

# The T E S Superannuation Fund

## SUPERANNUATION TRUST DEED

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**THIS TRUST DEED** is made on the Date of this Deed specified in the Schedule.

**PARTIES:**

1. The person named as the Founder in the Schedule ("the Founder")
2. The person named as the Trustee in the Schedule ("the Trustee")

**RECITALS:**

- A. An indefinitely continuing superannuation fund ("the Fund") known by the name specified in the Schedule was established on the Commencement Date ("Commencement Date of the Fund") specified in the Schedule.
- B. The Trustee is the present Trustee of the Fund.
- C. In accordance with the powers and procedures of the existing governing rules of the Fund, the Trustee hereby adopts this Trust Deed as the new governing rules of the Fund in substitution for the existing governing rules of the Fund.
- D. This Deed requires that:
  - (i) the Fund have the sole or primary purpose of providing Old-Age Pensions and may also have the ancillary purpose of providing other Benefits described in this Deed; **AND, OR IN THE ALTERNATIVE,**
  - (ii) the Fund have a Corporate Trustee as the Trustee of the Fund.
- E. This Deed reflects the intention of the Founder and the Trustee that the Fund operate as an Australian complying regulated self managed superannuation fund and comply with the Act in order that the Fund is eligible for Concessional Taxation Treatment.

**THIS DEED WITNESSES:**

1. **DEFINITIONS**

1.1 **Defined Terms in this Deed**

In this Deed, unless the context otherwise requires:

**"Account"** means any account established and maintained by the Trustee under this Deed for administering the Fund on behalf of the Members, and includes any Accumulation Account, Equalisation Account, Income Account, or Pension Account, as described in this Deed.

**"Account-Based Pension"** means a pension that meets the definition, description and standards of an account-based pension under the SIS Regulations, and specifically Regulations 1.03(1) and 1.06(9A).

**"Act"** means:

- (a) Co-contribution Act;
- (b) Corporations Act;
- (c) Family Law Act
- (d) Income Tax Act;
- (e) Privacy Act;
- (f) RSA Act;
- (g) SGA Act;
- (h) SIS Act;
- (i) SSA Act;
- (j) Trustee Act;
- (k) Unclaimed Money Act;
- (l) all amendments, other legislation relating to, and regulations made under, the abovementioned Acts;
- (m) any other law of the Commonwealth of Australia or State or Territory of Australia (including, where applicable, any declaration, determination, ruling or guideline made by any 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 that relates to superannuation or any Benefit provided under this Deed.

**"Allocated Pension"** means a pension that meets the definition, description and standards of an allocated pension under the SIS Regulations, and specifically Regulations 1.06(4) and 1.07A.

**"Approved Superannuation Entity"** means any superannuation entity, annuity, RSA, eligible rollover fund, eligible non-resident non-complying superannuation fund, or any other superannuation fund or benefit arrangement, into which or from which assets can be transferred into or from the Fund, without contravening the Act.

**"Auditor"** means a person who is an approved auditor, and appointed by the Trustee to be the auditor of the Fund.

**"Australian complying regulated self managed superannuation fund"** means a trust or fund that is a:

- (a) superannuation fund within the meaning of section 10 of the SIS Act;
- (b) regulated superannuation fund within the meaning of section 19 of the SIS Act;

- (c) self managed superannuation fund within the meaning of section 17A of the SIS Act;
- (d) complying superannuation fund within the meaning of section 45 of the SIS Act; and
- (e) Australian superannuation fund within the meaning given by section 295-95 of the Tax Act.

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

**"Beneficiary"** means a Member or Dependant or any other person who is entitled to be paid a Benefit from the Fund.

**"Beneficiary Nomination"** means a Three Year Binding Nomination; a Non-lapsing Binding Nomination; a Beneficiary Statement of Wishes; or any other form of written nomination given by a Member to the Trustee stating how the Member directs or wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

**"Beneficiary Statement of Wishes"** means any written nomination howsoever called given by a Member to the Trustee stating how the Member wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

**"Benefit"** means any amount which is, or may become payable, by the Trustee to a Beneficiary as a benefit from the Fund under this Deed, subject to the Trustee being satisfied of the Beneficiary's entitlement to receive the Benefit under the Act, and includes a Retirement Benefit, Preservation Age Benefit, Death Benefit, Permanent Incapacity Benefit, Temporary Incapacity Benefit, and Benefit payable on account of a Member (who is a temporary resident) permanently departing Australia or suffering severe financial hardship or compassionate grounds, as described in this Deed, or any other benefit that the Act permits to be paid from the Fund.

**"Child Contribution"** means a payment to the Fund made as a contribution on behalf of a Member by a parent, grandparent or other relative of that Member, and permitted by the Act.

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

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

**"Concessional Taxation Treatment"** means any and all of the concessions that are available under the Tax Act relating to superannuation and in respect of:

- (a) Contributions accepted by the Fund;
- (b) income and earnings derived from the investments of the Fund;
- (c) Benefits paid out of the Fund; and
- (d) any other matter concerning the Fund, Trustee or Beneficiaries as governed under this Deed.

**"Contribution"** means a gross payment to the Fund (prior to deduction of any Taxation payable in respect of the payment) made as a contribution by or on behalf of a Member in accordance with this Deed, including any Child Contribution, Employer Contribution, Government Contribution, Member Contribution, or Spouse Contribution or payment that is otherwise permitted as, or deemed to be, a contribution by the Act, and includes amounts which are transferred or rolled over to the Fund from an Approved Superannuation Entity.

**"Corporate Trustee"** means a Trustee that is a company incorporated under the Corporations Act and which company complies with any relevant requirement of the Act.

**"Corporations Act"** means the Corporations Act 2001 (Cth).

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

**"Dependant"** means in relation to a Member (whether living or deceased) any of the following persons:

- (a) the spouse, widow or widower of the Member;
- (b) a child of the Member including a child of the Member born after the death of the Member;
- (c) a 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 dependent 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; or
- (d) a person who is, or was at the time of death of the Member, in an interdependency relationship with the Member as defined in the Act ; and

**PROVIDED THAT:**

- (e) the person is a dependant as defined by the Act.

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

**"Eligible Person"** means any individual who is:

- (a) Gainfully Employed;
- (b) a spouse, child, grandchild or relative of a Member; or
- (c) permitted to be a member of an Australian complying regulated self managed superannuation fund or to have Contributions made on behalf of that person without contravening the Act.

**"Employee"** means a person who is an employee within the meaning of section 12 of the SGA Act.

**"Employer"** means any employer or its associates as defined in the Tax Act who is admitted by the Trustee to participate as an employer-sponsor of the Fund or from whom the Trustee accepts an Employer Contribution, and includes an Employer specified in the Schedule.

**"Employer Contribution"** means a gross payment to the Fund made as an employer contribution on behalf of a Member by the Member's Employer.

**"Family Law Act"** means the Family Law Act 1975 (Cth).

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

**"Fixed Term Pension"** means a pension payable for a fixed term based on the life expectancy of the primary Pensioner or his or her Spouse that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(7) and 1.07B.

**"Flexi Pension"** means a pension (also known as a "commutable lifetime pension") that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(6) and 1.07B.

**"Founder"** means the party named as the Founder in this Deed or any person who subsequently assumes the role of Founder under this Deed.

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

- (a) a person who is an Employee;
- (b) if the person has reached age 65, the person has been so employed or self-employed on at least a part time basis during the Financial Year, by having worked at least 40 hours in a period of not more than 30 consecutive days in that Financial Year; or
- (c) any other meaning of "Gainfully Employed" under the Act.

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

**"Income Tax Act"** means the Income Tax Assessment Act 1936 (Cth) and Income Tax Assessment Act 1997 (Cth).

**"Individual Trustee"** means a Trustee who is an individual, and if more than one, each of them.

**"Insurer"** means any insurer or assurer selected by the Trustee to obtain a Policy of Insurance under this Deed.

**"Investment Strategy"** means an investment strategy as required by the Act.

**"Legal Personal Representative"** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person.

**"Lifetime Pension"** means a pension payable for the lifetime of the primary Pensioner that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(2) and 1.07B.

**"Market-Linked Pension"** means a market-linked pension (also known as a "Term Allocated Pension" or "Growth Pension") as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulations 1.06(8) and 1.07C.

**"Member"** means a person admitted to membership of the Fund under this Deed and **"Membership"** means membership of the Fund.

**"Member Contribution"** means a gross payment to the Fund made by a Member as a contribution.

**"Nominated Beneficiary"** means a person nominated in writing by a Member as the desired recipient of a Benefit that is or becomes payable following the death of that Member, and includes a person nominated in a Beneficiary Nomination; or a person nominated under any other circumstances; but the nominated person must be either a Dependant or Legal Personal Representative of the deceased Member at the time of death.

**"Non-commutable Allocated Pension"** means a non-commutable allocated pension as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

**"Non-commutable Income Stream"** means a non-commutable income stream as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

**"Non-commutable Pension"** means a non-commutable pension (including pensions known as a "Non-commutable Market-Linked Pension" or a "Non-commutable Term Allocated Pension") as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

**"Non-concessional Contributions Cap"** has the meaning given by section 292-85 of the Income Tax Act.

**"Non-lapsing Binding Nomination"** means a written nomination howsoever called given by a Member to the Trustee directing how the Trustee is to pay all or part of a Benefit in respect of the Member on the death of the Member, but if the Fund is not a self managed superannuation fund either at the time that:

- (a) the nomination is made; or
- (b) the Trustee is to act on the nomination;

the Trustee must have consented to the nomination under s. 59(1)(a) of the SIS Act and this Deed at the time of paying the Benefit in accordance with the nomination.

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

**"Pension"** means a Benefit that is provided by the Fund as a pension or superannuation income stream in accordance with the Act, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and includes an Old-Age Pension, an Account-Based Pension, an Allocated Pension, a Lifetime Pension, a Fixed Term Pension, a Flexi Pension, a Market-Linked Pension, a Non-commutable Allocated Pension, Non-commutable Pension and Non-commutable Income Stream, or Transition to Retirement Income Stream, as described in this Deed or any other pension or superannuation income stream as described in or defined by the Act.

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

**"Permanent Incapacity"** in relation to a Member:

- (a) who has ceased to be Gainfully Employed, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Permanent Incapacity" (or the term "Total and Permanent Disability" or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or

(c) means permanent incapacity as defined in the Act;

and "**Permanently Incapacitated**" has a corresponding meaning.

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

"**Prescribed Event**" means a condition of release or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Act.

"**Privacy Act**" means the Privacy Act 1988 (Cth).

"**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 concerns the Fund or this Deed.

"**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 Officer**" means a director, secretary or other executive officer as defined by the Corporations Act of a Corporate Trustee.

"**Rollover Payment**" means any payment of a Member's Benefit rolled over by the Trustee within the Fund or to any other Approved Superannuation Entity or payment rolled over to the Trustee on behalf of a Member from any Approved Superannuation Entity.

"**RSA Act**" means the Retirement Savings Account Act 1996 (Cth.).

"**SGA Act**" means the Superannuation Guarantee (Administration) Act 1992 (Cth.).

"**SIS Act**" means the Superannuation Industry (Supervision) Act 1993 (Cth.).

"**SIS Regulations**" means the Superannuation Industry (Supervision) Regulations 1994 (Cth.).

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

"**Spouse Contribution**" means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted by the Act.

**"SSA Act"** means the Small Superannuation Accounts Act 1995 (Cth.).

**"Superannuation Lump Sum"** means a Benefit that is not a superannuation income stream benefit that is paid from a superannuation income stream within the meaning of the Tax Act.

**"Taxation"** means any tax, surcharge, levy, impost or duty, that is paid or payable by, or allowable taxation deduction to, the Trustee on behalf of the Fund or any Member or any Beneficiary in respect of any Benefit, or any person in respect of any Contribution, including income tax, capital gains tax, payroll tax, land tax, tax on eligible termination payments, surcharge pursuant to the Surcharge Acts and stamp duty.

**"Temporary Incapacity"** in relation to a Member:

- (a) who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental), that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Temporary Incapacity" (or the term "Temporary Disability" or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means temporary incapacity as defined in the Act;

and **"Temporarily Incapacitated"** has a corresponding meaning.

**"Three Year Binding Nomination"** means any written nomination howsoever called given by a Member to the Trustee directing how the Trustee is to pay all or part of a Benefit in respect of the Member on the death of the Member, which is made under and complies with s. 59(1A) of the SIS Act and regulation 6.17A of the SIS Regulations.

**"Transition to Retirement Income Stream"** means a pension that meets the definition, description and standards of a transition to retirement income stream under the SIS Regulations, and specifically Regulations 1.06(9A) and 6.01(2).

**"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.

**"Trustee Act"** means the Trustee Act 1958 (Vic) or the equivalent legislation of any other State or Territory of Australia relating to trustees and which is applicable to the Trustee.

**"Unclaimed Money Act"** means the Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth.).

## 1.2 **Defined Terms in the Act**

An expression used in this Deed which is defined in the Act and is not otherwise defined in this Deed, has the same meaning in this Deed unless the context otherwise requires.

## 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) A reference to the singular includes the plural and vice versa;
- (c) A reference to a gender includes any gender;
- (d) A reference to 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, consolidating 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 and permitted assigns;
- (j) A covenant or agreement on the part of two or more persons binds them jointly and individually;
- (k) A reference to "\$" or "Dollars" means the lawful currency of the Commonwealth of Australia.

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

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

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

- (a) to obtain and maintain the status of an Australian complying regulated self managed 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 deemed to be included in this Deed.

#### **3.2 Trustee must Comply with Act**

To the extent that any relevant requirements of the Act impose obligations upon the Trustee in carrying out the role of Trustee of the Fund, the Trustee must comply with those obligations. Without limitation to foregoing, in relation to the Trustee's exercise of its powers, discretions, authority and obligations relevant to the management, administration and control of the Fund under this Deed:

- (a) the Trustee may do anything that it is permitted to do or not restricted from doing under the Act;
- (b) the Trustee must do everything that it is required to do under the Act in order to satisfy a relevant requirement of the Act; and
- (c) the Trustee must refrain from doing anything that it is prohibited from doing under the Act, or which would cause a breach of, or non-compliance with, a relevant requirement of the Act.

#### **3.3 Inconsistency between Deed and Act**

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

### **4. GOVERNING LAW**

This Deed is governed by 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.

## 5. TRUSTEE HOLDS FUND ON TRUST

The Trustee must hold the Fund 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 consists of all cash, monies, investments and other property held by or on account of the Trustee under this Deed including:

- (a) Contributions made to the Fund under this Deed;
- (b) any other monies or assets (including Rollover Payments) paid or transferred to the Trustee under this Deed;
- (c) income arising from investments of the Fund;
- (d) any accretions to or profits arising from investments of the Fund;
- (e) 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;
- (f) the proceeds (including bonuses) of any Policy of Insurance received by the Fund; and
- (g) any other monies property or investments which are or become held by or on account of the Trustee on the trusts of this Deed.

## 7. ELECTION TO BE AUSTRALIAN COMPLYING REGULATED SELF MANAGED SUPERANNUATION FUND

### 7.1 Trustee must give Notice of Election

The Trustee must 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 must have:

- (a) the sole or primary purpose of providing Old-Age Pensions (notwithstanding that the Fund may also provide other ancillary Benefits as specified in this Deed); **AND, OR IN THE ALTERNATIVE,**
- (b) a Corporate Trustee as the Trustee of the Fund.

### 7.3 **No Amendment to Change Purpose**

Notwithstanding any other provision in this Deed to the contrary, the Trustee must not make or allow to be made any amendment to this Deed which 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, OR IN THE ALTERNATIVE,**
- (b) a Corporate Trustee.

### 7.4 **Fund to be "Australian Complying Regulated Self Managed Superannuation Fund"**

- (a) The Trustee and Founder intend that the Fund will maintain, and operate in a manner that satisfies, each of the elements of an Australian complying regulated self managed superannuation fund as defined in this Deed.
- (b) The Trustee must procure and ensure that any relevant requirements of the Act for an Australian complying regulated self managed superannuation fund are satisfied and complied with, including any requirement as to:
  - (i) the composition or structure of the Trustee, the Members or the relationship between them;
  - (ii) the acceptance of Contributions by or on behalf of Members; and
  - (iii) the ordinary location of the management and control of the Fund.

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

If required by the Act, the Trustee must 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 (TFN);
- (b) for an Australian Business Number (ABN); and
- (c) if applicable, for registration for Goods & Services Tax (GST).

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

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

Subject to clause 7, the office of the Trustee must be held by:

- (a) two or more Individual Trustees; or

- (b) a Corporate Trustee.

## 8.2 **Compliance with the Act**

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

## 8.3 **Founder and Members to Appoint and Remove Trustee**

The Founder 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 by notice in writing given to that person or company provided that, in the case of an appointment, the person or company has consented in writing to the appointment and is not disqualified from so acting; and
- (b) must ensure that any vacancy in the office of the Trustee is filled in a manner and within the time required by the Act.

An Individual Trustee or any Corporate Trustee or any Director of any Corporate Trustee must do all things necessary to implement and act in accordance with a notice of removal that it or he receives under this clause.

## 8.4 **Cessation from Office of Individual Trustees or Responsible Officers of Corporate Trustee**

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

- (a) upon the resignation of that person by notice in writing given to the Founder and all other Individual Trustees or Directors of a Corporate Trustee, as the case may be;
- (b) upon the removal of that person under clause 8.3 by notice in writing given to that person;
- (c) upon that person becoming disqualified within the meaning of the Act;
- (d) upon the death of that person, subject to clause 8.8;
- (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 the person.

#### **8.5 Cessation from Office of Corporate Trustee**

A company ceases 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;
- (b) upon the removal of that company as Corporate Trustee under clause 8.3 by notice in writing given to the company;
- (c) upon the company being disqualified from holding office as Corporate Trustee within the meaning 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 8.4 or pursuant to any requirement of the Act at all times during the immediately preceding period of 28 days.

#### **8.6 Trustee may be a Member**

An Individual Trustee or Responsible Officer of a Corporate Trustee is not disqualified from also being a Member or from exercising rights or deriving any Benefit as a Member.

#### **8.7 Consent to Appointment**

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

#### **8.8 Legal Personal Representative of Deceased Person**

If a person who is an Individual Trustee or Director of a Corporate Trustee dies, the Legal Personal Representative of that person may act in place of that person during the period commencing on the date of death and ending not later than the date on which a Death Benefit commences to be payable from the Fund in respect of that person.

## 8.9 Continuity of Office

A person who ceases to be an Individual Trustee or who is a Director of a company that ceases to be a Corporate Trustee must do everything reasonably necessary or required of that person to vest the Fund in the new or remaining Trustee and to deliver all records and other books in that person's possession or control to the new or remaining Trustee.

## 8.10 Trustee Declaration of Obligations and Responsibilities

- (a) A person must within 21 days after being appointed as an Individual Trustee or Director of a Corporate Trustee sign a declaration in the approved form under section 104A of the SIS Act that the person understands his or her duties as an Individual Trustee or Director of a Corporate Trustee.
- (b) A person who is an Individual Trustee or Director of a Corporate Trustee must ensure that, within 21 days after another person ("other person") is appointed as an Individual Trustee or Director of a Corporate Trustee, the other person signs a declaration in the approved form under section 104A of the SIS Act that the other person understands his or her duties as an Individual Trustee or Director of a Corporate Trustee.
- (c) The person and the other person referred to in paragraphs (a) and (b) must ensure that the declarations made under this clause by the person or other person are:
  - (i) retained for so long as is relevant and in any case for at least 10 years; and
  - (ii) available for inspection by the relevant Responsible Authority upon request.

## 9. PROCEEDINGS OF TRUSTEE

### 9.1 Meetings

- (a) The Trustee may meet, adjourn and regulate its meetings as the Trustee sees fit.
- (b) In the case of a Corporate Trustee, if the terms of its Constitution are inconsistent with the terms of this Deed, the terms of this Deed will prevail to the extent of the inconsistency.
- (c) Without limiting the foregoing, any Individual Trustee or Director of a Corporate Trustee may call a meeting by giving at least 14 days notice in writing to each other Individual Trustee or Director of a Corporate Trustee specifying:
  - (i) the date, time and place for the meeting;

- (ii) the agenda and proposed resolutions for the meeting.

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

- (a) A meeting of the Trustee must only exercise any powers or discretions exercisable by the Trustee under this Deed if a Quorum is present.
- (b) The Quorum is the number of persons representing at least 66% in 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 **Passing of Resolutions at Meetings**

- (a) All matters affecting the Fund arising at a meeting of the Trustee must be determined by resolution. No resolution will be effective unless carried by a simple majority, or if the Act requires a particular majority, by that majority.
- (b) A written resolution signed by a Chairperson of the Trustee will be *prima facie* evidence of an effective resolution passed at a meeting of the Trustee duly convened and held.
- (c) A copy of that written resolution must 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 that resolution is made.

## 9.4 **Attendances at Meeting when not present in Person**

An Individual Trustee or a Director of a Corporate Trustee may participate in a meeting of the Trustee without attending the meeting in person by means of any suitable and appropriate communications equipment provided that all persons participating in the meeting can hear each other. Participation in this way will be deemed to constitute presence in person at the meeting.

## 9.5 **Circular Resolutions**

A written resolution signed by all Individual Trustees or by all Directors of a Corporate Trustee will 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 will 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 notice given to him pursuant to a resolution passed by the Trustee.

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

The Chairperson may 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 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 has one vote on any question.
- (b) The Chairperson does not have a casting vote on any question.
- (c) The Founder may direct, either prior to or immediately following the vote on any question, that the vote be cast or recast, as the case may be, with each person having a number of votes corresponding to the withdrawal benefit amount of that person's Benefit in the Fund.
- (d) If a resolution concerns the exercise of discretion by the Trustee concerning the payment of a Death Benefit following the death of a Member and where the Member has not left a Beneficiary Nomination or has left a Beneficiary Nomination which is not valid, either:
  - (i) the resolution requires a unanimous decision of all Individual Trustees or Directors of a Corporate Trustee including the Legal Personal Representative representing the deceased Member; or
  - (ii) in the absence of a unanimous decision of all Individual Trustees or Directors of a Corporate Trustee including the Legal Personal Representative of the deceased Member, the resolution of the Trustee shall be to pay the Death Benefit to the Legal Personal Representative of the deceased Member.

### 9.9 Minutes of Meeting

- (a) The Trustee must keep or cause to be kept proper minutes of meetings of the Trustee which are entered in a book maintained for that purpose.
- (b) The Trustee must endeavour to ensure that all minutes of meetings 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 a simple majority.
- (c) The minutes of any meeting once signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting will be *prima facie* evidence of the matters stated in those minutes.
- (d) The Trustee must retain the minutes of meetings for at least the minimum period required by the Act.

### 9.10 Items for Consideration

Subject to clause 9.1, the Trustee must endeavour to ensure that meetings regularly consider, amongst other things and so far as relevant, 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 Benefits;
- (e) any complaints or enquiries made by Members;
- (f) any conflicts of interest; and
- (g) that the Trustee and the Fund are complying with the Act.

### 9.11 **Constitution of Corporate Trustee**

If the Trustee is a Corporate Trustee and any part of this Deed is inconsistent with the Constitution of the Trustee, the Trustee's Directors agree that, and will use reasonable endeavours to procure the agreement of the shareholders of the Trustee that, the inconsistent part of this Deed prevails over the Constitution, unless giving effect to the inconsistent part of this Deed would be contrary to the Corporations Act.

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

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

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion by the Trustee.

### 10.2 **Unfettered Discretion**

The Trustee has an absolute and unfettered discretion and is not bound to act subject to the direction of any other person (unless otherwise expressly required by the Act) in the exercise or non-exercise or partial exercise of any power or discretion by the Trustee.

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

The decision of the Trustee in relation to any dispute on the interpretation of this Deed or the rights or obligations of a Member or the Trustee or any other person under this Deed will be final and binding on all interested persons.

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

Unless permitted by the Act, a discretion given to the Trustee must not be exercised by the Founder or any other person 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 will not personally be liable for any claim, liability, cost, loss, damage or expense incurred by 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 does not exempt the Trustee from, and the Trustee will be liable for, any claim, liability, cost, loss, damage or expense which is a direct 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 of 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 must be indemnified out of the Fund for all liabilities incurred by the Trustee in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions given to the Trustee in this Deed or by the Act.
- (b) This indemnity does not extend to any liability of the Trustee arising in circumstances described in clause 11.2.

### 11.4 Indemnity of Director

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

### 11.5 Lien on Fund to Satisfy Indemnity

The Trustee may exercise a lien on and use any assets of the Fund for the purposes of satisfying the indemnity given to the Trustee provided that the existence or exercise of the lien does 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 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 the 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, and 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 access to any information or any documents which are prescribed by the Act; and
- (i) to comply with any other covenant that is prescribed by the Act.

**13. COVENANTS BY DIRECTORS OF A CORPORATE TRUSTEE**

- (a) If the Fund has a Corporate Trustee, each of its Directors covenant to exercise a reasonable degree of care and diligence for the purpose of ensuring that the Trustee carries out the covenants described in clause 12.
- (b) 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.
- (c) The reference in this clause to a reasonable degree of care and diligence refers 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 and Consents**

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 the Directors, as the case may be.

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

The Trustee must keep, and retain for as long as relevant and 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. The Trustee must, if requested, make those copies available for inspection by the Responsible Authority.

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

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

An Eligible Person may apply to the Trustee to become a Member of the Fund or the Trustee may invite an Eligible Person to become a Member of the Fund. The Trustee has discretion in deciding whether or not to accept an Eligible Person as a Member.

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

The Trustee may require as a condition of accepting an Eligible Person as a Member that the Eligible Person completes a written application in the form that the Trustee determines. The application form may make provision for:

- (a) all information which is required by the Act to be provided by the Trustee to the applicant and 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 acknowledgement by the Trustee and/or Employer; and
- (c) the applicant providing the nomination of a Nominated Beneficiary.

##### 15.3 **Acceptance of Membership Application**

If the Trustee accepts an application for membership, the applicant becomes a Member of the Fund on a date determined by the Trustee or, if the Trustee does not make a determination, on the date the application for membership is accepted by the Trustee.

**15.4 Deemed Acceptance of Application**

Notwithstanding clause 15.2, even if a completed written application for membership is not provided by an applicant, the payment of a Contribution by or on behalf of an applicant and the acceptance by the Trustee of that Contribution will be deemed to be acceptance of that applicant as a Member on the date that the Contribution is accepted by the Trustee.

**15.5 Members Bound by Deed**

Every Member is deemed to have consented to be bound by this Deed as it relates to the rights and obligations of the Member.

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

The Trustee must notify each Member in writing of that Member's rights to receive Benefits from the Fund and of any other information in the form and at the times required by the Act.

**15.7 Trustee May Impose Conditions on Members**

The Trustee may impose, remove or vary any conditions on the rights and obligations of a Member.

**15.8 Classification of Different Classes of Members**

- (a) The Trustee may classify Members into different classes of membership with rights and entitlements pertaining to each class as the Trustee may determine from time to time.
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights and entitlements pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as ordinary Members in one class of membership.

**16. MEETINGS OF MEMBERS****16.1 Members may Convene Meeting**

The Members may convene, meet, adjourn and regulate a meeting of Members as the Members see fit.

**16.2 Trustee Convening Meeting**

The Trustee may convene a meeting of Members and must convene a meeting of Members upon receiving a written notice of request for a meeting from the Founder or a Member.

**16.3 Notice of Meeting**

The Trustee convenes a meeting of Members by sending a notice of meeting to each Member specifying:

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

The notice must be accompanied by a form of proxy approved by the Trustee.

**16.4 Service of Notice**

The Trustee must 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 ordinary mail, and if by mail, notice will be deemed to have been given 3 days after the date of posting.

**16.5 Chairperson**

The Members may at the commencement of the meeting appoint a Chairperson of the meeting.

**16.6 Voting Entitlement**

- (a) Subject to clause 16.6(b), each Member is entitled to one vote, and the Chairperson does not have a casting vote in addition to the vote of the Chairperson as a Member.
- (b) Any Member may require, either prior to or immediately following the vote on any resolution, that the vote be cast or recast, as the case may be, with each Member having such number of votes corresponding to the amount of the Benefit in the Fund that the Member holds at the time of the vote, where each dollar of the withdrawal benefit equates to one vote.

**16.7 Trustee to Oversee Meeting**

The Trustee may oversee the conduct of the meeting of Members and must keep minutes of the meeting of Members.

## 17. CESSATION OF MEMBERSHIP

### 17.1 Triggering Events

A person ceases to be a Member of the Fund on the first to occur of the following:

- (a) the date on which payment of all the Member's Benefits is made or dealt with by the Trustee to or on behalf of the Member;
- (b) the date of death of the Member;
- (c) the date that the Trustee reasonably determines in accordance with any relevant requirement of the Act.

### 17.2 Member's Rights not Affected

A Member's cessation of Membership will not affect or exclude:

- (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

If requested by the Trustee, a Member must provide to the Trustee any information that the Trustee considers necessary or desirable for the purposes of any investigation or otherwise in connection with the Fund, including undergoing medical examination by a medical practitioner acceptable to the Trustee.

### 18.2 Member's Failure to Comply

If a Member fails to comply with the request by the Trustee, 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 any other conditions on the membership of that Member as the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

### 18.3 Information Incorrect or Misleading

If a Member provides information to the Trustee which affects or is likely to affect the Benefit 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 Benefit of that Member in a manner that the Trustee considers necessary or appropriate, but subject to the requirements of the Act.

#### 18.4 Tax File Numbers of Members

The Trustee may request a Member's Tax File Number in a manner and form permitted by the Act or the Responsible Authority. The Member is not obliged to comply with the request. If a Member quotes his or her Tax File Number to the Trustee, the Trustee must record, retain, 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 Members Updated Information to Trustee

Members may at any time give the Trustee updated information about their details such as address, marital status, status of Gainful Employment, Dependants and/or Nominated Beneficiaries.

### 19. DISCLOSURE AND REPORTING TO MEMBERS

#### 19.1 General Requirement

The Trustee must provide each Member with information in writing in relation to the main features, benefits, risks and conduct of the Fund, the financial condition and investment performance of the Fund, the Benefit of the Member, Contributions to the Fund, and any other matters that the Trustee determines is required by the Act.

#### 19.2 Specific Requirements

If required by the Act, the information that the Trustee is to provide may include:

(a) **New Members**

information to a person on becoming a Member;

(b) **For each Financial Year**

information to each Member in respect of each Financial Year of their membership;

(c) **Significant Events and Material Changes**

information to each Member in respect of any significant event and material changes in relation to the Fund;

(d) **Information on Request**

information to a Beneficiary (including a Member) on request by the Beneficiary if the Beneficiary reasonably requires the information for the purposes of:

- (i) understanding any Benefit that the Beneficiary may have, has or used to have;

- (ii) understanding the main features of the Fund;
  - (iii) making an informed judgment about the management and financial condition of the Fund;
  - (iv) making an informed judgment about the investment performance of the Fund; or
  - (v) understanding the particular investments of the Fund;
- (e) **Cessation of Membership**
- information to a Member, or if the Member has died, to each Beneficiary receiving a Benefit as a result of the death of the Member, in respect of the Member's cessation of membership; and
- (f) **Superannuation Splitting under Family Law Act**
- information in respect of any splitting of a Member's Benefit under the Family Law Act.

### 19.3 **Limitation on Disclosure**

Unless required by the Act, the Trustee is not required to disclose:

- (a) internal working documents of the Fund; or
- (b) information or documents that would disclose personal information of another person if, in the circumstances, the disclosure would be inappropriate or unreasonable; or
- (c) trade secrets or confidential information having commercial value that would be reduced by the disclosure; or
- (d) information or documents for which the Fund owes another person a duty of non-disclosure.

### 19.4 **What, When and How Information is Provided**

The Trustee must comply with the Act in relation to any information that is required to be disclosed as to:

- (a) what information is provided;
- (b) when the information is provided; and
- (c) how the information is provided.

**19.5 Product Disclosure Statements – Information Knowledge of Members**

The Trustee may assume that a Member has received, or has, and knows that they have, access to, all of the information that a product disclosure statement would be required to contain, unless the Member is able to satisfy the Trustee on reasonable grounds to the contrary.

**20. GENERAL POWERS OF THE TRUSTEE****20.1 Trustee has Complete Management and Control**

The Trustee has complete management and control of all matters concerning the Fund, subject to this Deed and the requirements of the Act.

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

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 discretions, powers and obligations under the Deed.

**20.3 Powers Additional to Powers Given under the Act**

The Trustee's powers and discretions under this Deed are additional to, and not in substitution for, the powers and discretions exercisable by the Trustee under the Act.

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

Subject to clause 23, the Trustee has 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, 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;

**21.7 Seek Advice**

To act on the advice of any Qualified Advisor (whether or not that advice 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 that 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 and 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 Rates and Taxes**

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 the Fund;

**21.12 Lease Property**

To lease or sub-lease any property (whether 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 manner as the Trustee may consider desirable;

**21.14 Undertaking 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 to provide for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender vary or assign or otherwise deal with any Policy of Insurance 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 a part of the Pension payable in respect of a Member;

**21.18 Insurance of Property**

To insure and keep insured any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

**21.19 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 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 complies with the Investment Strategy and the Act.

### 22.2 Specific Investment Powers of the Trustee

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 may 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 whether 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 deal with any investment of the Fund as authorised by this Deed as fully and effectively as a person absolutely and beneficially entitled to and dealing with his own property may do so.

### 22.4 The Trustee may have Interest in Investments

- (a) The Trustee may make or vary any of the investments authorised under this Deed even if 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 must disclose details of their interest in any investment in any manner that is required by 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 obtain a Policy of Insurance and may specify the type of Policy of Insurance to be obtained. The Trustee has no responsibility to the Member or the Dependents of the Member to obtain that 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 obtained; or
  - (iii) the Equalisation Account;in such proportions and manner as the Trustee may determine from time to time.
- (d) The Trustee and the Fund are not liable for any loss suffered by the Fund or any Member or Beneficiary as a result of:
  - (i) no or insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
  - (ii) an insurer failing to pay out on an insurance policy in whole or in part for whatever reason.

## 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, 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 other property of the Fund;
- (n) the costs (including commissions, fees, charges and duties payable) of making the proposed investment; and
- (o) the results of a 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 or the Trustee to be in breach of any relevant requirement of the Act.

**23.2 Borrowing by the Trustee**

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

**23.3 Lending to Members**

The Trustee must 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 a relative of a Member except in a manner 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 a manner 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
- (b) if the parties are not dealing with each other 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 must if required by the Act formulate and prepare an Investment Strategy which sets out the investment objectives of the Fund and the policy to achieve those objectives and incorporates any other matters which are necessary for the Trustee to comply with the Act.

**23.7 Member Investment Choice**

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").

- (a) The Trustee must give directions to the Members (or each Member 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 changed;
  - (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 the class of Members), unless it is a condition of membership that the Member must choose a particular Investment Strategy or combination of Investment Strategies.
- (b) 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 in 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.
- (c) If the Trustee offers Member Investment Choice, the Trustee must if required by the Act advise the Responsible Authority of the number of Investment Strategies which are offered as choices.
- (d) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. If so, the Trustee must:
- (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) if required by the Act, the Trustee has adopted an appropriate risk management statement; 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 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 under the Act does not exceed more than the allowable prescribed percentage of the Fund's total assets (calculated on market value) and does not contravene any other restriction of the Act.

### **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 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 the investment satisfies the Investment Strategy of the Fund.

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

The Trustee must record any investments attributable to the Member and all revenue and expenses in respect of the investment must be credited or debited as the case may be directly to the relevant Member's Accumulation Account.

#### **24.3 Variation to the Investment**

The Trustee may accept or reject a request from a 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 is required by the Act, the Trustee must obtain a valuation of the Fund. The valuation must be reflected in 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 a manner and on terms that the Trustee thinks fit.

#### 26.2 **Variation or Revocation to Delegation**

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

#### 26.3 **Delegation Subject to the Act**

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

#### 26.4 **Scope of Delegation**

The Delegate may only perform those duties and only has those powers that the Trustee expressly delegates to the Delegate.

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

#### 27.1 **Actuary**

The Trustee must if necessary appoint an Actuary to provide actuarial advice from time to time.

#### 27.2 **Auditor**

- (a) The Trustee must appoint in writing an Auditor to perform an audit of the Fund under the Act.
- (b) The Trustee must 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 Members' Benefits.

#### 27.3 **Custodian**

The Trustee may appoint in writing a Custodian to carry out 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 of the investments of the Fund subject to compliance 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 to provide to the Trustee appropriate information on the making of, and return on, the investments and to provide any other information that is necessary to enable the Trustee to assess the performance and capability of the Investment Manager in managing the investments of the Fund.
- (c) The Trustee must use 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 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 any Qualified Advisors to give advice that the Trustee considers 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 under this clause.

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

#### 28.1 **No Right to Charge Fees**

For as long as the Fund is a self managed superannuation fund under section 17A of the SIS Act:

- (a) no Individual Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee

duties or services performed by the Individual Trustee in that capacity in relation to the Fund;

- (b) no Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Corporate Trustee in that capacity in relation to the Fund; and
- (c) no Director of the Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person (including the Corporate Trustee) for any trustee duties or services performed by the Director in that capacity in relation to the Fund.

## 28.2 Indemnity and Reimbursement

The Trustee is 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 under this Deed;
- (c) all 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 must establish and maintain accounting records in a form that:

- (a) correctly records and explains the transactions and financial position of the Fund;
- (b) enables the annual accounting statements to be prepared in accordance with clause 30;
- (c) enables the annual returns of the Fund to be prepared and lodged in accordance with the Act;

- (d) enables those accounting records to be conveniently and properly audited in accordance with this Deed and the Act.

## 29.2 **Retention of Accounting Records**

The Trustee must retain the accounting records for at least the minimum period required by the Act after the end of the Financial Year to which the accounting records relate.

## 30. **ACCOUNTING STATEMENTS**

### 30.1 **Preparation**

The Trustee must 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) any other accounting statements that are required by the Act.

### 30.2 **Signature**

The accounting statements must be signed by or on behalf of the Trustee in a manner required by the Act or as otherwise permitted by law.

### 30.3 **Retention**

The Trustee must retain the accounting statements for the minimum period 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 must be audited by an Auditor appointed by the Trustee.

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

The Trustee must give the Auditor access to any accounting records and accounting statements and other documents and information connected with the Fund as requested by the Auditor to enable the Auditor to complete the audit.

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

The Trustee must in respect of each Financial Year and within the time required 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 or 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 must, if required by the Act, establish and maintain arrangements for complaints and enquiries by Members.

**33.2 Rights of Beneficiaries**

A Beneficiary has the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to that Beneficiary.

**33.3 Trustee to Deal within 90 Days**

The Trustee must deal with any enquiries or complaints 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 an event having a significant adverse effect on the financial position of the Fund, the Trustee must if required by the Act 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 Event**

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. **ACCUMULATION ACCOUNTS**

#### 35.1 **Separate Member Accumulation Accounts**

The Trustee must establish and maintain an Accumulation Account in respect of each Member.

#### 35.2 **Credits to Accumulation Accounts**

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

- (a) Contributions made by or on behalf of the Member;
- (b) the proceeds of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee;
- (c) any amount transferred or rolled over to the Fund from another Approved Superannuation Entity in respect of the Member;
- (d) the investment return (if positive) of the Member's Benefit as determined by the Trustee and transferred from the Income Account;
- (e) any amounts transferred from a Pension Account in respect of a Member; and
- (f) any other amounts as the Trustee may from time to time determine.

#### 35.3 **Debits to Accumulation Accounts**

The following amounts may be debited to the appropriate Accumulation Account of a Member:

- (a) any Benefit paid to a Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of the Member;
- (e) the 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;

- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (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 in respect of a Member; and
- (i) any other amounts as the Trustee may from time to time determine.

### 36. **INCOME ACCOUNT**

#### 36.1 **Establishment**

The Trustee must establish and maintain an Income Account for the Fund as the Trustee sees fit.

#### 36.2 **Credits**

The Income Account may be credited with the following:

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

#### 36.3 **Debits**

The Trustee may 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 if the Trustee determines that the 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 is not otherwise debited to a Member's Accumulation Account;
- (f) any income transferred to the Equalisation Account; and
- (g) any other amount as the Trustee may from time to time determine.

### **37. EQUALISATION ACCOUNT**

#### **37.1 Establishment**

The Trustee may establish and maintain an Equalisation Account as the Trustee sees fit.

#### **37.2 Credits**

Subject to the requirements of the Act, the Trustee may credit the Equalisation Account with:

- (a) an amount transferred from the Income Account; or
- (b) any part of an Insured Component that the Trustee determines to credit to the Equalisation Account; or
- (c) any reserves or any other amount which the Trustee so determines in the Trustee's discretion.

#### **37.3 Investment Return on Equalisation Account**

Any amount held in the Equalisation Account does not form part of any Accumulation Account or Pension Account and any investment return (positive or negative) derived by the Fund on the Equalisation Account shall be credited or debited to the Equalisation Account from the Income Account.

#### **37.4 Purpose and Use includes Reserves**

- (a) The Equalisation Account may be used by the Trustee for the purpose of:
  - (i) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy; or

- (ii) the benefit of any Member or Beneficiary or former Member or Beneficiary, including augmenting an Accumulation Account on any basis that does not breach the Act; or
  - (iii) for such other purposes that are not prohibited by this Deed or the Act as the Trustee may determine in its discretion.
- (b) The Trustee may create and operate separate Equalisation Accounts dealing with:
  - (i) investment reserves;
  - (ii) contribution reserves;
  - (iii) miscellaneous reserves;
  - (iv) pension reserves; or
  - (v) any other reserve that is permitted by the Act.

### **38. CALCULATION OF INVESTMENT RETURN AND EARNINGS**

- (a) Following each Balance Date, the Trustee may determine the investment return and investment earnings of the Fund for that Financial Year.
- (b) Subject to the requirements of the Act, the Trustee must determine the investment return to be credited or debited to a Member's Benefit in a way that is fair and reasonable as between all the Members of the Fund and the various kinds of Benefit of each Member of the Fund.
- (c) At any point in time during a Financial Year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the Fund for the purpose of applying that investment return in calculating the withdrawal benefit of a Member at that time.

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

#### **39.1 Application to Participate**

Any person who is an employer-sponsor may on the invitation of the Trustee or Founder make application to the Trustee to be admitted as an Employer for the purposes of participating in the Fund.

#### **39.2 Approval by Trustee**

An application by a proposed Employer to participate must be in a form that the Trustee determines and the acceptance or rejection of the application is at the discretion of the Trustee.

**39.3 Execution of Participating Employer Admission Form**

If the Trustee accepts a proposed Employer's application to participate in the Fund, the Trustee may request the Employer to execute a Participating Employer Admission Form as determined by the Trustee. Upon execution, the Employer is admitted as an Employer subject to the terms of this Deed and the Form.

**39.4 Employer May Contribute**

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

**39.5 Deemed Admission**

Notwithstanding any other provision in this Deed to the contrary, the Trustee may not compel a proposed Employer to become a participating employer-sponsor of the Fund, and the acceptance by the Trustee of an Employer Contribution from a proposed Employer will be deemed to constitute the Employer's admission as a participating employer-sponsor of the Fund.

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

In the event that an Employer is reconstructed or merges or amalgamates with another Employer, the transfer of service by a Member as an Employee of the former Employer to the service of a new Employer as a result of the reconstruction, merger or amalgamation will 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. INSOLVENCY OF TRUSTEE**

If a receiver, receiver and manager, official manager, liquidator, voluntary administrator or any other form of insolvency administrator ("the Administrator") is appointed to, or assumes control over all or part of the assets of the Trustee, then:

- (a) notwithstanding anything express or implied to the contrary in this Deed or in the instrument under which the Administrator has been appointed, all authorities, powers and discretions which are by this Deed vested in or exercisable by the Trustee will, for the duration of the appointment of the Administrator, be vested in and exercisable by the Members by resolution on behalf of that Trustee and not by the Administrator until such time as a new Trustee is appointed; and
- (b) the Administrator must do anything reasonably required by the Members to vest the control and assets of the Fund in the new Trustee appointed by the Members, and the Administrator must act in a manner that is fair and reasonable for the benefit of the Members of the Fund.

**42. MEMBER CONTRIBUTIONS**

The Trustee may accept any Member Contribution as long as the Contribution is permitted by the Act.

**43. EMPLOYER CONTRIBUTIONS****43.1 Employer may Contribute**

The Trustee may accept any Employer Contribution in respect of a Member as long as the Contribution is permitted by the Act.

**43.2 Contributions Pursuant to Agreement with Trustee**

If an Employer contributes to the Fund in respect of a Member under any agreement with the Trustee under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer must separately specify to the Trustee the amount of those Contributions under the Agreement and the amount of Contributions (if any) made pursuant to clause 43.1.

**44. OTHER CONTRIBUTIONS**

The Trustee may accept any other Contributions to the Fund made by or in respect of a Member, including any Child Contribution, Government Contribution, or Spouse Contribution as long as the Contribution is permitted by the Act.

**45. PAYMENT OF CONTRIBUTIONS****45.1 No Obligation to Contribute**

A Member does not have any obligation to make a Contribution to the Fund and may remain a Member of the Fund even if a Contribution is not made by or in respect of that Member.

**45.2 Contributions may be in Cash or other Assets**

Any Contribution may 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 in any other way that is not prohibited by the Act.

**45.3 Limitation on Accepting Contributions**

- (a) The Trustee must not accept any Contribution if the acceptance of the Contribution would contravene a requirement of the Act.
- (b) In addition to the Trustee's obligations under paragraph (a), the Trustee must not accept a Member Contribution if:
  - (i) the Member has not quoted the Member's Tax File Number to the Trustee; and

- (ii) that Member Contribution exceeds the amount of the Non-concessional Contributions Cap applicable to the Member.

#### 45.4 Refund of Ineligible Contributions

- (a) If the Trustee becomes aware that a Contribution (or part of a Contribution) has been accepted by the Trustee on behalf of a Member in breach of this clause or the Act, in respect of the Contribution (or such part of the Contribution) that the Trustee was not permitted to accept ("Excessive Contribution"), the Trustee:

- (i) must, if required to do so by the Act; or
- (ii) may, if permitted to do so or if not prohibited from doing so, under the Act;

within 30 days of becoming so aware, and in a manner that is not inconsistent with the Act, refund the Excessive Contribution.

- (b) The amount of the Excessive Contribution that is refunded may be:

- (i) adjusted to take account of any increase or decrease in the value of the Excessive Contribution attributable to the investment of the Excessive Contribution in the Fund during the period from acceptance to refund of the Excessive Contribution; and
- (ii) reduced to account for any reasonable administration costs and transaction costs that are reasonably related to the acceptance of the Excessive Contribution and do not exceed the true cost of an arm's length transaction.

- (c) If the Trustee has accepted an Excessive Contribution and, subject to paragraph (a), elects not to refund the Excessive Contribution, or the Trustee is prohibited by the Act from refunding the Excessive Contribution, to the Member, the Trustee:

- (i) must, if required to do so by the Act; or
- (ii) may, if permitted to do so or if not prohibited from doing so, under the Act;

use and release, in accordance with a release authority under the Tax Act given to the Trustee, so much of the Excessive Contribution from the Member's Accumulation Account balance as is necessary to pay the Fund's liability for the additional tax (including Medicare levy) that is payable in respect of the Excessive Contribution. The balance of the Excessive Contribution must remain in the Member's Accumulation Account in the Fund.

**45.5 Employer to remit Contributions Promptly**

All Contributions made on behalf of a Member (including by an Employer deducting an amount from the salary or wages payable to the Member) must be paid to the Trustee in the manner and within the timeframe required by the Act.

**45.6 Allocation of Contributions**

If required by the Act, all Contributions in respect of a Member received by the Trustee in a month must be allocated to that Member by crediting the Accumulation Account of the Member within 28 days after the end of the month, or if that is not reasonably practicable, within such longer period as is reasonable in the circumstances.

**46. CONTRIBUTION SPLITTING**

The Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member:

- (a) after the end of each Financial Year, in respect of contributions for the previous Financial Year; and
- (b) in the Financial Year in respect of which the contributions are made where the Member is closing the Member's account in the Fund;

with the split amount transferred to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted by the Act.

**47. FUND TO PROVIDE BENEFITS**

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

**48. RETIREMENT BENEFITS****48.1 Entitlement**

A Member is entitled to receive from the Fund a Retirement Benefit when:

- (a) in the case of a Member who has reached a Preservation Age that is less than 60 – if:
  - (i) an arrangement under which the Member was Gainfully Employed has come to an end; and
  - (ii) the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or

- (b) in the case of a Member who has attained age 60 - an arrangement under which the Member was Gainfully Employed has come to an end on or after the Member attained that age or the Trustee is reasonably satisfied that the Member intends never to again become Gainfully Employed, either on a full-time or part-time basis; or
- (c) the Member attains age 65, regardless of whether the Member is or continues to be Gainfully Employed; or
- (d) the Member satisfies any relevant requirements of the Act for the payment of a Benefit notwithstanding that the Member may otherwise continue in Gainful Employment.

#### 48.2 **Amount**

The amount of the Retirement Benefit is the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

#### 48.3 **Manner of Payment - Lump Sum or Pension**

The Member may elect to receive the Retirement Benefit 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 the election, then the Benefit will be paid as a Pension.

### 49. **PRESERVATION AGE BENEFITS**

#### 49.1 **Entitlement**

A Member is entitled to receive from the Fund a Preservation Age Benefit when the Member attains the Member's Preservation Age.

#### 49.2 **Amount**

The Preservation Age Benefit will be the amount determined by the Trustee subject to the requirements of the Act but must not exceed the balance of the Member's Accumulation Account.

#### 49.3 **Manner of Payment - Lump Sum or Pension**

Subject to the conditions of preservation and any other relevant requirements of the Act, the Member may elect to receive the Preservation Age Benefit as any one or more of the following forms (as they are defined in the Act):

- (a) a Transition to Retirement Income Stream;
- (b) a Non-commutable Allocated Annuity;
- (c) a Non-commutable Allocated Pension;
- (d) a Non-commutable Annuity; or

- (e) a Non-commutable Pension.

If the Member does not make the election, then the Benefit will be paid as a Transition to Retirement Income Stream.

## 50. **DEATH BENEFITS**

### 50.1 **Entitlement**

A Death Benefit is payable from the Fund in respect of a Member when the Member dies.

### 50.2 **Amount**

The Death Benefit is:

- (a) the balance of the 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) subject to the requirements of the Act, prior to the death of a Member, the Trustee and that Member may agree 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 balance 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"), and if so agreed, then the Death Benefit payable by the Trustee upon the death of that Member shall be the Other Amount.

### 50.3 **Manner of Payment - Trustee's Discretion**

- (a) A Death Benefit may be paid in a manner that the Trustee determines 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.
- (b) The Trustee must not pay a Death Benefit to a Dependent of a deceased Member as a Pension if doing so is prohibited by the Act.
- (c) Without limitation to clause 50.3(b), if a Member dies on or after 1 July 2007, a Beneficiary shall not be entitled to receive payment of the Member's Benefit as a Pension unless, at the time of the Member's death, the Beneficiary:
  - (i) is a Dependent of the Member within the meaning of the Act; and

- (ii) in the case of a child of the Member:
  - (A) is less than 18 years of age; or
  - (B) being 18 or more years of age:
    - (I) is financially dependent on the member and less than 25 years of age; or
    - (II) has a disability of the kind described in subsection 8(1) of the *Disability Services Act 1986*.
- (d) Except where clause (c)(ii)(B)(II) applies, a Beneficiary who is a child of the deceased Member cannot continue to receive the payment of the deceased Member's Death Benefit in the form of a Pension on becoming 25 years of age, and the Benefit must then be commuted to a Superannuation Lump Sum.

#### 50.4 **Beneficiary Nomination**

- (a) The Trustee must give to any Member who wishes to make a Beneficiary Nomination the information that the Trustee reasonably believes that the Member reasonably needs for the purpose of understanding the Member's rights to make a Beneficiary Nomination in accordance with the Act.
- (b) The Trustee must allow a Member to make a 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 of the Member; and
  - (ii) the form of the Beneficiary Nomination, 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 Beneficiary Nomination to the Trustee may amend or revoke the Beneficiary Nomination 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 Three Year Binding Beneficiary Nomination given to the Trustee ceases 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 Trustee to pay the Death Benefit in accordance with the Beneficiary Nomination, 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 required by sub-clause (e) or the relevant requirements of the Act, the Trustee is not 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 Beneficiary Nomination being invalid 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. Persons to Receive Death Benefits**

- (a) If the Trustee holds a Three Year Binding Nomination or a Non-lapsing Binding Nomination in respect of a deceased Member, 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, are 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) in the case of a Non-lapsing Binding Nomination, and if the Fund is not a self managed superannuation fund, the Trustee must consent to a payment in accordance with the Non-lapsing Binding Nomination;
  - (iv) in the case of a Three Year Binding Nomination, the notice is in a form that complies with the relevant requirements of the Act; and
  - (v) the Beneficiary Nomination is in effect.
- (b) If the Trustee does not hold a Beneficiary Nomination in respect of a deceased Member, 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 death of the Member; or
  - (ii) any one or more of the Dependents 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 may 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 Legal Personal Representative of the deceased Member, then subject to the requirements of the Act, the Trustee must determine that the Death Benefit ceases to be payable and shall be transferred to the Equalisation Account of the Fund.

(d) If the Trustee holds a Beneficiary Nomination which is a Beneficiary Statement of Wishes or a Three Year Binding Nomination which is not valid because it has lapsed or otherwise 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 in the Beneficiary Nomination provided that the Trustee is satisfied that the person was a Dependant of the deceased Member at the time of death of the Member; or

(ii) any 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 may determine in its discretion, but in so doing the Trustee may have regard to the wishes of the deceased Member as to the intended recipient of the Death Benefit evidenced by the Beneficiary Nomination.

## 52. **PERMANENT INCAPACITY BENEFITS**

### 52.1 **Entitlement**

A Member is entitled to receive from the Fund a Permanent Incapacity Benefit if the Member suffers Permanent Incapacity.

### 52.2 **Amount**

The Permanent Incapacity Benefit is:

(a) the balance 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 under this Deed that becomes payable upon the Member suffering Permanent Incapacity and is received by the Trustee; and
- (c) provided that, subject to the requirements of the Act, prior to the Permanent Incapacity of a Member, the Trustee and that Member may agree in writing that the Permanent Incapacity Benefit which becomes payable upon the Permanent Incapacity of the Member is to be an amount other than the aggregate of the balance 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 and received by the Trustee ("the Other Amount"), and if so agreed, then the Permanent Incapacity Benefit payable by the Trustee upon the Permanent Incapacity of that Member must be the Other Amount.

### 52.3 Manner of Payment - Lump Sum or Pension

- (a) The Member may elect to receive the Permanent Incapacity Benefit 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 the election, then the Benefit will be paid as a Pension.
- (b) If a Member is incapable of making an election under this clause, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

## 53. TEMPORARY INCAPACITY BENEFITS

### 53.1 Entitlement

A Member is entitled to receive from the Fund a Temporary Incapacity Benefit if the Member suffers Temporary Incapacity.

### 53.2 Amount

The Temporary Incapacity Benefit is:

- (a) the balance 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 under this Deed that becomes payable upon the Member suffering Temporary Incapacity and is received by the Trustee; and
- (c) provided that, subject to the requirements of the Act, prior to the Temporary Incapacity of a Member, the Trustee and that Member may agree in writing that the Temporary Incapacity Benefit which becomes payable upon the Temporary Incapacity of the Member is to be an amount other than the aggregate of the balance 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 and received by the Trustee ("the Other Amount"), and if so agreed, then the Temporary Incapacity Benefit payable by the Trustee upon the Temporary Incapacity of that Member must be the Other Amount.

### 53.3 **Manner of Payment**

A Temporary Incapacity Benefit must be paid to a Member as a Non-commutable Income Stream in a manner that is required or permitted by the Act.

## 54. **OTHER BENEFIT PAYMENTS**

### 54.1 **Prescribed Event**

A Member is entitled to receive, and to request payment of, any other Benefit that the Trustee is permitted by the Act to pay to the Member upon the Member satisfying a Prescribed Event, including benefits on account of:

- (a) the Member being a temporary resident permanently departing Australia;
- (b) the Member suffering severe financial hardship; or
- (c) compassionate grounds.

### 54.2 **Amount and Manner of Payment**

Unless otherwise expressly provided in this Deed or required or prohibited by the Act, the amount of the Benefit and the manner in which it is paid to or in respect of the Member must be determined by the Trustee subject to the requirements of the Act but must not exceed the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

### 54.3 **Temporary Residents Permanently Departing Australia**

If a Member was the holder of an eligible temporary resident visa within the meaning of the Act that has expired or that has been cancelled and the Member has departed from Australia, the Trustee must upon receiving a request from the Member and being satisfied of the foregoing pay that Member's Benefit to that Member as a single lump sum in a time and manner as permitted by the Act and after withholding or deducting any Taxation or other charges that the Trustee is required or entitled to withhold or deduct.

**55. BENEFITS PAYABLE AS A PENSION****55.1 Payment of Pension**

A Benefit that is payable as a Pension must be paid to the Pensioner as a Pension in accordance with this Deed but always subject to the requirements of the Act.

**55.2 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, subject to the requirements of this Deed and the Act.
- (b) If the Trustee and the Pensioner agree on a particular type of Pension to be provided to the Pensioner (the "Agreed Pension") they must 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 under this clause must be read and construed in conjunction with and will be deemed to form part of this Deed as between the Trustee and the Pensioner but does not otherwise constitute an amendment to this Deed.
- (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 prevails; or
  - (ii) any relevant requirement of the Act - then the requirement of the Act prevails;to the extent of that inconsistency.

**55.3 Amount of Pension**

The Trustee will determine the amount of any Pension and may take account of:

- (a) the 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 of the Act or the Responsible Authority.

#### 55.4 **Pension Account**

The Trustee must establish a Pension Account in respect of the Pensioner from which the Pension shall be paid. The Pension Account may be operated by the Trustee as the Trustee sees fit.

#### 55.5 **Segregation of Pension Assets**

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

- (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 actuarial certificates from an Actuary in relation to the adequacy of the segregated assets to meet the current and non-current liabilities as the Trustee considers necessary to satisfy the Act.

#### 55.6 **Conditions Applicable to All Pensions**

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

- (a) the Pension must be paid from the balance of the Pension Account of the Pensioner;
- (b) the payments of the Pension are made at least annually;
- (c) the Pension must not be able to be transferred to any person unless the Act permits; and
- (d) the capital value of the Pension and the income from the Pension must not be used as security for any borrowing unless the Act permits.

#### 55.7 **Variation to Pension Amount**

The Trustee may vary the Pension from time to time as long as the variation:

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

#### 55.8 **Limitation on Pension Amount**

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

**55.9 Death of Pensioner**

Subject to any Agreed Pension Rules made in a Pension Agreement under clause 55.2(b), if a Pensioner dies leaving an amount in credit in the Pension Account of the Pensioner:

- (a) if a Nominated Beneficiary has been nominated by the Pensioner, the Trustee must, 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 the amount does not exceed an amount calculated in accordance with the requirements of the Act; or
- (b) if no Nominated Beneficiary has been nominated, the balance of the Pension Account must be paid to any one or more of the Dependants of the Pensioner as the Trustee may determine and/or to the Legal Personal Representative of the Pensioner, subject to the requirements of the Act.

**55.10 Application to Convert Lump Sum Benefit to Pension**

A Member may by written application to the Trustee elect to convert to a Pension the whole or any part of a Benefit which is payable as a lump sum but has not already been paid under this Deed.

**55.11 Commutation of Pension to a Lump Sum**

On the written application of a Pensioner or Nominated Beneficiary of a deceased Pensioner, the Trustee must commute the whole or any part of a Pension payable from the Fund to the Pensioner or Nominated Beneficiary, as the case may be, provided that the commutation would not cause the Trustee or the Fund to breach any relevant requirement of the Act. The Trustee must not commute the Pension if a relevant requirement of the Act prohibits its commutation.

- (a) The Trustee may apply the amount of the commuted Pension by either:
  - (i) retaining the amount in the Fund as a credit to an Accumulation Account for the Pensioner or Nominated Beneficiary; or
  - (ii) paying the amount as a Benefit in the form of a lump sum or Pension in accordance with the provisions of this Deed.
- (b) If part of a Pension is commuted, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Pensioner by an amount that the Trustee considers appropriate subject to the compliance with any relevant requirement of the Act.

**55.12 Purchase of Pension or Annuity from Third Party**

A Member may request that the Trustee apply the Benefit payable to the Member to purchase a Pension or Annuity for or in respect of the Member from a third party.

**55.13 Allocated Pension**

If the Agreed Pension is an Allocated Pension, then:

- (a) the Agreed Pension Rules in the Pension Agreement must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as an Allocated Pension; and
- (b) the Allocated Pension ceases to be payable when the balance of the Pensioner's Pension Account is reduced to nil.

**55.14 Account-Based Pension**

If the Agreed Pension is an Account-Based Pension, then the Agreed Pension Rules in the Pension Agreement that apply to that Account-Based Pension must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as an Account-Based Pension.

**55.15 Lifetime Pension**

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

- (a) the Agreed Pension Rules in the Pension Agreement that apply to that Lifetime Pension must specify all of the requirements of the minimum "pension standards" specified in the Act which must be met for the Agreed Pension to qualify as a Lifetime Pension; and
- (b) if necessary, the Trustee must obtain and act upon an actuarial certificate obtained from an Actuary as to the appropriate amount and manner of the payments of the Lifetime Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Lifetime Pension, 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.

**55.16 Fixed Term Pension**

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

- (a) the Agreed Pension Rules in the Pension Agreement that apply to that Fixed Term Pension must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Fixed Term Pension;
- (b) if necessary, the Trustee must 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 Pension after taking all relevant factors and assumptions into account, including the Pensioner's life expectancy, any Investment Strategy guidelines for that Fixed Term Pension, 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.

#### **55.17 Market-Linked Pension**

If the Agreed Pension is a Market-Linked Pension, then the Agreed Pension Rules in the Pension Agreement that apply to that Market-Linked Pension must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Market-Linked Pension.

#### **55.18 Non-commutable Allocated Pension**

If the Agreed Pension is a Non-commutable Allocated Pension as defined in the Act, then the Agreed Pension Rules in the Pension Agreement that apply to that Non-commutable Allocated Pension must also specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Non-commutable Allocated Pension.

#### **55.19 Non-commutable Pension**

If the Agreed Pension is a Non-commutable Pension as defined in the Act, then the Agreed Pension Rules in the Pension Agreement that apply to that Non-commutable Pension must also specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Non-commutable Pension.

#### **55.20 Transition to Retirement Income Stream**

If the Agreed Pension is a Transition to Retirement Income Stream, then the Agreed Pension Rules in the Pension Agreement that apply to that Transition to Retirement Income Stream must specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Transition to Retirement Income Stream.

#### 55.21 **Non-commutable Income Stream**

If the Agreed Pension is a Non-commutable Income Stream as defined in the Act, then the Agreed Pension Rules in the Pension Agreement that apply to that Non-commutable Income Stream must also specify all of the requirements of the "minimum standards" specified in the Act which must be met for the Agreed Pension to qualify as a Non-commutable Income Stream.

### 56. **PAYMENT OF BENEFIT BY TRANSFER IN SPECIE**

#### 56.1 **Transfer of Assets**

The Trustee may with the written consent of a Beneficiary to whom a Benefit is payable transfer any asset of the Fund to that Beneficiary in satisfaction of the payment of the whole or part of the amount of the Benefit as long as:

- (a) the amount of the Benefit which is satisfied is equivalent to the value of the asset so transferred;
- (b) the payment is made as a Superannuation Lump Sum and not as the payment of a Pension;
- (c) the Trustee is satisfied that the transfer is permitted by the Act; and
- (d) the value of any assets to be transferred must (unless the Trustee otherwise determines) be the same as the value attributed to them when the Trustee last valued the assets of the Fund.

#### 56.2 **Transfer of Policy of Insurance**

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

### 57. **RESTRICTIONS ON PAYMENT OR DEALINGS WITH BENEFITS**

#### 57.1 **Compliance with the Act**

- (a) The Trustee must not pay or deal with any Benefit or 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.
- (b) The Trustee may pay or deal with any Benefit to or in respect of a Member if the Trustee's action is permitted under this Deed or under the

Act in respect to a member of an Australian complying regulated self managed superannuation fund.

**57.2 Trustee Must Act**

The Trustee must do anything necessary that the Trustee sees fit including adjusting the amount or terms of payment of Benefits in order to comply with any relevant requirements of the Act.

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

**58.1 Entitlement to Preserved Benefit**

A Beneficiary is only entitled to receive a Benefit comprising preserved benefits within the meaning of, and as permitted by, the Act.

**58.2 Unrestricted Non-Preserved Benefits**

The Trustee may pay to a Beneficiary at any time any part of a Member's Benefit comprising unrestricted non-preserved benefits within the meaning of, and as permitted by, the Act.

**58.3 Member May Request Transfer**

A Member may request the Trustee to 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.

**58.4 Trustee may transfer Preserved Benefit**

If the Trustee does not receive a request from a Member under clause 58.2 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 authorised 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 request or consent.

**58.5 Power of Attorney**

The Member will 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 made and the Trustee may act unilaterally in the name of the Member for that purpose.

**59. POSTPONEMENT OF BENEFIT PAYMENTS**

**59.1 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 the 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.

**59.2 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 payment of a Benefit withhold payment of that Benefit for a period of time that is agreed between the Trustee and the Beneficiary.

**60. TRANSFERS FROM APPROVED SUPERANNUATION ENTITIES**

**60.1 Trustee May Take Interest**

If a Member is or was a member of or a beneficiary under any other Approved Superannuation Entity, the Trustee may at the request of that Member receive from the trustee of the other Approved Superannuation Entity the whole or any part of the interest of that Member in the other Approved Superannuation Entity.

**60.2 Trustee To Hold Subject to this Deed**

The Trustee must hold any interest transferred to the Trustee under this clause as part of the Fund in an Accumulation Account for that Member.

**60.3 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 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.

**60.4 Member Subject to Fund**

A person whose interest in another Approved Superannuation Entity is transferred to the Fund under this clause becomes a Member and is subject to the rights and obligations of this Deed. If the Trustee so determines the Member becomes a Member of the Fund effective from the date on which the Member's interest was transferred to the Fund.

**61. TRANSFERS TO APPROVED SUPERANNUATION ENTITIES**

**61.1 Trustee May Transfer with Member's Consent or Request**

- (a) The Trustee may if requested by a Member, or if the Member consents subject to any conditions that 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 of that Member as at the date of transfer ("the Transferred Amount").

- (b) If the Trustee requires further information in relation to the Member's request, the Trustee must within 10 working days after receiving the request, ask the Member for the information. If the Trustee has not received the information within 10 working days after making the request, the Trustee must make reasonable further inquiries of the Member to obtain the information.

#### **61.2 Trustee May Transfer without Member's Consent**

Subject to the requirements of the Act, the Trustee may, and where required by the Act must, without the Member's request or consent, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the Benefit of that Member as at the date of transfer ("the Transferred Amount").

#### **61.3 Receipt of Transferred Amount**

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

#### **61.4 Extinguishment of Rights**

Upon the Trustee completing the transfer of the Transferred Amount in respect of a Member all of the rights and interests of that Member in the Fund and under this Deed (and all rights and interests of any Beneficiary entitled to claim in respect of the Member) in respect of the Transferred Amount will come to an end.

#### **61.5 Adjustment of Other Benefits upon Transfer**

The Trustee may make any adjustments to the Benefit of the other Members of the Fund as the Trustee considers appropriate in the circumstances of any transfer but subject to the requirements of the Act. Any adjusted Benefits may be substituted for the Benefits otherwise provided under this Deed and this Deed will apply on the same terms to those adjusted Benefits.

#### **61.6 Compliance with the Act**

No Benefit may be transferred to another Approved Superannuation Entity if the Trustee or the Fund would breach a relevant requirement of the Act.

#### **62. MEMBER MAY REQUEST ROLLOVER PAYMENT**

If a Member wishes to make a Rollover Payment of all or any of the Member's Benefit, the Member must complete and provide to the Trustee all documentation required by the Act to enable the Rollover Payment to be completed in accordance with the requirements of the Act.

## 63. TERMINATION OF THE FUND

### 63.1 Grounds for Termination

The Fund must be terminated if:

- (a) the Founder with the consent of a resolution of the Members determines to terminate the Fund and gives notice in writing of the determination to the Trustee;
- (b) there are no Members in the Fund and no Beneficiary with any interest in the Fund; or
- (c) subject to the approval of the Founder and a resolution (of approval) of the Members, the Trustee resolves to terminate the Fund.

### 63.2 Notice of Termination

Upon the termination of the Fund the Trustee must 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").

### 63.3 Winding up of the Fund

On and from the Termination Date:

- (a) no further Contributions may be made or accepted other than any arrears of Contributions due prior to the Termination Date;
- (b) the Trustee must call up and collect any arrears of Contributions;
- (c) the Trustee must pay out of the Fund any expenses incurred by or on behalf of the Fund;
- (d) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (e) the Trustee must otherwise continue to administer the Fund in accordance with the Deed;
- (f) if a surplus in the Fund remains after the payment of all Benefits to Members or their Dependants, the Trustee must distribute the surplus to or for the benefit of any Members or former Members, any Dependants of those Members or former Members, or the Legal Personal Representatives of any such Members, former Members, or Dependants, as the Trustee determines in its discretion; and

- (g) the Trustee must take all other necessary steps, including lodging a final return with the Responsible Authority, to wind up the Fund in accordance with the requirements of the Act.

**64. DISSOLUTION OF THE FUND**

Upon the satisfactory winding up of the Fund by the Trustee pursuant to clause 63.3, the Fund will be deemed to be dissolved.

**65. AVAILABILITY OF DEED**

The Trustee must keep a copy of this Deed and make it available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Beneficiary.

**66. AMENDMENT OF DEED**

**66.1 Who may Amend**

The Trustee may and must 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 this clause and the compliance with the Act.

**66.2 How Amendment Effected**

The Amendment must 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 the oral declaration or written resolution.

**66.3 Date of Amendment**

The Amendment may be effective from the date on which the Amendment is made or from any earlier or later date that is specified for that purpose in the deed or minute of meeting effecting the Amendment.

**66.4 Consent by Beneficiary**

If a proposed Amendment would adversely alter the Benefit of any Beneficiary, the proposed Amendment must not be made or become effective unless:

- (a) the Trustee has obtained that Beneficiary's consent in writing to the Amendment by following the procedure specified in the Act; or
- (b) the Act permits the proposed Amendment to be made by the Trustee without that Beneficiary's consent.

**66.5 Notice to Members**

As soon as practicable after the Deed has been amended, the Trustee must 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.

**66.6 Notice to Responsible Authority**

If required by the Act, the Trustee must lodge a copy of the Deed or Minutes of Meeting effecting the Amendment with the Responsible Authority.

**66.7 Amendments concerning Compliance with the Act**

If the proposed Amendment is to be made to enable the Fund to comply with any relevant requirement of the Act, the Amendment may be made without the consent of any Member even if the Member's Benefit may be adversely altered by the Amendment.

**66.8 Restriction on Amendments**

An Amendment must not be made to this Deed (including an Amendment to this clause) if it 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.

**67. REPLACEMENT OF THE FOUNDER**

**67.1 Founder May Replace**

- (a) The Founder may at any time by written instrument (including a will) resign from the position and/or appoint another person to hold the position of Founder (in place of or jointly with the current Founder).
- (b) Upon the death of a person holding office as Founder, the office of a Founder held by that person will be held and exercised by:
  - (i) the Legal Personal Representatives of the deceased person; or
  - (ii) if the will of the deceased person nominates another person to act as Founder, that other person.

**67.2 Trustee May Replace**

If at any time there is no Founder or the Founder ceases 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.

### 67.3 **Members May Replace**

The Members may by resolution resolve that:

- (a) the person holding the office of Founder is removed 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 is appointed as Founder jointly with the current Founder.

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

## 68. **TAXATION**

### 68.1 **Taxation of Benefits**

If any Taxation is payable in respect of a Benefit payable to a Beneficiary, then the Trustee must if required by the Act deduct or arrange to have deducted the amount of the Taxation (including any interest payable thereon) from the Benefit, and account for the Taxation to the proper Responsible Authority and pay the net Benefit to that Beneficiary.

### 68.2 **Taxation on Contributions**

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

### 68.3 **Taxation on Income**

If any Taxation is payable in respect of any Income of the Fund, the Trustee must if required by the Act deduct or arrange to have deducted the amount of the Taxation (including any interest payable thereon) from the Income Account or other relevant Account determined by the Trustee, and account for the Taxation to the proper Responsible Authority.

## 69. **PROOF OF ENTITLEMENT BY BENEFICIARIES**

Any person claiming to be entitled to any Benefit must, if requested by the Trustee produce to the Trustee satisfactory evidence of that entitlement and do the acts and execute the documents that the Trustee may reasonably require.

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

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

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

This Deed does 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.

**72. FAMILY LAW PROCEEDINGS**

**72.1 Operation of this Clause**

- (a) Without limitation to clause 3 of this Deed, the Trustee must act in conformity with any obligations imposed on the Trustee under the Family Law Act ("the Act") even if this Deed does not authorise that act or prohibits that act.
- (b) An expression that is defined in the Act will have the same meaning when that expression is used in this clause.

**72.2 Superannuation Agreement**

- (a) The Trustee must comply with the Act in giving effect to a superannuation agreement that is in force and made under the Act between a Member and a non-member spouse of that Member.
- (b) Whenever any splittable payment becomes payable in respect of a superannuation interest identified in the superannuation agreement which is not an unsplittable interest:
  - (i) the Trustee must pay to the non-member spouse the amount (if any) calculated in accordance with the Act; and
  - (ii) the Trustee must make a corresponding reduction in the Benefit Entitlement of the Member to whom the splittable payment would have been made but for the payment split.
- (c) The payment of the entitlement of the non-member spouse under a payment split must, if required by the SIS Act, be made by the Trustee to a regulated superannuation fund or retirement savings account for the benefit of the non-member spouse.

**72.3 Court Order**

The Trustee must comply with any order made by a court that imposes obligations on the Trustee under the Act.

**72.4 Request for Information**

The Trustee must comply in the manner prescribed by the Act with any proper application made to the Trustee under the Act by an eligible person for information about the superannuation interest of a Member.

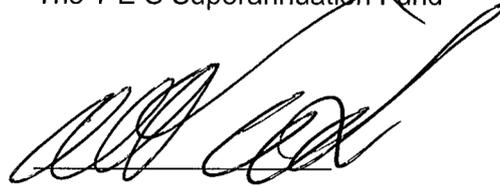
**73. PRIVACY**

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

**SCHEDULE  
PARTICULARS OF THE FUND**

**NAME OF THE FUND:** The T E S Superannuation Fund

**DATE OF THIS DEED:**

A handwritten signature in black ink, appearing to be 'M. Goldberg', written over a horizontal line.

**COMMENCEMENT DATE  
OF THIS FUND:**

30 June 1993

**FOUNDER:**

Six Traw Pty Ltd  
A.C.N. 009 622 155

**TRUSTEE:**

Six Traw Pty Ltd  
A.C.N. 009 622 155

**NOTE:**

The Fund Reference Number is: 039991

The drafting of this Trust Deed has been undertaken by:  
Madgwicks, Lawyers, Level 19, 535 Bourke Street, Melbourne Vic. 3000  
Ref: Mr Rick Goldberg



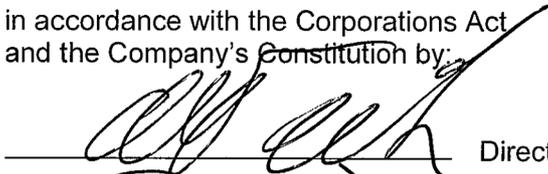
EXECUTED by the Parties as a Deed on the Execution Date:

**BY THE FOUNDER**  
**- CORPORATE**

THE COMMON SEAL of )  
Six Traw Pty Ltd )  
A.C.N. 009 622 155 )  
was hereunto affixed in accordance with its )  
Constitution in the presence of: )

OR

EXECUTED BY  
Six Traw Pty Ltd  
A.C.N. 009 622 155  
in accordance with the Corporations Act  
and the Company's Constitution by:

  
\_\_\_\_\_  
Director Lloyd

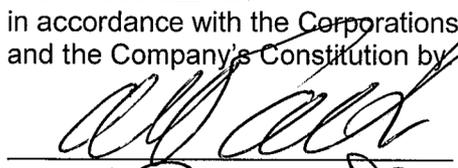
  
\_\_\_\_\_  
Director/Secretary Boz

**BY THE TRUSTEE**  
**- CORPORATE**

THE COMMON SEAL of )  
Six Traw Pty Ltd )  
A.C.N. 009 622 155 )  
was hereunto affixed in accordance with its )  
Constitution in the presence of: )

OR

EXECUTED BY  
Six Traw Pty Ltd  
A.C.N. 009 622 155  
in accordance with the Corporations Act  
and the Company's Constitution by:

  
\_\_\_\_\_  
Director Lloyd

  
\_\_\_\_\_  
Director/Secretary Boz

