

MinterEllison

L A W Y E R S

**CIDAV PTY LTD
ACN 087 869 501**

('Trustee')

CIDAV SUPER FUND

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SUPERANNUATION FUND

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CIDAV SUPER FUND

DEED dated 9 June 1999

BY CIDAV PTY LTD ACN 087 869 501 of c/- Level 15, 1 King William Street, Adelaide South Australia ('Trustee')

RECITALS

- A. The Trustee wishes to establish a superannuation fund for the benefit of those people who become Members of the Fund, on the terms and conditions set out in this Deed.
- B. The Trustee has agreed to act as the trustee of the Fund.

AGREEMENT

1. INTERPRETATION

1.1 Definitions

In this Deed:

'Act' means, as the context requires, the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1936*, the *Income Tax Assessment Act 1997*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Contributions Tax Imposition Act 1997* and any regulations made pursuant to any of those Acts or any replacement or additional legislation in respect of the regulation of superannuation funds;

'Annuity' means an annuity as defined in the *Superannuation Industry (Supervision) Act 1993*;

'Auditor' means the auditor for the time being appointed pursuant to this Deed;

'Commissioner' means, as the context requires, the Commissioner of Taxation or the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or any other regulatory body which has responsibility for the supervision of the conduct of superannuation funds;

'Deed' means this deed including any Schedule, as amended from time to time;

'Dependant' in relation to a Member or former Member means:

- (a) the Spouse of the Member or former Member; or
 - (b) any child, step-child or adopted child of the Member or former Member including any such child born after the death of the Member and any person who, in the opinion of the Trustee, is or was actually maintained by the Member or former Member as his child;
- or

(c) any other person who, in the opinion of the Trustee, was financially dependent on the Member or former Member at the relevant time;

'Employee' means a person in the employment of an Employer and includes a director of that Employer and any other person declared by the Employer to be an Employee;

'Employer' means a person or company by whom a Member is employed, and in relation to a particular Member means the Employer of that Member;

'Fund' means all of the assets from time to time held by the Trustee on the trusts of this Deed;

'Fund Earning Rate' means the Fund Earning Rate referred to in clause 15.1;

'Fund Reserve Account' means the Fund Reserve Account referred to in clause 7.1(a);

'Fund Year' means a period of 12 months ending on 30 June, or such other period ending on such other date as the Trustee from time to time determines;

'Investment Fluctuation Account' means the Investment Fluctuation Account referred to in clause 7.4;

'Investment Income' means the Investment Income determined in accordance with clause 15.1;

'Member' means a person who has been accepted by the Trustee as a Member of the Fund and who has not ceased to be a Member and includes a person in receipt of a pension from the Fund;

'Member Account' means, in relation to a Member each account established pursuant to clause 7.1 or clause 7.6 which the Trustee decides is a Member Account;

'Nominated Dependant' means a Dependant nominated as the Nominated Dependant by a Member in writing on a Nomination of Beneficiaries Form;

'Nominated Relative' means a Relative nominated as the Nominated Relative by a Member in writing.

'Plan Credit' means, in respect of a Member, the total amounts standing to the credit of the Member's Member Accounts;

'Policy' means any policy of assurance including a policy on the life of a Member for endowment, term, disablement, accident or sickness insurance, effected either as an individual policy or as a group policy (in which case in relation to a Member or a former Member 'Policy' means the particular assurance on the life of the Member or former Member) and includes any policy covering any two or more of those risks;

'Relative' in relation to a Member or former Member means:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, cousin, grandchild or great-grandchild of the Member;
- (b) any Spouse of any of the persons specified in paragraph (a);
- (c) any child of any of the persons specified in paragraph (a) or (b); or
- (d) any other natural person selected by the Trustee to whom the Trustee considers it appropriate to pay a benefit in respect of the Member;

'Relevant Law' means the Act, as modified in its application to the Fund by any subsisting declaration, modification or exemption granted by the Commissioner and, where the Trustee deems appropriate:

- (a) any announcement of a proposed change to the Act whether or not the change is to have retrospective effect;
- (b) any circular guideline ruling announcement or advice given by the Commissioner;

where the Trustee considers that observance of or compliance with any such announcement circular guideline ruling or advice will either:

- (c) be a prerequisite for or in any way assist the Fund to be a Superannuation Fund in relation to each year of income; or
- (d) be necessary to ensure that the Trustee does not breach the Act;

'Retirement Date' means, in relation to a Member, the Member's 65th birthday;

'Review Date' means a date on which the Trustee determines the Investment Income of the Fund pursuant to clause 15;

'Rollover Payment' means any payment made by the Trustee at the request of a Member or former Member or in other circumstances allowed under the Act or acceptable to the Commissioner to any one or more of the following:

- (a) the trustee of an approved deposit fund;
- (b) the trustee of a Superannuation Fund;
- (c) the trustee of an eligible rollover fund;
- (d) the issuer of an Annuity;
- (e) a financial institution to be credited to a retirement savings account;

'Spouse' of a person includes a person who, although not legally married to the person, in the opinion of the Trustee lives or lived with the person on a bona fide domestic basis as the husband or wife of the person;

'Superannuation Fund' means a superannuation fund which, in the opinion of the Trustee, in the relevant year of income, will be a 'complying superannuation fund' for the purposes of the Act;

'Taxation' includes income tax (including capital gains tax, tax on eligible termination payments and tax on contributions) payroll tax, land tax, stamp duty, surcharge, levy, impost, other tax, advance instalment of tax, penalty or interest, including any tax, advance instalment of tax, penalty or interest imposed by or payable under the *Superannuation Contributions Tax Imposition Act 1997*;

'Trustee' means the company which, for the time being, is the trustee of the Fund whether original additional or substituted.

1.2 Interpretation

Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and vice versa;
- (c) a person includes a body corporate;
- (d) a statute, regulation or provision of a statute or regulation ('Statutory Provision') will be construed as a reference to that Statutory Provision as amended or re-enacted from time to time and includes any statute, regulation or provision enacted in replacement of that Statutory Provision;
- (e) a clause or schedule is a reference to a clause or schedule of this Deed (unless the context otherwise requires);

and headings are for convenience only and do not affect the interpretation of this Deed.

1.3 Severance

If:

- (a) any provision of this Deed is void or voidable or unenforceable in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly;
- (b) notwithstanding paragraph (a), a provision of this Deed would still be void, voidable, unenforceable or illegal:

(i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be severed; and

(ii) in any other case, the whole provision must be severed;

and the remainder of this Deed will be of full force or effect.

1.4 **Words and Expressions Defined in Act**

Unless the context indicates a contrary intention, words and expressions used in this Deed will have the meanings assigned to them in the Act.

2. **THE FUND**

2.1 **Establishment**

By this Deed, the Trustee establishes the Cidav Super Fund.

2.2 **Fund Vested in Trustee**

The Fund will be vested in the Trustee and will at all times be held controlled and managed by the Trustee subject to the trusts powers and provisions of this Deed.

3. **MEMBERSHIP OF THE FUND**

3.1 **Application for Membership**

Any person accepted by the Trustee who, if required by the Trustee, has lodged with the Trustee an application for membership in such form as the Trustee may determine, may be admitted to membership of the Fund by the Trustee.

3.2 **Admission to Membership**

When the Trustee admits a person to membership of the Fund, the person will become a Member and will be bound by this Deed.

3.3 **Special Conditions of Membership**

The terms and conditions applicable to a Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member, may be varied by written agreement between the Trustee and the Member.

3.4 **Information to be Given to New Members**

As soon as practicable after the admission of a person as a Member of the Fund the Trustee will give to that Member any information required by Relevant Law.

3.5 **Provision of Information**

Every Member and any person who may become entitled to be paid a benefit from the Fund when requested by the Trustee must furnish such information as the Trustee deems necessary for the purposes of any investigation or otherwise in connection with the Fund. Every Member must submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee.

3.6 **Failure to Comply**

If a Member or any other person who becomes entitled to be paid a benefit from the Fund fails to comply with the provisions of clause 3.5 the Trustee may suspend the payment of any contributions in respect of that Member or withhold any benefit in respect of that Member or person until the Member or other person does comply.

3.7 **Incorrect or Misleading Information**

Where a Member or any other person who becomes entitled to be paid a benefit from the Fund furnishes information required pursuant to this Deed which affects or is likely to affect the benefits payable to or in respect of the Member or person and the information supplied is incorrect or misleading or any relevant information is deliberately withheld, the Trustee may in its absolute discretion alter those benefits in such manner as the Trustee considers appropriate.

4. **CONTRIBUTIONS TO THE FUND**

4.1 **Employer Contributions**

Subject to the other provisions of this Deed, a Member's Employer may contribute to the Fund in respect of those of its Employees who are Members such amounts as may be agreed from time to time between the Trustee and the Member. The Employer may make additional contributions in respect of any Member at any time. If the Employer is a company, its contributions may be paid on its behalf by another company in any group of companies to which it belongs.

4.2 **Member Contributions**

Subject to the other provisions of this Deed, each Member may contribute to the Fund such amount (if any) as that Member determines from time to time.

4.3 **Payment of Contributions**

Contributions will be paid at the times and in the manner determined by the Trustee, subject to any requirements of Relevant Law.

4.4 Acceptance of Contributions

The Trustee:

- (a) may accept contributions from any person in respect of a Member to the extent permitted by Relevant Law;
- (b) must not accept any contribution if, in the opinion of the Trustee, the acceptance of the contribution would not be permitted by Relevant Law.

4.5 Form of Contributions

Subject to the requirements of Relevant Law, contributions may be made either in cash or by transfer to the Fund of an asset in kind. If a contribution is made by the transfer of an asset to the Trustee, the amount of the transfer will be the market value of that asset at the time of its transfer, and the transfer will be undertaken on such terms and conditions as are determined by the Trustee.

5. TRANSFERS FROM OTHER FUNDS

Where a Member is or was a member of or is or was a beneficiary under any other Superannuation Fund, approved deposit fund, eligible rollover fund or Annuity, or holds money in a retirement savings account, the Trustee may receive from the trustee of the other Superannuation Fund, approved deposit fund or eligible rollover fund or from the financial institution managing the retirement savings account or from the issuer of the Annuity, money or assets in respect of the Member's interest in the Superannuation Fund, approved deposit fund, eligible rollover fund, retirement savings account or Annuity. The Trustee will hold the money or assets received as part of the Fund subject to any requirements of Relevant Law and will credit the particular Member's Member Accounts in the manner agreed between the Trustee and the Member to take account of the money or assets received.

6. TRANSFERS TO OTHER FUNDS

6.1 Transfers to Other Funds

Without in any way affecting any other provision of this Deed giving the Trustee power to transfer a Member's interest in the Fund to another superannuation arrangement or otherwise deal with the Member's interest in the Fund, but subject to any requirements of Relevant Law:

- (a) where a Member joins or is eligible to join a Superannuation Fund ('Other Fund'); and
- (b) the Member requests that the Member's interest in the Fund be transferred to the Other Fund ('Transferred Amount');

the Trustee may, subject to such conditions and indemnities as the Trustee may require, pay to the trustee of the Other Fund the Transferred Amount or transfer investments of the Fund of equivalent value to the Transferred Amount.

6.2 **Benefits Reduction**

The Trustee will debit such of the Member's Member Accounts as the Trustee determines with the Transferred Amount in such proportions as the Trustee considers appropriate and the receipt of the Transferred Amount by the trustee of the Other Fund will be a complete discharge to the Trustee of all liabilities in respect of, and the Trustee will have no responsibility to see to the application of, the Transferred Amount

7. **FUND ACCOUNTS**

7.1 **Fund Accounts**

The Trustee will keep the following Accounts for the purpose of administering the Fund and in particular, for the purpose of calculating the benefits payable from the Fund:

- (a) a Fund Reserve Account;
- (b) in respect of each Member, one or more Member Account to which contributions accepted pursuant to clause 4.1 will be credited.

7.2 **Crediting of Member Accounts**

In addition to any amounts to be credited to the Member Account pursuant to clause 7.1, each of a Member's Member Accounts will, subject to any restrictions imposed by Relevant Law, be credited with:

- (a) such portion of the Investment Income of the Fund (if positive) as the Trustee determines will be credited to the Member Account in accordance with clause 15.6; and
- (b) any other amounts which the Trustee with the consent of the Member determines will be credited to the Member Account.

7.3 **Debiting of Member Accounts**

Each of a Member's Member Accounts will, subject to any restrictions imposed by Relevant Law, be debited with:

- (a) such portion of the Investment Income of the Fund (if negative), as the Trustee determines will be debited to the Member Account in accordance with clause 15.6; and
- (b) such portion of the costs, charges and expenses and Taxation which the Trustee determines will be debited to the Member Account in accordance with clauses 16.1 and 16.2; and

- (c) any amount which is paid to the Member pursuant to clause 8.2 which the Trustee determines will be debited to the Member Account; and
- (d) any other amounts which the Trustee with the consent of the Member determines will be debited to the Member Account.

7.4 Investment Fluctuation Account

The Trustee may establish an Investment Fluctuation Account for the purposes described in clause 15.2. If at any time the Trustee considers that the amount standing to the credit of the Investment Fluctuation Account exceeds such amount as is likely to ever be required for the purposes described in clause 15.2, the Trustee may debit such excess amount from the Investment Fluctuation Account and credit the Member Accounts of all Members and the Fund Reserve Account with such proportions of the excess amount as the Trustee may decide.

7.5 Fund Reserve Account

The amount standing to the credit of the Fund Reserve Account at any time will be equal to the value of the Fund less the sum of the amounts credited to the Investment Fluctuation Account, the Member Accounts of all Members and any other accounts which may be established pursuant to clause 7.6. The Trustee will from time to time, in accordance with Relevant Law, apply the whole or any part of the amount standing to the credit of the Fund Reserve Account in such manner as the Trustee may determine and Relevant Law allows.

7.6 Additional Accounts

In addition to the accounts mentioned in clauses 7.1 to 7.4, the Trustee may establish and maintain such other accounts as the Trustee deems appropriate.

8. BENEFITS

8.1 Benefits

Subject to the provisions of this Deed, a benefit equal to the Member's Plan Credit will become payable in respect of a Member if:

- (a) the Member retires from a business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the retirement occurred before or after the Member joined the Fund);
- (b) the Member requests payment of his or her benefit after the Member's Retirement Date;
- (c) if an Employer has, at any time, contributed to the Fund in respect of the Member, the Member ceases to be employed by the Employer;

- (d) the Member ceases to work for gain or reward in any business, trade, profession, vocation, calling, occupation or employment on account of the Member's ill-health (whether physical or mental);
- (e) the Member dies;
- (f) the Trustee so determines, then in such other circumstances or on such conditions as may be permitted by the Relevant Law; or
- (g) Relevant Law otherwise requires or permits the Member's benefit to be cashed.

8.2 Cashing Part of a Benefit

If Relevant Law requires or permits a Member to cash some but not all of the Member's benefit, the Trustee may cash that part of the Member's benefit, in which case the Trustee will, in accordance with clause 7.3(c), debit one or more of the Member's Member Accounts in such manner and proportions as the Trustee considers appropriate with an amount equal to that part of the benefit which has been cashed.

8.3 Benefits Payable in Other Circumstances

Notwithstanding the provisions of this Deed, the Trustee may, in its absolute discretion, pay part or all of a Member's Plan Credit to the Member in such circumstances and on such conditions as may be permitted by the Relevant Law.

9. PAYMENT OF BENEFITS

9.1 Method of Payment

- (a) The Trustee may pay a benefit by forwarding a cheque to the postal address last notified of the person to whom the benefit is payable or paying the benefit directly to a bank or other account nominated by the person or in such other manner as the Trustee determines.
- (b) All benefits will be expressed and paid in Australian currency unless otherwise specifically agreed between the Member and the Trustee.

9.2 Receipt for Benefits

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

9.3 Tax on Benefits

The Trustee may deduct any Taxation from any benefit payable pursuant to this Deed.

9.4 Pensions and Annuities

- (a) Upon a Member becoming entitled to be paid a lump sum benefit, the Member may request the Trustee to pay some or all of the Member's benefit as an income benefit.
- (b) A request under paragraph (a) must be made in such a form and within such time as the Trustee may in its absolute discretion determine.
- (c) If the Member's request meets the requirements of this clause 9.4, the Trustee must, subject to any requirements of Relevant Law, arrange for the payment of that proportion of the Member's benefit as the Member requested be paid in the form of an income benefit to be paid as an income benefit either by applying the relevant proportion of the benefit in the purchase of an Annuity for the Member in such manner and on such conditions as the Trustee in its absolute discretion determines or, by paying the relevant proportion of the benefit as a pension of such amount and on such conditions as the Trustee and the recipient of the pension agree.
- (d) If the recipient elects that the pension is to be a pension for the purposes of Relevant Law and that it is to comply with certain minimum standards prescribed by Relevant Law, the agreement between the Trustee and the recipient must include the requirements that ensure both that it is a pension of that type and that it complies with those standards, and this Deed will be deemed to include in it those requirements and those standards but only to the extent that the Deed relates to that pension.

9.5 Payment of Benefits on Death

- (a) Where any benefit becomes payable to or in respect of a Member or former Member pursuant to this Deed and the Member or former Member is not alive when the benefit is to be paid, the Trustee must pay or apply the benefit to or for the benefit of such one or more of:
 - (i) the Nominated Dependants;
 - (ii) any other Dependants; and
 - (iii) the legal personal representativesas determined by the Trustee in its absolute discretion and in the manner at the times by the instalments and in such proportions between them as the Trustee determines in its discretion.
- (b) If the Member or former Member has no Nominated Dependants or other Dependants and no legal personal representative has been appointed within 12 months of the date of death of the Member or former Member or within such shorter period as the Trustee in its absolute discretion considers reasonable, the Trustee must, subject to Relevant Law, pay the benefit to any one or more of the Nominated Relatives and any other Relatives of the Member or former Member in such proportions between them (if more than one) as determined by the Trustee in its absolute discretion.

9.6 Payment to Others on Behalf of Beneficiaries

When any person to whom a benefit becomes payable is under the age of 18 years or when in the opinion of the Trustee it would be in the best interests of that person, the Trustee may retain the benefit in the Fund until the Trustee is satisfied that it should be paid to the person or pay all or part of any benefit to any other person for application on behalf of that person and the receipt of the person to whom the benefit is paid will be a complete discharge to the Trustee for the payment in respect of the person. The Trustee will not be bound or concerned to see to the application of the benefit so paid.

9.7 Benefit Payment Restrictions

Benefits payable to or in respect of a Member may only be paid to the Member in cash to the extent permitted by Relevant Law.

9.8 Preserved Benefits

Any benefits which have become payable to a Member but which are unable to be paid to the Member in cash may, at the discretion of the Trustee, be dealt with in accordance with clause 6.1 or clause 9.11 or retained in the Fund.

9.9 Retention of Benefit in the Fund

At the request of a Member or any other person who becomes entitled to be paid a benefit from the Fund, the Trustee may at its absolute discretion but subject to the requirements of Relevant Law, retain all or part of the benefit in the Fund until:

- (a) the Member or person entitled requests that it be paid to him;
- (b) the Member dies; or
- (c) the Trustee elects for whatever reason to pay the benefit to the Member or the person entitled thereto,

whichever first occurs.

9.10 Interest on Benefits

If any benefit, including any amount referred to in clause 19, is retained in the Fund, the Trustee may in its absolute discretion increase the benefit by an amount of interest calculated at the Fund Earning Rate in respect of the period from the date on which the benefit became payable until the date on which the benefit is paid.

9.11 Rollover Payments

Where a Member or former Member wishes to effect a Rollover Payment in respect of all or any part of any benefit payable to him from the Fund he must make a request to the Trustee in writing nominating the institution to which the payment is to be made and the amount to be applied as the Rollover Payment. The Member or former Member must in addition complete and execute such documents as are required to enable the Rollover Payment to be effected and for it to be recorded by the Commissioner, but in circumstances provided for in the Act or otherwise acceptable to the Commissioner the Trustee may effect a Rollover Payment in relation to a Member's benefit without the consent of the Member or former Member.

9.12 Transfer of Policy

Where a Member and/or any other person is entitled to be paid or the Trustee in its discretion determines to pay a benefit and where the Trustee holds a Policy of any kind in respect of the Member, the Trustee may in its absolute discretion and in lieu of surrendering the Policy assign it to the Member or other person or to such one or more of them to the exclusion of the other or others as the Trustee in its discretion may determine and the value of the Policy as at the date of assignment will be deducted from the benefit payable to the Member and/or other person and neither the Trustee nor the Employer will be liable to pay any premiums becoming due and owing under the said Policy as from the date of the assignment.

9.13 Transfer of Investments

The Trustee may with the consent of a Member and/or any other person to whom a benefit is payable and to the extent permitted by Relevant Law transfer investments of the Fund of equivalent value to that Member and/or other person in lieu of paying the whole or part of the amount otherwise payable.

9.14 No Beneficial Interest

Notwithstanding any provision of this Deed, no Member or any other person entitled to be paid a benefit from the Fund will have or acquire any beneficial or other interest in a specific asset of the Fund or the assets of the Fund as a whole while such asset or assets remain subject to the provisions of this Deed.

9.15 Unclaimed Benefits

The Trustee may deal with any unclaimed money in the manner specified in Relevant Law.

10. **ASSIGNMENTS, CHARGES AND MONEYS OWING TO THE FUND OR TO AN EMPLOYER**

10.1 **Assignments and Charges**

The Trustee must not recognise, or in any way encourage or sanction, the assignment of or a charge over the whole or any part of a Member's Plan Credit or the Member's interest in it, or a charge over the whole or any part of the Fund, except to the extent that it is permitted by Relevant Law.

10.2 **Deduction from Benefit**

Subject to the requirements of Relevant Law, the Trustee may deduct from any part of a Member's Plan Credit and either itself retain or if appropriate pay to the Employer any money owing by the Member to the Trustee or, if the Trustee is satisfied that the Employer's claim is valid, to the Employer, and pay any balance to the Member or other person to whom the benefit would but for this clause have been payable.

11. **FORFEITURE OF BENEFITS**

11.1 **Conditions of Forfeiture**

Any Member:

- (a) who assigns or charges or attempts to assign or charge any benefit;
- (b) whose benefits whether by the Member's own act operation of law an order of any Court or otherwise become payable to or vested in any other person, company, government or other public authority;
- (c) who becomes bankrupt or insolvent;
- (d) in the opinion of the Trustee is incapable of managing the Member's affairs,

will if a benefit is not payable prior to the occurrence of any of the above events, to the extent permitted under the Act and at law generally forfeit entitlement to the benefit whereupon the Member will cease to be a Member;

11.2 **Member Account Residue**

Any Member or former Member in respect of whom all benefits which the Trustee considers should be paid pursuant to the provisions of this Deed have been paid and who still has a residual amount standing to the credit of any of his Member Accounts will forfeit that amount forthwith and that amount will be dealt with as a forfeited benefit.

11.3 Application of Certain Forfeited Benefits

Subject to the requirements of Relevant Law, the Trustee may pay or apply the whole or any part of any benefits which have been forfeited to or for the benefit of the former Member or his Dependants or any one or more of them in such proportions between them and on such terms as the Trustee may from time to time in its absolute discretion determine or, if the Member has died, the benefits may be applied in accordance with clause 9.5.

11.4 Application of Remaining Forfeited Benefits

Any forfeited benefits not dealt with in accordance with clause 11.3 will be credited to the Fund Reserve Account.

12. THE TRUSTEE

12.1 Trustee must be a constitutional corporation

There will only be one Trustee and the Trustee must be a constitutional corporation.

12.2 Retirement of Trustee

The Trustee:

- (a) must immediately retire by written notice to the Members if the Trustee becomes a disqualified person for the purposes of Relevant Law; and
- (b) may, at any time, retire by giving 60 days' (or such shorter period to which the Members may agree) written notice to the Members;

and in either case, the Members must, by deed, appoint another constitutional corporation to act as Trustee in its place.

12.3 Replacement of Trustee

The Members may by unanimous resolution at any time remove the Trustee from office and by deed, appoint in its place another constitutional corporation to act as Trustee.

12.4 Constitution

The Trustee must at all times ensure that its constitution is consistent with any applicable requirements of Relevant Law.

12.5 Continuity of Office

A Trustee will, on ceasing to be a Trustee, do everything necessary to vest the Fund in the new Trustee and deliver all records and other books to the new Trustee.

12.6 Office of Trustee

The office of Trustee must be filled at all times and if a vacancy occurs a new Trustee must be appointed as soon as is reasonably practicable but in any event within 60 days of that vacancy occurring.

13. TRUSTEE'S POWERS OF MANAGEMENT

13.1 Trustee's General Powers

The Trustee will have power:

- (a) to manage administer and deal with the Fund and all proceedings matters and things connected with the Fund; and
- (b) to enter into and execute all contracts deeds and documents and to do all such matters and things as it considers expedient for the purpose of carrying out the trusts authorities powers and discretions conferred upon the Trustee by this Deed with power, subject to the other provisions of this Deed, to give such undertakings and incur all such obligations relating to the Fund as the Trustee thinks fit,

and such further powers as may be necessary ancillary or incidental to this Deed.

13.2 Additional Specific Powers

In addition to the powers which it has by law and which are otherwise granted to it by this Deed the Trustee will have the following powers:

- (a) to settle compromise or submit to arbitration any claim matter or thing relating to this Deed or the Fund or to the rights of Members former Members or any other persons claiming to be entitled to be paid a benefit pursuant to this Deed;
- (b) to commence carry on or defend proceedings relating to the Fund or to the rights of Members former Members or other persons claiming to be entitled to be paid a benefit from the Fund;
- (c) subject to any restrictions contained in Relevant Law, to borrow money and to secure the repayment of that money in any manner and upon any terms with or without security which the Trustee may consider advisable;
- (d) to insure or reinsure any risks contingencies or liabilities of the Fund;
- (e) to underwrite, sub-underwrite or otherwise assume liability for any risk contingency or liability under any superannuation arrangement conducted by an Employer in connection with any transfer of Employees to the Fund;
- (f) to retain the services of and to appoint professional or other advisers or agents in relation to the management administration or investment of the Fund and to pay out of

the Fund all expenses of and incidental to the management and administration of the Fund including the fees of any advisers or agents and the remuneration of persons appointed pursuant to this Deed and to revoke any such appointment; and

- (g) to indemnify or undertake to indemnify any person company government or institution in respect of any claim matter or thing relating to the Fund or to the rights of Members, former Members or other persons entitled in respect of the Fund.

13.3 **Trustee's Discretion**

In the exercise of the authorities powers and discretions vested in it pursuant to this Deed, the Trustee will have an absolute and unfettered discretion and may from time to time exercise or enforce all or any of such powers authorities and discretions and will have power generally to do all such things as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Deed.

13.4 **Trustee may act on advice**

The Trustee may act on the advice or opinion of any accountant actuary barrister solicitor medical practitioner professional adviser or expert whether or not such advice has been obtained by the Trustee.

13.5 **Indemnity of Trustee and directors**

The Trustee and each of its directors will be indemnified out of the Fund against all liabilities, losses, costs and expenses (excluding any liability for a monetary penalty under a civil penalty order imposed under the Act) incurred in the exercise or purported exercise or attempted exercise of the trusts powers authorities and discretions vested in the Trustee or at law and will have a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity and generally for the payment of all legal and other costs charges and expenses of administering or winding up the Fund and otherwise of performing their duties under the Deed. This indemnity will extend to any payments made to any person whom the Trustee bona fide believes to be entitled to it although it may subsequently be found that the person was not in fact so entitled, but will not be available to any person if the person failed to act honestly or intentionally or recklessly failed to exercise the degree of care and diligence that the person was required to exercise. In this clause, the word 'Trustee' includes any former Trustee.

13.6 **Delegation by Trustee**

The Trustee may delegate to any one or more persons firms or companies on such terms as the Trustee may think fit any of the authorities powers and discretions conferred upon the Trustee. Without limiting the generality of the foregoing the Trustee may appoint from time to time such one or more persons firms or companies as the Trustee may think fit to act either as custodian or investment manager or both subject to such conditions as the Trustee may from time to time determine and may delegate to and confer upon such a custodian or investment manager such authorities power or discretions, including the Trustee's power of delegation, as the Trustee may think fit. The Trustee will have power to pay out of the Fund

to any such custodian investment manager or other delegate such remuneration for its services as the Trustee considers proper and to remove from time to time any such custodian or investment manager.

13.7 **Trustee's Remuneration**

The Trustee will not receive any salary or remuneration from the Fund in respect of its services as Trustee but nothing in this Deed will preclude any firm corporation or partnership of which the Trustee or any of its directors is a partner director shareholder related body corporate (as defined in the *Corporations Law*) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.

13.8 **Confidentiality of Information**

The Trustee and every Employer will regard as strictly confidential so far as practicable all information disclosed to or gained by them in the course of administering the Fund or otherwise in connection with this Deed or anything relating or incidental to it.

13.9 **Liability of Trustee**

The Trustee will not be liable for any loss or breach of trust whatsoever other than:

- (a) loss attributable to the Trustee, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the Trustee was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order made against the Trustee under the Act.

13.10 **Liability of Directors of Trustee**

A director of the Trustee will not be liable for any loss or breach of trust whatsoever other than:

- (a) loss attributable to the director, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the director was required to exercise; or
- (b) liability for a monetary penalty under a civil penalty order made against the director under the Act.

13.11 Inquiries and Complaints

The Trustee may, and to the extent required pursuant to the Act, must, establish arrangements under which:

- (a) Members and other beneficiaries have the right to make inquiries into, or complaints about, the operation or management of the Fund in relation to the Member or beneficiary making the inquiry or complaint; and
- (b) those inquiries or complaints will be properly considered and dealt with within 90 days or such other period as may be prescribed by Relevant Law after they are made.

14. INVESTMENTS

14.1 Authorised Investments

Subject to:

- (a) the restrictions imposed by Relevant Law on investing in in-house assets;
- (b) any prohibition on acquiring certain kinds of assets from Members or relatives of Members which is prescribed by Relevant Law;
- (c) any prohibition prescribed under Relevant Law against lending money or giving financial assistance to, Members or relatives of Members; and
- (d) any other restrictions imposed by Relevant Law;

so much of the moneys forming part of the Fund from time to time as is not required immediately for the payment of benefits or other amounts authorised by this Deed may be invested by the Trustee in any investment whatsoever which the Trustee considers appropriate, including, but without in any way being limited to, the following investments:

- (i) any investment for the time being authorised or permitted by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;
- (ii) any mortgage on freehold property situated in Australia or elsewhere even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;
- (iii) on deposit with or on loan to any bank building society or other financial institution;
- (iv) on deposit with or on loan to any Employer or any other person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may

have a direct or indirect interest in the borrowing or may benefit directly or indirectly therefrom;

- (v) the purchase or acquisition in any way of shares of any class or description or of any type of bond mortgage debenture note option or other like security in or of any Employer or any other company or trust fund, society, unincorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (vi) any Policy or annuity whether by proposal purchase or otherwise and any choses in action interest for life or any lesser term or in reversion or howsoever arising;
- (vii) the purchase or acquisition of any interest in real or personal property and the improvement or extension thereof;
- (viii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (ix) the discounting of loans mortgages contracts hire purchase agreements or leases; and
- (x) bills of exchange, promissory notes or other negotiable instruments.

14.2 Power to Sell and Vary Investments

The Trustee will have power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

14.3 Investment Directions

The Trustee may from time to time, in its absolute discretion, allow a Member or Members to give directions to the Trustee in relation to the investment of a portion of the Fund's assets representing the Member's Member. Accounts on the basis that the Trustee may comply with any such investment directions, but will not be obliged to do so. When an investment is made pursuant to any direction made by a Member in accordance with this clause:

- (a) the Trustee must note in the Fund's records that the investment was made in accordance with a Member's investment directions and the name of the Member;
- (b) any income or gains or losses of a revenue or capital nature arising from the investment will be credited or, in the case of a loss, debited, to the relevant Member's Member Accounts and such amounts will be excluded from the calculation of Investment Income pursuant to clause 15.1;

- (c) any costs, charges or expenses incurred or arising from the investment and any Taxation which is or may become payable in respect of the investment will be debited to the Member's Member Accounts and any such amounts will be excluded from the calculation of Investment Income pursuant to clause 15.1.

15. INVESTMENT INCOME AND INVESTMENT FLUCTUATION ACCOUNT

15.1 Investment Income

At the end of each Fund Year and on any other date which the Trustee considers appropriate ('Review Date') the Trustee must value all of the assets of the Fund at the Review Date and determine:

- (a) the Investment Income of the Fund in respect of the period since the previous Review Date which will comprise all net income and net capital gains (whether realised or unrealised) and other increments to the value of the Fund less any expenses, capital losses (whether realised or unrealised), other deductions in the value of the Fund and Taxation as the Trustee considers appropriate; and
- (b) the Fund Earning Rate to be credited (or debited) to Member's Accounts and the Fund Reserve Account in accordance with clause 15.6.

15.2 Investment Fluctuation Account

The Trustee may utilise the Investment Fluctuation Account in the manner described in this clause as a mechanism for smoothing any fluctuations in the value of investments and the level of Investment Income.

15.3 Credits to the Investment Fluctuation Account

The Trustee may, when determining the Fund Earning Rate in accordance with clause 15.1, decide that a portion of the Investment Income determined in accordance with clause 15.1 should be set aside for the purpose set out in clause 15.2, in which case the appropriate portion of the Investment Income will be credited to the Investment Fluctuation Account.

15.4 Debits to the Investment Fluctuation Account

The Trustee may, when determining the Fund Earning Rate, in accordance with clause 15.1, decide that the Investment Income should be supplemented as contemplated in clause 15.2, in which case, an appropriate amount will be debited to the Investment Fluctuation Account.

15.5 Relevant Considerations

For the purpose of making the decisions contemplated in clauses 15.1, 15.3 and 15.4, the Trustee must consider the following matters:

- (a) the amount standing to the credit of the Investment Fluctuation Account;

- (b) the amount of the Investment Income;
- (c) the amount of Investment Income which is expected to arise in respect of the subsequent Fund Year;
- (d) the Investment Income credited to the Members' Member Accounts in respect of the previous Fund Year; and
- (e) such other matters as the Trustee considers relevant.

15.6 **Crediting Accounts**

The Trustee will as soon as reasonably practicable after the Review Date credit (if the Fund Earning Rate is positive) or debit (if the Fund Earning Rate is negative) the Member Accounts in respect of all Members and the Fund Reserve Account with interest, at the Fund Earning Rate, on such basis as the Trustee considers equitable having regard to the balances of those accounts during the Fund Year and the requirements of Relevant Law.

15.7 **Interim Fund Earning Rate**

The Trustee may, from time to time, during each Fund Year, determine an interim Fund Earning Rate which will be used when determining the interest to be credited (or debited) to any account for the purpose of calculating benefits.

16. **COSTS AND EXPENSES AND TAXATION**

16.1 **Costs and Expenses**

Except as otherwise expressly provided in this Deed:

- (a) all costs charges and expenses incurred in connection with the preparation establishment maintenance administration operation or winding up of the Fund will be borne by the Fund and paid by the Trustee and the Trustee may debit the Members' Member Accounts, the Fund Reserve Account and the Investment Income of the Fund in such manner as it considers appropriate to reflect the payment of or the making of any provision for any such costs charges and expenses; and
- (b) the Trustee will indemnify the Employer in respect of any costs charges or expenses which are properly incurred by the Employer.

The Trustee may, however, accept contributions in respect of such costs charges or expenses from an Employer or may arrange with an Employer for such costs charges or expenses to be paid and borne by the Employers in such manner and in such proportions as the Trustee may determine.

16.2 Taxation

The Trustee may make provision in such manner as it considers appropriate to allow for any anticipated or future liability for Taxation in respect of contributions to, earnings of, benefits payable from, or otherwise in respect of the Fund and will have power to pay any Taxation in respect of contributions to, earnings of, benefits payable from, or otherwise in respect of the Fund out of the Fund. The Trustee may debit the Members' Member Accounts, the Fund Reserve Account and the Investment Income of the Fund in such manner as it considers appropriate to reflect the payment of or the making of any provision for any Taxation. The Trustee will not be liable to account to any Member or any other person for any payments made by the Trustee in good faith to any duly empowered fiscal authority of the Commonwealth of Australia or any State or Territory of it or any other country or part of a country for Taxation or any other charges upon the Fund or for or on account of the retention of any moneys or assets in the Fund to meet any prospective liability on the part of the Trustee in relation to the Fund to such fiscal authority, notwithstanding that any such payment or provision need not have been made.

17. FUND RECORDS

17.1 Receipt and Payment of Moneys

The Trustee will lodge all moneys of the Fund as soon as practicable to the credit of an account in the name of the Fund kept with a bank, building society or other financial institution or into a trust account of a solicitor accountant investment manager or administration manager appointed pursuant to this Deed.

17.2 Issue of Receipts

A receipt given on behalf of the Fund by the Trustee or by any other person who may from time to time be authorised by the Trustee in writing to receive any moneys of the Fund will be a sufficient discharge to the person by whom the moneys are paid.

17.3 Records and Accounts to be kept

The Trustee must:

- (a) keep account of all moneys received for and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect and pay promptly into a bank or other account of the Fund all moneys from time to time due to the Fund;
- (c) keep appropriate records books and accounts having regard to the requirements of Relevant Law and make suitable arrangements for custody of documents relating to the investments of the Fund; and
- (d) prepare accounts and statements in relation to the Fund as at the end of the Fund Year in accordance with Relevant Law.

17.4 Audit

The Trustee must cause the accounts and statements referred to in clause 17.3(d) to be audited by the Auditor at the end of each Fund Year or at such other time or times as required by Relevant Law and the Auditor must give to the Trustee a report in respect of each such audit. If the Auditor is satisfied that the annual return prepared for the Fund for that particular year of income is true and fair he will execute an audit certificate in the prescribed form for lodgement with the Commissioner.

17.5 Availability of Deed

A copy of this Deed must be made available for inspection by any Member on the request of that Member.

17.6 Information for Trustee

The Trustee may request a Member or a Member's Employer to give to the Trustee all information in their power or possession which may, in the opinion of the Trustee, be necessary or expedient for the management and administration of the Fund. The Trustee may act upon any information given to it by a Member or an Employer pursuant to this Deed.

17.7 Disclosure and Reporting Requirements

The Trustee must provide to Members, former Members, Employers, the Commissioner and any other persons who ask the Trustee to provide them with information about the Fund such information in relation to the conduct of the Fund and benefits payable from the Fund in such form as required by Relevant Law.

18. APPOINTMENT OF AUDITOR

The Trustee must appoint an Auditor on such conditions as the Trustee determines and who is appropriately qualified according to the criteria specified by Relevant Law.

19. TERMINATION OF THE FUND**19.1 Termination**

If:

- (a) it appears to the Trustee that the Fund is insolvent and the Trustee resolves to terminate the Fund;
- (b) for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund;
- (c) there are no Members in the Fund and the Trustee resolves to terminate the Fund; or

(d) the Members, by unanimous resolution, ask the Trustee to terminate the Fund,
the Fund will be terminated from a date determined by the Trustee ('Termination Date').

19.2 Allocation of Assets

All moneys and assets of the Fund after payment or allowance for any liabilities or expenses of the Fund will be applied to the extent that such moneys and assets will permit to provide benefits in respect of each Member pro rata to each Member's Plan Credit in such form and provided by such arrangements as the Trustee determines.

19.3 Provision of Benefits

Every Member or other person entitled to be paid a benefit will accept the benefits provided under clause 19.2 in full discharge of all claims in respect of the Fund provided that:

- (a) the payment of any benefit pursuant to this clause will be subject to clauses 9, 10 and 11;
- (b) no benefit will be paid pursuant to this clause to or in respect of any Member while the Member remains in the employ of an Employer other than for such purposes and in such circumstances as Relevant Law allows or the Commissioner approves.

20. AMENDMENTS

20.1 Amendments to this Deed

The provisions of this Deed including this clause may be added to amended altered modified varied or deleted with immediate, prospective or, to such extent as the law allows, retrospective effect from time to time by the Trustee by deed or by resolution of the Trustee but no amendment alteration modification variation or deletion ('Amendment') may be made which is not permitted by Relevant Law.

20.2 Notice to Members

The Trustee must promptly give the Members written notice of any Amendment if required pursuant to Relevant Law to do so.

21. RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE

21.1 Employer's Powers not Prejudiced

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

21.2 **Work-related claims**

Nothing in this Deed will in any way affect the right of a Member or his personal representative to claim damages or compensation under common law or under any worker's compensation legislation or any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of his employment with the Employer.

22. **PROPER LAW**

This Deed will be governed and construed and will take effect in accordance with the laws of South Australia. Employers, the Trustee, Members and former Members and their Dependents and Legal Personal Representatives must accept the jurisdiction of the Courts of that State. If that State is South Australia, section 35b of the *Trustee Act 1936* of South Australia has no application to this Deed.

23. **RELEVANT LAW**

23.1 **Power to Comply with Relevant Law**

Notwithstanding any other provision of this Deed and in addition to the powers and discretions conferred upon the Trustee by this Deed, the Trustee will be empowered but not, except as provided in this Deed, required to do or procure to be done or refrain from doing such acts matters and things as in the opinion of the Trustee may be necessary or desirable:

- (a) to enable the Fund to become, and continue to be, a 'regulated superannuation fund' for the purposes of the Act; and
- (b) in order to comply with or satisfy any provision or requirement of Relevant Law or of the Commissioner.

23.2 **Deemed Inclusion of Relevant Law Requirements**

Notwithstanding any other provision of this Deed, all provisions of Relevant Law (if any) that must be included in this Deed from time to time in order for the Fund to be a 'complying superannuation fund' for the purposes of Relevant Law in any year of income are deemed to be included in this Deed, but only for so long as that deemed inclusion is necessary for the Fund to be a complying superannuation fund. If there is any inconsistency between any provision deemed to be included in this Deed pursuant to this clause 23.2 ('**deemed provision**') and any other provision of this Deed, the deemed provision must prevail and that other provision of this Deed will be deemed to be modified to the extent of the inconsistency.

EXECUTED as a deed.

THE COMMON SEAL of **CIDAV**)
PTY LTD is affixed in accordance)
with its constitution in the presence)
of:)



[Handwritten signature]
.....
Director

[Handwritten signature]
.....
Director/Secretary