month in which the deduction was made.

**PART I – BENEFITS**

**48. FUND TO PROVIDE BENEFITS**

The Trustee shall ensure that the Fund is maintained solely for the purpose of providing the Benefits described in this Deed.

**49. RETIREMENT BENEFITS**

**49.1 Entitlement**

Upon a Member;

- (a) retiring from Gainful Employment at or after a Member's Normal Retirement Age; or
- (b) reaching the age of 65 years; or
- (c) fulfilling the relevant requirements of the Act for the payment of Benefits upon retirement notwithstanding that the Member may otherwise continue in Gainful Employment;

that Member shall be entitled to receive from the Fund a Retirement Benefit equivalent to the amount then standing to the credit of the Member's Accumulation Account as advised to the Member by the Trustee.

#### **49.2 Manner of Payment – Lump Sum or Pension**

Where a Member is eligible to receive a Retirement Benefit, the Member may elect whether such Benefit shall be payable as a lump sum or as a Pension or in the purchase of an Annuity or partly as any one or more of those forms. If the Member does not make such an election, then the Benefit shall be payable in the form of a Pension.

### **50. EARLY RESIGNATION (TERMINATION OF EMPLOYMENT) BENEFITS**

#### **50.1 Entitlement**

Upon a Member ceasing to be in Gainful Employment with an Employer (who has made Contributions to the Fund in relation to that Member) before the Member's Normal Retirement Age and the Member is not otherwise entitled to any other Benefit from the Fund, the Member shall be entitled to receive from the Fund, subject to the conditions of preservation as required by the Act, an Early Resignation Benefit equal to:

- (a) the amount then standing to the credit of the Member's Accumulation Account which amount represents the Member Contributions (if any) made by the Member accumulated with interest compounded at the Determined Interest Rate up to the date on which the Member ceased to be in Gainful Employment with that Employer; and
- (b) such additional amount (if any) as the Fund shall be required to provide for the Member such that the total Early Resignation Benefit to which that Member is entitled is not less than the minimum benefit requirements specified in the Act; and
- (c) such additional amount as the Trustee may determine having regard to the circumstances of the Member's cessation of Gainful Employment but subject to the requirements of the Act;

**PROVIDED THAT** the total Early Resignation Benefit payable to this clause shall not exceed the amount then standing to the credit of the Member's Accumulation Account.

## **50.2 Manner of Payment – Lump Sum or Pension**

Where a Member is entitled to receive an Early Resignation Benefit pursuant to this clause, subject to the conditions of preservation as required by the Act the Member may elect whether such Early Resignation Benefit shall be payable as a lump sum or as a Pension or in the purchase of an Annuity or partly as any one or more of those forms. If the Member does not make such an election, then the Benefit shall be payable in the form of a Pension.

## **51. DEATH BENEFITS**

### **51.1 Entitlement**

Upon the death of a Member the Trustee shall pay a Death Benefit equal to:

- (a) the amount then standing to the credit of that Member's Accumulation Account as at the date upon which payment is made; and
- (b) the proceeds of any Policy of Insurance effected on behalf of the Member under this Deed; and

#### **PROVIDED THAT:**

- (c) if, prior to the death of a Member, the Trustee and that Member have agreed in writing that the Death Benefit which becomes payable upon the death of that Member shall be an amount other than the aggregate of the amount standing to the credit of the Member's Accumulation Account as at the date upon which payment is made and the proceeds of any Policy of Insurance effected under this Deed on behalf of that Member ("the Other Amount"), then the Death Benefit payable by the Trustee upon the death of that Member shall be the Other Amount.

### **51.2 Manner of Payment – Trustee's Discretion**

A Death Benefit shall be paid in such manner as the Trustee may determine in its discretion in the form of a Pension, the purchase of an Annuity or a lump sum or any one or more of those forms.

### **51.3 Binding Beneficiary Nominations**

- (a) The Trustee must give to any Member who wishes to make a binding beneficiary nomination under sub-clause (b) the information that the Trustee reasonably believes that the Member reasonably needs for the purpose of understanding the Member's rights to make a binding beneficiary nomination in accordance with the Act.

- (b) The Trustee must allow a Member to make a binding beneficiary nomination by giving to the Trustee a notice in writing which requires that any Death Benefit payable on or after the Member's death is paid to the person or persons referred to in the notice as the Member's Nominated Beneficiary **PROVIDED THAT:**
  - (i) the Nominated Beneficiary is the legal personal representative or a Dependant or Dependents of the Member; or
  - (ii) the form of the notice, and the manner in which it is completed by the Member and given to the Trustee satisfies the relevant requirements of the Act.
- (c) A Member who has given a notice of binding beneficiary nomination to the Trustee may amend or revoke the notice by giving to the Trustee a notice of amendment or revocation in accordance with the relevant requirements of the Act.
- (d) Unless sooner revoked by the Member, a notice binding beneficiary nomination given to the Trustee shall cease to have effect at the end of the period of 3 years after the day it was first signed or last confirmed or amended, by the Member.
- (e) If an item of information given by a Member in a notice of binding beneficiary nomination is not sufficiently clear to allow the notice, the Trustee must seek from the Member a written statement to clarify the item as soon as practicable after the Trustee receives the notice.
- (f) Other than as requires by sub-clause (e) or the relevant requirements of the Act, the Trustee shall not be responsible or liable to a Member or that Member's estate or any other person for any consequence arising from the Member's notice of binding beneficiary nomination being invalid and/or ineffective due to the notice:
  - (i) having ceased to have effect; or
  - (ii) having failed to comply with any relevant requirement of the Act.

#### **51.4 Persons to Receive Death Benefits**

- (a) Where a Death Benefit is payable in respect of a Member, if the Trustee holds a notice of binding beneficiary nomination which has been given to the Trustee by that Member in accordance with clause 51.3, the Trustee must pay the Death Benefit to the person or persons referred to as the Nominated Beneficiary in the notice if:

- (i) the person, or each of the persons, mentioned in the notice is the legal personal representative or a Dependant of the deceased Member; and
  - (ii) the proportion of the Death Benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the notice; and
  - (iii) the notice is in a form that complies with the relevant requirements of the Act; and
  - (iv) the notice is in effect.
- (b) Where a Death Benefit is payable in respect of a Member and the Trustee does not hold a notice of binding beneficiary nomination from that Member or such notice held by the Trustee does not conform to the relevant requirements of this Deed or the Act, the Trustee must pay or apply the Death Benefit to or for the benefit of:
  - (i) a person nominated in writing by the deceased Member provided that the Trustee is satisfied that the person was a Dependant of the deceased Member at the time of the death of the Member; or
  - (ii) such one or more of the Dependants of the deceased Member; or
  - (iii) the legal personal representatives of the deceased Member;in such proportions between all or any of the above persons or categories of persons as the Trustee shall determine in its discretion.
- (c) If after reasonable inquiry the Trustee determines that the deceased Member left no Dependants or that there are no Dependants whose existence, identity and whereabouts are satisfactorily known to the Trustee and the Trustee is unable to locate any personal representative of the deceased Member, then subject to the requirements of the Act, the Trustee shall determine that the Death Benefit or any part thereof shall cease to be payable and shall be retained in the Equalisation Account or the Fund.

## **52. TOTAL AND PERMANENT DISABILITY BENEFIT**

### **52.1 Entitlement**

If in the opinion of the Trustee, a Member becomes Totally and Permanently Disabled before the Member's Normal Retirement Age, the Member shall be entitled to receive from the Fund a Permanent Disability Benefit comprising:



- (a) the amount then standing to the credit of the Member's Accumulation Account at the date upon which payment is made; and
- (b) the proceeds of any Policy of Insurance effected on behalf of the Member; and

**PROVIDED THAT:**

- (c) if, prior to the Total and Permanent Disability of the Member, the Trustee and that Member have agreed in writing that the Permanent Disability Benefit which becomes payable upon the Total and Permanent Disability of the Member shall be an amount other than the aggregate of the amount standing to the credit of the Member's Accumulation Account at the date upon which payment is made and the proceeds of any Policy of Insurance effected under this Deed on behalf of that Member (the "Other Amount"), then the Permanent Disability Amount payable by the Trustee upon the Total and Permanent Disability of that Member shall be the Other Amount.

**52.2 Manner of Payment – Lump Sum or Pension**

- (a) Where a Member is entitled to receive a Permanent Disability Benefit pursuant to this clause, the Member may elect whether such Benefit is to be payable as a lump sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms. If the Member does not make such an election, then the Benefit shall be payable in the form of a Pension.
- (b) If a Member is incapable of making an election pursuant to this clause, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

**53. BENEFITS PAYABLE AS A PENSION**

**53.1 Payment of Pension**

Where a Benefit is payable as a Pension, the Trustee shall pay the Benefit to the Pensioner as a Pension in accordance with this clause but always subject to the requirements of the Act.

### **53.2 Type of Agreed Pension and Pension Agreement**

- (a) The Trustee and the Pensioner may agree to any type, manner or form of Pension being provided to the Pensioner that suits the needs of the Pensioner, but subject to the requirements of this Deed and the Act. Without limitation to the foregoing, the particular type of Pension may include an Allocated Pension, Lifetime Income Stream or Fixed Term Income Stream.
- (b) If the Trustee and the Pensioner agree on a particular type of Pension to be provided to the Pensioner ("the Agreed Pension") they shall if they consider it necessary or desirable to comply with the Act record that agreement between them in writing ("the Pension Agreement") specifying any particular rules and requirements governing the Agreed Pension ("the Agreed Pension Rules").
- (c) Any Pension Agreement made pursuant to this clause shall be read and construed in conjunction with and deemed to form part of this Deed as between the Trustee and the Pensioner.
- (d) If there is any inconsistency between any requirement of the Agreed Pension Rules and:
  - (i) any provision of this Deed – then the requirement of the Agreed Pension Rules shall prevail; or
  - (ii) any relevant requirement of the Act – then the requirement of the Act shall prevail;

to the extent of that inconsistency.

### **53.3 Amount of Pension**

The amount of any Pension payable pursuant to this clause shall be determined by the Trustee. The Trustee shall take account of:

- (a) wishes of the Pensioner; and
- (b) if required for the purpose of that Pension, actuarial advice obtained from an Actuary as to the appropriate amount and manner of the payments of the Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, the Investment Strategy guidelines for that Pension, and any prudential requirements imposed on the Trustee by the Act; and

- (c) any other relevant requirements imposed by the Act or the Responsible Authority.

#### **53.4 Pension Account**

Where the Trustee determines to pay all or any part of a Benefit as a Pension, the Trustee shall establish a Pension Account in respect of the Pensioner from which the Pension shall be paid. The Pension Account shall be operated by the Trustee in such manner as the Trustee considers necessary or desirable in order to provide the Pension in accordance with this Deed.

#### **53.5 Segregation of Pension Assets**

The Trustee shall, if required, in relation to each Pension payable pursuant to this Deed:-

- (a) segregate and set apart assets of the Fund for each Pensioner for the sole purpose of enabling the Fund to discharge the whole or part of any current or non-current liability in relation to the payment of the Pension as those liabilities fall due for payment; and
- (b) obtain such actuarial certificates in relation to the adequacy of the segregated assets to meet the current and non-current liabilities as the Trustee considers necessary in accordance with any requirement of the Act.

#### **53.6 Conditions Applicable to All Pension**

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

- (a) the Pension shall be paid from the amount standing to the credit of the Pension Account of the Pensioner;
- (b) the payments of the Pension are made at least annually;
- (c) the Pension shall not be able to be transferred to any person other than as permitted in accordance with the requirements of the Act; and
- (d) the capital value of the Pension and the income from the Pension shall not be used as security for any borrowing unless the Act permits.

### **53.7 Variation to Pension Account**

The Trustee shall have power to vary the Pension from time to time but subject always that any variation:

- (a) must comply with any relevant requirement of the Act;
- (b) must be in accordance with any on-going actuarial advice that is required to be obtained or maintained; and/or
- (c) must comply with any Pension Agreement for that Pension.

### **53.8 Limitation of Pension Amount**

The total instalments of a Pension payable in respect of a Pensioner shall not exceed the amount standing to the credit of the Pensioner in his Pension Account at the relevant time.

### **53.9 Death of Pensioner**

Subject to any Agreed Pension Rules made in a Pension Agreement pursuant to clause 53.2(b), if a Pensioner dies and at the time of death an amount is standing to the credit of the Pension Account of the Pensioner:

- (a) where a Nominated Beneficiary has been nominated by the Pensioner, the Trustee shall, unless otherwise requested to the contrary by the Nominated Beneficiary, pay to the Nominated Beneficiary the balance of the Pension Account (either as a Pension or commuted to a lump sum) provided that such amount shall not exceed an amount calculated in accordance with the requirements of the Act; or
- (b) where no Nominated Beneficiary has been nominated, the balance of the Pension Account shall be paid to such one or more of the Dependents of the Pensioner.

### **53.10 Application to Convert Lump Sum Benefit to Pension**

A Member may on written application to the Trustee elect to have the whole or any part of a Benefit which is payable as a lump sum pursuant to this Deed converted to a Pension.

### **53.11 Commutation of Pension to a Lump Sum**

- (a) On the written application of a Pensioner or Nominated Beneficiary of a deceased Pensioner, the Trustee shall commute the lump sum Benefit the whole or any part of a Pension payable from the Fund to such Pensioner or Nominated Beneficiary, as the case may be, provided that such commutation would not cause the Trustee or the Fund to be in breach of any relevant requirement of the Act.
- (b) The Trustee shall pay the amount of the lump sum Benefit in respect of the commuted Pension in the same manner as a lump sum Benefit which is payable upon retirement in accordance with the provisions of this Deed.
- (c) Where part of a Pension is commuted to a lump sum Benefit, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Pensioner by such amount as the Trustee considers appropriate subject to the compliance with the minimum and maximum benefit requirements specified in the Act.

### **53.12 Purchase of Pension or Annuity from Third Party**

If a Benefit is payable to a Member, upon request by the Member, the Trustee may apply the Benefit to purchase a Pension or Annuity for or in respect of the Member from a third party.

### **53.13 Allocated Pension**

If the Agreed Pension is an Allocated Pension, then the following rules shall also apply to that Allocated Pension:

- (a) the payments of that Allocated Pension in a year, except a payment by way of commutation, must not be larger or smaller in total than, respectively, the maximum and minimum limits calculated in accordance with the prescribed requirements of the Act; and
- (b) the Allocated pension shall cease to be payable when the balance of the Pensioner's Pension Account is reduced to nil.

#### **53.14 Lifetime Income Stream**

If the Agreed Pension is a Lifetime Income Stream, then the following rules shall also apply to that Lifetime Income Stream:

- (a) the Agreed Pension Rules in the Pension Agreement must specify all of the requirements of the minimum "pension standards" specified in the Act which must be met for the Lifetime Income Stream to be measured against the pension RBL (within the meaning of the Act) when determining the maximum amount of concessionally taxed benefits of the Pensioner; and
- (b) if necessary, the Trustee shall obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Lifetime Income Stream after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Lifetime Income Stream, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee by the Act in order that the Trustee can meet the requirements specified in paragraph (a) above.

#### **53.15 Fixed Term Income Stream**

If the Agreed Pension is a Fixed Term Income Stream, then the following rules shall also apply to that Fixed Term Income Stream:

- (a) the Agreed Pension Rules in the Pension Agreement must specify that payments of the Fixed Term Income Stream will be of fixed amounts made at least annually for a specified fixed period which period is:
  - (i) not shorter than any minimum period specified by the Act; and
  - (ii) not longer than any maximum period specified by the Act; and
  - (iii) that the payments and requirements of that Fixed Term Income Stream are in all other relevant aspects in accordance with the Act; and
- (b) if necessary, the Trustee shall obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Fixed Term Income Stream after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Fixed Term Income Stream, the balance of the Pensioner's Pension Account, and any prudential requirements imposed on the Trustee by the Act in order that the Trustee can meet the requirements specified in paragraph (a) above.

**54. PAYMENT OF BENEFIT BY TRANSFER IN SPECIE**

**54.1 Transfer of Investments**

The Trustee may with the written consent of a Beneficiary to whom a Benefit is payable pursuant to this Deed transfer any asset or investment of the Fund to that Beneficiary in satisfaction of the payment of the whole or such part of the amount of the Benefit otherwise payable **PROVIDED THAT:**

- (a) the amount of the Benefit which is satisfied is equivalent to the value of the asset or investment so transferred;
- (b) the Trustee is satisfied that such transfer is permitted by the Act; and
- (c) the value of any assets or investments to be transferred shall (unless the Trustee otherwise determines) be the same as the value attributed to them when the Trustee last valued the assets of the Fund.

**54.2 Transfer of Policy of Insurance**

Where a Benefit is payable to a Beneficiary and the Benefit includes any interest of a Policy of Insurance, the Trustee may in its absolute discretion and in lieu of surrendering such Policy of Insurance assign the Policy of Insurance to that Beneficiary. The value of the Policy of Insurance as at the date of assignment shall be debited as a payment to the Beneficiary in the relevant Accumulation Account or Pension Account. Neither the Trustee nor an Employer shall be responsible for payment of any further premiums which become payable under the Policy of Insurance as and from the date of assignment.

**55. RESTRICTIONS ON PAYMENT OR DEALINGS WITH BENEFITS**

**55.1 Compliance with the Act**

Notwithstanding any other provision of this Deed, the Trustee shall not pay or deal with any other amount from the Fund to or in respect of any Beneficiary in any circumstances which would cause the Trustee or the Fund to be in breach of any relevant requirement of the Act.

**55.2 Trustee Must Act**

The Trustee may do all things necessary as the Trustee sees fit including but without limitation, adjusting the amount or terms of payment of Benefits in such manner and to such extent as the Trustee considers appropriate in order to comply with any relevant requirements of the Act.

**55.3 Status of Members Age 65 and Over**

For Members who have reached the age of 65 years, the Trustee must make reasonable attempts to keep itself informed of the ongoing employment status of those Members.

**56. CONDITIONS FOR PAYMENT OF PRESERVED BENEFITS**

**56.1 No Entitlement to Preserved Benefit**

- (a) No Beneficiary shall be entitled to receive any Preserved Benefit payable by the Fund which is required to be preserved in accordance with a relevant requirement of the Act.
- (b) Without limitation to paragraph (a), the Trustee shall on a regular basis take account of any charges to the aged-based preservation rules or requirements under the Act as are applicable to a Beneficiary and ensure that they are adhered to.

**56.2 Member May Direct Trustee**

A Member may direct the Trustee to:

- (a) transfer the Preserved Benefit to another Approved Superannuation Entity selected by the Member and in which the Member is a participant or eligible to participate; or
- (b) retain the Preserved Benefit in the Fund.

**56.3 Trustee may transfer Preserved Benefit**

If the Trustee does not receive a direction from the Member in accordance with clause 56.2 and the Trustee is satisfied that there exists an Approved Superannuation Entity in which the Member is a participant or eligible to participate and the trustees thereof are empowered and willing to accept a transfer of the Preserved Benefit, then the Trustee may transfer that Preserved Benefit to that other Approved Superannuation Entity without the Member's direction or consent.

**56.4 Power of Attorney**

The Member shall be deemed to have irrevocably appointed the Trustee as the attorney for that Member for the purpose of securing that Member's participation in the Approved Superannuation Entity to which the transfer is to be effected and the Trustee may act unilaterally in the name of the Member for that purpose.



## **56.5 Retention of Preserved Benefit**

If a Preserved Benefit is not transferred to another Approved Superannuation Entity as provided in this clause, the Preserved Benefit shall be retained in the Fund to the credit of the Member's Accumulation Account and accumulated with interest at the Determined Interest Rate until:

- (a) **Death:** the death of the Member in which event the Preserved Benefit shall be paid as a Death Benefit in accordance with this Deed;
- (b) **Retirement:** the retirement of the Member which entitles the Member to be paid the Preserved Benefit as a Retirement Benefit in accordance with this Deed;
- (c) **Request:** the Member requests that the Preserved Benefit be paid to that Member;
- (d) **Responsible Authority:** the payment of the Preserved Benefit is approved by a Responsible Authority; or
- (e) **Discretion:** the Trustee elects in its discretion to pay the Preserved Benefit to the Member or a Dependant of the Member;

whichever is the first to occur **PROVIDED THAT** no payment shall be made of the Preserved Benefit unless at the date of payment the Preserved Benefit is paid in accordance with the Act.

## **57. FORFEITURE OF BENEFIT ENTITLEMENTS**

### **57.1 Events of Forfeiture**

A Beneficiary who at a relevant time has any entitlement to a Benefit Entitlement and:

- (a) who assigns or charges or attempts to assigns or charge that Benefit Entitlement;
- (b) who interest in the Benefit Entitlement, whether by the Beneficiary's own act, operation of law, order of any Court or otherwise, becomes payable to or vested in any other person, company, government or statutory or other public authority;
- (c) who, in the opinion of the Trustee commits any fraud or is guilty of dishonesty, defalcation or serious misconduct; or

- (d) who makes a request to the Trustee to forfeit all or any part of that Benefit entitlement and the request is accepted by the Trustee in the Trustee's discretion;

shall forfeit the Beneficiary's entitlement to all or part of that Benefit Entitlement held in the Fund at that time.

#### **57.2 Forfeited Entitlement to Equalisation Account**

- (a) Any Benefit Entitlement which is forfeited pursuant to this Deed shall be credited to the Equalisation Account and shall be held and applied by the Trustee in accordance with this Deed.
- (b) Any income derived by the Fund on the forfeited Benefit Entitlement held in the Equalisation Account shall be credited to the Equalisation Account.

#### **57.3 Application of Forfeited Benefit Entitlements**

The Trustee shall apply any amount representing a forfeited Benefit Entitlement standing to the credit of the Equalisation Account in respect of a Beneficiary in any of the following ways (subject to compliance with the Act):

- (a) in providing for the benefit of the Beneficiary on such terms as the Trustee may from time to time in its discretion;
- (b) in providing assistance to that Beneficiary in the case of hardship, sickness, accident or other misfortune causing hardship;
- (c) in augmenting the Benefits payable to or in respect of any Dependents of that Beneficiary; or
- (d) in such other manner which in the opinion of the Trustee will not breach any relevant requirement of the Act.

#### **57.4 Severability**

If any part of this clause is construed as or held to be illegal or invalid, that part or parts shall be deemed to be deleted from this clause and the legality and validity of the remaining parts of this clause shall not be affected by its deletion.

**58. POSTPONEMENT OF BENEFIT PAYMENTS**

**58.1 To Facilitate Administration**

Subject to the compliance with the Act, the Trustee may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any Benefit for any period not exceeding six months or, with approval of the Beneficiary to which the Benefit is payable, a longer period after the happening of the event upon which the Benefit becomes payable.

**58.2 At Request of Beneficiary**

Subject to the compliance with the Act, the Trustee may at the request in writing of any Beneficiary entitled to receive the payment of a Benefit withhold payment of that Benefit for such a period of time, subject to the Act, as shall be agreed between the Trustee and the Beneficiary so entitled to that Benefit.

**59. TRANSFERS FROM APPROVED SUPERANNUATION ENTITIES**

**59.1 Trustee May Take Interest**

If a Member is or was a member of a beneficiary under any other Approved Superannuation Entity, the Trustee may at the direction of that Member acquire by transfer from the Trustee of the other Approved Superannuation Entity the whole or any part of that Member in the Approved Superannuation Entity.

**59.2 Trustee to Hold Subject to this Deed**

Any interest transferred to the Trustee pursuant to this clause shall be held by the Trustee as part of the Fund in the Accumulation Account for that Member pursuant to this Deed.

**59.3 Payment of Special Unpreserved Benefits**

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a Preserved Benefit in the Approved Superannuation Entity, then subject to the compliance with the Act and any other terms or conditions pertaining to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of that Beneficiary.

#### **59.4 Member Subject to the Fund**

A person whose interest in another Approved Superannuation Fund is transferred pursuant to this clause shall become a Member and be subject to the rights and obligations of this Deed. If the Trustee so determines that the Member shall be deemed to have become a Member of the Fund on the date on which the Member's interest was so transferred to the Fund.

### **60. TRANSFERS TO APPROVED SUPERANNUATION ENTITIES**

#### **60.1 Trustee May Transfer**

The Trustee may at the written request of a Member and subject to such conditions as the Trustee determines, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate any Benefit or Benefit Entitlement in respect of that Member which reflects the entitlement of the Member in the Fund as at the date of transfer ("the Transferred Amount").

#### **60.2 Receipt of Transferred Amount**

The receipt by the proper officer of the other Approved Superannuation Entity of the Transferred Amount shall be a sufficient discharge to the Trustee. Neither the Trustee nor any Employer shall be responsible for the payment or disposal by the trustees of the other Approved Superannuation Entity of the Transferred Amount.

#### **60.3 Extinguishment of Rights**

Upon the completion of the transfer of the Transferred Amount in respect of a Member all of the rights and interests of that Member under this Deed (and all rights and interest of any Beneficiary entitled to claim in respect of the Member) in respect of the Transferred Amount shall be extinguished.

#### **60.4 Adjustment of Other Benefits Upon Transfer**

In respect of any transfer pursuant to this clause the Trustee may make such adjustments to the Benefit or Benefit Entitlements of the other Members of the Fund as the Trustee considers appropriate in the circumstances but subject to the requirements of the Act. Such adjusted Benefits or Benefit Entitlements shall be substituted for the Benefits otherwise provided under this Deed and this Deed shall apply on the same terms to those adjusted Benefits or Benefit Entitlements.

**61. MEMBER MAY REQUEST ROLLOVER PAYMENT**

If a Member wishes to effect a Rollover Payment of all or any of the Benefit Entitlement of the Member, the Member shall complete and provide to the Trustee such documentation required by the Act to enable the Rollover Payment to be effected in accordance with the requirements of the Act.

**PART J – MISCELLANEOUS PROVISIONS**

**62. TERMINATION OF THE FUND**

**62.1 Grounds for Termination**

The Fund shall be terminated and thereafter wound up:

- (a) if the Founder with the consent of a resolution of the Members determines to terminate the Fund and gives notice in writing of such determination to the Trustee;
- (b) if it appears to the Trustee that the Fund is insolvent and the Trustee resolves to terminate the Fund;
- (c) if there are no further Members remaining in the Fund; or
- (d) if for any reason the Trustee considers it appropriate to terminate the Fund, and subject to the approval of the Founder and a resolution (of approval) of the Members, the Trustee resolves to terminate the Fund.

**62.2 Notice of Termination**

Upon the termination of the Fund the Trustee shall give notice in writing to each Employer and each of the Members that the Fund has or is to be terminated as from a specified date (“the Termination Date”).

**62.3 Winding up of the Fund**

On and from the Termination Date:

- (a) no further Contributions shall be made or accepted other than any arrears of Contributions due to the Termination Date
- (b) the Trustee shall call up and collect any arrears of the Contributions;
- (c) the Trustee shall pay out of the Fund any expenses incurred by or on behalf of the Fund

- (d) the Trustee shall distribute the balance of the Fund in such manner as the Trustee shall consider appropriate in accordance with the Deed until all Benefits which are payable or Benefit Entitlements which could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (e) the Trustee shall otherwise continue to administer the Fund in accordance with the Deed; and
- (f) if a surplus in the Fund remains after the payment of all Benefits and Benefit Entitlements to Members or their Dependants, the Trustee shall distribute such surplus to or for the benefit of any Members or former Members, any Dependants of such Members or former Members, or the legal personal representatives of any such Members, former Members, or Dependants, as the Trustee determines in its absolute discretion.

### **63. DISSOLUTION OF THE FUND**

Upon the satisfactory winding up of the Fund by the Trustee pursuant to clause 62.3, the Fund shall be deemed to be dissolved.

### **64. AVAILABILITY OF THE DEED**

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

### **65. AMENDMENT OF DEED**

#### **65.1 Who may amend**

The Trustee may and shall at the request of the Founder at any time amend, add to, vary or rescind any of the provisions of this Deed (including this clause) ("the Amendment") subject to the provisions of this clause and the compliance with the Act.

#### **65.2 How Amendment Effected**

The Amendment shall be made by:

- (a) a deed executed by the Trustee; or
- (b) an oral declaration or written resolution of the Trustee which is evidenced by a Minute of Meeting of the Trustee confirming such oral declaration or written resolution.

**65.3 Date of Amendment**

The Amendment shall be effective from the date on which the Amendment is made or from such earlier or later date as is specified for that purpose in the Deed or Minute of Meeting effecting the Amendment.

**65.4 Consent by Beneficiary**

In the event that a proposed Amendment would adversely alter the Benefits or Benefit Entitlements of any Beneficiary, the proposed Amendment shall not be made or become effective unless:

- (a) that Beneficiary has consented in writing to the Amendment in compliance with the procedure specified in the Act carried out by the Trustee or;
- (b) the proposed Amendment is otherwise allowable and able to be made by the Trustee under the Act without that Beneficiary's consent.

**65.5 Notice to Members**

As soon as practicable after the Deed has been amended pursuant to this clause, the Trustee shall give to each Member a written statement explaining the nature and purpose of the Amendment and the effect of the Amendment on the entitlement of the Members.

**65.6 Notice to Responsible Authority**

If required by the Act, a copy of the Deed or Minutes of Meeting effecting the Amendment shall be lodged with the Responsible Authority.

**65.7 Amendments Concerning Compliance with the Act**

If the proposed Amendment is to be made for the purpose of enabling the Fund to comply with any relevant requirement of the Act, the Amendment may be made without the consent of any Member notwithstanding that the Member's Benefit or Benefit Entitlement may be adversely altered by the Amendment.

**65.8 Restriction on Amendments**

Notwithstanding any provision in this clause to the contrary, no Amendment shall be made to this Deed (including an Amendment to this clause) which would have the effect or result that the Fund does not have or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions as provided in this Deed; and/or in the alternative

- (b) a company as the Corporate Trustee of the Fund.

## **66. REPLACEMENT OF THE FOUNDER**

### **66.1 Founder May Replace**

- (a) The person holding the office of Founder may at any time by written instrument (including a will of that person) appoint another person to hold the office of Founder and to exercise all rights, powers and discretions conferred upon the Founder under this Deed.
- (b) Upon the death of a person holding office as Founder, the office of a Founder held by that person shall thereafter be held and exercised by the legal personal representatives of the deceased person.

### **66.2 No Founder**

If at any time there is no Founder or the Founder cease to be willing to act as Founder or, in the opinion of the Trustee, the Founder (if a natural person) is incapacitated to such an extent as to render him unable to properly discharge the functions of the Founder, the Trustee may with the consent of a resolution of the Members appoint a person to be the Founder.

### **66.3 Members May Replace**

The Members may by resolution resolve that:

- (a) the Founder is removed from the office of Founder and replaced by a person nominated by the Members who has consented to act as Founder; or
- (b) one or more persons nominated by the Members who have consented to act shall be appointed as Founder jointly with the current Founder.

Any removal or appointment pursuant to this clause shall only be effective upon giving notice of the removal or appointment, as the case may be, to the Trustee and the current Founder.



**67. TAXATION**

**67.1 Taxation of Benefits**

If any Taxation is payable in respect of any Benefit payable to any Beneficiary, then the Trustee shall deduct or arrange to have deducted the amount of such Taxation (including interest payable thereon) from the Benefit. The Trustee shall account for such Taxation to the proper Responsible Authority and pay the net Benefit to the Beneficiary so entitled.

**67.2 Taxation on Contributions**

If any Taxation is payable in respect of any Contribution made by or on behalf of a Member, the Trustee shall deduct or arrange to have deducted the amount of such Taxation (including any interest payable thereon) from the relevant Member's Accumulation Account and the Trustee shall account for such Taxation to the proper Responsible Authority.

**68. PROOF OF ENTITLEMENT BY BENEFICIARIES**

Any person appearing, purporting or claiming to be qualified or entitled to any Benefit or Benefit Entitlement shall on request by the Trustee produce to the Trustee such evidence and do such acts and execute such documents as the Trustee may reasonably require.

**69. NO PERSONAL CLAIM OF MEMBERS OR DEPENDANTS FOR INTEREST**

No Beneficiary or person claiming through or on behalf of a Beneficiary shall be entitled to claim any payment of any interest in the Fund except as provided in this Deed.

**70. COMPENSATION RIGHTS OF MEMBERS NOT LIMITED**

This Deed shall not affect any rights of a Member or the legal personal representative of a Member arising under any statutory enactment or at common law in circumstances where the Member is injured or dies as a result of an event arising in the course of the employment of the Member.

**71. FAMILY LAW PROCEEDINGS**

The Trustee shall comply with any direction or ruling made by order of the Family Court of Australia to the Trustee relating to any Benefit or Benefit Entitlement of a Beneficiary of the Fund.

**SCHEDULE A**

<b>NAME OF FUND:</b>	<b>Costin &amp; Tucker Private Pension Fund</b>
<b>FOUNDER:</b>	<b>Gregory Francis Costin</b>
<b>COMMENCING DATE OF THIS FUND:</b>	<b>27<sup>th</sup> March 2006</b>
<b>EXECUTION DATE OF THIS FUND:</b>	<b>27<sup>th</sup> March 2006</b>
<b>BALANCE DATE:</b>	<b>30<sup>th</sup> June each year</b>
<b>TRUSTEES:</b>	<b>Gregory Francis Costin and Ruth Charlotte Tucker</b>
<b>PARTICIPATING EMPLOYER:</b>	<b>Greg Costin Services Trust</b>

**EXECUTED** by the parties as a Deed on the Execution Date:

**BY THE FOUNDER**  
**INDIVIDUAL**

**SIGNED, SEALED and DELIVERED** )  
by the said )  
Gregory Francis Costin )  
(as Founder) )  
in the presence of )

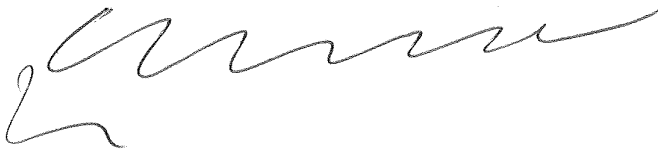


**BY TRUSTEE**

**SIGNED, SEALED and DELIVERED** )  
by the said )  
Gregory Francis Costin )  
(as Trustee) )  
in the presence of )



**SIGNED, SEALED and DELIVERED** )  
by the said )  
Ruth Charlotte Tucker )  
(as Trustee) )  
in the presence of )



- Costin & Tucker Private Pension Fund -

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