

Trust deed

The Aracon Superannuation Fund

Aracon Superannuation Pty Ltd

Trust deed

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Trust deed

Date

Parties

**Aracon Superannuation Pty Ltd ABN 13 133 547 396 RSE L0003384 of
(Trustee)**

Recitals

- A The first trustee has determined to establish and maintain a Superannuation Fund called The ARA Retirement Fund (**Fund**) for the individual personal benefit of the persons eligible to join the fund and become Members and the Dependants of those persons.
- B The first trustee agreed to act as the first Trustee of the Fund established under this deed as is testified by its execution of the relevant deed.
- C The first trustee retired and Aracon Superannuation Pty Ltd was appointed as Trustee by deed dated 2009.
- D All cash and investments of the Fund established in this deed are to be held by the Trustee upon the trusts of and subject to the terms and conditions of this deed.
- E This deed is made with the intent that the Trustee, the Members and any Participating Employers shall be bound by the terms and conditions of this deed.
- F The Trustee also wishes to rename the Fund as the Aracon Superannuation Fund.

The parties agree

1 Definitions and interpretation

1.1 Definitions

In this deed:

Accounts means a statement of the income and expenditure for a Financial Year, and a statement of the assets and liabilities at the end of that Financial Year and a statement of the source and application of funds for that Financial Year and such other accounts as the Trustee may determine from time to time.

Act or the Act means:

- (a) the Superannuation *Industry (Supervision) Act 1993*; and
- (b) the regulations made thereunder.

Actuary means a fellow or an accredited member of the Institute of Actuaries of Australia.

Allocated Pension Member means a Member who is in receipt (or who the Trustee has determined to pay) a pension under clause 4.2 of Part C of the Schedule.

Allocated Pension Rules means the rules referred to in clause 4.2(a)(1) of Part C of the Schedule.

Applicable Law means the Act, the *Corporations Act 2001*, the Corporations Regulations, the *Income Tax Assessment Act 1997*, the *Income Tax Assessment Regulations*, the *Superannuation (Unclaimed Money and Lost Members) Act 1999*, the *Family Law Act 1975*, the *Anti-Money Laundering and Counter Terrorism Financing Act 2006*, the *Bankruptcy Act 1966* and any other applicable Act, regulation or other lawful requirement (as amended from time to time) with which the Trustee or the Fund must comply (whether to avoid breaching the relevant Act, regulation or other lawful requirement or to qualify for tax or other concessions which the Trustee determines to be desirable or for any other purpose).¹

Assets means any form of property including all the cash and Authorised Investments, including contributions received (unless those contributions are held subject to clause 10.7 in a separate trust account), held by the Trustee upon the trusts contained in this deed.

Authorised Investments means the investments which the Trustee is authorised to invest in pursuant to clause 17.

Benefit means any amount paid or payable by the Trustee out of the Fund to a Member pursuant to this deed.

Binding Nomination in respect of a Member means a written notice received by the Trustee from the Member which:

- (a) is in a form approved by the Trustee;
- (b) complies with the Applicable Law;
- (c) confirms a previous Binding Nomination or nominates one or more of the Member's Dependants and legal personal representative to receive the Benefit payable following the death of the Member and the proportions in which it is to be paid; and
- (d) is intended by the Member to be binding on the Trustee.

Books has the meaning assigned to that term in the Act.

Business Day means a day that is not a Saturday, a Sunday, a public holiday or a bank holiday in Melbourne, Victoria.

Commencement Day has the meaning assigned to that term in the Act.

Compulsory Contributions means those contributions required to be made by an Employer in respect of a Member under the provisions of the SGC Act or under any industrial award reduced where applicable by the cost of providing any Insured Benefit pursuant to clause 19 and any other applicable costs or charges that the Trustee is permitted to deduct therefrom in accordance with clause 6.

¹ Amended by deed dated 27 June 2007

Contribution-splitting application means an application by a Member in respect of contributions made by or on behalf of that Member on or after 1 January 2006 that meets the requirements of the Applicable Law and any other conditions or restrictions determined by the Trustee from time to time.²

Custodian means the corporation appointed under clause 16.2, if any.

Death Benefit Instruction in respect of a Member means a written notice received by the Trustee from the Member which:

- (a) directs the Trustee to pay the Benefit payable on the death of the Member to one or more of the Member's Dependants and legal personal representative and the proportions in which it is to be paid;
- (b) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction;
- (c) the notice is in the form prescribed by the Trustee for a Death Benefit Instruction.

Deed or this Deed means this deed as originally executed and as it may from time to time be amended in accordance with its provisions.

Dependant has the same meaning as the term has under the Act.

Determination Date means the last day of each calendar month.

Employee means a natural person who is in the employment of an Employer and includes a director, manager or secretary of a corporate Employer.

Employer is a person who satisfies the meaning assigned to that term by the Act and where applicable agrees to participate in the Fund and be bound by the Trust Deed pursuant to clause 15.2.

Eligible Person means any person who is not prohibited from being a Member of the Fund pursuant to the Applicable Law.

Expense Reserve Account means the account established pursuant to clause 14.3.

Financial Year means each successive period of 12 months commencing on the first day of July and ending on the thirtieth day of June except that the first Financial Year shall be the period commencing on the date of this deed and ending on 30 June 2005 and the last Financial Year shall be the period commencing on the first day of July immediately preceding termination and ending on the date of termination of this trust.

Fund means The Aracon Superannuation Fund as constituted by this deed and includes a reference to each separate sub-plan created under clause 34 of this deed.

Gainful Employment in relation to a Member means employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment.

GST means goods and services tax under the GST Act or any similar tax under similar legislation.

² Amended by deed dated 23 March 2006

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*.

Insured Benefit means the proceeds of any Benefit arranged in respect of a Member by the Trustee pursuant to clause 19 with a life insurance company or any like corporation or body.

Investment Account means accounts established for a Member pursuant to clause 14.2.

Investment Nomination means any of a Specific Investment Nomination, Investment Pool Nomination or such other nomination of Authorised Investments as the Trustee may permit from time to time under clause 18.1.

Investment Pool means a pool of selected Authorised Investments with a distinctive investment strategy created in accordance with clause 16.5.

Investment Pool Nomination means the nomination of an Investment Pool by a Member in accordance with clause 18.

Investment Units means units conferring an equal undivided interest in an Investment Pool in accordance with the provisions of clause 16.5 and being valued pursuant to clause 20.

Life Expectancy means the life expectancy of a Term Allocated Pension Member or the life expectancy of a Term Allocated Pension Member's Spouse as determined in accordance with the Act.

Market Value of an Asset at the Relevant Date means, subject to the Act, the Trustee's assessment which shall be final and binding on all parties of the market value of that Asset determined as follows:

- (a) in the case of units or interests in trusts (including managed investment schemes), the redemption price thereof quoted for the relevant trust on the Relevant Date or the latest redemption price so quoted prior to that date;
- (b) in the case of securities officially listed on any recognised stock exchange:
 - (i) any prices concerning such investment shall be determined in accordance with the rules or usual practice of the stock exchange on which such securities are listed;
 - (ii) save as provided in (b)(iii) below the value of such investment shall be the price (if any) quoted for the last sale for that investment on the Relevant Date or prior to that date on that stock exchange provided that if such price is above the price (if any) quoted for the '*latest seller*' price on the Relevant Date or prior to that date then such '*latest seller*' price shall be the market value or if such price is below the price (if any) quoted for the '*latest buyer*' price on the Relevant Date or prior to that date then such '*latest buyer*' price shall be the market value;
 - (iii) if in the case of an investment listed on a stock exchange there have been no sales or no buyer price quoted within three months prior to the Relevant Date or trading in the investment has been suspended for at least two trading days and is continuing, the Trustee may cause a broker approved by the Trustee (being a member of the stock exchange on which such investment is quoted or otherwise an active broker on that stock exchange)

to certify the amount (if any) which in their opinion shall be the value thereof and the value so certified shall be deemed to be the value of such investment;

- (c) in case of deposits, the amount of such deposits;
- (d) in the case of land, cost or the most recent value as determined by a licensed valuer;
- (e) in the case of mortgages, the amount secured and outstanding (whether presently payable or not) pursuant to the mortgage which the Trustee considers recoverable;
- (f) in the case of government or company securities, commercial bills or promissory notes, an amount determined by the Trustee;
- (g) in the case of a policy of insurance or assurance, its surrender value;
- (h) in any other case, the value thereof determined in such manner as the Trustee shall from time to time determine as a net value which could reasonably be considered to be the current net market value of such investment on the Relevant Date.

Member means:

- (a) an Eligible Person who is accepted by the Trustee for membership of the Fund in accordance with the provisions of this deed; and
- (b) a former Eligible Person who at the relevant time is receiving or entitled to receive Benefits from the Fund.

Normal Retirement Date means the date on which a Member attains their sixty-fifth (65th) birthday or such other date as may be agreed in a particular case between the Member and the Trustee.

Pensioner means any person who is in receipt of a pension pursuant to this deed.

Personal Member means a Member who is classified by the Trustee as a personal member for the purposes of this deed.

Preferred Nomination means a notice to the Trustee given by an applicant or Member that nominates a person or persons to receive all or part of the Benefit payable on their death, other than in the form of a Binding Nomination or Death Benefit Instruction. Where more than one person is nominated, the Preferred Nomination may specify the proportion for each person.

Preserved Benefit means any benefit or portion of a benefit that is required to be preserved under the Act.

Product Disclosure Statement in relation to the Fund means a Product Disclosure Statement prepared for the purposes of the Fund pursuant to the Applicable Law.

Register means the register of Members maintained by the Trustee pursuant to clause 26.

Regulated Document means the Product Disclosure Statement and any other documents required to be provided to Members or prospective Members pursuant to the Applicable Law.

Regulator has the meaning assigned to that term in the Applicable Law.³

Relevant Date means the date on which the value of any Asset or of an Investment Unit is valued under this deed.

Resolution means a resolution passed at a meeting of Members duly convened and held in accordance with the provisions of this deed by a majority of the persons voting thereat upon a show of hands and if a poll is demanded, then by a majority of votes given on such poll, but where the Act requires a particular majority or any other conditions for the passage of a resolution, then that majority and those conditions will apply.

Retirement has the meaning assigned to that term in the Act.

Reversionary Pensioner means the person (if any) to whom a pension is payable on the death of a Member pursuant to clause 4.3(r) of the Schedule for Part C in relation to Allocated Pension Members and clause 4.7(a)(11) of the Schedule for Part C in relation to Term Allocated Pension Members.

Schedule means the Schedule to this deed comprising Parts A, B and C and any other Parts that may be added from time to time.

SGC Act means the *Superannuation Guarantee Charge Act 1992*.

Specific Investment Nomination means the nomination of specific Authorised Investments by a Member in accordance with clause 18.

Spouse means, in relation to a Member:

- (a) a husband, wife, widower or widow of the Member; and
- (b) a person who, though not legally married to the Member, in the opinion of the Trustee lives or has lived with the Member as at the relevant date on a bona fide domestic basis as the husband or wife of that Member.

Tax Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

Tax Reserve Account means the account established pursuant to clause 14.4.

Tax Liability means any liability or estimated liability as determined by the Trustee for taxes and charges assessed, charged or imposed by or under any federal or state law whether in respect of contributions, income earned (after deducting such expenses as may be allowed under the Tax Act or the Act) from Assets, capital gains realised on the sale of Assets or otherwise.

Term Allocated Pension Member means a Member who is in receipt (or who the Trustee has determined to pay) a pension under clause 4.4 of Part C of the Schedule.

³³ Amended by deed dated 23 March 2006

Term Allocated Pension Rules means the rules referred to in clause 4.4(a)(1) of Part C of the Schedule.

Total and Permanent Disablement means:

- (a) in any case where the Trustee has effected a policy of insurance pursuant to clause 19 to provide Total and Permanent Disablement Benefits in respect of a Member, Total and Permanent Disablement as defined within that policy of insurance (or what the Trustee considers to be the corresponding words or expression contained in that policy); or
- (b) where no such policy of insurance has been effected, ill-health (whether physical and mental) which in the opinion of the Trustee is such that the Trustee having regard to the appropriate medical evidence is satisfied that the Member is unlikely ever again to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;

and '*Totally and Permanently Disabled*' shall have a corresponding meaning, provided that Total and Permanent Disablement shall only be regarded as having occurred for the purpose of releasing any Preserved Benefit component of any Benefit payable on Total and Permanent Disablement pursuant to this deed if the evidence provided by the Member concerned is sufficient to satisfy the Trustee that the Member also meets the conditions for permanent incapacity as defined in the Act.

Transition to Retirement Conditions means the conditions in the Applicable Law that enable a Member to access their Preserved Benefit, in the form of a non-commutable allocated pension or non-commutable annuity as defined in the Applicable Law, notwithstanding that the Member is in Gainful Employment.⁴

Trustee means the Trustee for the time being of the Fund appointed under the provisions of this deed.

Unrestricted Non-Preserved Benefits has the meaning assigned to that term under the Act.

Valid Binding Nomination has the meaning given in clause 29.7.

Valid Death Benefit Instruction has the meaning given in clause 29.9.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) a term which is used in this deed as a defined term and which is defined in the Applicable Law shall to the extent of any inconsistency have the meaning given to that term in the Applicable Law unless the Trustee determines otherwise provided that if a term has more than one definition under the Applicable Law, the term shall have the meaning that the Trustee determines from time to time either generally or for any particular purpose;
- (b) a reference:

⁴ Amended by deed dated 23 March 2006

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- (1) to the singular includes the plural and vice versa;
 - (2) to a gender includes all genders;
 - (3) to any document (including this deed) includes references to that document as amended, consolidated, supplemented, novated or replaced;
 - (4) to an agreement includes any deed, agreement or legally enforceable arrangement or understanding whether written or not;
 - (5) to any person or any party includes:
 - (A) references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency as the case requires; and
 - (B) that person's successors, permitted assigns, substitutes, executors and administrators;
 - (6) to law:
 - (A) includes references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, by-law, judgment, rule of common law or equity, rule of any applicable stock exchange; and
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced;
 - (7) to judgment includes references to any order, injunction, decree, determination or award of any court or tribunal;
 - (8) to proceeding includes litigation, arbitration, and investigation;
 - (c) headings are for convenience only and must be ignored in construing this deed;
 - (d) if a period of time is specified and dates from, after or before a given day or the day of an act or event, it is to be calculated exclusive of that day;
 - (e) the words including or includes mean including but not limited to or including without limitation;
 - (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (g) this deed must not be construed adversely to a party solely because that party was responsible for preparing it; and
 - (h) where any person is required to provide, or may provide, a notice or application in writing to another person, then the Trustee may, subject to the Applicable Law, permit that notice or application to be given in electronic or other form and on such other terms and conditions as the Trustee may determine.

1.3 Incorporation of Applicable Law

Notwithstanding anything expressed or implied to the contrary in this deed, if there is a conflict between clause 1.4 and any other provision of this deed, clause 1.4 shall prevail.

1.4 Effect of Applicable Law

Subject to right of the Trustee to elect otherwise:

- (a) any provision or requirement of the Applicable Law which is expressly required to be included in this deed in order to comply with or satisfy a requirement of the Applicable Law is hereby deemed to be included in this deed;
- (b) if there is a conflict between a provision or requirement deemed by clause 1.4(a) to be included in this deed and any other provision of this deed, the deemed provision or requirement shall prevail;
- (c) the Trustee and Member shall do or procure to be done such acts as in the opinion of the Trustee are necessary to comply with the Applicable Law; and
- (d) where the Applicable Law grants a power to the Trustee this deed is deemed to include such powers.

1.5 Overriding Provisions

The provisions in Part D of the Schedule (**Part D**) form part of this deed. Except to the extent that the Trustee determines otherwise (either generally or in any particular case) and also except that clause 1.4 prevails over the provisions in Part D, the provisions in Part D override any other provisions of this deed to the extent of any inconsistency.⁵

2 Trust

2.1 The Trustee or any Custodian or nominee appointed by the Trustee pursuant to clause 16.2 shall hold all Assets of the Fund upon and according to the trusts contained in this deed and the Fund shall consist of:

- (a) such contributions as shall be made to the Fund in respect of any Member at any time as set out in this deed;
- (b) all Assets, benefits and policies of insurance in which any moneys forming a part or the whole of the Fund are invested or by which they are represented and all income and gains derived from them.

2.2 The trust fund constituted by this deed is to be called The Aracon Superannuation Fund or such other name as the Trustee may from time to time determine.

2.3 The Trustee will act as Trustee of the Fund in accordance with the provisions of this deed.

⁵ Amended by deed dated 27 June 2007

3 Period of Trust and Termination

- 3.1 The trust created by this deed starts on the date of this deed and shall terminate, subject to clause 3.4, upon the occurrence of one of the following events:
- (a) if there is no person to whom a Benefit is or may be payable; or
 - (b) the Trustee determines that the liabilities of the Fund at any time exceed the Assets of the Fund.
- 3.2 The Trustee shall realise the Assets of the Fund within one hundred and eighty (180) days after the termination of the Fund provided that the Trustee may defer the sale or the realisation of any or all the Assets of the Fund if the Trustee forms the opinion that such sale or realisation is prejudicial to the interests of the Members.
- 3.3 After the sale and realisation of the Fund, the Trustee shall after paying costs of the Fund and its winding up distribute the moneys as follows:
- (a) where the proceeds of the assets of the Fund are required to be preserved under the Act, the Trustee shall notify each Member of this requirement and request them to nominate in writing within one month a fund approved under the Act for the receipt of the proceeds; or
 - (b) where the proceeds are not required to be preserved under the Act, as directed by the Member or if a Member fails to make such a direction, in such manner as the Trustee, subject to the Act, determines is reasonable in all the circumstances.
- 3.4 Where a Member fails to nominate a fund for the purpose of clause 3.3(a) within one month of the Trustee communicating the request to the Member, the Trustee may transfer the benefit to such other fund and in such manner as is not inconsistent with the Act.
- 3.5 The trust constituted by this deed will endure for any period allowed by law for the duration of any trust established by this deed.

4 The Trustee

- 4.1 The Trustee shall at all times comply with all requirements imposed under the Applicable Law on a person who is or who assumes the office of trustee of a superannuation fund that is subject to the Applicable Law.
- 4.2 The Trustee shall:
- (a) ensure that the Fund is reviewed by an Actuary and audited as required under the Applicable Law;
 - (b) provide information to Members as required under the Applicable Law; and
 - (c) administer the Fund at all times in accordance with the requirements of the Applicable Law.
- 4.3 Subject to the provisions of this deed, the Trustee;

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- (a) shall have all the powers over and in respect of the Assets constituting the Fund as it would exercise if it were the absolute and beneficial owner thereof, and may do anything it considers appropriate for the proper administration of the Fund and compliance with Applicable Law and the deed;
 - (b) shall not, except where permitted by the Act, be subject to direction by another person in the exercise of the Trustee's powers;
 - (c) shall manage and supply management services to the Fund for the benefit of the Members and may delegate to any company or committee or person on such terms as the Trustee may think fit any of the powers, duties or discretions conferred upon it by this deed but the Trustee shall remain responsible at all times for the acts of any company or person so appointed; and
 - (d) may employ such accountants, actuaries, advisers, auditors, bankers, barristers, brokers, consultants, custodian trustees, investment trustees, managers, solicitors and other persons, firms, corporations, or companies as it considers desirable.

4.4 The Trustee shall cease to hold office as Trustee if:

- (a) it notifies the Members of its intention to retire voluntarily after giving one month's written notice; or
- (b) it becomes a '*disqualified person*' within the meaning of the Act or is otherwise not permitted to remain as Trustee under the requirements of the Act or this deed; or
- (c) it has failed to comply within thirty (30) days (or such shorter period as may be required) with a requirement of the Act or this deed contained in a written notice served on it by any Regulator unless the failure to comply is immaterial and is not capable of rectification.

4.5 Subject to the Act, the Trustee shall appoint in writing another person who is qualified under the Act to assume the office of Trustee to be the new trustee of the Fund prior to the Trustee retiring or being removed as Trustee and effective from the date on which the new trustee is appointed.

4.6 The Trustee shall on retirement do everything necessary to vest the Assets of the Fund, or cause them to be vested, in the new trustee appointed and shall deliver to such new trustee all Books and other property whatsoever relating thereto and all the costs thereof and/or incidental thereto shall be recouped from or borne by the Fund.

4.7 The new trustee shall execute a deed in such form as the Trustee may reasonably require whereby the new trustee shall be bound by all the covenants and obligations on the part of the Trustee from the date of its appointment and from that date the retiring Trustee shall be absolved and released from all covenants and obligations, save in respect of any antecedent breach, and the new trustee shall and may thereafter exercise all the powers and rights and shall be subject to all the covenants and obligations of the Trustee in all respects as though the new trustee had been originally named as a party to this deed.

5 Trustee Covenants

- 5.1 **The Trustee, and each director of the Trustee, hereby covenants with the Members to do all those matters required by Section 52 and 52A of the Act as amended from time to time.**

6 Trustee Fees

- 6.1 The Trustee is entitled, in respect of each of the Members, to be paid by the Fund for supplies (including services) made to the Fund the following fees in respect of each Member:
- (a) an initial fee equal to 4% of the amount of all contributions paid into the Fund by or in respect of Members;
 - (b) subject to clause 6.2, a management fee equal to 1.5% per annum of the amount standing to the credit of the relevant Member's Investment Account as at the Determination Date; and
 - (c) an administration fee of an amount not exceeding \$100.00 per annum for each Member's Investment Account to be charged on each Determination Date, which fee will be indexed annually to Average Weekly Ordinary Times Earnings.
- 6.2 The Trustee may debit a Member's Investment Account with such amounts as the Trustee determines are reasonable and which the Member directs the Trustee in writing to pay to the Member's agent either at the time a contribution is made to the Fund by or on behalf of that Member or at any time whilst the Member remains a Member.
- 6.3 Subject to clause 6.7, any amount which the Trustee is entitled to receive under clause 6.1 must be debited to the Member's Investment Account on the day on which it is determined.
- 6.4 The Trustee shall be entitled to accept a lesser amount for all fees or amounts due under this deed and the Trustee in exercising this power may determine that Members may be charged a differential management fee pursuant to clause 6.1(b).
- 6.5 Except where the Fund makes a loss or the Act does not prohibit it, the Trustee shall not charge any fees that would give rise to a negative return on any Member's Investment Account balance where that account balance is less than \$1,000.00 (or such other amount prescribed by the Act) provided that the Trustee shall be entitled to refuse to accept Members who have account balances of less than \$1,000.00 (or such other amount prescribed by the Act) and/or to pay such a Member's Investment Account balance to the Eligible Rollover Fund or the fund established by the Act for such purposes.
- 6.6 In addition to the Trustee's remuneration, the Trustee shall be reimbursed out of the Fund for any of the following costs, charges, expenses and outgoings reasonably and properly incurred in the operation of the Fund:
- (a) the costs of convening and holding any meeting of Members and carrying out any directions or resolutions of any such meeting, including any costs it incurs in relation to the establishment and operation of policy committees pursuant to the Act;
 - (b) the cost of all audits of the Fund;

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- (c) the costs of acquisitions or disposal of any Authorised Investment including brokerage, commission and stamp duty;
 - (d) bank fees and other charges (including but not limited to debits tax and charges in respect of financial institutions duty) incurred in connection with the bank accounts of the Fund;
 - (e) the cost of printing and posting statements, cheques, accounts, distribution statements, reports, notices of meeting and other documents required to be circulated amongst or sent out pursuant to the provisions of this deed;
 - (f) reasonable remuneration of and all costs, charges and expenses incurred by any receiver appointed;
 - (g) all costs, duties, taxes, charges, expenses and outgoings or any other government or other charges or imposts whatsoever including GST;
 - (h) costs of preparation and execution of this deed or any supplemental Deed or Deed executed in substitution for this deed including solicitors costs and any other costs incurred in relation thereto;
 - (i) fees and expenses of any accountant, Actuary, auditor, barrister, solicitor, investment manager, consultant or other expert from time to time employed by the Trustee pursuant to this deed;
 - (j) all costs, charges and expenses paid to a Regulator or incurred in relation to the preparation and distribution of any information, annual return, memorandum, periodical or other report or document prepared, lodged or issued in accordance with the Applicable Law (other than Member benefit statements);
 - (k) custodian fees referred to in clause 16.2.

6.7 The Trustee may allocate amounts to be paid or reimbursed to it under this clause 6 amongst such of the Members' Investment Accounts or Investment Pools as it considers appropriate, including amounts that the Trustee is otherwise authorised to debit to a Member's Investment Account.

6.8 The amount reimbursed to the Trustee under clause 6.6 in any Financial Year plus the amounts actually paid to the Trustee under clause 6.1 in respect of that Financial Year must not exceed the lesser of the maximum amount that could have been paid to the Trustee under clause 6.1 in respect of that Financial Year and the maximum amounts specified in the Regulated Documents.

6.9 The fees in this deed are exclusive of GST and if GST is payable as a consequence of any supply made or deemed to be made or other thing done under or in connection with this deed, the relevant fee must be increased by an amount calculated by multiplying the amount of the relevant fee by the prevailing rate of GST.

7 Brokerage

7.1 The Trustee may agree to pay brokerage or commission in respect of an application for an interest in the Fund to any person, but only if the Applicable Law permits such person to be paid such brokerage or commission.

8 The Auditor

- 8.1 The Trustee shall appoint an auditor as required by the Applicable Law who shall audit the Books and accounts of the Fund within such a period after the end of each Financial Year as the Trustee shall determine.
- 8.2 An auditor may at any time and from time to time:
- (a) be removed by the Trustee; and
 - (b) retire at the expiration of one month's notice in writing to the Trustee.
- 8.3 The Trustee shall provide the auditor of the Fund with such oral or written information and explanations relating to the conduct of the affairs of the Fund as the auditor shall reasonably require.

9 Trustee's indemnity

- 9.1 Except where prohibited by the Act and notwithstanding anything to the contrary in this deed⁶, the Trustee and its directors shall in carrying out their duties as Trustee be indemnified out of the Assets of the Fund against all liabilities properly incurred and shall (subject to the Act) have a lien on and may use moneys forming part of the Fund in pursuance of such indemnity. The indemnity under this clause shall (without limiting the indemnity) extend to:
- (a) a payment to a person the Trustee bona fide believed was entitled to the payment;
 - (b) any loss suffered from an act or omission of the Trustee pursuant to this deed;
 - (c) all costs incurred in bringing legal proceedings to secure compliance with the provisions of this deed or to recover any loss to the Fund; and
 - (d) any losses suffered by the Trustee acting upon:
 - (1) advice of or information obtained from barristers, solicitors or other experts instructed by the Trustee; and
 - (2) a statement of or information obtained from a banker, accountant, valuer or other person independent of the Trustee.

10 Participation and membership

- 10.1 The Trustee may accept an application for membership of the Fund from an Eligible Person upon and subject to the terms and conditions of this deed.
- 10.2 Upon acceptance of the application the Eligible Person making the application shall be bound by the provisions of this deed.

⁶ Amended by deed dated 18 April 2005

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- 10.3 The Trustee may in its discretion accept or refuse any application and it shall not be required to assign any reason or ground for a refusal.
- 10.4 Upon receipt of moneys paid or received from an applicant or any Authorised Investments transferred to the Fund by an applicant, the moneys or Authorised Investments shall, subject to clause 10.2, form part of the Fund and,
- (a) the applicant shall be registered as a Member; and
 - (b) the moneys or Authorised Investments shall be credited to an Investment Account opened in the name of that Member.

Notwithstanding any other provision of this deed, the Trustee may decline to accept the transfer of any Authorised Investments from an applicant without giving any reason.

- 10.5 The Trustee may at any time and from time to time accept further moneys by way of additions to the Fund.
- 10.6 The Trustee must not intentionally or recklessly issue an interest in the Fund to a person (not being a Member) except where that person has made application in writing (or such other form permitted by the Applicable Law) and has received all information required by the Applicable Law.
- 10.7 Where the Trustee receives moneys or Authorised Investments on behalf of an applicant and does not issue the interest in the Fund immediately after receiving the money or Authorised Investments the Trustee shall pay the money or Authorised Investments into a trust account until such time as the relevant interest is issued or the moneys or Authorised Investments are refunded or transferred back (as the case may be) to the applicant or a person entitled to receive it.
- 10.8 Subject to Applicable Law, if an application to become a Member is found to contain any misstatement error mistake or suppression the Trustee may make such adjustments as it in its absolute discretion considers appropriate to the Benefits to be provided by the Fund for that particular Member and/or the contributions (if any) to be paid to the Fund by that Member.
- 10.9 Each Member shall be entitled to a beneficial interest in the Fund in respect of the Member but such interest shall not:
- (a) entitle the Member other than as provided in this deed or permitted by law:
 - (1) to interfere with the rights or powers of the Trustee in its dealings with the Fund or any part of it;
 - (2) to exercise any rights, powers or privileges in respect of any Authorised Investments of the Fund; and
 - (3) to require the transfer to him or her of any Assets of the Fund; or
 - (b) confer other than as provided in this deed any interest in any particular part of the Fund or Asset.
- 10.10 The Trustee may admit a person as a Member to be subject to the terms and conditions contained in a Schedule and may permit a Member to transfer between Schedules, which

transfer will be subject to such terms and conditions as the Trustee may in its absolute discretion determine.

10.11 Notwithstanding any other provision in this clause 10, the Trustee may accept an Eligible Person for membership of the Fund in the circumstances permitted by the Applicable Law.⁷

10.12 A Member ceases to be a Member when any of the following occurs:

- (a) the full amount of a Benefit payable to the Member is paid;
- (b) the balance of a Member's Investment Account is transferred out of the Fund under clause 22.

11 Termination of Participation by an Employer

11.1 Subject to the Employer agreeing to provide an indemnity to the Trustee in a form that is reasonably acceptable to the Trustee, an Employer may request the Trustee, in a form specified by the Trustee from time to time (or to the effect of that form with such variations as the Trustee may from time to time determine as necessary or expedient to comply with the requirements of the Act or to enable the Fund to be more conveniently administered or managed), to terminate its participation in the Fund on a date which shall not be less than 30 days from the date of such request (**Cessation Date**).

11.2 Within a period of not more than 15 days after the Cessation Date the Trustee shall:

- (a) advise the Employer (**Retiring Employer**) of all arrears of contributions due pursuant to this deed up to the Cessation Date and the Retiring Employer shall pay such arrears up to the Cessation Date;
- (b) determine any Benefits which have become payable on or before the Cessation Date in respect of those Members whose membership was nominated by the Retiring Employer and such Benefits shall continue to be payable from the Fund;
- (c) certify to the Retiring Employer what proportion of the Assets including arrears (if any) of contributions still to be made pursuant to clause 11.2(a) is properly attributable to Members who were in the employment of the Retiring Employer at the Cessation Date (**Members' Fund Share**);
- (d) notify those Members whose membership was nominated by the Retiring Employer of the termination of the participation of the Retiring Employer;
- (e) make such arrangements as it thinks proper with the Retiring Employer or Members whose membership was nominated by the Retiring Employer or the trustee of another approved superannuation fund to ensure that the amount of the Members' Fund Share is maintained until such time as Benefits otherwise payable in lieu of the Members' Fund Share would have been paid to the Member; and
- (f) if after providing Benefits to Members pursuant to clause 11.2(b) and the Members' Fund Share pursuant to clause 11.2(c) a surplus remains to the credit of the Retiring Employer, the amount of such surplus shall subject to the Act be paid to

⁷ Amended by deed dated 23 March 2006

the Retiring Employer or distributed in such other manner as the Retiring Employer prescribes.

- 11.3 Without limiting the generality thereof, the following provisions shall apply following receipt by the Trustee of a request by an Employer under clause 11.1:
- (a) each payment made pursuant to clause 11.2 shall only be made against delivery to the Trustee of such form of receipt and discharge as may be required by the Trustee;
 - (b) where for the purposes of acceding to the Retiring Employer's request under clause 11.1 or making such arrangements under clause 11.2(e) the Trustee determines that it is necessary to realise any Assets of the Fund and for whatever reason the Assets are not realised, the Trustee with the consent of the Retiring Employer or the Member may transfer such Assets, where appropriate to the Retiring Employer or the Member or to some other approved superannuation fund or apply such Assets in the purchase of a deferred, immediate or other annuity provided that a Retiring Employer or Member shall only be entitled to an appropriation and transfer of specific Assets pursuant to this clause if the Trustee is satisfied that such appropriation or transfer will not cause the Fund to fail to satisfy any of the requirements of the Act and the Assets are of a similar nature and condition to the investments made by the Trustee pursuant to any investment authority lodged with the Trustee; and
 - (c) the value of any Assets transferred as provided for in clause 11.3(b) shall be calculated at Market Value and the costs of any brokerage, stamp duty and any other fees incurred in transferring such Assets shall be borne by the Retiring Employer or the Member as appropriate provided that in directing the appropriation or transfer of such Assets, the Trustee shall have power to adjust the same either by making or receiving cash payments or otherwise and to settle any question arising in relation thereto in any manner which appears to it to be just.
- 11.4 Where any Benefits represented by the proceeds of the Assets to be appropriated or transferred pursuant to this clause 11 are subject to preservation pursuant to the Act no amounts shall be paid directly to a Member but shall be transferred to an approved superannuation fund which has the appropriate provisions to continue to preserve those Benefits in accordance with the Act.

12 Forfeiture of benefits

- 12.1 All Benefits being provided under the Fund in respect of a Member or Dependant shall (to the extent permitted by the Act) be absolutely forfeited by any Member or Dependant:
- (a) who assigns or charges or attempts to assign or charge any of their Benefits;
 - (b) whose Benefits whether by their own act or by operation of the law or otherwise become payable to or vested in any other person organisation or government;
 - (c) who in the opinion of the Trustee becomes mentally ill or of unsound mind or otherwise incapable of managing their own affairs.
- 12.2 The Trustee may in its absolute discretion pay or apply the whole or any part of the Benefits which have in accordance with clause 12.1 been forfeited to or for the benefit of

the Member or any one or more of their Dependants and/or legal personal representative in such shares and in such manner as the Trustee in its absolute discretion determines, and if no such person is entitled to receive a Benefit then in such other manner as the Trustee, subject to the Act and the Tax Act, may determine.

13 Meetings

- 13.1 The Trustee may at any time call a meeting of Members for any purpose.
- 13.2 A notice calling a meeting of Members must state the objects of the meeting and the terms to be submitted to the meeting.
- 13.3 The Trustee shall send to each Member a notice by post of any meeting at least 10 Business Days before the meeting.
- 13.4 The accidental omission to give such notice to or the non-receipt of a notice by a Member shall not invalidate the meeting.
- 13.5 Any notice convening a meeting of Members shall contain adequate notice of:
- (a) the time and place of the meeting;
 - (b) any matters to be considered at the meeting of which the convenor is aware;
 - (c) any resolutions to be put at the meeting of which the convenor is aware; and
 - (d) a summary of the information relating to those matters and resolutions that is relevant to a holder of those interests on deciding how to vote at the meeting.
- 13.6 The chairman of a meeting shall be:
- (a) a person nominated by the Trustee (whether a Member or not); or
 - (b) where no such nomination is made by the Trustee or if a chairman nominated by the Trustee is not present within 15 minutes after the time appointed for holding the meeting the Members present shall choose one of their number to be chairman.
- 13.7 All meetings shall, subject to the provisions of this deed, be subject to direction by the chairman of the meeting.
- 13.8 The chairman shall not have a casting vote.
- 13.9 Subject to clause 13.11, no business shall be transacted at any such meeting unless a quorum of at least 25 persons holding or representing by proxy at least 10% of the value of the beneficial interests in the Fund are present.
- 13.10 If within 30 minutes from the time appointed for any meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place.
- 13.11 At an adjourned meeting the Members present in person or by proxy (whatever their number or whatever the value of their beneficial interests) shall form a quorum.

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- 13.12 Subject to clauses 13.13 and 13.19, every question submitted to a meeting of the Members shall be decided by a show of hands where every Member who is present shall have one vote.
- 13.13 Where required by this deed or the Applicable Law that an issue be decided by the value of the beneficial interests for the time being issued then every Member who is present in person or by proxy shall have a vote for each dollar of the value of his or her beneficial interest in the Fund.
- 13.14 No objection shall be raised as to the qualification of any voter after the conclusion of a meeting.
- 13.15 On a poll votes may be given either personally or by proxy.
- 13.16 The instrument appointing the proxy shall be in writing under the hand of the appointor or of its authorised agent and:
- (a) be in a form which the Trustee has approved;
 - (b) be deposited with the Trustee not less than two (2) clear days before the relevant meeting;
 - (c) be less than 12 months old; and
 - (d) the Trustee shall have received no intimation in writing of the death or incapacity of the appointor or any revocation of the proxy.
- 13.17 A poll may be demanded before or immediately after any question is put to a show of hands by:
- (a) the chairman; or
 - (b) by not less than five Members; or
 - (c) one or more Members, holding or representing at least one-tenth (1/10) of the value of beneficial interests in the Fund.
- 13.18 If at any meeting a poll is demanded it shall be taken in such manner as the chairman directs.
- 13.19 A demand for a poll may be withdrawn.
- 13.20 Any poll demanded at any meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment.
- 13.21 The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- 13.22 At any meeting a declaration by the chairman that a resolution has been carried or carried by any particular majority, or lost or not carried by any particular majority, shall be conclusive evidence of the fact and shall be binding upon the Trustee and all the Members whether present or not present at such meeting.
- 13.23 A meeting of Members shall have the power by resolution to sanction or assent to any alteration, addition, modification to, or cancellation, of any provision of the deed proposed

by the Trustee and to authorise the Trustee to concur in and execute any supplemental Deed embodying any such alteration, addition, modification or cancellation proposed by the Trustee.

13.24 Minutes of all resolutions passed and proceedings held at every meeting of Members shall be made and signed by the chairman and duly entered in a book to be provided for that purpose by the Trustee and retained for at least 10 years.

14 Administration and Accounts

14.1 The Trustee shall establish and maintain such accounts and sub-accounts and maintain such other Trustee and Fund records as it may deem necessary or expedient for the proper administration of the Fund including an Investment Account in respect of each Member. The Trustee must keep Trustee and Fund records in the manner and for the period prescribed by Applicable Law.

14.2 The Investment Account in respect of any Member shall have:

- (a) recorded the contributions made to the Fund by or in respect of the relevant Member and the date upon which such contributions were made;
- (b) recorded the relevant details of the Assets (including Investment Units) acquired or realised by the Trustee in respect of the Member for the purposes of the Fund, including any revaluation of the Assets in accordance with clause 20;
- (c) debited any losses, outgoings, expenses, charges or otherwise in respect of the acquisition, realisation, holding or otherwise of the Assets referred to in clause 14.2(f);
- (d) credited all interest, dividends, rent or other income (whether positive or negative) in respect of the Assets referred to in clause 14.2(b);
- (e) debited any Tax Liability in respect of assessable contributions, investment income of any description and Benefits attributable to that Member;
- (f) debited to it any fees or expenses payable in respect of the Member in accordance with clause 6;
- (g) debited to it the amount to be credited to the Expense Reserve Account or Tax Reserve Account pursuant to clause 14.3 or 14.4;
- (h) credited or debited such other amounts as the Trustee determines in respect of a Contribution-splitting application from a Member in accordance with the Applicable Law and any conditions or restrictions determined by the Trustee from time to time;⁸
- (i) credited or debited such other amounts as the Trustee determines to be appropriate from time to time.

⁸ Amended by deed dated 23 March 2006

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- 14.3 The Trustee may establish an Expense Reserve Account to facilitate payment of the fees and outgoings, expenses and charges referred to in clause 6. For this purpose, the Trustee may, from time to time, debit each Member's Investment Account with such amounts as the Trustee shall, in its absolute discretion, determine to be equitable having regard to the value of the Member's Investment Account from time to time and credit a corresponding amount to the Expense Reserve Account.
- 14.4 The Trustee may establish a Tax Reserve Account to facilitate payment of any Tax Liability debited against each Member's Investment Account pursuant to clause 14.2.
- 14.5 The Trustee may establish an operational risk reserve or any other reserve account which the Trustee determines and the Applicable Law does not prohibit.
- 14.6 The Trustee may redeem moneys from the Fund for the purpose of payment of Benefits and payments to other approved superannuation funds, expenses, outgoings, charges, Tax Liabilities and for any other purpose allowed by the Applicable Law⁹ or this deed and make appropriate adjustments to relevant accounts and sub-accounts.

15 Contributions

- 15.1 All Members may contribute or arrange for contributions to be made on their behalf to the Fund of such amounts, in such manner and at such times as is agreed with the Trustee.
- 15.2 An Employer wishing to contribute to the Fund in respect of a nominated Member or group of Members may apply for participation in the Fund by undertaking in a form approved by the Trustee to be bound by the provisions of this deed.
- 15.3 An Employer may contribute to the Fund in respect of its Employees such amounts, in such manner and at such times as is agreed with the Trustee.
- 15.4 Notwithstanding anything else in this deed, the Trustee has the right at any time to decline to accept all or any part of any contribution made by a Member or from any person on behalf of a Member without having to give any reasons for so doing.
- 15.5 Subject to the Act, the Trustee may accept any other amounts in respect of Members including shortfall components (for the purpose of the SGC Act) and government co-contributions (under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*).

⁹ Amended by deed dated 23 March 2006

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- 15.6 Subject to the Applicable Law and any conditions or restrictions determined by the Trustee from time to time, the Trustee may receive and consider a Contribution-splitting application from a Member. For this purpose, and notwithstanding any other provision of this deed, the Trustee may do or cause to be done anything considered necessary, expedient or desirable in order to give effect to the Contribution-splitting application.¹⁰

16 Investment of the Assets of the Fund

- 16.1 Any power to invest any Assets of the Fund given to the Trustee pursuant to this Clause 16 shall be subject to the Act and any exercise of that power shall be on bona fide arm's length terms.
- 16.2 The Trustee shall where required by the Applicable Law appoint a corporate body as the Custodian or one or more corporate bodies as Custodians to hold on its behalf the title to all, or some, of the Assets in which the Fund is for the time being invested and the Trustee may:
- (a) pay the Custodians out of the Assets of the Fund such remuneration for its services as the Trustee from time to time determines;
 - (b) give notice to each Custodian terminating its appointment at any time and for any reason and appoint another corporate body or bodies to act as Custodian or Custodians; and
 - (c) appoint a Custodian even where such appointment is not required by the Applicable Law.
- 16.3 Where a Custodian is appointed under clause 16.2, the Trustee shall:
- (a) promptly on receipt of application moneys or Authorised Investments, pay the moneys either to an account in the name of the Custodian or a trust account established for such purposes; and
 - (b) in all Regulated Documents and other representations relating to the Fund direct that all cheques and other payment orders in respect of applications for interests in the Fund be drawn in favour of the Custodian.
- 16.4 The Trustee may appoint, in writing, any corporation as investment manager of any part or all of the Fund on such terms as the Trustee thinks fit and may delegate any duties or powers to any such corporations provided always that any agreement with an investment manager shall include terms to the effect that the investment manager shall:
- (a) not without the consent of the Trustee exercise any discretion which should properly be exercised by the Trustee;
 - (b) not without the consent of the Trustee appoint any Custodian of the assets of the Fund;
 - (c) provide appropriate information to the Trustee as to the making of and return on the investments of the Assets of the Fund; and

¹⁰ Amended by deed dated 23 March 2006

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- (d) provide such information as the Trustee reasonably requires to assess the capability of the investment manager to manage the investments of the Fund.
- 16.5 The Trustee may create pools of selected Authorised Investments within the Fund (**Investment Pool**). Each Investment Pool shall comprise one or more different Authorised Investments, and have a distinctive investment strategy as determined by the Trustee. The Trustee may debit to each Investment Pool such amounts as it is authorised to charge to an Investment Pool, and for this purpose may realise Assets in the Investment Pool to satisfy any such charge. The Trustee may divide the Investment Pool into Investment Units in respect of a particular Investment Pool and shall credit the Investment Account of each Member entitled to Investment Units in that Investment Pool with the value of such Investment Units. Fractional Investment Units may be created.
- 16.6 The Trustee may determine that certain Authorised Investments may be nominated by a Member under a Specific Investment nomination, and determine in its discretion any conditions which may apply in respect of such Specific Investment Nomination.
- 16.7 Subject to the Act, the Trustee may borrow or raise money by way of a loan from a bank for the purpose of providing temporary finance for the Fund.
- 16.8 Each Authorised Investment shall be purchased, sold or otherwise dealt with at a price which is the Market Value of the Authorised Investment as determined by the Trustee from time to time. In determining a Market Value the Trustee may have reference to such recognised financial information as is available from or published by an appropriate independent and commercially recognised source.
- 16.9 Notwithstanding anything else contained in the deed, the Trustee shall be entitled in relation to any proposed Authorised Investment to appoint a licensed valuer to determine the fair market value of the proposed Authorised Investment.
- 16.10 The Trustee shall establish and keep current a register of all investments of the Fund showing in respect of each investment as applicable:
- (a) the nature of the investment and, if relevant, the Investment Pool to which it relates;
 - (b) the date of acquisition thereof by the Trustee;
 - (c) the date of maturity thereof;
 - (d) the cost thereof;
 - (e) the number of each share or unit representing the investment (if applicable);
 - (f) the rate per annum of the redemption yield thereon (if applicable); and
 - (g) any other information required by the Act or as the Trustee may deem necessary.

17 Authorised Investments

- 17.1 Subject to this deed and the Applicable Law, the Trustee has all the powers in respect of the Fund that it is possible under the law to confer on a Trustee and as though it were the absolute owner of the Fund and acting in its personal capacity.

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- 17.2 Without limiting clause 17.1, the Trustee in its capacity as Trustee of the Fund has the power to borrow and to incur all types of obligations and liabilities.
- 17.3 Without limiting clause 17.1, the Trustee may in its capacity as Trustee of the Fund invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

18 Investment Authority

18.1 Subject to the requirements of the Act and this clause 18, the Trustee may offer each Member the option to nominate which specific Authorised Investments all or any part of the moneys standing to the credit of his or her Investment Account are to be invested in accordance with the terms of this deed and the option to vary any existing nomination. The Member may make the nomination as:

- (a) a Specific Investment Nomination; or
- (b) an Investment Pool Nomination; or

nominate Authorised Investments in such other manner as the Trustee may allow from time to time.

18.2 The Investment Nomination must include all the information required by the Applicable Law and the Trustee from time to time. The Trustee may seek further information from the Member at any time in relation to any Investment Nomination.

18.3 **The Trustee may approve or reject any Investment Nomination or variation of any Investment Nomination or accept it subject to any condition or conditions. Where the Trustee rejects an Investment Nomination or variation or imposes conditions in relation to an Investment Nomination it must notify the Member in writing stating its reasons. The Member may modify and resubmit the Investment Nomination or variation. The provisions of this clause 18 shall apply to the resubmitted** Investment Nomination or variation.

18.4 The Trustee may vary the proportions nominated by the Member in his or her Investment Nomination by plus or minus 5% for rounding and convenience of investment in its absolute discretion.

18.5 **The Trustee shall make the Authorised Investments nominated in the Investment** Nomination where the Trustee has accepted it, subject to such terms and conditions as the Trustee determines.

19 Insurance

19.1 The Trustee may arrange with a life insurance company for any or all Insured Benefits to be provided for the benefit of a Member or Members on an individual or group basis by means of a policy or policies of insurance held by or on trust for the Fund.

19.2 A policy effected under clause 19.1 shall be on such terms and conditions as may be approved by the Trustee and the Trustee shall pay all premiums, and receive from the life insurance company all payments, refunds and other moneys in respect of the policy and shall dispose of all moneys received in accordance with this deed.

19.3 The Trustee may from time to time require any Member or any person who has applied to become a Member to:

- (a) be medically examined;
- (b) submit other evidence of health or pastimes;
- (c) provide proof of age to the satisfaction of a life insurance company; and/or
- (d) take such other steps as may be required by the Trustee or a life insurance company for the purposes of effecting any policy or policies.

19.4 Subject to the Act, if at any time:

- (a) the Trustee is of the opinion that it is not reasonably practicable to obtain life insurance or any increase in life insurance or to maintain life insurance in respect of a Member under a policy on terms acceptable to the Trustee; or
- (b) pursuant to the policy the life insurance company for any reason whatsoever fails to provide or increase, or reduces, terminates or withholds life insurance in respect of a Member or refuses to admit a claim for the whole or part of the life insurance effected in respect of a Member,

any Benefit payable to or in respect of a Member pursuant to this deed shall be reduced to the extent that life insurance is not obtained, increased or maintained or is not provided or increased or is reduced or terminated or that claim is not admitted in respect of him/her, as the case may be, or, where life insurance is withheld shall be adjusted accordingly.

19.5 The Trustee may invest or pay any part of the Member's Investment Account in paying the premiums in respect of any life insurance policy effected or acquired in relation to a Member at the request of the Member.

19.6 All premiums paid under any life insurance policy effected or acquired in relation to a Member as contemplated in clause 19.5 shall be debited to the Member's Investment Account in accordance with clause 14.2 and the proceeds of any life insurance policy shall be credited to the Member's Investment Account in accordance with clause 14.2.

19.7 In the event that no life insurance is in force or has been effected at the time a Member or his or her Dependants are eligible to receive a Benefit as the result of the death or Total and Permanent Disablement of the Member, the Benefit payable shall be limited to the amount standing to the credit of the Member's Investment Account.

20 Investment and buy-back prices for Investment Units

20.1 The Authorised Investments of the Fund shall be valued at Market Value and in accordance with this deed and with normal accounting principles at such times as the Trustee determines as appropriate.

20.2 All Investment Units in each Investment Pool shall be of equal value.

20.3 The Trustee covenants that it will not create or deal with any Investment Units otherwise than at a price calculated in accordance with the terms of this deed.

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- 20.4 The buy-back price of an Investment Unit shall be calculated by dividing the number of Investment Units in the Investment Pool at the Relevant Date into the Market Value of the Assets in that Investment Pool on the Relevant Date (after properly accounting for any fees or expenses payable out of the Assets in the Investment Pool) less all costs which would have been incurred on the sale or disposal of the investments comprised in the Investment Pool on the Relevant Date, but the Trustee may in respect of any calculation deem those costs to be a lesser amount or zero.
- 20.5 The investment price of an Investment Unit shall be calculated by dividing the number of Investment Units in the Investment Pool at the Relevant Date into the Market Value of the Assets in that Investment Pool on the Relevant Date (after properly accounting for any fees or expenses payable out of the Assets in the Investment Pool) less all costs which would have been incurred on the purchase or acquisition of the investments comprised in the Investment Pool on the Relevant Date but the Trustee may in respect of any calculation deem those costs to be a lesser amount or zero.
- 20.6 The Trustee's statement of any determination made under this clause 20 is final and binding on all parties.

21 Transfer from other funds

- 21.1 The Trustee may in respect of any Eligible Person accept from another superannuation or like fund an agreed sum or assets (in the form of Authorised Investments) and such a person shall if not already a Member be admitted as a Member and shall be granted such rights to Benefits additional to or in lieu of those otherwise provided under this deed as the Trustee shall determine.

22 Transfer to other funds

- 22.1 The Trustee may:
- (a) at the request of a Member; or
 - (b) if the Trustee considers it necessary or desirable,
- transfer to the trustee of any other complying superannuation fund (as defined in the Act) a Member's entitlement (whether or not a benefit is payable immediately in respect of the Member) subject to such conditions and indemnities as the Trustee may require.
- 22.2 The receipt of such other superannuation fund shall be sufficient discharge to the Trustee for such Member who shall cease to have any further or other entitlement to a Benefit under the deed.
- 22.3 The Trustee shall not be responsible for the payment or disposal by the trustee of the other superannuation fund of any entitlement so paid or transferred under clause 22.1.

23 Powers of Employer not affected

- 23.1 Except as may be expressly provided for in this deed nothing in this deed shall be deemed to affect prejudice or alter in any way the powers of an Employer with regard to any dealings whatsoever with any of its Employees.
- 23.2 Any accrued Benefit entitlement or Benefits to which a Member or his or her Dependants and/or legal personal representative may be or may claim to be entitled under this Deed shall not be used or alleged or claimed as damages or grounds for increasing damages in any action or claim by that Member or his or her Dependants or legal personal representative or by anyone through any of them against the Trustee or any Employer.

24 Limitation of liability

- 24.1 Subject to this deed, no Member shall be under any obligation personally to indemnify the Trustee or any creditor of it in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the Trustee in relation to, arising from or in connection with the Fund, by reason of his or her having been admitted to the Fund or having paid contributions or transferred any moneys or Assets to the Fund or any relationship with the Trustee arising from any such contributions or transfers. Any such liability is hereby expressly excluded. The only rights, if any, of indemnity of the Trustee and its respective creditors shall be limited to having recourse to the Assets of the Fund.

25 Amendment of this deed

- 25.1 Subject to Applicable Law and any approval required by law and clause 25.2, the Trustee may from time to time by supplemental deed alter, modify, add to or delete (collectively, 'amend' or 'amendment' as the context requires) any of the provisions of this deed (including the provisions of this Clause).
- 25.2 If an amendment would alter adversely the accrued benefits or right or claim to accrued benefits of a Member, the amendment will only have effect in relation to the adversely affected Member if that Member has consented to the amendment.

26 Registers

- 26.1 The Trustee shall keep and maintain a register of Members at the registered office of the Trustee or at another location advised to Members. At any time and free of charge the auditor shall be entitled to inspect the register as required by Applicable Law and each Member may inspect the register if permitted by Applicable Law.

27 Copies of deed

- 27.1 A copy of this deed (and all amendments thereto) shall at all times during business hours be made available by the Trustee for inspection at their registered office or in such other manner required by Applicable Law.

28 Retirement Benefits

- 28.1 Subject to the provisions of this deed, the Benefits payable to or in respect of a Member on or before the Normal Retirement Date and the circumstances governing their payment are as described in the relevant Part of the Schedule to this deed applicable to the Member.
- 28.2 The payment of any Benefit is subject to the production of such evidence, the performance of such activities and the execution of such documents as the Trustee may reasonably require.
- 28.3 As soon as is reasonably practicable prior to the payment of any Benefit to the Member or to the person or persons entitled to receive the Benefit, the Trustee shall debit or credit (as the case may be) the Member's Investment Account with any amounts referred to in clause 14.2 (including the proceeds of any insurance policy effected in respect of the Member pursuant to clause 19) which amounts have accrued up to the time of such payment and which have not otherwise been so debited or credited.
- 28.4 Payment of all Benefits shall be subject to the preservation conditions in force under the Act at the time of payment.
- 28.5 Notwithstanding anything contained in this deed, the Trustee shall be entitled at its absolute discretion to pay to any Member where requested by the Member to do so that portion of his or her entitlement in the Fund which represents unrestricted non-preserved benefits or which satisfies another condition of release as defined in the Act.

29 Death Benefits

- 29.1 The Trustee may offer Members and applicants, or any group of them, the option of giving the Trustee:
- (a) a Preferred Nomination;
 - (b) a Binding Nomination; or
 - (c) a Death Benefit Instruction.
- 29.2 Where there Trustee has offered such an option, a Member or applicant may give the Trustee a Preferred Nomination, Binding Nomination or a Death Benefit Instruction.
- 29.3 A Preferred Nomination, Binding Nomination or a Death Benefit Instruction in respect of a Benefit is revoked if the Member:
- (a) gives the Trustee notice in writing, in a form prescribed or accepted by the Trustee, that Preferred Nomination, the Binding Nomination or Death Benefit Instruction respectively is revoked;
 - (b) gives the Trustee another Preferred Nomination, Binding Nomination or a Death Benefit Instruction, in respect of that Benefit; or
 - (c) where the Benefit has become payable or is being paid as a pension, nominates a reversionary beneficiary.

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- 29.4 On receipt of a Binding Nomination the Trustee must consider whether the Binding Nomination is sufficiently clear to allow the Trustee to pay the Benefit, and if necessary seek further information from the Member to clarify any unclear item as soon as practicable after the Trustee receives the Binding Nomination.
- 29.5 On receipt of a Death Benefit Instruction, the Trustee must:
- (a) consider whether to consent to the Death Benefit Instruction; and
 - (b) notify the Member if the Trustee does not consent.
- 29.6 A Binding Nomination becomes invalid if:
- (a) any person nominated as a Dependant:
 - (1) dies;
 - (2) ceases to be a Dependant of the Member; or
 - (3) ceases to be in a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction;
 - (b) it ceases to have effect under the Applicable Law.
- 29.7 A Valid Binding Nomination is a Binding Nomination that, at the time of the Member's death, has not become invalid under 29.6.
- 29.8 A Death Benefit Instruction becomes invalid if:
- (a) the Member's Spouse named in a Death Benefit Instruction ceases to be the Member's Spouse or becomes permanently separated from the Member;
 - (b) any person nominated as a Dependant:
 - (1) dies;
 - (2) ceases to be a Dependant of the Member; or
 - (3) ceases to be in a class of persons the Trustee has prescribed as eligible to be nominated in a Death Benefit Instruction.
- 29.9 A Valid Death Benefit Instruction is a Death Benefit Instruction that, at the time of the Member's death, has not become invalid under 29.8.
- 29.10 A Preferred Nomination is not binding on the Trustee, but the Trustee may consider the Preferred Nomination when exercising the Trustee's discretions under clause 29.11(d).
- 29.11 On the death of a Member:
- (a) where there is a reversionary beneficiary, the Trustee will pay the Benefit as a pension to the reversionary beneficiary;
 - (b) where there is a Valid Binding Nomination, the Trustee will pay the Benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified;

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- (c) where there is a Valid Death Benefit Instruction, the Trustee will pay the Benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified;
 - (d) otherwise, the Trustee shall pay or apply the Benefit to or for the benefit of such one or more of the former Member's Dependants or the legal personal representative of the Member in the manner, at the times, and in such proportions between them, if more than one, as the Trustee may from time to time in its discretion determine and notwithstanding any nomination by a Member that is not a Binding Nomination nor a Valid Death Benefit Instruction, the Trustee shall have absolute and unfettered discretion in making a determination.

29.12 If the Trustee after making reasonable enquiries is unable to identify any Dependants or legal personal representative of a deceased Member, the Trustee may pay the Benefit to any individual who in the Trustee's opinion has a fair claim to the Benefit, where the Applicable Law permits the payment to be made to that individual.

29.13 On the death of a Member, the Benefit payable in respect of the Member shall be the Benefit calculated in accordance with whichever Part of the Schedule to this deed is applicable to the Member. Subject to the Act, such payments may be paid in the form of one or more lump sums or pensions, as the Trustee in its absolute discretion may determine.

30 Alternative Benefits

30.1 Subject to clause 30.2 and to the approval of the Trustee and to any conditions and restrictions imposed by the Trustee at any time and from time to time:

- (a) without limiting any provision of the Schedule, a Member may in a form approved by the Trustee apply to receive a Pension from the Fund either by electing to receive a Pension pursuant to Part C of the Schedule or on such other basis and in such other manner (if any) as may be determined by the Trustee; and
- (b) a Pensioner may by written notice given to the Trustee in a form approved by the Trustee elect to receive a lump sum Benefit in lieu of all or part of a Pension or to alter the terms and conditions or provisions thereof.¹¹

30.2 The Trustee may at any time and from time to time in connection with clause 30.1, or anything done or which may be done pursuant to that clause, do or cause to be done anything considered necessary, expedient or desirable in order to ensure or better ensure satisfaction of any applicable requirement under the Act or the Tax Act or other requirement or relief from taxation in respect of the Fund, including without limitation restricting or altering the manner, form, amount and terms and conditions of payment of any lump sum Benefit or Pension which is payable, or which would or might have become payable, by reason of an election made under clause 30.1 or which would or might have been or become payable but for such an election.

¹¹ Amended by deed dated 23 March 2006

31 GST

If GST arises and is payable as contemplated in clause 6.9 of this deed or otherwise, the recipient of the relevant supply must pay the GST arising at the same time and in the same manner as making payment of any monetary consideration on which such GST is calculated or at the time the liability for GST arises, as the case may be or, if applicable, whichever is the earlier and against delivery to the recipient by the supplier of a tax invoice on terms of and complying with the GST Act.

32 Applicable Law

The rights, liabilities, and obligations of the Trustee and Members shall be governed by the laws of the State of Victoria and any proceedings to enforce such rights, liabilities or obligation may be taken in the courts of that state.

33 Severance

If any part of the provisions of this deed are adjudged by any person who has authority under the Act to make such a determination or by any court of competent jurisdiction or by any Tribunal of competent jurisdiction or by any other competent body to be illegal or invalid or unenforceable by reason of law, the said provisions shall be read down and, if need be, the infringing parts thereof severed herefrom so as to give the remaining provisions a legally valid and enforceable operation to the fullest extent permitted by law.

34 Trustee may make a Sub-Plan

- 34.1 The Trustee may make a determination as to whether a sub-plan should be made for a certain Member or Members of the Fund, may admit a person under clause 10.10 as a new Member of a sub-plan on the basis that the terms and conditions of a sub-plan apply, and may determine the terms for eligibility of a sub-plan.
- 34.2 In making a determination under clause 34.1, the Trustee must have regard to all relevant matters including the provisions of the Act and any law.
- 34.3 Any sub-plan made pursuant to this clause 34 may be made on such terms and conditions as the Trustee thinks fit and documented in such form as the Trustee determines not being inconsistent with the provisions of this Trust Deed or the Act or any requirements relating to the Fund. For the avoidance of doubt, but without limitation, those terms and conditions of a sub-plan may include:
- (a) the types of benefits;
 - (b) the Authorised Investments or Investment Pools offered under the sub-plan, or part of a sub-plan;
 - (c) fees and charges payable under the sub-plan, or part of a sub-plan;
 - (d) such other matters as the Trustee determines.

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- 34.4 For the avoidance of doubt, and without limitation, where a sub-plan is determined, the Trustee's powers in relation to the appointment of custodians, investment managers, insurers, and other service providers, and the Trustee's powers, including its powers to appoint delegates and agents, may be exercised with respect to a particular sub-plan or part of a sub-plan.
- 34.5 Notwithstanding any other provision of this Trust Deed, if the Trustee has made a sub-plan comprising a certain Member or Members of the Fund, any information, reports, documents and statements required or permitted by this Trust Deed to be given to that Member or those Members may, unless contrary to the Act, relate specifically to such sub-plan comprising that Member or those Members and not to any other segment of the Fund.
- 34.6 A sub-plan made under this clause 34 may bear such name or style as the Trustee may from time to time determine.
- 34.7 The Trustee may terminate, close, amend, vary or reconstitute existing sub-plans at any time on such terms and conditions as it determines.
- 34.8 Any liability that in the Trustee's opinion relates to a sub-plan must not be satisfied from the assets, or the benefits, relating to Members or Employers in any other sub-plan.
- 34.9 Despite sub-clause 34.8, unless the Trustee determines otherwise in writing, the establishment of a sub-plan does not create, and a sub-plan is not, a separate trust or resettlement.

EXECUTED as a deed.

Schedule - Part A

Employer Sponsored Membership

1 Application of this Part A

This Part A shall only have application to each Member who has been nominated by his or her Employer pursuant to clause 15.2 of the deed.

2 Benefits payable upon Retirement

If:

- (a) a Member satisfies the relevant conditions for Retirement on or after the Normal Retirement Date; or
- (b) a Member has attained the Normal Retirement Date and the Act requires the Member's benefit to be paid,

then the Member shall be paid a lump sum Benefit equal to the amount held to the credit in the Member's Investment Account at the relevant time.

3 Benefits payable upon Total and Permanent Disablement

If a Member becomes Totally and Permanently Disabled whilst in the service of his or her Employer and has not been dismissed or resigned from such service, then the Member will be entitled to be paid a lump sum Benefit equal to the amount held to the credit in the Member's Investment Account at the time of payment (including the proceeds of any insurance policy effected in respect of a Member pursuant to clause 19 of the deed).

4 Benefits payable upon death

Upon the death of a Member the Trustee shall subject to clause 29 of the deed pay or apply in accordance with the provisions of that clause a Benefit equal to the amount held to the credit in the Member's Investment Account at the time of payment or application (including the proceeds of any insurance policy effected in respect of a Member pursuant to clause 19 of the deed).

5 Benefits payable upon ceasing service for other reasons

Upon a Member ceasing to be in the service of his or her Employer other than in the circumstances described in clauses 2, 3 and 4 of this Part A, the Member shall be entitled subject to the preservation requirements of the Act, to a lump sum benefit equal to the amount held to the credit of the Member's investment Account at the time of cessation of service.

Schedule - Part B

Personal Members

1 Application of this Part B

This Part B shall only have application to those Members who are classified by the Trustee as Personal Members of the Fund.

2 Benefits payable upon Retirement

Where:

- (a) the Member:
 - (1) retires by reason of Total and Permanent Disablement; or
 - (2) qualifies for Retirement; or
- (b) any other circumstance exists or arises in respect of the Member where in the opinion of the Trustee, payment would not cause the Fund to be in breach of or to fail to comply with any relevant requirement of the Act or otherwise prejudice any relief from taxation available to the Fund;

then the Member shall be entitled to be paid a lump sum Benefit equal to the amount held to the credit in the Member's Investment Account at the relevant time (including the proceeds of any insurance policy effected in respect of the Member pursuant to clause 19 of the deed).

3 Benefits payable upon death

Upon the death of a Member the Trustee shall subject to clause 29 of the deed pay or apply in accordance with the provisions of that clause a Benefit equal to the amount held to the credit in the Member's Investment Account at the time of payment or application (including the proceeds of any insurance policy effected in respect of the Member pursuant to clause 19 of the deed).

Schedule - Part C

Personal Pensions

1 Application of this Part C

This Part C shall only have application to those Members who qualify for or elect to receive a pension from the Fund.

2 Benefits payable upon Retirement

- (a) Where a Member to whom this Part C applies:
- (1) retires by reason of Total and Permanent Disablement; or
 - (2) satisfies other relevant conditions for Retirement; or
- (b) any other circumstance exists or arises in respect of the Member where in the opinion of the Trustee, payment of a pension would not cause the Fund to be in breach of or to fail to comply with any relevant requirement of the Act or otherwise prejudice any relief from taxation available to the Fund,
- then the Trustee may pay a Pension to the Member in accordance with clause 4 of this Part C.

3 Contributions

- (a) Subject to the Applicable Law, including that contributions can only be accepted before a pension commences, a contribution to this Part C may consist of:
- (1) a rollover or a transfer of any benefits in respect of a Member from another superannuation or like fund;
 - (2) an amount allotted to a Member, in accordance with the Applicable Law and any restrictions or conditions determined by the Trustee from time to time, pursuant to a Contribution-splitting application; and
 - (3) other contributions made by or in respect of a Member.¹²
- (b) The Trustee may establish rules governing the acceptance of amounts under clause 3(a) of this Schedule including, but not limited to, the minimum and/or maximum amount that may be accepted.

¹² Amended by deed dated 23 March 2006

4 Pension rules

4.1 Types of pensions payable

The Trustee may pay in respect of a Member:

- (a) The Trustee may pay in respect of a Member:
 - (1) an Allocated Pension, in accordance with the clause 4.2 of this Schedule;
or
 - (2) a Term Allocated Pension, in accordance with clause 4.5 of this Schedule,
as nominated by the Member.
- (b) The Trustee may pay a Member who meets the Transition to Retirement Conditions a pension in accordance with clause 4.1(a) as nominated by the Member provided that in all cases payment of the pension does not contravene the Applicable Law.
- (c) For the purposes of clause 4.1(b), the requirements of the Applicable Law that apply to the payment of a pension to a Member who meets the Transition to Retirement Conditions are deemed to be incorporated into the Allocated Pension Rules or Term Allocated Pension Rules and, to the extent of any inconsistency, the requirements of the Applicable Law shall be deemed to be incorporated into this deed and shall override those Rules.¹³

4.2 Allocated Pension

- (a) Subject to clause 4.2(b) of this Schedule:
 - (1) An Allocated Pension is a pension payable in accordance with clauses 4.2 and 4.3 of this Schedule (**Allocated Pension Rules**).
 - (2) The Trustee must pay an Allocated Pension in accordance with these Allocated Pension Rules.
 - (3) An Allocated Pension Member is a Member who is paid an Allocated Pension in accordance with these Allocated Pension Rules.
- (b) To the extent that there is any omission, the provisions of the Applicable Law that relate to the payment of an Allocated Pension¹⁴ are deemed to be incorporated into the Allocated Pension Rules and to the extent of any inconsistency, the provisions of the Applicable Law¹⁵ shall be deemed to be incorporated into this deed and shall override these Allocated Pension Rules.

¹³ Amended by deed dated 23 March 2006

¹⁴ Amended by deed dated 23 March 2006

¹⁵ Amended by deed dated 23 March 2006

4.3 Terms and Conditions of an Allocated Pension

- (a) The Trustee may pay each Member a pension:
 - (1) commencing on the date specified in the Member's application which must be not later than the date necessary to comply with the Applicable Law; and
 - (2) terminating when the Member's Investment Account balance is zero.
- (b) The Trustee will pay an Allocated Pension Member an Allocated Pension, having regard to the terms and conditions set out in that Member's application.
- (c) The Trustee must pay the pension to a Member at the times set out in the Member's application as approved by the Trustee.
- (d) A Member may change the frequency of the pension payments if:
 - (1) the change is approved by the Trustee; and
 - (2) is in a form approved by the Trustee.
- (e) If at any time a Member has not made a selection as to the frequency of the pension payments, the Trustee must pay the pension annually.
- (f) For so long as the pension is payable, the Trustee must ensure that at least one payment is made during each Financial Year.
- (g) For each Financial Year (or part of a financial year), the pension payments to a Member must not be:
 - (1) larger than the maximum limits; or
 - (2) smaller than the minimum limits,set out in the Applicable Law for Allocated Pension benefits;
- (h) As at the time a Member becomes an Allocated Pension Member and each 1 July, the Trustee must notify the Member of the minimum and maximum levels for pension payments for the Financial Year in which that date occurs.
- (i) At any time during a Financial Year, a Member may select the level of pension payments for that Financial Year within the limits in clause 4.3(g) of this Schedule. The selection must be in a manner approved by the Trustee.
- (j) If at any time during a Financial Year no selection has been made for that year under clause 4.3(i) of this Schedule and a pension was being paid in the previous Financial Year, the Trustee must either:
 - (1) pay a pension for the current year calculated according to any previous agreement between the Trustee and Member; or
 - (2) if the Member's application does not contain a stipulation for the current year, continue to pay a pension at the level prevailing at the end of the previous Financial Year.

However, the Trustee may adjust the level up to the minimum or down to the maximum so as to comply with clause 4.3(g) of this Schedule.

- (k) If, at the time of commencing to receive an Allocated Pension, a Member has not made a selection under clause 4.3(i) of this Schedule, the Trustee must pay a pension at the minimum level required under clause 4.3(g) of this Schedule.
- (l) If permitted by the Applicable Law, a Member may commute the whole or a part of the Member's pension at any time by notifying the Trustee in a manner approved by the Trustee.¹⁶
- (m) On a Member fully commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount standing to the credit of the Member's Investment Account.
- (n) On a Member partially commuting the Member's pension, the Trustee must pay a lump sum benefit to the Member equal to the amount requested but not exceeding the amount standing to the credit of the Member's Investment Account.
- (o) If the Applicable Law requires the Trustee to commute part of a Member's pension, the Trustee must comply with that requirement.
- (p) The capital value of the pension and the income from it must not be used as security for a borrowing unless permitted by the Applicable Law.
- (q) The pension must not be transferred to another person unless permitted by the Applicable Law.
- (r) If a Member dies while still entitled to a pension, the Trustee will pay the Member's Benefit:
 - (1) to the nominated reversionary beneficiary (if any); or
 - (2) if there is no nominated reversionary beneficiary, in accordance with clause 29 of this deed.¹⁷
- (s) In making a decision under clause 4.3(r)(2) of this Schedule the Trustee may have regard to any preference expressed by the Member.

4.4 Term Allocated Pension

- (a) Subject to clause 4.4(b) of this Schedule:
 - (1) a Term Allocated Pension is a pension payable in accordance with clauses 4.4, 4.6 and 4.7 of this Schedule (**Term Allocated Pension Rules**).
 - (2) the Trustee must pay a Term Allocated Pension in accordance with these Term Allocated Pension Rules.

¹⁶ Amended by deed dated 23 March 2006

¹⁷ Amended by deed dated 23 March 2006

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- (3) A Term Allocated Pension Member is a Member who is paid a Term Allocated Pension in accordance with these Term Allocated Pension Rules.
- (b) To the extent that there is any omission, the provisions of the Applicable Law that relate to the payment of a term allocated pension¹⁸ are deemed to be incorporated into the Term Allocated Pension Rules and to the extent of any inconsistency, the provisions of the Applicable Law¹⁹ shall be deemed to be incorporated into this deed and shall override these Term Allocated Pension Rules.

4.5 Contributions

The Trustee may only accept a contribution as set out in clause 3 of this Schedule in respect of a Term Allocated Pension Member prior to the Commencement Day of that Member's Term Allocated Pension. A Term Allocated Pension Member may not add to, or increase, the amount of their contribution in respect of their Term Allocated Pension after the Commencement Day of their Term Allocated Pension.

4.6 Payment of Term Allocated Pension

- (a) The Trustee shall, subject to the provisions of this deed but otherwise in accordance with the provisions of this clause 4.6, pay a pension or pensions to each Term Allocated Pension Member.
- (b) The Trustee will pay a Term Allocated Pension to a Term Allocated Pension Member having regard to the terms and conditions set out in that Member's application.
- (c) No payment of a Term Allocated Pension shall be made unless the payment is permissible under Applicable Law.

4.7 Terms and Conditions of a Term Allocated Pension

- (a) Subject to Applicable Law and commutation payments as provided by the Term Allocated Pension Rules, any amount payable to a Term Allocated Pension Member shall be paid to that Member as a pension, on such terms as agreed by the Member and the Trustee provided that:
- (1) pension payments are made on an annual basis to the Term Allocated Pension Member or the Term Allocated Pension Member's Reversionary Pensioner:
- (A) throughout a period equal to either:
- (I) the Term Allocated Pension Member's Life Expectancy from the Commencement Day of the Term Allocated Pension Member's pension (rounded up to the next whole number if the Term Allocated Pension Member's Life Expectancy does not consist of a whole number of years); or

¹⁸ Amended by deed dated 23 March 2006

¹⁹ Amended by deed dated 23 March 2006

(II) the Term Allocated Pension Member's Life Expectancy mentioned in clause 4.7(a)(1)(A)(I) calculated, at the option of the Term Allocated Pension Member, as if the Term Allocated Pension Member were up to 5 years younger on the Commencement Day; or

(B) throughout a period equal to either:

(I) the Life Expectancy of the Term Allocated Pension Member's Spouse on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Term Allocated Pension Member's Spouse does not consist of a whole number of years); or

(II) the Life Expectancy of the Term Allocated Pension Member's Spouse calculated, at the option of the Term Allocated Pension Member, as if his or her Spouse were up to 5 years younger on the Commencement Day (rounded up to the next whole number if the Life Expectancy of the Term Allocated Pension Member's Spouse does not consist of a whole number of years),

as selected by the Term Allocated Pension Member PROVIDED THAT:

(III) the Term Allocated Pension Member has requested that his Term Allocated Pension revert to his surviving Spouse on his death; and

(IV) the Life Expectancy of the Term Allocated Pension Member's Spouse is greater than the Life Expectancy of the Term Allocated Pension Member; and

(V) the Term Allocated Pension Member has not chosen to make an arrangement mentioned in clause 4.7(a)(1)(A)(I) or 4.7(a)(1)(A)(II); and

(2) the total amount of the pension payments to be made in a year (excluding payments by way of commutation pursuant to clause 4.7(a)(9) of this Schedule but including payments made under a payment split in accordance with the *Family Law Act 1975* (Cth)) is determined in accordance with the relevant provisions of the Act; and

(3) the Term Allocated Pension does not have a residual capital value; and

(4) the Term Allocated Pension cannot be commuted except in those circumstances set out in clause 4.7(a)(9) of this Schedule ; and

(5) the Term Allocated Pension cannot be transferred except in those circumstances set out in clause 4.7(a)(10) of this Schedule ; and

(6) if the Term Allocated Pension reverts to another person, it must not have a reversionary component greater than 100% of the benefit of the Term Allocated Pension Member immediately before the reversion; and

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- (7) the capital value of the Term Allocated Pension, and the income from it, cannot be used as security for a borrowing; and
- (8) the Term Allocated Pension complies with any other requirements of the Act relating to such pensions which may apply from time to time; and
- (9) the Term Allocated Pension can only be commuted in these circumstances:
- (A) if the Term Allocated Pension:
- (I) is not funded from the commutation of particular annuities or pensions as specified by the Act; or
- (II) the commutation is made within 6 months after the Commencement Day of the Term Allocated Pension; or
- (III) subject to clause 4.7(a)(10) of this Schedule, on the death of the Term Allocated Pension Member or the Term Allocated Pension Member's Reversionary Pensioner,
- by payment of:
- (IV) a lump sum or a new pension to one or more Dependants of either the Term Allocated Pension Member or the Term Allocated Pension Member's Reversionary Pensioner; or
- (V) a lump sum to the legal personal representative of either the Term Allocated Pension Member or the Term Allocated Pension Member's Reversionary Pensioner; or
- (VI) if, after making reasonable enquiries, the Trustee is unable to find a person mentioned in clauses 4.7(a)(9)(A)(IV) and 4.7(a)(9)(A)(V), a lump sum to another individual; or
- (B) if the Term Allocated Pension Member has opted, under clause 4.7(a)(1)(B) of this Schedule, for a period calculated in relation to the Life Expectancy of the Term Allocated Pension Member's Spouse, the Term Allocated Pension cannot be commuted until the death of both the Term Allocated Pension Member and the Term Allocated Pension Member's Spouse; or
- (C) to pay a superannuation contributions surcharge in accordance with the Applicable Law; or
- (D) to give effect to a payment split in accordance with the *Family Law Act 1975* (Cth),

PROVIDED THAT if the Term Allocated Pension is commuted in accordance with this clause 4.7(a)(9), the commutation amount cannot exceed the account balance of the Term Allocated Pension Member immediately before the commutation; and

- (10) the Term Allocated Pension can only be transferred in the following circumstances:

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- (A) on the death of the Term Allocated Pension Member:
 - (I) to a Dependant of the Term Allocated Pension Member; or
 - (II) to the legal personal representative of the Term Allocated Pension Member; or
 - (B) on the death of the Term Allocated Pension Member's Reversionary Pensioner:
 - (I) to a Dependant of the Term Allocated Pension Member's Reversionary Pensioner; or
 - (II) to the legal personal representative of the Term Allocated Pension Member's Reversionary Pensioner; or
 - (C) if the Term Allocated Pension of the Term Allocated Pension Member is transferred directly to the purchase of another benefit that is a particular annuity or pension as specified by the Applicable Law; and
- (11) a Reversionary Pensioner for the purposes of these Term Allocated Pension rules shall be determined by the Trustee, provided that in each case it is a Dependant of the relevant Term Allocated Pension Member.

Schedule - Part D

1 ²⁰Information requirements

An applicant for membership, a Member, a beneficiary, a claimant for a benefit, an Employer and any other person contributing paying or transferring amounts to the Fund in respect of a Member must give to the Trustee (or the Trustee's agent) all information, evidence and proofs reasonably requested by the Trustee in order to administer the Member's benefits and the Fund in accordance with this deed or to comply with the Applicable Law. If any of the requested information, evidence or proofs is not provided or is later found to be inaccurate or incomplete, the Trustee may reject an application or claim, refuse to accept contributions, and impose conditions on or adjust affected benefits in the manner and to the extent the Trustee considers necessary or appropriate.

2 Acceptance of Contributions

The Trustee must not accept contributions in respect of a Member where:

- (a) the Applicable Law does not permit acceptance of such contributions; or
- (b) the Trustee determines not to accept contributions of a particular type or in particular circumstances.

3 Refund of Contributions

The Trustee must refund a contribution if required by the Applicable Law and may refund any contribution made in error. In refunding contributions the Trustee may deduct any negative investment earnings or movement in unit price and an amount for reasonable administration and transaction costs, including an appropriate proportion of any insurance premium paid in respect of the Member or not recoverable by the Trustee.

4 Allocation of Contributions

The Trustee must allocate contributions to a Member at the times and otherwise in accordance with the Applicable Law.

5 Limits on Splittable Contributions

Notwithstanding any other provision of this deed, the Trustee must only permit a Member to transfer contributions to the Member's spouse not exceeding the maximum splittable amount under, and otherwise in accordance with, the Applicable Law. The Trustee may make any other adjustments to the splittable amount that it considers necessary or appropriate having regard to its tax obligations.

²⁰ Amended by deed dated 27 June 2007

6 Power to Make Rules and Policies

The Trustee may make rules and adopt policies in relation to any matters that the Trustee considers appropriate for the convenient administration of the Fund. The Trustee shall not be liable for not doing something that the Trustee is permitted but not required to do under any policy of the Trustee or under the Applicable Law.

7 Compliance Requirements for Transfers

The Trustee is empowered to make any transfer from the Fund required under the Applicable Law. All transfers out of the Fund are subject to such conditions and must be made within the timeframes required under the Applicable Law. The Trustee must provide to the person responsible for the transferred amount such information as the Applicable Law requires.

8 Illiquid Investments

Where a Member's benefits are wholly or partly invested in an illiquid investment as a consequence of the Member exercising a choice regarding the investment of the Member's benefits, the Trustee shall not be liable for any loss, cost, expense or other liability arising from a delay in the transfer or payment of the benefit associated with a delay in realising the illiquid investment.

9 Benefit Payment Requirements

The Trustee may suspend consideration of a person's claim to or payment of a benefit until all required information evidence and proofs are provided to the satisfaction of the Trustee and, if the required information evidence and proofs are not provided to the Trustee's satisfaction or the Applicable Law so requires, the Trustee may withhold payment.

10 Tax

The Trustee may take any action (whether prospective or retrospective) that the Trustee considers necessary or appropriate to calculate, pay, deduct or take account of any tax, including without limitation:

- (a) adopting policies relating to the application or timing of tax credits and tax debits to Member accounts;
- (b) adopting policies relating to the acceptance of members and contributions without any required or desirable tax-related information;
- (c) adopting policies relating to the claiming of tax refunds;
- (d) reducing or otherwise adjusting contributions to or benefits or other amounts payable from the Fund, in which case the Member will be entitled to only the net amount;

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- (e) providing information and making payments to the Regulator;
 - (f) establishing reserves and making provisions in the accounts of the Fund; and
 - (g) charging to recover the costs and expenses attributable to administering any tax requirement.

Each Member is liable for all tax incurred by the Trustee or the Fund in relation to an excess contribution in respect of that Member and must indemnify the Trustee in respect of such tax.

11 Membership

For the avoidance of doubt, if the Trustee receives, or determines that it holds, an amount (Residual Amount) that relates to the benefits that a person has previously received (other than the Residual Amount), and the Trustee determines that the Residual Amount is to be paid to the person, the Residual Amount will not result in the issue of a new interest but forms part of the original interest associated with the benefits previously paid to the person.

12 Electronic Delivery

Without limiting the means by which notices may be given or information may be disseminated, the Trustee may give notice or provide information by any form of data or image transmission or communication facility or medium, including without limitation facsimile, electronic mail and the internet, in which case the notice will be considered to have been received when transmitted, accessed or published (as the case may be).

13 Pensions

- (a) Form of Pension

The Trustee may pay any form of pension that is approved by the Trustee and permitted by the Applicable Law.

- (b) Payment of Pension

Where a Member or beneficiary has elected to be paid a pension, the pension may be paid in such manner as is agreed between the Trustee and the Member or beneficiary, or in the absence of agreement as the Trustee determines provided the pension satisfies the standards of a pension referred to the Applicable Law.

- (c) Deemed inclusion of Applicable Law

This deed is deemed to include each requirement of the Applicable Law that the governing rules under which a pension is provided must satisfy for the pension to be a relevant pension for the purposes of the Applicable Law.

(d) Commutation

A Member may commute the whole or a part of the Members pension at any time by notifying the Trustee in a manner approved by the Trustee, subject to the requirements of the Applicable Law.

(e) Variation

The Trustee may vary any terms and conditions of a pension or impose additional terms and conditions to ensure that the relevant pension does and will continue to comply with Applicable Law or in any other manner contemplated by the Applicable Law, without necessarily commuting the pension.

(f) Reversionary Beneficiary

A Member may nominate one or more Dependants as a reversionary beneficiary to whom the pension may be transferred after the Member's death provided that the nomination is consistent with the Applicable Law. The Trustee must reject any nomination that is not consistent with the Applicable Law, in which case, if the Member does not provide a nomination that is consistent with the Applicable Law, the balance of the pension as at the Member's death must be paid to the reversionary beneficiary as a lump sum or paid in accordance with this deed at the Trustee's discretion.

(g) Commutation of Reversionary Beneficiary Pension

Subject to the requirements of the Applicable Law, a reversionary beneficiary may elect to:

- (1) commute a part or all of a pension by notifying the Trustee in a manner approved by the Trustee; or
- (2) limit any right of commutation that the reversionary beneficiary might otherwise have to ensure that the pension complies with the Applicable Law,

provided that the Trustee must commute a reversionary beneficiary's pension if and to the extent that the Applicable Law so requires.

Trust Deed

Signing page

SIGNED SEALED AND DELIVERED by
ARACON SUPERANNUATION PTY LTD
ABN 13 133 547 396 affixing its common seal
in accordance with section 127 of the
Corporations Act 2001 (Cth) in the presence
of:

.....
Signature of director

.....
Signature of director/company secretary

.....
Name of director
(please print)

.....
Name of director/company secretary
(please print)