

# Allens › ‹ Linklaters

## Trust Deed

### Crescent Wealth Superannuation Fund

**CCSL Limited**

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<b>Date</b>	9 OCTOBER 2012
<b>Parties</b>	
1.	<b>CCSL Limited</b> (ABN 51 104 967 964) of Level 16, 114 William Street, Melbourne, Victoria (the <b>Trustee</b> ).
<b>Recitals</b>	
A	The Trustee wishes to establish a superannuation fund to be known as the Crescent Wealth Superannuation Fund (the <b>Fund</b> ) which is to be governed by this trust deed as amended from time to time.
B	The purpose of the Fund is to provide benefits for members and their dependants as permitted by legislation governing complying superannuation funds.
C	The trustee is the first trustee of the Fund.

**It is agreed** as follows.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this Deed, the following definitions apply unless the context requires otherwise.

**Account** means in relation to a Member an account established and maintained by the Trustee in respect of the Member in a Division or Plan.

**Account Based Pension** means a pension payable from the Pension Division that meets the minimum standards under Rules 3.1 and 3.3 of Schedule 3, but does not include a Transition to Retirement Pension.

**AML/CTF Act** means the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* (Cth).

**Auditor** means an approved auditor (as defined in section 10 of the SIS Act) appointed by the Trustee under clause 21.3.

**Authorised Person** means a financial adviser that is duly authorised by a Member pursuant to clause 2.11.

**Binding Nomination** means, from a date determined by the Trustee, a nomination given to the Trustee by a Member that:

- (a) is in a form acceptable to the Trustee;
- (b) requires the Trustee to pay any Death Benefit in respect of the Member to eligible persons (being any one or more of the Member's Dependents or legal personal representative);

- (c) complies with the requirements of the SIS Act and any conditions specified by the Trustee from time to time; and
- (d) has not been subsequently revoked or replaced by the Member.

**Category** means a category of membership under a Plan as described in the relevant Participation Deed or as otherwise determined by the Trustee, and in relation to a Member at any time, means the Category which applies to the Member at that time.

**Commencement Date** means the date of the Deed or such other date as the Trustee may determine.

**Custodian** means a custodian which satisfies the requirements of Superannuation Law.

**Death Benefit** means the benefit payable in relation to a Member's interest in a Division or Plan following the Member's death.

**Deed** means this Deed and any Rules made under this Deed as amended from time to time.

**Default Investment Option** means any Investment Option designated by the Trustee as the default Investment Option for a Division, Plan or category of Members under clause 15.2(a)(iii).

**Dependant** has the same meaning as in section 10 of the SIS Act.

**Division** means a division of the Fund established under clause 2 and in relation to a Member, means the Division into which the Member has been admitted and has not ceased to be a Member of.

**Employee** means a person who is:

- (a) in the employ of an Employer;
- (b) a director of an Employer; or
- (c) otherwise taken to be an employee of an Employer for the purposes of the Superannuation Guarantee Charge Acts.

**Employee Member** means an Employee who has been admitted to membership of the Employer-Sponsored Division under Schedule 1 and has not ceased to be an Employee Member in respect of whom Schedule 1 applies.

**Employer:**

- (a) in relation to an Employee Member, means the Participating Employer in whose employ the Employee Member is for the time being engaged or taken to be engaged for the purposes of the Superannuation Guarantee Charge Acts; and
- (b) in relation to a Member (other than an Employee Member), means the employer in whose employ the Member is for the time being engaged or taken to be engaged for the purposes of the Superannuation Guarantee Charge Acts.

**Employer-Sponsored Division** means the Division of that name established under clause 2.3 and governed by the Rules set out in Schedule 1.

**Family Law Act** means the *Family Law Act 1975* (Cth) and regulations made under it.



**Fund** means the superannuation fund known as the Crescent Wealth Superannuation Fund established by this Deed.

**Fund Assets** means the total of the assets of the Fund from time to time.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**Insurer** means any life insurance company with whom a Policy is effected under clause 9.

**Investment Direction** means a direction given to the Trustee by a Member or Authorised Person pursuant to clause 16.1, as varied from time to time, where the direction:

- (a) is in such form as may be required by the Trustee or Superannuation Law from time to time;
- (b) relates to the Investment Options to which assets representing the Member's Account are to be applied by the Trustee;
- (c) was given in circumstances permitted by, and otherwise complies with, Superannuation Law and any conditions specified by the Trustee from time to time; and
- (d) has been accepted by the Trustee and has not subsequently been revoked or replaced by the Member or Authorised Person.

**Investment Option** means an investment option established and maintained by the Trustee under clauses 15.2 and 15.3.

**Legal Personal Representative** has the same meaning as in section 10 of the SIS Act.

**Member** means a person who has been admitted to membership of the Fund under clause 3 and has not ceased to be a Member.

**Non-Binding Nomination** means a wish expressed by a Member as to the destination of the Member's Death Benefit in a form approved by the Trustee, and which is not binding on the Trustee.

**Participating Employer** means a person who has been admitted as a Participating Employer under clause 4 and has not ceased to be a Participating Employer, and in respect of an Employee Member, means the Participating Employer in whose employ the Employee Member is for the time being engaged or taken to be engaged for the purposes of the Superannuation Guarantee Charge Acts.

**Participation Deed** means:

- (a) in relation to a Participating Employer, any deed or agreement entered into between the Trustee and the Participating Employer pursuant to clause 2.5(b), as amended from time to time, or such other form of application to become a Participating Employer as the Trustee may approve from time to time; and
- (b) in relation to a Promoter, any deed or agreement entered into between the Trustee and the Promoter pursuant to clause 2.5(b), as amended from time to time.

**Pension Division** means the Division of that name established under clause 2.3 and governed by the Rules set out in Schedule 3.

**Pension Member** means a Member who has been admitted to membership of the Pension Division under Schedule 3 and has not ceased to be a Pension Member in respect of whom Schedule 3 applies.

**Personal Division** means the Division of that name established under clause 2.3 and governed by the Rules set out in Schedule 2.

**Personal Member** means a Member who has been admitted to membership of the Personal Division under Schedule 2 and has not ceased to be a Personal Member in respect of whom Schedule 2 applies.

**Plan** means a Plan established by the Trustee in accordance with clause 2.5(a) and:

- (a) in relation to a Member, means the Plan into which the Member has been admitted and has not ceased to be a Member of;
- (b) in relation to a Participating Employer, means the Plan established by the Trustee in the Employer-Sponsored Division in respect of Employees of the Participating Employer; and
- (c) in relation to a Promoter, means the Plan or Plans established by the Trustee in the Personal Division and/or the Pension Division in respect of the Promoter.

**Policy** means a policy of insurance which provides death or disability cover (which may include income protection) that is issued by an Insurer in respect of a Member or group of Members.

**Policy Committee** has the same meaning as in section 10 of the SIS Act.

**Preservation Requirements** means any requirement imposed by Superannuation Law that requires that a benefit not be paid to a Member until the occurrence of certain events or that it be paid only in a certain manner or form or to a Superannuation Entity or particular type of Superannuation Entity, the non-compliance with which requirement would result or may result in the Fund failing to be a complying superannuation fund for the purposes of the Tax Act in any year of income and includes any requirement or guideline that is imposed or established by or under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990* (Cth) or under the terms on which a transfer of moneys or assets into the Fund is made.

**Privacy Law** means:

- (a) the Privacy Act 1988 (Cth) (**Privacy Act**);
- (b) the National Privacy Principles contained in Schedule 3 to the Privacy Act or any approved privacy code (as defined in the Privacy Act that applies to trustees of regulated superannuation funds;
- (c) any other statute, regulation or law of Australia or elsewhere which relates to the protection of personal information (as defined in the Privacy Act) and which trustees of regulated superannuation funds must observe.

**Promoter** means a person with whom the Trustee has entered into a Participation Deed relating to the promotion of interests in one or more Divisions or in one or more Plans established in any Division.

**Prudential Standard** means any prudential standard made by the Australian Prudential Regulation Authority under Superannuation Law that must be complied with by the Trustee from time to time.

**Regulator** means (as the context requires) the Australian Prudential Regulation Authority, the Australian Securities & Investments Commission and the Australian Taxation Office or any successor of them.

**Reserve Account** means an account or accounts (if any) maintained by the Trustee in relation to the Fund, a Division or Plan under clause 10.4.

**Rules** means those rules governing each Division established by the Trustee and contained in the Schedules to this Deed.

**Schedule** means any Schedule to this Deed, and in relation to a Division means the Schedule applicable to the Division.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and regulations made under it.

**Splittable Contributions** has the meaning given to it under the *Superannuation Industry (Supervision) Regulations 1994*.

**Sponsor** means Crescent Funds Management (Aust) Limited ABN 32 144 560 172 or such other person appointed or agreed by the Trustee for purposes of this Deed.

**Superannuation Authority** means any person or body appointed under any Superannuation Law who is empowered under that legislation or some other legislation to exercise any discretion, give any consent or approval or otherwise give effect to and administer the Superannuation Law.

**Superannuation Complaints Tribunal** means the tribunal established by the *Superannuation (Resolution of Complaints) Act 1993* (Cth).

**Superannuation Entity** means a complying superannuation fund for the purposes of the Tax Act, a complying approved deposit fund for the purposes of the Tax Act, an annuity complying with the standards prescribed under Superannuation Law or such other fund or entity which the Trustee determines to be an Superannuation Entity, the acceptance of moneys or assets from or the payment or transfer of moneys or assets to which would not in the opinion of the Trustee jeopardise the status of the Fund as a complying superannuation fund in any year of income or cause the Fund to be in breach of or fail to comply with any relevant requirement of Superannuation Law.

**Superannuation Guarantee Charge Acts** means the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth) and any other Act relating to the imposition, collection and administration of the superannuation guarantee charge and any regulations made under the foregoing Acts.

**Superannuation Law** means requirements in any of the SIS Act, the *Corporations Act 2001* (Cth), the Tax Act, the Superannuation Guarantee Charge Acts, the *Superannuation*

(*Unclaimed Money and Lost Members*) Act 1999, the Family Law Act, the Prudential Standards and regulations made under those Acts and all other requirements, whether legislative or otherwise including:

- (a) any administrative guidelines, rulings or determinations issued by a Superannuation Authority; or
- (b) statements by government advising changes and proposed changes to Superannuation Law,

in each case with which the Fund, this Deed or the Trustee must comply or satisfy (or which, in the reasonable opinion of the Trustee, the Fund, this Deed or the Trustee ought comply or satisfy) in order to be a complying superannuation fund for the purposes of the Tax Act or in order to secure or better secure any concession in respect of Tax or other government impost granted or available to the Fund or in order to avoid what the Trustee may consider to be a relevant penalty, detriment or disadvantage.

**Tax** means income tax (including any tax on the disposal of assets), contributions tax, withholding tax, stamp, financial institutions and other duties tax and other taxes, levies, imposts, deductions and charges whatsoever (including in respect of any duty imposed on receipts or liabilities of financial institutions any amounts paid in respect thereof to another financial institution) together with interest thereon and penalties with respect thereto (if any) and charges, fees or other amounts made on or in respect thereof.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) and any regulations made thereunder.

**Total and Permanent Disablement** in relation to a Member:

- (a) has the same meaning as that expression (or an expression corresponding to it) in any Policy that applies to or in respect of the Member under which insurance proceeds may become payable upon the disablement of the member; or
- (b) if paragraph (a) does not apply to the Member, means **permanent incapacity** as defined in the SIS Act.

**Total and Temporary Disablement** in relation to a Member:

- (a) has the same meaning as that expression (or an expression corresponding to it) in any Policy that applies to or in respect of the Member under which insurance proceeds may become payable upon the disablement of the member; or
- (b) if paragraph (a) does not apply to the Member, means **temporary incapacity** as defined in the SIS Act.

**Transition to Retirement Pension** means a pension payable from the Pension Division that meets the minimum standards under Rules 3.2 and 3.3 of Schedule 3.

**Trustee** means the trustee of the Fund named in this Deed and any other Trustee appointed in accordance with the provisions of this Deed.

## 1.2 Definitions from SIS Act

In this Deed, unless the context requires otherwise, the following terms shall have the same meaning as they have in the SIS Act:

*investment manager*  
*regulated superannuation fund*  
*superannuation fund*  
*year of income.*

### 1.3 Policies

A reference to a person effecting, maintaining, claiming under or otherwise dealing with a Policy includes where that Policy is a group or master policy effecting or maintaining membership under or claiming under or otherwise dealing with that Policy on behalf of a Member under that Policy.

### 1.4 Payment in respect of a Member

In this Deed, unless the contrary intention appears, a payment in respect of a Member includes a payment or transfer of assets from the Fund in satisfaction of any obligation to or in respect of a Member and, without limiting the generality of the foregoing, includes a payment or transfer of assets:

- (c) to or for the benefit of a Member;
- (d) to or for the benefit of a Dependant of a Member;
- (e) to another person at the direction of a Member or the Legal Personal Representative of a Member; or
- (f) to or for the benefit of the Legal Personal Representative of a Member.

### 1.5 Interpretation

Headings are for convenience only and do not affect interpretation. In this Deed, the following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause or schedule is a reference to a clause of or schedule to this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's Legal Personal Representatives).

- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (k) A reference to *dollars* and \$ is to Australian currency.
- (l) A reference to an *asset* includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset.
- (m) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.

## 1.6 Schedules

Each Schedule to this Deed forms part of this Deed and applies as the Rules in relation to the Division to which it is expressed to refer.

## 2. The Fund and Divisions

### 2.1 Establishment of the Fund

On the Commencement Date:

- (a) the Fund is established as an indefinitely continuing superannuation fund; and
- (b) the Trustee becomes the first trustee of the Fund and agrees to be bound by this Deed.

### 2.2 Assets of the Fund

The Fund Assets shall be vested in the Trustee upon trust to apply the same in the manner set forth in this Deed.

### 2.3 Initial Divisions

As at the Commencement Date the Fund comprises the following Divisions:

- (a) an Employer-Sponsored Division, which is governed by the Rules set out in Schedule 1;
- (b) a Personal Division, which is governed by the Rules set out in Schedule 2; and
- (c) a Pension Division, which is governed by the Rules set out in Schedule 3.

**2.4 Constitution of new Divisions**

- (a) The Trustee may establish other Divisions of the Fund and each Division may have different rights, liabilities, conditions, terms, rules and fees applying to it.
- (b) When establishing a new Division, the Trustee with the consent of the Sponsor will prescribe the following particulars to be set forth in an additional Schedule:
  - (i) the name of the Division;
  - (ii) the commencement date of the Division;
  - (iii) the Rules for the Division; and
  - (iv) such other matters as the Trustee may specify.

**2.5 Plans**

- (a) The Trustee may with the consent of the Sponsor determine that any Division will comprise a number of Plans and may establish such Plans and determine the rights, liabilities, conditions, terms, rules and fees applying to each Plan, including without limitation:
  - (i) establishing one or more Plans under which a Participating Employer or a group of Participating Employers and their respective Employee Members participate in the Employer-Sponsored Division;
  - (ii) establishing one or more Plans in a Division in respect of a Promoter or group of Promoters; and
  - (iii) establishing Plans by reference to such other criteria as the Trustee considers appropriate.
- (b) Where the Trustee determines to establish a Plan under clause 2.5(a):
  - (i) the Trustee may agree to issue interests in the Plan under a name nominated by the Participating Employer or the Promoter and accepted by the Trustee; and
  - (ii) the Trustee may agree with the Participating Employer or the Promoter such other terms and conditions applicable to the Plan as the Trustee thinks fit,  
  
under the Participation Deed or in such other form as the Trustee may agree from time to time.
- (c) Each Plan established in accordance with clause 2.5(a) will be governed by:
  - (i) the terms of this Deed;
  - (ii) the Rules relating to the relevant Division; and
  - (iii) the terms and conditions set out in the relevant Participation Deed (if any).

**2.6 Closure of Division or Plan**

The Trustee may with the consent of the Sponsor close a Division or Plan and thereafter no new Members shall be admitted to the Division or Plan unless the Trustee determines to re-open the Division or Plan previously closed.

**2.7 Membership of more than one Division and Plan**

The Trustee may permit a Member:

- (a) to be a Member of more than one Division;
- (b) to be a Member of more than one Plan;
- (c) to transfer from one Division to another Division; and
- (d) to transfer from one Plan to another Plan,

on such terms and conditions as the Trustee determines from time to time.

**2.8 Transfers between Divisions or Plans**

Without limiting clause 2.7 and subject to Superannuation Law:

- (a) a Member may, in the form specified by the Trustee from time to time, request the Trustee to; or
- (b) the Trustee may in respect of a Member or Category of Members, transfer the benefits of the relevant Member or Members and their participation in the Fund from one Division, Plan or Category under this Deed to another and the Trustee will:
- (c) determine the terms and conditions of such transfer; and
- (d) do all things which the Trustee considers necessary to satisfy the provisions of this Deed and the requirements of Superannuation Law in respect of the transfer.

**2.9 Beneficial interest and rights of members**

Each Member is entitled to a beneficial interest in the Fund but that interest shall not:

- (a) entitle the Member other than as provided for in this Deed or permitted by law to:
  - (i) interfere with the rights or powers of the Trustee in respect of the Fund Assets;
  - (ii) exercise any rights, powers or privileges in respect of any Fund Asset; or
  - (iii) require the transfer to such Member of any particular Fund Asset; or
- (b) otherwise confer any interest in any particular Fund Asset.

**2.10 Single trust**

- (a) Despite any other provision of the Deed, the Fund constitutes a single trust and a Division or Plan does not constitute a separate trust.
- (b) The Trustee must maintain each Division and Plan in such a way so as to identify the assets and liabilities which are from time to time attributed to each.



**2.11 Authorised Person**

- (a) A Member may authorise his or her financial adviser, in the manner approved by the Trustee from time to time and subject to any terms and conditions or procedural requirements determined by the Trustee, to give instructions to the Trustee in relation to that Member's application for membership and participation in the Fund pursuant to this Deed, including without limitation, giving Investment Directions, and such person will be referred to as an Authorised Person.
- (b) Where a Member gives such an authority, the Trustee shall be entitled to act and rely on such authority and will not be liable for Investment Directions or other instructions given by an Authorised Person who has been properly authorised by the Member unless and until the Trustee receives written notice of revocation by the Member of such authority.
- (c) While such an authority is in force, the Trustee may (but is not obliged to) give effect to any instructions from the Member which are within the scope of the Authorised Person's authority, provided that in the event of any conflict between an instruction from a Member and an instruction from a duly Authorised Person, the Trustee shall be entitled (but not obliged to) to give effect to the instruction from the Authorised Person.

**3. Members****3.1 Eligibility**

- (a) A person is eligible to become a Member of a Division or Plan in accordance with the Rules for that Division.
- (b) The Trustee may in its absolute discretion:
  - (i) accept or reject an application for membership;
  - (ii) impose special conditions when accepting an application for membership; and
  - (iii) elect not to accept an application for membership until such time as the relevant Insurer or insurance underwriter has agreed to provide insurance cover to or in respect of the applicant.

**3.2 Information to Trustee**

- (a) Before the Trustee accepts a person as a Member the Trustee may require the person to:
  - (i) have a medical examination;
  - (ii) provide information that is reasonably required by any Insurer in respect of the person; and
  - (iii) provide information which the Trustee considers relevant to the administration of the Fund.

- (b) When requested to do so by the Trustee, each Employer, Member or person to whom a benefit may become payable under this Deed must provide any information or produce any documents that the Trustee may reasonably require or the purpose of enabling the Trustee to perform any duties or obligations or exercise any powers or discretions under this Deed or at law.
- (c) Where the Trustee is of the opinion that a Member or beneficiary has provided information required by the Trustee which is incorrect or misleading, or any relevant information has been deliberately withheld, the Trustee may in its absolute discretion reduce or adjust any benefit payable to or in respect of the Member or beneficiary in such manner as the Trustee may determine.

### 3.3 Membership

- (a) A person becomes a Member:
  - (i) on the date on which the Trustee approves the person's application; or
  - (ii) on any other date determined by the Trustee.
- (b) If the Trustee approves an application for membership, the Trustee must, as soon as reasonably practicable:
  - (i) notify the Member and their Employer (if relevant) of the date on the person is admitted to membership;
  - (ii) notify the Member of any special conditions imposed under clause 3.1(b)(ii);
  - (iii) establish an Account in respect of the Member and establish all records that the Trustee is required to keep in respect of the Member under this Deed or Superannuation Law.
- (c) If the Trustee rejects an application for membership, the Trustee must notify the person and their employer (if relevant) as soon as reasonably practicable and must deal with any monies submitted to the Trustee in connection with the application in a manner permitted by Superannuation Law.

### 3.4 Members bound by Deed

Every person being or becoming a Member shall be deemed to have approved of and to be bound by this Deed and the Rules.

### 3.5 Cessation of membership of Division or Plan

Unless otherwise provided in the Rules, a Member shall cease to be a Member of a Division or Plan when:

- (a) the balance of the Member's Account in the Division or Plan has been paid to or in respect of the Member in accordance with clause 12;
- (b) the balance of the Member's Account in the Division or Plan has been transferred to another Division or Plan, or to another Superannuation Entity in accordance with clause 7.3;

- (c) part of the balance of the Member's Account in the Division or Plan has been paid in accordance with clause 12 and a transfer is made to another Division or Plan, or to another Superannuation Entity in accordance with clause 7.3, in satisfaction of the remaining balance of the Member's Account in the Division or Plan; or
- (d) the Member's entitlement to benefits from the Division or Plan otherwise ceases.

## 4. Participating Employers

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### 4.1 Application by employer

If a person wishes to apply to become a Participating Employer of the Employer-Sponsored Division of the Fund in respect of some or all of its Employees, the person must execute a Participation Deed in such form and containing such information as the Trustee may from time to time require.

### 4.2 Acceptance of application by employer

- (a) If the Trustee approves an application under clause 4.1, from the date specified in the Participation Deed or, if there is no such date, from a date determined by the Trustee (the **Plan Commencement Date**), the employer shall become a Participating Employer and this Deed shall become binding on the Participating Employer and the Employees of that Participating Employer who become Members.
- (b) On accepting an application, the Trustee must within any time specified by Superannuation Law:
  - (i) notify the Participating Employer in writing, detailing the Plan Commencement Date and any other matters which the Trustee considers appropriate or which are required by Superannuation Law;
  - (ii) if agreed between the Trustee and Participating Employer, establish a Plan in the Employer-Sponsored Division for the Participating Employer;
  - (iii) establish relevant Accounts for the Plan; and
  - (iv) if required by Superannuation Law, establish a Policy Committee in respect of the Plan.
- (c) Each person becoming a Participating Employer shall be deemed to have approved of and to be bound by this Deed and the Rules of the Employer-Sponsored Division.
- (d) A Participating Employer must execute such other agreements or acknowledgements in such form as the Trustee may from time to time require.
- (e) Subject to Superannuation Law, the Trustee and the Participating Employer may agree to amend the Participation Deed at any time and from any date (including retrospectively).

**4.3 Rejection of application by employer**

The Trustee may reject an application under clause 4.1. If the Trustee rejects an application, the Trustee must within any time specified by Superannuation Law:

- (a) notify the person in writing; and
- (b) return any contributions received in connection with the application.

**4.4 Employee eligibility for membership**

A Participating Employer may by notice to the Trustee nominate from time to time Employees whom it wishes to become Employee Members of the Participating Employer's Plan in the Employer-Sponsored Division. The Participating Employer shall supply to the Trustee such information relating to those Employees as may be required by the Trustee including, if relevant, the Category that applies to each Employee.

**4.5 Status of Employee**

Each Participating Employer shall promptly give written notice to the Trustee upon an Employee Member ceasing to be an Employee.

**4.6 Contributions by Employer**

Each Participating Employer will contribute to the Fund in respect of its Employee Members as agreed between the Trustee and the Participating Employer under the Participation Deed or as specified in the Rules.

**4.7 Reduction or suspension of contributions by Employer**

Subject to the Rules, a Participating Employer may by notice to the Trustee reduce or suspend the payment of contributions by it in respect of some or all of the Employee Members in respect of which it is contributing and on receipt of such notice the Trustee shall advise the relevant Employee Members, and may:

- (a) adjust any benefits in respect of those Members; and
- (b) permit those Members to reduce or suspend their contributions (if any) to the Fund.

**4.8 Withdrawal of Participating Employer from Fund**

If:

- (a) a Participating Employer's Plan in the Employer-Sponsored Division ceases to have any Employee Members;
- (b) a Participating Employer becomes bankrupt or is placed in liquidation (other than for the purpose of amalgamation or reconstruction or similar purpose) or ceases to carry on a business;
- (c) a Participating Employer gives the Trustee 90 days' prior written notice (or such other period as the Trustee agrees) that it wishes to cease to participate in the Fund; or

- (d) the Trustee gives the Participating Employer 90 days' prior written notice (or such other period as the Trustee specifies) that it wishes to terminate the Participating Employer's participation in the Fund,

the Participating Employer will cease to participate in the Fund from the date such event occurs or such notice expires (the **Plan Termination Date**).

#### 4.9 Procedure on termination of Participating Employer

Subject to clause 4.10, upon the occurrence of an event under clause 4.8:

- (a) the Participating Employer must immediately pay into the Plan any arrears of contributions for any period prior to the Plan Termination Date, but may make no further contributions to the Plan thereafter;
- (b) the Trustee must continue to pay out of the Plan any benefits which have become payable on or before the Plan Termination Date;
- (c) after providing for:
  - (i) all insurance premiums, expenses and liabilities (including Tax) for which the Trustee reasonably believes the Fund is or may become liable in respect of the Plan for any period prior to the Plan Termination Date; and
  - (ii) any fees to which the Trustee reasonably believes it is or will become entitled in respect of the Plan for any period prior to the Plan Termination Date,

the Trustee will, with effect from the Plan Termination Date, transfer the assets and Members referable to the Plan to:

- (iii) another Division of the Fund (including a Plan within that Division);
  - (iv) another Superannuation Entity nominated by the former Participating Employer, if applicable; or
  - (v) another Superannuation Entity selected by the Trustee,
- in a manner consistent with Superannuation Law.

#### 4.10 Replacement of Participating Employer

If a Participating Employer gives a notice under clause 4.8 but nominates a replacement employer to take its place and the replacement employer executes a Participation Deed or such other agreements or acknowledgements in such form as the Trustee may from time to time require, the Trustee may agree that with effect from a date determined by the Trustee:

- (a) the Participating Employer's participation in the Fund will cease; and
- (b) the replacement employer will become a Participating Employer in respect of the relevant Plan in the Employer-Sponsored Division.

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## 5. Promoters

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### 5.1 Participation Deed

- (a) A person may apply to become a Promoter in respect of one or more Divisions or Plans. The Trustee may, with the consent of the Sponsor, consent to such person becoming a Promoter, provided that the person must execute a Participation Deed in such form and containing such information as the Trustee may from time to time require.
- (b) Each person becoming a Promoter shall be deemed to have approved of and to be bound by this Deed and the Rules.
- (c) A Promoter must execute such other agreements or acknowledgements in such form as the Trustee may from time to time reasonably require.
- (d) Subject to Superannuation Law, the Trustee and the Promoter may agree to amend the Participation Deed at any time and from any date (including retrospectively).

### 5.2 Contributions by Promoter

Each Promoter will contribute to the Fund such amounts (if any) as agreed between the Trustee and the Promoter under the Participation Deed or as specified in the Rules.

### 5.3 Termination of Promoter's Plan

Subject to Superannuation Law, the Trustee may terminate a Plan established by the Trustee in respect of a Promoter:

- (a) if the Plan ceases to have any Members;
- (b) if the Promoter becomes bankrupt or is placed in liquidation (other than for the purpose of amalgamation or reconstruction or similar purpose) or ceases to carry on a business;
- (c) if the Participation Deed terminates; or
- (d) in any other circumstances permitted in the Participation Deed,

with effect from the date such event occurs or such notice expires (the **Promoter Plan Termination Date**).

### 5.4 Procedure on termination of Promoter's Plan

Upon the occurrence of an event under clause 5.3 in relation to a Plan established in respect of the Promoter, the following will apply:

- (a) the Promoter must immediately pay into the Plan any arrears of contributions for any period prior to the Promoter Plan Termination Date, but may make no further contributions to the Plan thereafter;
- (b) the Trustee must continue to pay out of the Plan any benefits which have become payable on or before the Promoter Plan Termination Date;
- (c) after providing for:

- (i) all insurance premiums, expenses and liabilities (including Tax) for which the Trustee reasonably believes the Fund is or may become liable in respect of the Plan for any period prior to the Promoter Plan Termination Date; and
- (ii) any fees to which the Trustee reasonably believes it is or will become entitled in respect of the Plan for any period prior to the Promoter Plan Termination Date,

the Trustee may determine, with effect from the Promoter Plan Termination Date, to transfer or otherwise re-designate the assets and Members referable to the Plan to:

- (iii) another Division or Plan;
- (iv) another Superannuation Entity nominated by the former Promoter; or
- (v) another Superannuation Entity selected by the Trustee,

in a manner consistent with Superannuation Law.

## 6. Contributions

### 6.1 General

- (a) Each Participating Employer and each Member must contribute to the Fund, a Division or a Plan such amounts, in such manner and at such times as may be specified in the Rules, a Participation Deed or any other arrangement agreed by the Trustee.
- (b) Subject to Superannuation Law and clause 6.2, the Trustee may accept into the Fund, a Division or a Plan:
  - (i) contributions made by a Member;
  - (ii) contributions made on behalf or in respect of a Member, including from:
    - (A) the Member's Employer (whether or not the Employer is a Participating Employer); or
    - (B) the Member's Spouse; and
  - (iii) government co-contributions or similar payments in respect of a Member, in any manner and at any time as the Trustee considers appropriate.
- (c) Subject to Superannuation Law and any conditions the Trustee may determine from time to time, the Trustee may:
  - (i) allocate within the Fund, a Division or a Plan; or
  - (ii) transfer to another Superannuation Entity,  
an amount of benefits, for the benefit of a Member's Spouse, that is equal to the nominated amount of the Splittable Contributions made by, for or in respect of the Member, and may make such adjustment to the Member's benefits as the Trustee considers appropriate.

## **6.2 Limit on contributions**

Notwithstanding any other provision of this Deed and the Rules, the Trustee:

- (a) may in its absolute discretion decline to accept a contribution to the Fund or a Division for any reason;
- (b) may determine from time to time a minimum contribution amount in respect of Members (whether in relation to Members generally or in relation to any particular Member or Category of Members), and may decline to accept a contribution to the Fund or a Division that is less than the relevant minimum amount;
- (c) may refuse to accept any contribution which may, in the opinion of the Trustee, jeopardise the status of the Fund as a complying superannuation fund for the purposes of the Tax Act; and
- (d) must not accept any contribution where to do so would constitute a breach of Superannuation Law.

## **6.3 Refund of payments**

If any moneys paid to the Fund will or will be likely to jeopardise the status of the Fund as a complying superannuation fund for the purposes of the Tax Act, constitute a breach of Superannuation Law or is found by the Trustee to have been paid by mistake (whether of law or of fact), the Trustee may refund those moneys to the person who paid them to the Fund but the Trustee shall not be liable to pay any interest, or account for any earnings or compensate the person who paid those moneys in any way except where required by Superannuation Law and a person shall not be deemed to have become a Participating Employer or a Member merely by reason of the receipt by the Trustee of those moneys. If permitted by Superannuation Law, the Trustee may adjust the amount to be repaid to take account of any insurance premiums, Tax, fees or other expenses paid or payable in respect of those moneys as the Trustee sees fit.

## **6.4 Acceptance of assets**

The Trustee may agree to accept the transfer of an asset by an Employer or Member as a contribution to a Division of the Fund, and the amount of the contribution shall be the value of the asset to be transferred as agreed between the Trustee and the Employer or Member (as the case may be), and shall be applied by the Trustee as a contribution by or in respect of the Member to whom it relates.

## **7. Transfers**

### **7.1 Transfers into the Fund**

The Trustee may in its absolute discretion accept into a Division of the Fund:

- (a) moneys or assets (whether in the form of cash, in specie transfer or any other form) from another Superannuation Entity under an arrangement with the trustee, an employer or member of that Superannuation Entity where the member proposes to become or is a Member of the Division of the Fund;



- (b) subject to Superannuation Law and the Tax Act an employment termination payment of a person under an arrangement between that person and the Trustee where that person proposes to become or is a Member of the Division of the Fund; or
- (c) moneys or assets (whether in the form of cash, in specie transfer or any other form) from another Division of the Fund where the Member intends to become a Member of the first-mentioned Division of the Fund,

and the amount of the moneys or the value of the assets transferred shall be applied by the Trustee in accordance with the arrangements relating to the transfer as agreed by the Trustee.

## **7.2 Non-acceptance of transfer in**

The Trustee may in its absolute discretion decline to accept any transfer or payment of moneys from another Superannuation Entity or person for any reason and the Trustee must not accept any transfer or payment of moneys which would, in the opinion of the Trustee, jeopardise the status of the Fund as a complying superannuation fund or constitute a breach of Superannuation Law.

## **7.3 Transfers out of the Fund**

- (a) Subject to the Rules of the relevant Division or Plan and such other conditions as the Trustee may determine from time to time, the Trustee may:
  - (i) at the request of the Member in a form approved by the Trustee from time to time;
  - (ii) if required by Superannuation Law; or
  - (iii) without the consent of the Member in circumstances where such consent is not required by Superannuation Law,pay or transfer all or part of a Member's benefit to another Superannuation Entity (whether in the form of cash, in specie transfer or any other form), together with any other amount (whether on an allocated or non-allocated basis) as the Trustee considers appropriate, in any manner permitted by Superannuation Law.
- (b) The Trustee may from time to time specify a minimum transfer amount and impose such other conditions on transfers out of the Fund as it considers appropriate.
- (c) A transfer under this clause 7.3 satisfies the Member's entitlements to any benefit from the Fund in respect of the amount transferred and the Trustee is not responsible for the manner in which the transferee deals with the amount transferred.

## **8. Cooling off**

If the Trustee accepts a contribution or transfer from or in respect of a Member and:

- (a) the contributor or transferor requests repayment of the contribution or transfer; and
- (b) Superannuation Law requires the Trustee to do so,

the Trustee must repay to the contributor or transferor the amount accepted as adjusted by any movement in the value of the Member's relevant Account and by any other adjustment or payment of Tax, fees, costs or expenses that the Trustee is entitled to make pursuant to Superannuation Law.

## **9. Policies**

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### **9.1 Trustee may effect Policies**

- (a) The Trustee may effect one or more Policies in respect of, or extend the application of one or more Policies to a particular Member or Category of Members, or to the Members of a particular Division or Plan.
- (b) A Policy may only be effected with an Insurer agreed to by the Trustee.
- (c) The Trustee may accept an assignment of a policy of insurance on such terms and conditions as the Trustee determines from time to time.
- (d) The obligations of the Trustee to effect or extend a Policy to or in respect of a Member under this clause 9.1 may, if the Trustee so determines, be conditional on the Member submitting to such medical examination and providing such information as the Insurer under the Policy requires.

### **9.2 Insurance premiums**

- (a) The Trustee may pay the insurance premiums attributable to a Member under each Policy that applies to or in respect of the Member in any manner the Trustee in its sole discretion determines, including by deducting the insurance premium amount from contributions or transfers received in respect of the Member or by debiting the insurance premium amount from an Account maintained in respect of the Member under clause 10.
- (b) The Trustee may agree with a Participating Employer:
  - (i) that a reduced rate of premium will apply in respect of some or all of its Employees; or
  - (ii) that some or all of the premiums otherwise payable by its Employees under this clause 9 will be paid by the Participating Employer.
- (c) The Trustee may agree with a Promoter:
  - (i) that a reduced rate of premium will apply in respect of some or all of the Members of a Plan established in respect of the Promoter; or
  - (ii) that some or all of the premiums otherwise payable by such Members under this clause 9 will be paid by the Promoter.

### **9.3 Operation of Policy**

- (a) The terms of any Policy that applies to or in respect of a Member shall bind the Member and any person who is or becomes entitled to a benefit in respect of the

Member and the Trustee will only be required to effect or maintain a Policy in accordance with its terms.

- (b) The Trustee is solely entitled to enforce any rights, remedies or contract in connection with a Policy and no Member, Participating Employer, Promoter or person claiming through them may claim any right, title or interest in or to any Policy or contract or any moneys payable under it.

#### **9.4 Termination or refusal of cover**

- (a) If the Trustee effects or seeks to effect a Policy or an increase in the cover provided by a Policy and:
  - (i) the Insurer refuses to provide or increase the cover under the Policy in respect of a Member on its standard terms; or
  - (ii) the Insurer for any reason whatsoever fails to provide, increase or maintain, or reduces, terminates or withholds cover under the Policy or does not admit or defers a claim in whole or in part,

then the benefit in respect of which the Policy has been or would have otherwise been effected will be reduced or varied to the extent to which a Policy or cover under a Policy has not been effected on standard terms or has otherwise not been obtained, increased or maintained or has been reduced, terminated or withheld or in respect of which a claim is not admitted or is deferred, and the benefit will be adjusted or not be provided in accordance with the requirements or decision of the Insurer under a Policy.

- (b) To the extent required by Superannuation Law, the Trustee must advise each Member of the amounts covered or declined under a Policy that applies to or in respect of that Member.
- (c) If the Insurer under a Policy declines to provide (in whole or in part), or will only provide subject to qualifications, cover in respect of a Member under the Policy then the Trustee will not be required to arrange any other or alternative Policy in respect of that Member.

#### **9.5 Adjustment of benefits**

- (a) Where a Policy applies to or in respect of a Member, the Trustee may adjust the amount of, the time for payment and the basis of payment of all or part of the Member's benefit in such manner as it considers appropriate to take account of the terms and conditions upon which the proceeds of such Policy are payable by the Insurer and the amount of such proceeds.
- (b) No payment is required to be made from the Fund by the Trustee in respect of any Policy greater than the amount actually received by the Trustee under the Policy, as adjusted to take account of any Tax, fees, costs, expenses or other deductions that the Trustee is entitled to make under this Deed.

- (c) Any adjusted benefit provided pursuant to this clause 9.5 shall be in lieu and in full satisfaction of the benefit that would or may have been payable but for the operation of this clause.

## **10. Accounts**

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### **10.1 Accounts for Members**

- (a) The Trustee shall establish and maintain an Account for each Member in respect of their membership of a Division or Plan, and may establish more than one Account referable to each Division or Plan of which a Member is a member.
- (b) The Trustee may, in its absolute discretion, determine a minimum balance that must be maintained in a Member's Account (whether in relation to Members generally or in relation to any particular Member or Category of Members), and may adjust the amount so determined at any time.

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

- (a) The Trustee shall credit to a Member's Account:
  - (i) any contributions made to the Division or Plan by, on behalf of or in respect of the Member;
  - (ii) any amount accepted into the Division or Plan in respect of the Member from another Superannuation Entity, person, Division or Plan pursuant to clause 7.1;
  - (iii) any proceeds received by the Trustee in respect of the Member under a Policy which the Trustee determines to credit to the Account;
  - (iv) the amount of any positive investment earnings determined by the Trustee to be attributable to the Account or arising from the Investment Options applicable to the Account;
  - (v) any other money or assets received by the Trustee in respect of the Member; and
  - (vi) any other amounts which the Trustee considers appropriate or equitable to be credited to the Account.
- (b) The Trustee shall debit to a Member's Account:
  - (i) such amounts as the Trustee determines pursuant to clause 9.2 in respect of insurance premiums attributable to the Member under each Policy that applies to or in respect of the Member's membership of the Division or Plan;
  - (ii) the amount of any Tax, fee, charge, cost or expense determined by the Trustee to be attributable to the Account or arising from the Investment Options applicable to the Account and which has not been taken into account in the calculating the investment earnings in relation to the Account;

- (iii) any amount rolled over, paid or transferred out of the Division or Plan in respect of the Member;
- (iv) the amount of any negative investment earnings determined by the Trustee to be attributable to the Account or arising from the Investment Options applicable to the Account; and
- (v) any other amounts which the Trustee considers appropriate or equitable to be debited to the Account.

### **10.3 Adjustment to Account procedures**

The Trustee may:

- (a) establish additional Accounts in respect of Members (whether in relation to Members generally or in relation to any particular Member or Category of Members) as appropriate or divide any one or more of the Accounts into sub-accounts; and
- (b) vary the items to be credited or debited to such Accounts, notwithstanding clause 10.2.

### **10.4 Reserve Accounts**

Subject to Superannuation Law, the Trustee may establish and maintain one or more Reserve Accounts within the Fund for any purpose (including, for the avoidance of doubt, one or more Reserve Account to cover the operational risk of the Fund, within the meaning of Superannuation Law) and allocate to those accounts receipts or payments or other amounts as the Trustee considers appropriate and are permitted by Superannuation Law from time to time.

## **11. Fees**

### **11.1 Establishment fee**

The Trustee may charge a fee to establish an Account in the Fund, a Division or a Plan in respect of a Member.

### **11.2 Contribution fee**

The Trustee may charge a fee on any amount paid, contributed or transferred to the Fund, a Division or Plan in respect of a Member.

### **11.3 Administration fee**

- (a) The Trustee may charge an administration fee in respect of a Member calculated as:
  - (i) a percentage per annum of the balance of each Member's Account; and/or
  - (ii) a fixed dollar amount per Member per annum as determined by the Trustee.

- (b) Unless otherwise determined by the Trustee and notified to Members in accordance with Superannuation Law, administration fees will accrue on a daily basis and be payable monthly in arrears.

#### **11.4 Investment fee**

The Trustee may charge a fee relating to the investment or further investment of amounts in respect of a Member's Account, including in relation to the selection of specific Investment Options.

#### **11.5 Withdrawal fee**

The Trustee may charge a fee out of any benefit payment or transfer made from the Fund in respect of a Member.

#### **11.6 Switching fee**

The Trustee may charge a fee for switching or transferring amounts between Investment Options in respect of a Member's Account, whether pursuant to an Investment Direction (or variation thereof) or otherwise in accordance with this Deed.

#### **11.7 Other transaction fees**

The Trustee may charge a fee in respect of specific administrative tasks undertaken in relation to Member's Account.

#### **11.8 Pension variation fee**

In relation to a Member in receipt of a pension from the Pension Division, the Trustee may charge a fee for any variation a Member elects to make to the terms, frequency of payments or pension level in relation to the pension.

#### **11.9 Disputes and complaints fees**

Subject to Superannuation Law, the Trustee may charge any fees against the Account of a Member or in respect of the Fund, a Division, Plan or Category, which in its view are reasonable in relation to the time and effort the Trustee spends dealing with any dispute or complaint regarding a Member's interest in the Fund. This includes, without limitation, the entitlement of the Fund to a benefit under a Policy or the entitlement of a Member, a Member's Dependant or a Member's Legal Personal Representative to a payment from the Fund.

#### **11.10 Family law fees**

Subject to Superannuation Law, the Trustee may impose fees and charges upon Members and other persons at any time in relation to a payment flag or payment split made in relation to a Member's benefit or otherwise in relation to the operation of the *Family Law Act 1975* (Cth) in relation to a Member or a Member's benefit.

#### **11.11 Adviser remuneration**

Subject to Superannuation Law, the Trustee may deduct from a Member's Account any amount which the Member has authorised the Trustee to pay from the Member's Account

(howsoever the Member may have done so) including without limitation any remuneration, fee, compensation or commission or brokerage (howsoever described) payable to the financial adviser of the Member, at such times and in such amounts as the Member has authorised.

#### **11.12 Fee arrangements**

Unless otherwise determined by the Trustee, any fees charged or imposed by the Trustee under this clause 11 will be:

- (a) in respect of an Employee Member – as agreed between the Trustee and the Participating Employer from time to time and set out in the relevant Participation Deed (as amended) or other written agreement or acknowledgement by the Participating Employer;
- (b) in respect of some or all of the Members of a Plan established in respect of a Promoter – as agreed between the Trustee and the Promoter from time to time and set out in the relevant Participation Deed (as amended) or other written agreement or acknowledgement by the Promoter; or
- (c) in respect of a Member not covered by paragraph (a) or (b) – as otherwise determined by the Trustee from time to time and notified to the Member in accordance with Superannuation Law.

#### **11.13 Variation, waiver or deferral of fees**

The Trustee may determine:

- (a) that different fees or fee rates will apply to different Divisions, Plans, Participating Employers, Promoters or Members (whether generally or in relation to a particular Division, Plan, Participating Employer, Promoter, Investment Option, Member or Category of Members);
- (b) to apply a reduced rate of fees (whether generally or in relation to a particular Division, Plan, Participating Employer, Promoter, Investment Option, Member or Category of Members), and may defer payment of any fees under this clause 11 for any period; or
- (c) to apply a waiver, reimbursement, discount or other reduction of any fees under this clause 11 to any Divisions, Plans, Participating Employers, Promoters or Members (whether generally or in relation to a particular Division, Plan, Participating Employer, Promoter, Investment Option, Member or Category of Members) for any period,

in each case, on such terms and conditions as the Trustee may from time to time determine.

#### **11.14 Payment of fees**

- (a) The Trustee may deduct the fees payable by a Member in any manner as the Trustee in its sole discretion determines, including by deducting the fee amount from contributions or transfers received in respect of the Member or by debiting the fee amount from the Member's Account in accordance with clause 10.

- (b) The Trustee may agree with a Participating Employer:
  - (i) that a reduced rate of fees will apply in respect of some or all of the Employee Members of the Participating Employer's Plan; or
  - (ii) that some or all of the fees otherwise payable by such Employee Members under this clause 11 will be paid by the Participating Employer.
- (c) The Trustee may agree with a Promoter:
  - (i) that a reduced rate of fees will apply in respect of some or all of the Members of a Plan established in respect of the Promoter; or
  - (ii) that some or all of the fees otherwise payable by such Members under this clause 11 will be paid by the Promoter.

## **12. Benefits**

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### **12.1 Entitlement to benefits**

Subject to this Deed and the Rules, each Member is entitled to benefits calculated under the relevant Rules for the Division or Plan of which he or she is a Member.

### **12.2 Compliance with Superannuation Law**

- (a) The payment of benefits shall be subject to Superannuation Law and any applicable Preservation Requirements and, notwithstanding any other provision of this Deed or the Rules, the Trustee:
  - (i) must pay a benefit to or in respect of a Member if required by Superannuation Law;
  - (ii) may pay a benefit to or in respect of a Member if not inconsistent with Superannuation Law; and
  - (iii) will not be required to pay a benefit to or in respect of a Member other than in accordance with Superannuation Law.
- (b) The Trustee may impose such conditions on the early payment of the benefit as the Trustee considers appropriate.
- (c) A Member shall inform the Trustee as soon as practicable after the date (if any) that Superannuation Law requires the Trustee to cash the Member's benefits.

### **12.3 Proofs**

Whenever it is necessary for the Trustee to decide questions of fact, the Trustee may act upon such proofs or presumptions as it considers satisfactory whether or not they are strictly legal proofs or legal presumptions.

### **12.4 Information required by Trustee**

- (a) The Trustee may require any Member or other person claiming any benefit from the Fund:
  - (i) to supply any information or documents; or



- (ii) to undergo medical examinations or tests by a medical practitioner or other person selected by the Trustee,  
for any purpose connected with the Fund.
- (b) If a Member or person referred to in clause 12.4(a) does not comply with a requirement of the Trustee made pursuant to that clause, the Trustee may:
  - (i) suspend payment of any benefit in respect of the Member or person; and
  - (ii) suspend consideration of any claim by the Member or person,  
until the Member or person so complies.
- (c) The Trustee will treat as confidential all information which becomes known to it in the course of administering, and exercising powers under, this clause 12.4.

#### **12.5 Deferral of benefit payment**

The Trustee may delay payment of a benefit for such period as the Trustee considers reasonable and may defer payment in circumstances where it considers it appropriate.

#### **12.6 Voluntary deferral**

A Member who is entitled to a benefit may request the payment of all or part of the benefit to be deferred. The Trustee may comply with the request by transferring the benefit to another Division of the Fund or otherwise retaining the benefit in the Fund or as otherwise required by Superannuation Law.

#### **12.7 Treatment of preserved benefits**

Subject to clause 12.9, if any benefit or part of a benefit otherwise payable to a Member is unable to be so paid by reason of Preservation Requirements, the benefit (or part thereof) may be:

- (a) transferred to another Superannuation Entity nominated by the Member and approved by the Trustee; or
- (b) transferred to another Division of the Fund or otherwise retained in the Fund until it may be paid under Superannuation Law.

#### **12.8 Payment to other Superannuation Entity**

A person who is entitled to a benefit may request in writing that the Trustee pay all or part of the benefit to another Superannuation Entity. The Trustee must comply with the request if the payment complies with Superannuation Law.

#### **12.9 Payment of benefit to eligible rollover fund**

The Trustee may pay or transfer a benefit that is payable to or in respect of a Member to an eligible rollover fund if permitted by Superannuation Law.

#### **12.10 Unclaimed benefits**

The Trustee must comply with Superannuation Law in relation to a benefits of which Superannuation Law treats as unclaimed money.

**12.11 Transfer of assets**

The Trustee may pay a benefit to a person who is entitled to the benefit by transferring assets of equivalent value to the person or the person's nominee if the person so requests and the Trustee agrees.

**12.12 Pensions or annuities**

Subject to Superannuation Law, on the request of a Member or beneficiary, the Trustee may agree to:

- (a) pay a pension from the Pension Division on terms agreed between the Trustee and the Member or beneficiary; or
- (b) purchase an annuity in the name of the Member or beneficiary on terms agreed between the Trustee and the Member or beneficiary,

provided that the payment of a pension or purchase of an annuity is consistent with Superannuation Law.

**12.13 Death Benefits**

- (a) The Trustee may offer Members the opportunity to make, revoke or replace Binding Nominations and Non-Binding Nominations on such terms and conditions as the Trustee determines from time to time, including permitting different nominations in respect of a Member's interests in different Divisions or Plans.
- (b) Where the Trustee has a Binding Nomination that is valid and in effect at the date of a Member's death, the Trustee must pay the Death Benefit in accordance with the Binding Nomination.
- (c) If at the time of a Member's death the Trustee does not have a Binding Nomination that is valid and in effect in relation to that Member, the Trustee must pay the Death Benefit to one or more of:
  - (i) the Dependants of the Member;
  - (ii) the Legal Personal Representative of the Member; and
  - (iii) any other person eligible to receive payment of the Death Benefit under Superannuation Law,

in such proportions and in such form, manner and subject to such terms and conditions as the Trustee determines from time to time. When determining the proportions, the Trustee may have regard to any Non-Binding Nomination it holds in respect of the Member at the time of the Member's death.

- (d) The Trustee may pay a Death Benefit in any one or more of the following forms:
  - (i) one or more lump sums; or
  - (ii) where permitted by Superannuation Law:
    - (A) one or more pensions; or
    - (B) the purchase of one or more annuities,

provided that the form of any payment is not inconsistent with regulation 6.21(2) of the *Superannuation Industry (Supervision) Regulations 1994*.

- (e) The Trustee may in its absolute discretion increase the amount of a Death Benefit by the amount that would accrue to the Fund if a deduction under section 295-485 of the *Income Tax Assessment Act 1997* (Cth) were allowed.

#### **12.14 Legal disability of person**

If it appears to the Trustee that a Member or other person to whom a benefit would otherwise be payable is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with such benefit, the Trustee may pay or apply the whole or part of any such benefit in one or more of the following ways:

- (a) to any Dependant of the Member or other person; or
- (b) to a person who appears to the Trustee to be a trustee for (including a trustee appointed by the Trustee under a separate trust established by the Trustee), or a parent or guardian of, or a Legal Personal Representative of, or to have for the time being the care or custody of the Member or other person, or to have the financial expense of the care or custody of the Member or other person.

#### **12.15 Discharge of Trustee**

The receipt of a person to whom a benefit is paid under this clause 12 will absolutely discharge the Trustee in respect of the benefit paid to that person and the Trustee is not bound to see to the application of that benefit.

#### **12.16 Assignments**

The Trustee must not recognise, encourage or sanction any assignment, purported assignment, charge of or lien over a benefit unless permitted by Superannuation Law.

### **13. Family Law**

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#### **13.1 Definitions**

Words which are defined in the Family Law Act and used in this clause 13 have the same meaning as in the Family Law Act.

#### **13.2 Trustee options**

The Trustee may deal with a superannuation interest of a member spouse or the entitlement or interest of a non-member spouse as may be required or permitted by the Family Law Act in accordance with the provisions of Superannuation Law and the provisions of this clause 13, and in particular the Trustee may deal with and give effect to:

- (a) a superannuation agreement;
- (b) a flag lifting agreement;
- (c) a splitting order;
- (d) a flagging order; or

- (e) such other agreement or order that may be made under the Family Law Act in relation to a superannuation interest.

### **13.3 Non-member spouse**

Without limiting the generality of clause 13.2, where the Trustee has received notice of a payment split which has been properly served, the Trustee may:

- (a) create an interest in the Fund for the non-member spouse in accordance with the terms of the payment split (or at the written request of the non-member spouse if not prohibited by Superannuation Law), whereupon the non-member spouse becomes a Member of the Personal Division of the Fund; or
- (b) make a payment, rollover or transfer in respect of the non-member spouse in accordance with Superannuation Law.

### **13.4 Adjustment in Member's benefit**

Where the Trustee creates an interest in the Fund for a non-member spouse or makes a payment, rollover or transfer in respect of the non-member spouse, the Trustee may make such adjustments to the superannuation interest of the member spouse as the Trustee determines appropriate in accordance with Superannuation Law, and in particular may:

- (a) debit an Account of the member spouse by an amount equal to the amount paid, rolled over, transferred or applied to create a new interest in respect of the non-member spouse;
- (b) make any adjustments to an Account of the member spouse or a non-member spouse as may be necessary in relation to Tax, fees, charges, costs or expenses that may be charged against such Accounts; and
- (c) do such other things as may be necessary or convenient to deal with the adjustments that may be required to be made to any of the Accounts or benefit of a member spouse or non-member spouse arising from any matter the subject of this clause.

### **13.5 Payment Flag**

If the Trustee has received a payment flag which has been properly served, the Trustee must defer payment of a benefit to or in respect of the Member until the payment flag is lifted.

### **13.6 Provision of information**

- (a) Subject to Superannuation Law, the Trustee may provide any information to the member spouse or non-member spouse relating to the benefits and interests of the member spouse and the non-member spouse.
- (b) A member spouse or non-member spouse must provide any information, declarations, proofs, documents and payments required by the Trustee for the purposes of the Deed or Superannuation Law.

**13.7 Other powers**

- (a) The Trustee may determine that the member spouse and the non-member spouse shall pay such fees and charges and reimburse the Fund for such costs and expenses incurred in connection with the provision of any information or the doing of any thing by the Trustee in relation to a member spouse's superannuation interest as may be permitted by Superannuation Law and for this purpose the Trustee may debit any fee, charge, cost or expense to any one or more Accounts maintained by the Trustee in respect of the member spouse or the non-member spouse (as the case may be) as the Trustee may determine subject to Superannuation Law.
- (b) A non-member spouse who is not a Member of the Fund will only have rights to information and other rights as prescribed by Superannuation Law and under this clause 13 and has no other rights, claims or entitlements against the Fund, the Trustee (or any person acting on behalf of the Trustee) under this Deed or the Rules.
- (c) The Trustee may do such other things as may be necessary or convenient to give effect to the matters the subject of this clause 13 that the Trustee determines.

**14. Investments****14.1 Investment powers**

Subject to Superannuation Law, the Trustee shall invest the Fund at arm's length, but otherwise in such manner as it shall in its absolute discretion determine and notwithstanding any statutory provisions or any rule of law or equity to the contrary, and in addition to all other powers conferred on it under the provisions of this Deed or by statute or rule of law or equity, the Trustee shall have full and absolute powers of investing and transposing moneys and buying selling or otherwise acquiring or dealing with property both real and personal and varying all or any part of the investments of the Fund from time to time in all respects as if it were the absolute owner of and beneficially entitled to those investments and the Trustee's power to invest shall not be restricted by any legislation relating to trustee investments. Without limiting the generality of the absolute powers given to it, the Trustee shall in particular have the following powers:

- (a) to invest in any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
- (b) to invest in one or more Policies;
- (c) to purchase or in any other manner whatsoever, hold, deal in, sell and mortgage shares of any description (whether fully paid or contributing) in any company or corporation whatsoever whether public, private or otherwise and/or in any real and/or personal estate of whatsoever kind and wheresoever situate and in any security undertaking or venture of any kind whatsoever;

- (d) to purchase, lease, hire or in any other way acquire any real and/or personal property of whatsoever nature and kind and wheresoever situate including without limitation, freehold, leasehold or conditionally purchased land whatsoever whether such property is obtained subject to mortgage or otherwise;
- (e) to purchase or in any other manner whatsoever, hold, deal in, sell and mortgage units, sub-units or other interests in any unit trust or similar scheme;
- (f) to invest in any mortgage or charge over land or any personal property of whatsoever kind and wheresoever situate;
- (g) to sell either for distribution in cash or for re-investment or for any other purpose whatsoever the whole or any part of the trust property at any time or times for such price or prices and on such terms and conditions as the Trustee may think fit and to invest the proceeds of any such sale in a manner authorised by this Deed;
- (h) to invest in any of the public stocks or funds or government securities of any country, kingdom, republic or any state anywhere in the world;
- (i) to deposit moneys with any bank or company wheresoever situate and to place moneys on deposit fixed or on call with or without interest in any bank or public or private company anywhere in the world;
- (j) to invest, enter into or deal in any futures contract, any underwriting or sub-underwriting, options, foreign currency or rights or interests in relation thereto, interest rate or currency swap contracts or other like investments, contracts or dealings;
- (k) to apply the whole or any part of the Fund to or for the purpose of and to apply the same to commence, carry on, manage, control, direct or otherwise participate in any company, undertaking, profit making venture, or other activity wheresoever situate as the Trustee in its absolute discretion may deem fit;
- (l) to sell, call-in or otherwise convert any assets or investments comprised in the Fund at any time or from time to time and to re-invest the proceeds of sale calling-in or conversion or apply the same in accordance with the trusts and discretions contained in this Deed and in the sale, calling-in, conversion or realisation of any assets comprised in the Fund to sell or otherwise dispose of the same for such consideration and by public auction or private sale or for cash or upon terms or in any such other manner as the Trustee may in its absolute discretion think fit;
- (m) to invest any of the moneys of the Fund in a common pool with the moneys of any other superannuation fund or other fund and to make such arrangements for determining the proportion of the investments so held which is attributable to the Fund and to such other superannuation fund or other fund as it considers just and equitable,

but in exercising its investment powers under this Deed the Trustee shall not acquire any asset from a Member or a relative of a Member (within the meaning of the SIS Act), except as permitted by Superannuation Law.

**14.2 Custodians**

- (a) The Trustee may appoint one or more bodies corporate to act as Custodian subject to such conditions as the Trustee determines and may, subject to the consent of the Sponsor, delegate to and confer upon such Custodian such powers as the Trustee may think fit, and may remove such Custodian or alter the terms of its appointment as it sees fit.
- (b) Subject to Superannuation Law, the Trustee shall not be liable or responsible for any act, omission, error of judgement, negligence or breach of trust of any such Custodian and shall not be bound to take proceedings against any Custodian in respect thereof.
- (c) The Trustee may pay out of the Fund to any such Custodian such remuneration for its services as the Trustee considers proper.
- (d) Any powers, discretions or authorities delegated by the Trustee to a Custodian may be exercised by that Custodian alone or jointly with the Trustee as the Trustee in its discretion shall determine, but in any event must be exercised on behalf of the Trustee.
- (e) The appointment of a Custodian must be in writing and consistent with Superannuation Law.

**14.3 Borrowing**

To the extent permitted by Superannuation Law the Trustee may borrow or raise money and may secure payment or repayment in any manner it determines.

**15. Investment strategy and Investment Options**

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**15.1 Investment strategy**

The Trustee will formulate and give effect to a strategy for the investment of assets of the Fund or each Division (including, if the Trustee so determines, one or more different investment strategies in respect of particular Plans or Categories of Members) from time to time in accordance with Superannuation Law, and any investment strategies so formulated may provide for Members or Authorised Persons to give Investment Directions to the Trustee.

**15.2 Investment Options**

- (a) The Trustee may in its absolute discretion:
  - (i) make available to Members a choice of one or more Investment Options for the investment of assets in the Member's Account;
  - (ii) determine from time to time the number and selection of Investment Options that will be available to Members of the Fund, each Division, Plan or Category of Members;
  - (iii) designate a Default Investment Option for the Fund, each Division, Plan or Category of Members;

- (iv) consolidate, divide or close any Investment Option and reallocate or otherwise deal with the assets of that Investment Option as the Trustee considers appropriate; and
  - (v) transfer assets between different Investment Options.
- (b) Investment Options do not constitute separate trust funds.

### **15.3 Designation and variation of Investment Options**

- (a) The Trustee may from time to time specify:
  - (i) the assets or types of assets to be held in each Investment Option;
  - (ii) if applicable, the proportion of assets of different types to be held in each Investment Option; and
  - (iii) any other matters relating to an Investment Option that the Trustee considers appropriate.
- (b) The Trustee may at any time and from time to time in its discretion vary, suspend, withdraw or terminate an Investment Option as it considers appropriate.
- (c) Where an Investment Option has been suspended, withdrawn or terminated in accordance with clause 15.3(b), the Trustee in its discretion may transfer an affected Member to another Investment Option determined by the Trustee and notified to the Member.
- (d) An Investment Option must not be designated or varied in a manner that is inconsistent with Superannuation Law.

## **16. Investment Directions**

### **16.1 Investment Directions**

- (a) Subject to Superannuation Law, the Trustee may establish rules prescribing the terms and conditions upon which the Trustee may permit or require Investment Directions to be given to the Trustee by a Member or an Authorised Person, including but not limited to:
  - (i) the selection of one or more Investment Options for the investment of assets in the Member's Account;
  - (ii) the selection of the amount or percentage of such assets are to be allocated between the Investment Options;
  - (iii) the acquisition or disposal of one or more Investment Options on a regular basis within a particular time period, as specified in the Investment Direction;
  - (iv) the switching of amounts so allocated between Investment Options; and
  - (v) such other terms and conditions relating to the investment, re-investment or disposal of assets held in each Investment Option as the Trustee determines.



- (b) Without limiting the generality of clause 16.1(a) and subject to Superannuation Law:
- (i) the Trustee may invite or require each Member who completes an application for membership of a Division or Plan, and at such other times or in such other circumstances as the Trustee determines and as are permitted by the Superannuation Law, to give an Investment Direction to the Trustee;
  - (ii) the Trustee may determine (whether in relation to Members generally or in relation to any particular Member or Category of Members):
    - (A) a minimum amount or percentage; and/or
    - (B) a maximum amount or percentage,of a Member's Account that may be allocated to any particular Investment Option, and may adjust the amount or percentage so determined at any time;
  - (iii) the Trustee may accept or reject an Investment Direction and may accept an Investment Direction subject to special conditions in its discretion, and must notify the Member of any such rejection or special conditions as soon as reasonably practicable;
  - (iv) where a Member fails to complete a valid Investment Direction, the relevant assets in the Member's Account may be invested in such other manner as determined by the Trustee (including in accordance with the applicable Default Investment Option) until such time as the Trustee implements a valid Investment Direction in respect of the Member;
  - (v) a Member may from time to time request in writing a variation of an Investment Direction in a form approved by the Trustee from time to time and the provisions of this clause will apply in respect of the requested variation;
  - (vi) pending the acquisition of investments in accordance with a Member's Investment Direction, contributions and any other receipts from or in respect of a Member or invested in such other manner as determined by the Trustee (including in accordance with the applicable Default Investment Option);
  - (vii) if an Investment Option which is the subject of a Member's Investment Direction is terminated or ceases to be available to the Member, any cash or other amount realised in respect of a Member as a result of the termination or unavailability of the Investment Option may be invested in such other manner as determined by the Trustee (including in accordance with the applicable Default Investment Option) until such time as the Trustee implements a revised or replacement Investment Direction in respect of the Member; and

- (viii) the maximum value of assets that may be the subject of a Member's Investment Direction is equal to such proportion of the amount standing to the credit of the Member's Account as the Trustee may determine from time to time.
- (c) The implementation of the Investment Direction by the Trustee shall not in any way constitute an endorsement of the investment by the Trustee. The Trustee is not, in any circumstances, responsible for the selection of any Investment Option by a Member or Authorised Person. The Trustee will not be deemed to have endorsed, or made any recommendation in respect of, any investment contained in an Investment Direction, and will not be liable for any losses arising as a result of the implementation of an Investment Direction.

## **16.2 Making investments**

Subject to Superannuation Law and any rules prescribed by the Trustee pursuant to clause 16.1(a) or otherwise in accordance with this Deed upon acceptance of a valid Investment Direction from a Member or Authorised Person, the Trustee will invest the relevant assets in the Member's Account in accordance with the Investment Direction and do such other things to implement and give effect to the Investment Direction as it considers necessary or desirable.

## **16.3 Trustee's discretion to realise investments**

Notwithstanding any other provision of this clause 16, if the Trustee determines that it is appropriate to realise all of an investment of a particular type, the Trustee may realise that investment on such terms and conditions as it considers appropriate. The Trustee will, as soon as practicable, notify affected Members of the realisation of the investment and may request such Members to complete revised or replacement Investment Directions. The sale proceeds of such realisation may be invested in such other manner as determined by the Trustee (including in accordance with the applicable Default Investment Option) until such time as the Trustee implements a revised or replacement Investment Direction in respect of the Member.

## **16.4 Postponement of application and repayment**

The Trustee may postpone the application of any amount to an Investment Option or the repayment of any amount from an Investment Option for any reason the Trustee considers appropriate.

# **17. Allocation of earnings and expenses**

## **17.1 General**

Unless the subject matter or context otherwise requires, where for the purposes of this Deed or the Rules, the Trustee is required to calculate an earnings rate, or determine investment earnings in relation to the Fund, a Division, a Plan, an Investment Option or an

Account, the Trustee may in its absolute discretion determine to allocate such earnings rate or investment earnings:

- (a) by means of a rate or rates determined in accordance with clause 17.2; and/or
- (b) on a unitised basis in accordance with clause 17.3.

## 17.2 Earning Rates

- (a) In respect of any period, the Trustee may determine a rate or rates for that period having regard to:
  - (i) the income, including any realised capital gains of the Fund, Division, Plan, Investment Option or Account during the period;
  - (ii) any change in the value of the assets of the Fund, Division, Plan, Investment Option or Account during the period;
  - (iii) all expenses and losses incurred or suffered by the Fund, Division, Plan, Investment Option or Account during the period;
  - (iv) any applicable requirements of Superannuation Law; and
  - (v) any other matter or circumstance which the Trustee thinks relevant.
- (b) In determining a rate or rates under this clause 17.2 in respect of a period, the Trustee may if the Trustee thinks fit:
  - (i) average the earnings or expenses of the Fund, Division, Plan, Investment Option or Account to reduce the effect of actual or possible periodic fluctuations to those earnings or expenses in accordance with a policy adopted by the Trustee; or
  - (ii) determine different rates to apply to the Fund, Division, Plan, Investment Option or Account in respect of different parts of the period in accordance with a policy adopted by the Trustee.
- (c) A rate or rates determined under this clause 17.2 may be positive or negative.
- (d) Unless the subject matter or context otherwise requires, where the Trustee is required to determine a rate or rates under this clause 17.2 in respect of a period, the Trustee may also from time to time determine a rate or rates (which may be positive or negative) being the Trustee's estimate of the rate or rates of interest or investment earnings, or based on some other measure which the Trustee considers appropriate in respect of the relevant period prior to the determination of the actual rate or rates for that period.
- (e) The Trustee may exercise its power under this clause 17.2:
  - (i) to determine different rates to apply in respect of different parts of a period in accordance with a policy adopted by the Trustee; and/or
  - (ii) to apply an estimated rate or rates in relation to Members generally or in relation to one or more particular Members or categories of Member.

## 17.3 Unitisation

- (a) The Trustee may:
  - (i) divide any or all of the Fund's investments or Investment Options into units; and
  - (ii) allocate units to any or all Accounts maintained for the purposes of the Fund, a Division or Plan.
- (b) Units may be consolidated or divided as determined by the Trustee.
- (c) The Trustee may determine different unit prices to apply to specific investments, Investment Options, Accounts, units or classes of units on issue or redemption, or for such other different purposes as the Trustee may think fit from time to time.
- (d) The Trustee may do anything that the Trustee determines is necessary or desirable to maintain or administer the investments, Investment Options and Accounts to which this clause 17.3 applies on a unitised basis.
- (e) The Trustee may from time to time prescribe a policy in relation to:
  - (i) the investments, Investment Options and Accounts to which this clause 17.3 is to apply or not to apply (as the case may be);
  - (ii) the price at which units are to be issued and redeemed;
  - (iii) the method and frequency of valuing the investments or Investment Portfolios to which this clause 17.3 applies; and
  - (iv) any other matter which the Trustee determines to be necessary or desirable for administering the investments, Investment Options and Accounts to which this clause 17.3 applies on a unitised basis,and may amend or revoke any rules so made at any time.
- (f) Where this Deed or the Rules refer to the balance, aggregate or amount standing to the credit of an Investment Option or Account to which this clause 17.3 applies, such reference is taken to be a reference to the Investment Option or Account (as the case may be) calculated by reference to the number of units in the Account or Investment Option and the relevant unit price determined by the Trustee under this clause at the time of calculation.

## 18. Valuations

Subject to clause 17 and unless otherwise determined by the Trustee:

- (a) the Trustee must cause a valuation of all Fund Assets to be made at least once in each year of income of the Fund and at such other dates and by such persons and utilising such methods as the Trustee may determine and which complies with relevant accounting standards and Superannuation Law;
- (b) the Trustee must cause a valuation of the asset held in each Investment Option as frequently as it considers appropriate by such persons and utilising such methods

as the Trustee may determine and which complies with relevant accounting standards and Superannuation Law;

- (c) the Trustee may from time to time determine principles for valuing the whole or any part of the Fund which are consistent with Superannuation Law; and
- (d) The Trustee may cause some or all Fund Assets to be revalued whenever it sees fit and may do so from time to time having regard to the nature of the relevant assets or investments.

## **19. The Trustee**

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### **19.1 Eligibility**

The Trustee must be a constitutional corporation as defined in section 10 of the SIS Act.

### **19.2 Automatic cessation of office**

Subject to Superannuation Law, the Trustee ceases to be the trustee of the Fund and must appoint a replacement trustee in accordance with clause 19.4 when:

- (a) the Trustee ceases to carry on business;
- (b) the Trustee is placed in liquidation (except for the purpose of amalgamation or reconstruction or some similar purpose) or under official management; or
- (c) Superannuation Law so requires.

### **19.3 Resignation**

The Trustee:

- (a) may resign as trustee of the Fund by giving 6 months' written notice to the Sponsor (or such lesser period as the Sponsor may agree); and
- (b) may agree to resign as trustee of the Fund upon receiving 6 months' written notice from the Sponsor requesting the Trustee to do so, or in any other circumstances agreed between the Trustee and the Sponsor,

and must in either case appoint a replacement trustee in accordance with clause 19.4.

### **19.4 Replacement Trustee**

- (a) The Trustee must:
  - (i) by deed appoint another constitutional corporation that is eligible and appropriately licensed (if required) to act as trustee of the Fund;
  - (ii) do, deliver, sign and execute all such things, papers, records, writings, documents, deeds and other property as may be necessary to give proper effect the transfer or assignment to or otherwise the vesting of the Fund Assets in the new Trustee or its nominee; and
  - (iii) do all things within its power to procure the prompt delivery to the new trustee or its nominee all books, documents, records and other property relating to the Fund.

- (b) The resignation and appointment of a Trustee must be made by deed unless otherwise determined by the Regulator.

#### **19.5 Ceasing to be Trustee**

- (a) Upon ceasing to be the trustee of the Fund, the Trustee shall, subject to paragraph (b), be deemed to be discharged from the trusts of this Deed and the duties and obligations of a Trustee under this Deed at the time and on the date of it ceasing to be the trustee of the Fund.
- (b) Nothing contained in this Deed shall relieve a Trustee from liability for any antecedent breach of trust for which it would otherwise be liable.

### **20. Powers and Duties of the Trustee**

#### **20.1 General powers**

Subject to applicable Australian law, this Deed and Superannuation Law, the Trustee shall have power to do all acts and things which it considers necessary, desirable or expedient for the administration, maintenance and preservation of the Fund or any part of it and in the exercise and performance of its powers and obligations under this Deed and without limitation the Trustee may:

- (a) provide receipts, releases or discharges for money or other assets payable or transferable to the Fund or for claims by or against the Fund;
- (b) open and operate on bank accounts or accounts with cash management trusts or other financial institutions as it thinks fit and all cheques and other negotiable instruments and all receipts for money paid to the Fund shall be signed, drawn, accepted and endorsed or otherwise executed in such manner as the Trustee thinks fit;
- (c) enter into all contracts, deeds and documents and do all acts and things which it considers necessary or desirable for the purpose of carrying out the trusts of this Deed;
- (d) settle, compromise or submit to arbitration any claims or matters relating to this Deed, the Fund or the rights of any Member;
- (e) commence, carry on or defend any proceedings in relation to this Deed, the Fund or the rights of any Member;
- (f) effect or acquire policies of insurance of any kind on or relating to any risk, contingencies, liabilities of the Fund or the life of lives of any person or otherwise to insure the payment of the benefits or any part thereof payable under this Deed;
- (g) pay all insurance premiums, rates, Taxes, rents and other outgoings in connection with any real or personal property included in the Fund or any expenses of or incidental to the management or administration of the Fund;

- (h) accept and receive as part of the Fund any property whether real or personal which may be conveyed, transferred, paid and accepted by the Trustee by way of addition or accretion to the Fund;
- (i) at the expense of the Fund, instruct actuaries, auditors, solicitors, accountants and other advisers and act upon their advice without being liable to any Member or other person under this Deed in respect of anything done in accordance with such advice;
- (j) delegate all or any of its powers and duties to any such person as the Trustee may think fit and the Trustee shall not be responsible for any loss thereby incurred and shall be entitled to make payment out of the Fund to such persons for work done or services rendered;
- (k) subject to Superannuation Law, borrow moneys from any person, firm or company upon such terms and conditions and upon giving such security as the Trustee in its absolute discretion may determine and to invest any moneys so borrowed as part of the Fund and to mortgage, charge or encumber the whole or any part of the trust property from time to time to secure repayment of the moneys borrowed and interest thereon; and
- (l) make regulations and adopt procedures in relation to the calculation and rounding off of contributions, benefits, amounts debited or credited to any account, the valuation of assets or any other matters as shall be necessary or convenient for the Fund.

## **20.2 Delegations and appointments**

The Trustee may at any time on such terms as it considers appropriate:

- (a) delegate to any of its directors, officers and employees or to any related body corporate of the Trustee or to any other person as the Trustee determines such powers, authorities and discretions (not exceeding those vested in the Trustee);
- (b) appoint any person to be an attorney or agent of the Trustee for such purposes and with such powers, authorities or discretions (not exceeding those vested in the Trustee) as the Trustee determines (including the power of sub-delegation); and
- (c) appoint any person to be sub-agent of the Trustee for such purposes and with such powers, authorities and discretions (not exceeding those vested in the Trustee) as the Trustee determines.

## **20.3 Variation and exercise of delegated powers**

The Trustee may:

- (a) revoke or vary the terms of any delegation;
- (b) exercise any delegated function, power, discretion or authority itself concurrently with or to the permanent or temporary exclusion of a delegate.

**20.4 Service providers**

The Trustee may appoint or engage any person to provide such services in relation to the Fund as it determines in its absolute discretion, including such services relating to the investment, administration or promotion of the Fund as it determines (including fees, commissions and like matters), provided that such appointment or engagement is consistent with Superannuation Law.

**20.5 Acting on advice**

The Trustee may act on the advice or opinion of any consultant, accountant, actuary, barrister, solicitor, medical practitioner or other professional person or expert (whether or not such advice or opinion has been obtained by the Trustee) and shall not be liable to the Fund for any loss or damage for so acting in good faith.

**20.6 Exercise of powers and discretions**

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

**20.7 Expenses**

The Trustee is authorised to pay from the Fund all costs, charges and expenses connected with:

- (a) this Deed and the Rules, any supplemental deed and the establishment of the Fund;
- (b) any disclosure document made available in respect of the Fund;
- (c) the sale, purchase, insurance, custody and any other dealing with Fund Assets;
- (d) any proposed investment;
- (e) the administration, management and custody of the Fund or the Fund Assets and liabilities;
- (f) the convening and holding meetings of Members, and the implementation of any resolutions passed at such meetings;
- (g) the promotion and marketing of the Fund;
- (h) Tax and bank fees;
- (i) the engagement of agents, valuers, advisers and contractors including (without limitation) for example, legal fees;
- (j) the preparation and audit of taxation returns, regulatory returns and accounts of the Fund;
- (k) termination of the Fund and the retirement or removal of the Trustee and the appointment of a new Trustee;



- (l) any Policy Committee required by Superannuation Law and established under clause 20.13 in respect of the Fund;
- (m) complying with Superannuation Law and any request or requirement of a Superannuation Authority;
- (n) any court proceedings, arbitration or other dispute concerning the Fund; and
- (o) computer equipment and software relating to the Fund.

#### **20.8 Trustee reimbursement**

The Trustee may be reimbursed out of the Fund in relation to any costs, charges and expenses incurred by it or by a person referred to in clauses 20.2 or 20.4 which the Trustee has paid or will be obliged to pay to the person.

#### **20.9 Commission and brokerage**

The Trustee may pay any commission, procurationem or other fees or brokerage to any person on such terms as the Trustee determines so long as this is not inconsistent with Superannuation Law.

#### **20.10 Trustee remuneration**

- (a) The Trustee may enter into an arrangement with the Sponsor pursuant to which the Trustee, as compensation for services rendered in relation to the Fund, is:
  - (i) paid a fee by the Sponsor; or
  - (ii) entitled to remuneration out of the Fund Assets,on such terms, in such amounts and calculated in such manner as agreed between the Trustee and the Sponsor from time to time and the Trustee may retain any such fee or remuneration and is not liable to account to the Fund or Members for such fee or remuneration.
- (b) Any remuneration or fee paid to the Trustee out of the Fund Assets pursuant to clause 20.10(a) will be an expense of the Fund.
- (c) The entitlement of the Trustee to remuneration or fees under this clause 20.10:
  - (i) is not reduced in the event that the Trustee appoints one or more persons to provide services in relation to investment, administration, custody or promotion of the Fund, or any other service, regardless of whether fees are payable from the Fund in respect of those services; and
  - (ii) is in addition to any Taxes that may be payable in relation to such remuneration or fees, including the amount of Tax imposed or payable as a result of GST Law.

#### **20.11 Dealings by Trustee**

Subject to Superannuation Law:

- (a) the Trustee;
- (b) any related body corporate of the Trustee; and

- (c) the directors, officers or employees of the Trustee or any such related body corporate,

may effect any transaction or exercise individually or jointly any power or discretion, even though that person has another interest directly or indirectly in the result of the transaction or exercise.

#### **20.12 Superannuation Law**

The Trustee may, notwithstanding anything expressed or implied to the contrary in this Deed, do all things considered by it as necessary or convenient to comply with any provision, requirement or obligation of or under Superannuation Law and without limiting the generality of the foregoing the Trustee may:

- (a) require Members, Dependants of Members or other persons entitled to a benefit or making contributions to the Fund to provide such information as the Trustee may require in order to satisfy it that any provision of Superannuation Law is complied with, to determine whether any Tax is payable or to calculate any benefit;
- (b) refuse to accept any contribution or refuse to pay any benefit to any person where acceptance of the contribution or the payment of the benefit may in the reasonable opinion of the Trustee result in the Fund ceasing to be a complying superannuation fund for the purposes of the Tax Act or where information sought under clause 20.12(a) has not been provided; and
- (c) lodge any returns or other documents required by Superannuation Law, make objection to any assessment or seek review of any determination of any Superannuation Authority or to pursue any objection or review by way of legal or other proceedings.

#### **20.13 Policy Committees**

- (a) The Trustee will establish and maintain Policy Committees in accordance with the requirements of Superannuation Law.
- (b) Any Policy Committee established under clause 20.13(a) will have the specific functions set out in Superannuation Law and such other functions as the Trustee may delegate to it from time to time.

#### **20.14 Loans to Members**

Subject to Superannuation Law, the Trustee will not lend money of the Fund nor give any other financial assistance using the resources of the Fund to a Member of the Fund or a relative of a Member of the Fund.

#### **20.15 Enquiries or complaints**

The Trustee will comply with Superannuation Law in relation to enquiries into and complaints about the operation or management of the Fund. The Trustee may determine to require a person making an enquiry or complaint to pay the Trustee's costs and expenses reasonably incurred in responding to that enquiry or complaint in relation to the operation or management of the Fund.

**20.16 Trustee to keep records**

The Trustee will keep all records and reports as required by Superannuation Law in accordance with Superannuation Law.

**20.17 Report of significant adverse event**

The Trustee will comply with Superannuation Law in relation to the notification of significant adverse events.

**20.18 Compliance with notices**

The Trustee will comply with notices and directions from a Regulator, a Superannuation Authority and the Superannuation Complaints Tribunal.

**20.19 Payments of levies**

The Trustee may make any levy payment or other payment out of the Fund as is required by Superannuation Law from time to time to be made and have power to allocate the cost of any such levy to the accounts of Members and/or to one or more Reserve Accounts as the Trustee considers fair and equitable.

**20.20 AML/CTF and privacy legislation**

The Trustee shall comply with the provisions of the AML/CTF Act and the Privacy Law to the extent that they apply to trustees of regulated superannuation funds.

**20.21 Marketing and promotion of Fund**

- (a) For the purposes of this clause 20.21, an **Activity** means any act directly or indirectly related to or incidental to the marketing, promoting, advertising or educating of any person or the creation of awareness for any person with respect to the Fund.
- (b) The Trustee may, subject to Superannuation Law, engage in any Activity which the Trustee determines will promote:
  - (i) the concept of superannuation generally;
  - (ii) the Fund specifically or a Division specifically or a Plan specifically;in order to limit the reduction in the number of Members, or to increase the number of Members, or to protect the contributions base or to protect the membership base of the Fund, Division or Plan or for any other purpose which the Trustee believes is in the best interests of the Members of the Fund, Division or Plan.
- (c) The Trustee may only exercise the powers under this clause 20.21 where the Trustee has determined that:
  - (i) the expense of the Activity is reasonable having regard to the likely benefits to the present and future Membership of the Fund, Division or Plan (as appropriate); and
  - (ii) the expense is reasonable having regard to the total value of the assets in the Fund, Division or Plan (as appropriate).

- (d) The Trustee may engage the services of any suitably qualified persons to advise on, be involved in or to implement any Activity and may remunerate those persons in respect of any advice, involvement or implementation in accordance with the powers set out in this Deed.

#### **20.22 Voting rights exercisable by Trustee**

Subject to Superannuation Law, all rights of voting or other rights conferred by any investments of the Fund shall be exercised in such manner as the Trustee may determine in its absolute discretion. The Trustee may from time to time formulate policies regarding the Trustee's exercise of such rights.

#### **20.23 Meetings of Members**

The Trustee may convene a meeting of Members or a meeting of the Members of a particular Division, Plan or Category of Members at any time and may prescribe rules as to the conduct and business of such meetings from time to time.

### **21. Accounts, Audit and Information**

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#### **21.1 Records and accounts**

The Trustee shall maintain or cause to be maintained proper accounts and records of the Fund and its administration as may be required by Superannuation Law and as the Trustee may otherwise determine.

#### **21.2 Provision of information**

Subject to clause 21.4, the Trustee must provide Members with such information in relation to the Fund and the Member's interest in the Fund as is required by Superannuation Law or as the Trustee otherwise determines.

#### **21.3 Audit**

The Trustee shall appoint an Auditor and have the Fund audited as required by Superannuation Law.

#### **21.4 Confidentiality**

The Trustee shall not be required to disclose to any person other than the Sponsor any information relating to a Member or a person who has ceased to be a Member unless that disclosure:

- (a) is reasonably necessary or convenient for the purpose of obtaining advice by the Trustee in relation to any matter pertaining to the Fund or is required by an Insurer for the purpose of effecting or maintaining any Policy;
- (b) is required by law;
- (c) is authorised by the person in respect of whom the information relates;
- (d) is to a Member and is of information relating to that part of the Fund of which the person is a Member so long as the information does not include information

relating to benefits of other Members or personal information pertaining to other Members of the Fund,

and the Trustee may require before disclosing any information that the consent of persons about whom the information relates is obtained and that the person to whom the information is provided gives such undertakings as to the use of the information or confidentiality of the information as the Trustee may require.

## **22. Taxation**

### **22.1 Power to deduct tax: general**

The Trustee has power to deduct amounts (including from a Member's Account balance or from benefits payable under the Rules) in respect of any:

- (a) Tax or surcharge;
- (b) advance or instalment; and
- (c) similar or associated amounts,

which, in the opinion of the Trustee, is or may become assessable or payable in relation to the Fund or a Member, whether in respect of contributions, income or realised capital gains of the Fund, a Member, an Investment Option or otherwise.

### **22.2 Dealing with tax deducted**

The Trustee has power to credit amounts deducted pursuant to clause 22.1 to an account in the books of the Fund pending actual payment to the relevant government authority and may retain any earnings on amounts so deducted without being required to account to the Fund or the Members concerned for such amounts.

### **22.3 Discharge upon payment of taxes**

The Trustee will be released and discharged in respect of amounts deducted pursuant to clause 22.1 and which are paid to the relevant government authority.

### **22.4 Trustee may make adjustments to Member benefits**

If the Trustee pays an amount of a kind described in clause 22.1, a Member's Account balance or the benefits payable to or in respect of the Member (or a combination thereof) may be reduced in such manner as the Trustee considers fair and equitable having regard to:

- (a) the amount so paid; and
- (b) the accretions which would have accrued on that amount had the amount not been paid,

unless a reduction, deduction or adjustment has already been made to the relevant Account or benefit under another provision of the Deed.

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**23. Liability of Trustee**

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**23.1 Liability for acts or omission**

The Trustee shall not be liable to the Fund nor to any person whatsoever for any loss or damage suffered by reason of:

- (a) any act or omission on the part of the Trustee other than a fraudulent act or omission or wilful misconduct or dishonesty;
- (b) neglect or default of any delegate, Auditor, accountant, actuary, solicitor, or other agent or advisor engaged by or relied on by the Trustee in good faith; or
- (c) any act or omission on the part of the Trustee in compliance with Superannuation Law or discharge of its obligations under Superannuation Law (or which, in the reasonable opinion of the Trustee, was necessary or desirable to comply with a requirement of Superannuation Law or the discharge of its obligations under Superannuation Law).

**23.2 Discretions and powers of the Trustee**

Every discretion or power conferred by this Deed on the Trustee shall be an absolute and uncontrolled discretion or power and the Trustee shall not be held liable for any loss or damage occurring as a result of its concurring or refusing or failing to concur in the exercise or proposed exercise of such discretion or power, or on account of its failure to carry out any of its duties or obligations by reason of the fact that it has not received any (or has received insufficient or inadequate) instructions or information from a Member or any other person at any time.

**23.3 Liability of Trustee**

In the execution of the trusts and powers the Trustee shall not be liable for any loss to the Fund arising by reason of any investment made in good faith or for the negligence or fraud of any person, firm or corporation (or any employees of any such person, firm or corporation) employed at any time and from time to time by the Trustee although the employment of such person, firm or corporation was not strictly necessary or expedient or by reason of any mistake or omission made in good faith by the Trustee or by reason of any other matter or thing except fraud, wilful misconduct or dishonesty on the part of the Trustee who is sought to be made liable.

**23.4 Indemnity**

Subject to Superannuation Law, the Trustee and each director of the Trustee shall be indemnified by the Fund in respect of any liability incurred while acting as the Trustee or as director of the Trustee (as the case may be) except where the liability arises from a breach of trust where the Trustee or director:

- (a) fails to act honestly in a matter concerning the Fund;
- (b) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence required to be exercised,

or the liability is for a monetary penalty under a civil penalty order imposed under Superannuation Law. The Trustee may realise any assets of the Fund (including any Policy or any units or interests under any Policy) in whole or in part for the purposes of such indemnity and, without limitation, the indemnity shall extend to all legal and other costs, charges and expenses of administering or winding up the Fund and otherwise of performing any trusts, powers, authorities and discretions under this Deed. The indemnity provided to the Trustee and the directors of the Trustee under this clause 23.4 shall be in addition to any other indemnity allowed by law or given under this Deed. To the extent that the assets of the Fund are inadequate to indemnify and reimburse the Trustee under this clause 23.4 and clause 23.5 the Trustee shall be indemnified and reimbursed by the Sponsor.

#### **23.5 Lien**

Subject to Superannuation Law, the Trustee shall have a lien on and may dispose of all assets of the Fund in the hands of the Trustee for the purpose of the indemnity set forth in clause 23.4.

#### **23.6 Information provided to Trustee**

The Trustee shall be entitled to rely upon information provided to it by a Member or any other person acting at the request of or on behalf of a Member and the Trustee shall be indemnified by the Member who provided the information or at whose request or on whose behalf the information was provided in relation to any loss, damage or expense incurred by the Trustee arising as a result of any such information proving to be incorrect or misleading.

#### **23.7 Trustee not obliged to pay**

Subject to Superannuation Law, except in the case of dishonesty or unless the Trustee has failed to exercise the degree of care and diligence required of a trustee having regard to the powers, authorities and discretions conferred on the Trustee by this Deed, in no event is the Trustee bound to make any payment to any person in connection with this Deed or the Fund or liable to any person in connection with this Deed or the Fund to any greater extent than the assets of the Fund.

### **24. Amendment of Trust Deed**

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#### **24.1 Amendments**

Subject to clauses 24.2 and 24.3, the Trustee may at any time by deed, amend, add to, delete or replace all or any of the provisions contained in this Deed, including the provisions of this clause, and the amendment, addition to, deletion or replacement may be retrospective or take effect on a specified date.

**24.2 Amendment not to reduce benefits**

No amendment shall be made under clause 24.1 which would have the effect of adversely altering a beneficiary's right or claim to accrued benefits or the amount of those accrued benefits unless such amendment is permitted by Superannuation Law.

**24.3 Amendment not to permit natural person Trustee**

No amendment shall be made under clause 24.1 which would have the effect of permitting a person other than a constitutional corporation (as defined in section 10 of the SIS Act) to be appointed as trustee of the Fund.

**24.4 Notification**

The Trustee must notify the Members of the nature, purpose and effect of any amendment where required to do so by Superannuation Law. Failure to notify will not invalidate the amendment.

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**25. Termination of Fund**

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**25.1 Termination**

If:

- (a) the Sponsor gives the Trustee 6 months' prior written notice that it wishes to terminate the Fund and no other person assumes the obligations of the Sponsor under this Deed; or
- (b) the Trustee with the consent of the Sponsor resolves to terminate the Fund from a specified termination date which is at least 6 months (or such other period agreed between the Trustee and the Sponsor) after the date of such resolution,

the Fund will terminate from the date such notice expires or from such specified termination date (the **Termination Date**).

**25.2 Consequences of termination**

On and from the Termination Date:

- (a) no further Employers or Members will be admitted to membership of the Fund;
- (b) the Trustee must not accept any further contributions (other than those due on or prior to the Termination Date) and all outstanding contributions must be paid forthwith; and
- (c) the Trustee must not pay any benefits or make any transfers out of the Fund, except as provided in this clause 25.

**25.3 Payments on termination of Fund**

Subject to Superannuation Law, upon termination of the Fund the Trustee will apply the Fund Assets in the following order of priority:

- (a) to provide for any Tax, whether or not assessed or presently payable;



- (b) to provide for all expenses and liabilities of the Fund, including those incurred or expected to be incurred by the Trustee in connection with the termination of the Fund;
- (c) to pay any benefit to or in respect of a Member which became payable prior to the Termination Date; and
- (d) in respect of each Member to whom clause (c) does not apply, to pay or transfer an amount equal to the value of that Member's benefits or benefit entitlement in the Fund.

#### **25.4 Payment of benefits on termination**

The benefits payable on termination of the Fund shall be in such form and be provided through such arrangements as the Trustee shall determine. Each Member shall accept the benefits allotted to him by the Trustee in full discharge of all claims in respect of the Fund and shall have no further claim whatsoever in relation to the Fund. Any decision by the Trustee in relation to the amount or method of payment of any such benefits shall be final.

#### **25.5 Death Benefits**

If a Member dies before the Trustee pays or transfers a benefit in respect of the Member under clause 25.3, the Trustee must pay the benefit as a Death Benefit.

### **26. Superannuation Law**

#### **26.1 Superannuation Law deemed to be included**

Notwithstanding any other provision of this Deed or the Rules, any provision of Superannuation Law that is required to be included in this Deed for the Fund to remain or to be a complying superannuation fund for the purposes of the Tax Act will be deemed to be included in this Deed as if every such provision was set out in this Deed on and from the date that the provision is required to be so included.

#### **26.2 Inconsistency of provisions**

In the event of any inconsistency between the provisions deemed by clause 26.1 to be included in this Deed and the terms of this Deed or the Rules, the provisions deemed to be included by clause 26.1 will prevail.

#### **26.3 Trustee not in contravention**

A failure to comply with or contravention of Superannuation Law will not of itself constitute a contravention of this Deed or a breach of trust by the Trustee. Nothing in this clause will operate to relieve the Trustee of its obligations under Superannuation Law.

#### **26.4 Modification or exemption**

Subject to Superannuation Law, the Trustee may seek modification of or exemption from the requirements of Superannuation Law, and if any modification or exemption is granted by a Regulator, the Trustee is relieved from compliance with those provisions of this Deed

and Superannuation Law expressed in that modification or exemption subject to any conditions in that modification or exemption.

## **27. Overriding Prudential Requirements**

### **27.1 Power to comply with Superannuation Law**

The Trustee must comply with any requirement of Superannuation Law, and has the power to comply with any other provision of Superannuation Law, including, without limitation, any provision in relation to:

- (a) equal representation;
- (b) proceedings of the Trustee;
- (c) maintaining reserves of the Fund;
- (d) borrowing money or maintaining an existing borrowing;
- (e) investing the assets of the Fund;
- (f) acquiring assets from a Member or his or her relatives;
- (g) appointing investment managers and custodian trustees and requiring investment managers to provide information to the Trustee;
- (h) establishing procedures for dealing with enquiries into or complaints about the operation and management of the Fund;
- (i) providing financial assistance to a Member or his or her relatives;
- (j) maintaining Fund records;
- (k) reporting significant adverse events in relation to the Fund;
- (l) preparing statements in relation to the Fund;
- (m) providing information about the Fund to the Members, Regulators and other persons;
- (n) complying with notices and requests in relation to the Fund;
- (o) acceptance of contributions by the Fund;
- (p) in-house assets;
- (q) collection of tax file numbers;
- (r) payment of benefits, including (without limitation) unclaimed benefits and payment of benefits to an eligible rollover fund;
- (s) the vesting, preservation and portability of benefits arising directly or indirectly from amounts contributed to the Fund;
- (t) the form in which benefits may be provided by the Fund;
- (u) the financial position of the Fund; and
- (v) the winding-up of the Fund.

**27.2 Power to elect**

The Trustee may elect that from the date of the election the Fund shall be a regulated superannuation fund and any election made under this clause may not be revoked.

**28. Miscellaneous****28.1 Currency**

All benefits are expressed and paid in Australian currency unless expressly otherwise agreed by the Trustee with a Member.

**28.2 Governing law**

This Deed shall be governed by and construed in accordance with the law of Victoria.

**28.3 Indemnities**

Each indemnity in this Deed is a continuing obligation and shall survive the termination of this Deed. It is not necessary for any person entitled to the benefit of an indemnity under this Deed to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

**Executed and delivered as a Deed** in Melbourne.

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001* by  
**CCSL Limited:**



Director Signature

VINCENT PARROTT

Print Name



Director/Secretary Signature

GARY WHITE

Print Name

9 OCTOBER 2012

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**SCHEDULE 1 – EMPLOYER-SPONSORED DIVISION RULES****1. Application of Schedule**

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The Employer-Sponsored Division comprises Plans which offer each eligible Employee who becomes a Employee Member accumulation benefits only. The Rules applying in relation to persons who become Employee Members of the Employer-Sponsored Division are set out in this Schedule 1.

**2. Eligibility**

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**2.1 Admission of Employee Members**

- (a) An Employee is eligible to be admitted as an Employee Member of a Plan in the Employer-Sponsored Division if:
  - (i) the Employee is employed by a Participating Employer;
  - (ii) the Participating Employer nominates the Employee for membership of the Plan in accordance with clause 4.4 ; and
  - (iii) a contribution is received and accepted by the Trustee in respect of the Employee.
- (b) Such an Employee will be admitted as an Employee Member of the Plan in the Category specified by the Participating Employer (if any).
- (c) Subject to Superannuation Law, the Trustee may from time to time agree with the Participating Employer to vary the Category that applies to an Employee Member.

**2.2 Employee Member Accounts**

Upon admission of an Employee Member to a Plan under this Division, the Trustee will establish an Account in the relevant Plan in respect of the Employee Member.

**3. Contributions and transfers**

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**3.1 Member contributions**

- (a) An Employee Member must contribute to the Plan at the rate or on the basis required (if any) by the Participation Deed between the Participating Employer and the Trustee.
- (b) The Trustee may agree with the Principal Employer that contributions otherwise payable by an Employee Member under Rule 3.1(a) will be paid by the Participating Employer. If the Participating Employer and the Trustee agree, the contributions paid by the Participating Employer under this Rule 3.1(b) may be treated as contributions by the Member.

- (c) An Employee Member may make such further contributions to the Plan at such times and in such amounts as the Participating Employer, the Member and the Trustee may from time to time agree and those contributions shall be applied by the Trustee as the Member directs and as agreed by the Trustee.
- (d) Unless the Member and the Participating Employer agree otherwise, the Participating Employer may deduct the Member's contributions from the Member's remuneration. The Participating Employer must pay the contributions to the Trustee in the manner and at the times agreed between the Participating Employer and the Trustee and otherwise in accordance with Superannuation Law.

### **3.2 Employer contributions**

- (a) Each Participating Employer must contribute to the Plan in respect of an Employee Member at the rate or on the basis set out in the Participation Deed between the Participating Employer and the Trustee.
- (b) A Participating Employer may contribute such further amounts to the Plan at such times and in such amounts as the Participating Employer and the Trustee may from time to time agree and those contributions shall be applied by the Trustee as the Participating Employer directs and as agreed by the Trustee.

### **3.3 Other contributions**

The Trustee may accept contributions to the Employer-Sponsored Division on behalf of or in respect of an Employee Member from any other person at such times and in such amounts as the Trustee may from time to time agree and is permitted by Superannuation Law.

### **3.4 Transfers**

An Employee Member or any other person may make transfers into the Plan on behalf of or in respect of the Employee Member at such times and in such form as the Trustee may from time to time agree and is permitted by Superannuation Law.

## **4. Insurance cover**

### **4.1 Participation Deed**

The Trustee will effect insurance cover pursuant to clause 9 in respect of each Employee Member in accordance with:

- (a) the Participation Deed between the Participating Employer and the Trustee; and
- (b) the Category applicable to the Employee Member, as notified to the Trustee by the Participating Employer from time to time.

### **4.2 Cessation of cover**

Unless the Trustee, the Participating Employer and the Employee Member otherwise agree, any insurance cover effected by the Trustee under a Policy in respect of an

Employee Member will cease when the Member ceases to be a Member of the Plan or the Employer-Sponsored Division pursuant to clause 3.5.

## **5. Benefits**

### **5.1 Death**

- (a) Subject to Superannuation Law, upon the death of an Employee Member, the Death Benefit payable in respect of the Member will be equal to the sum of:
  - (i) the balance of the Member's Account in the Plan; and
  - (ii) any proceeds received by the Trustee in respect of the Member under a Policy upon the Member's death.
- (b) Unless otherwise agreed between the Trustee and the Member's beneficiary, the Trustee will pay a benefit in respect of a Member under this Rule 5.1 by way of one or more lump sums in accordance with clause 12.13.

### **5.2 Total and Permanent Disablement**

- (a) Subject to Superannuation Law, upon an Employee Member suffering Total and Permanent Disablement there will be payable to the Member a benefit equal to the sum of:
  - (i) the balance of the Member's Account in the Plan; and
  - (ii) any proceeds received by the Trustee in respect of the Member under a Policy upon the Member's Total and Permanent Disablement.
- (b) Unless otherwise agreed with the Trustee, the Trustee will pay a benefit to or in respect of a Member under this Rule 5.2 by way of one or more lump sums.

### **5.3 Total and Temporary Disablement**

- (a) Subject to Superannuation Law, where an Employee Member:
  - (i) is covered for Total and Temporary Disablement under a Policy; and
  - (ii) satisfies the definition of Total and Temporary Disablement,the Employee Member is entitled to the proceeds received by the Trustee in respect of the Member under a Policy upon the Member's Total and Temporary Disablement.
- (b) The Trustee will pay a benefits to or in respect of a Member under this Rule 5.3 in a manner consistent with Superannuation Law.

### **5.4 Other payment or transfer of benefits**

- (a) Subject to Superannuation Law and any rules prescribed by the Trustee from time to time, an Employee Member may at any time request that all or part of the balance of the Member's Account in the Employer-Sponsored Division be:
  - (i) paid to or at the direction of the Member under clause 12;

- (ii) transferred to another Superannuation Entity nominated by the Member under clause 7.3; or
  - (iii) transferred to another Division or Divisions of the Fund.
- (b) Unless otherwise agreed with the Trustee, the Trustee will pay a benefit to or at the direction of a Member under this Rule 5.4 by way of one or more lump sums.

## **5.5 No duplication of benefits**

For the avoidance of doubt:

- (a) where an Employee Member is a Member of one or more other Divisions of the Fund, the Member will only be entitled to benefits calculated under this Schedule 1 in respect of their membership of the Employer-Sponsored Division; and
- (b) where an Employee Member participates in more than one Plan, the benefits payable in respect of the Member's participation in each Plan will only be payable once.

## **6. Transfers out of Employer-Sponsored Division**

### **6.1 Cessation of employment**

- (a) Unless the Trustee and the Participating Employer otherwise agree, an Employee Member will cease to be eligible to be an Employee Member of the Plan in the Employer-Sponsored Division when he or she ceases employment with the Participating Employer.
- (b) Where an Employee Member ceases to be eligible to be an Employee Member of the Plan, the following will apply:
  - (i) the balance of the Member's Account in the Plan will, subject to Superannuation Law, be:
    - (A) paid to or at the direction of the Member in accordance with clause 12;
    - (B) transferred to another Superannuation Entity nominated by the Member in accordance with clause 7.3; or
    - (C) transferred to another Division or Divisions of the Fund; and
  - (ii) unless the Trustee, the Participating Employer and the Member otherwise agree, any insurance cover effected by the Trustee under a Policy in respect of the Member will cease.

### **6.2 Transition to retirement**

Subject to Superannuation Law and any rules prescribed by the Trustee from time to time, if an Employee Member who continues to be in the employ of a Participating Employer becomes eligible under Superannuation Law to commence a Transition to Retirement Pension, upon the request of the Employee Member the Trustee may:

- (a) transfer to the Pension Division all or such part of the balance of the Member's Account in the Plan as the Member requests; and
- (b) reduce the Member's benefits or benefit entitlement under the relevant Plan and otherwise adjust the terms and conditions of the Member's participation in the Plan as the Trustee considers appropriate to take account of the transfer.



**SCHEDULE 2 – PERSONAL DIVISION RULES****1. Application of Schedule**

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The Personal Division offers each eligible person who becomes a Personal Member accumulation benefits only. The Rules applying in relation to persons who become Personal Members of the Personal Division are set out in this Schedule 2.

**2. Eligibility**

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**2.1 Admission of Personal Members**

- (a) A person is eligible to be admitted to membership of the Personal Division:
  - (i) if the person is the Spouse of a Member and the Trustee accepts an application made by the Member or the Spouse in relation to the Spouse's membership of the Personal Division;
  - (ii) if the person is a Member of another Division or Plan and the Trustee accepts a transfer in respect of the Member from that Division or Plan into the Personal Division;
  - (iii) if the Trustee agrees to create an interest in the Personal Division in respect of a non-member spouse under clause 13; or
  - (iv) if the Trustee otherwise accepts an application made by or on behalf of the person and a contribution or transfer made by, on behalf of, or in respect of the person is received and accepted by the Trustee.
- (b) The Trustee may from time to time impose such terms, conditions and restrictions on a Personal Member's membership in the Personal Division as the Trustee considers appropriate and must advise the Personal Member in writing of such terms, conditions and restrictions.
- (c) A Personal Member will be admitted as a Member of the Plan relevant to the Personal Member's membership (if any).

**2.2 Personal Member Accounts**

Upon admission of a person to membership of the Personal Division, the Trustee will establish an Account in respect of the Personal Member.

**3. Contributions and transfers**

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**3.1 Member contributions**

Subject to Superannuation Law, a Personal Member may make contributions to the Personal Division at such times and in such amounts as the Member and the Trustee may

from time to time agree and those contributions shall be applied by the Trustee as the Member directs and as agreed by the Trustee.

### **3.2 Other contributions**

Subject to Superannuation Law, the Trustee may accept contributions to the Division in respect of a Personal Member from:

- (a) the Personal Member's Employer (whether or not the Employer is a Participating Employer);
- (b) the Personal Member's Spouse; and/or
- (c) any other person,

at such times and in such amounts as the Trustee may from time to time agree and is permitted by Superannuation Law.

### **3.3 Transfers**

Subject to Superannuation Law, a Personal Member or any other person may make transfers into the Division in respect of the Personal Member at such times and in such form as the Trustee may from time to time agree and is permitted by Superannuation Law.

## **4. Insurance cover**

### **4.1 General**

The Trustee may agree to provide death, Total and Permanent Disablement and/or Total and Temporary Disablement insurance cover pursuant to clause 9 to or in respect of Personal Members (whether in relation to Personal Members generally or in relation to any particular Personal Member or category of Personal Members):

- (a) for such amount as agreed by the Trustee and the Personal Member from time to time;
- (b) in accordance with the Plan (if any); and
- (c) on the terms and conditions of the Policy and such other terms and conditions prescribed by the Trustee from time to time.

### **4.2 Cessation of cover**

Unless the Trustee and the Personal Member otherwise agree, any insurance cover effected by the Trustee under a Policy in respect of a Personal Member will cease when the Member ceases to be a Member of the Personal Division pursuant to clause 3.5.

## **5. Benefits**

### **5.1 Payment or transfer of benefits**

- (a) Subject to Superannuation Law, a Personal Member may at any time request that all or part of the balance of their Account in the Personal Division be:

- (i) paid to or at the direction of the Member under clause 12; or
  - (ii) transferred to another Superannuation Entity nominated by the Member under clause 7.3.
- (b) Unless otherwise agreed with the Trustee, the Trustee will pay a benefit to or at the direction of a Member under this Rule 5.1 by way of one or more lump sums.

## **5.2 Death benefits**

- (a) Subject to Superannuation Law, upon the death of an Employee Member, the Death Benefit payable in respect of the Member will be equal to the sum of:
  - (i) the balance of the Member's Account in the Plan; and
  - (ii) any proceeds received by the Trustee in respect of the Member under a Policy upon the Member's death.
- (b) Unless otherwise agreed with the Trustee, the Trustee will pay a benefit in respect of a Member under this Rule 5.2 by way of one or more lump sums in accordance with clause 12.13.

## **5.3 No duplication of benefits**

For the avoidance of doubt, where a Personal Member is a Member of one or more other Divisions of the Fund, the Member will only be entitled to benefits calculated under this Schedule 2 in respect of their membership of the Personal Division.

# **6. Transfers out of Personal Division**

## **6.1 Transition to retirement**

Subject to Superannuation Law and any rules prescribed by the Trustee from time to time, if a Personal Member who continues to be in the employ of an Employer (whether or not the Employer is a Participating Employer) becomes eligible under Superannuation Law to commence a Transition to Retirement Pension from the Pension Division, upon the request of the Personal Member the Trustee may:

- (a) transfer to the Pension Division all or such part of the balance of the Member's Account in the Personal Division as the Member requests; and
- (b) reduce the Member's benefits or benefit entitlement under the Personal Division and otherwise adjust the terms and conditions of the Member's participation in the Personal Division as the Trustee considers appropriate to take account of the transfer.

## **6.2 Account Based Pension**

Subject to Superannuation Law and any rules prescribed by the Trustee from time to time, if a Personal Member becomes eligible under Superannuation Law to commence an Account Based Pension from the Pension Division, upon the request of the Personal Member the Trustee may:

- (a) transfer to the Pension Division all or such part of the balance of the Member's Account in the Personal Division as the Member requests; and
- (b) reduce the Member's benefits or benefit entitlement under the Personal Division and otherwise adjust the terms and conditions of the Member's participation in the Personal Division as the Trustee considers appropriate to take account of the transfer.

**SCHEDULE 3 – PENSION DIVISION RULES****1. Application of Schedule**

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The Pension Division offers each eligible person who becomes a Pension Member account based pensions (including transition to retirement pensions). The Rules applying in relation to persons who become Pension Members of the Pension Division are set out in this Schedule 3.

**2. Eligibility**

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**2.1 Admission of Pension Members**

- (a) A person may be admitted to membership of the Pension Division if the Trustee permits.
- (b) A Pension Member will be admitted as a Member of the Plan relevant to the Pension Member's membership (if any).

**2.2 Types of pensions**

The Trustee may provide the following types of pension under the Pension Division:

- (a) an Account Based Pension; or
- (b) a Transition to Retirement Pension.

**3. Minimum Standards**

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**3.1 Account Based Pensions**

An Account Based Pension must be a pension:

- (a) to which regulation 1.06(9A)(a) of the *Superannuation Industry (Supervision) Regulations 1994* applies; and
- (b) that meets the standards of regulations 1.06(9A), 1.06(9B) and 1.07D of the *Superannuation Industry (Supervision) Regulations 1994*.

**3.2 Transition to Retirement Pensions**

A Transition to Retirement Pension must be a pension:

- (a) to which regulation 1.06(9A)(a) of the *Superannuation Industry (Supervision) Regulations 1994* applies;
- (b) that meets the standards of:
  - (i) regulations 1.06(9A), 1.06(9B) and 1.07D of the *Superannuation Industry (Supervision) Regulations 1994*; and

- (ii) paragraph (b) of the definition of **transition to retirement income stream** in regulation 6.01 of the *Superannuation Industry (Supervision) Regulations 1994*.

### 3.3 Miscellaneous

Notwithstanding any other provision of this Deed and Rules, the following apply in respect of any Account Based Pension or Transition to Retirement Pension payable under this Division:

- (a) the capital supporting the pension may not be added to by way of contribution, rollover or transfer after the pension has commenced;
- (b) the pension may only be transferred to another person on the death of the beneficiary (primary or reversionary, as the case may be); and
- (c) the capital value of the pension and the income from it cannot be used as security for a borrowing.

### 3.4 Other rules

Subject to Rule 3.1 or 3.2 (as applicable) and Rule 3.3, the Trustee may from time to time:

- (a) determine rules and conditions for the operation, administration and termination of Account Based Pensions and Transition to Retirement Pensions; and
- (b) vary or revoke such rules and conditions.

## 4. Contributions

- (a) Prior to the commencement of a pension under this Division, a Pension Member may contribute, or arrange to have contributions or transfers made on behalf of or in respect of the Pension Member, including from the Member's Employer or Spouse, to the Pension Division:
  - (i) as agreed between the Pension Member and the Trustee; and
  - (ii) as permitted by Superannuation Law.
- (b) Subject to Superannuation Law, the Trustee will allocate any contributions or transfers received in respect of a Pension Member under Rule 4(a) to an Account established in the Pension Division in respect of the Member.
- (c) The Trustee must establish a separate Account for each Account Based Pension or Transition to Retirement Pension payable from the Pension Division.

## 5. Pension payments

### 5.1 Commencement and termination

Subject to Superannuation Law, each Account Based Pension or Transition to Retirement Pension maintained in respect of a Pension Member will:

- (a) commence on the date agreed between the Pension Member and the Trustee; and

- (b) terminate when the pension has been paid or transferred in accordance with its terms.

## **5.2 Frequency of payments**

Subject to Rule 3.1 or 3.2 (as applicable) and Rule 3.3, payments will be made from an Account Based Pension or Transition to Retirement Pension:

- (a) at such times as nominated in writing by the Pension Member and accepted by the Trustee; or
- (b) if the Pension Member has not made a nomination under paragraph (a) – on a monthly basis,

provided that payment of the pension is made at least annually and is otherwise consistent with Superannuation Law.

## **5.3 Pension level**

Subject to Rule 3.1 or 3.2 (as applicable) and Rule 3.3, the following will apply in respect of each Account Based Pension or Transition to Retirement Pension:

- (a) the level of pension payments for each financial year (or part thereof) must not be:
  - (i) less than the minimum level (if any) required by Superannuation Law; or
  - (ii) greater than the maximum level (if any) required by Superannuation Law;
- (b) prior to commencement of the pension, the Pension Member must nominate in writing the level of pension payments to be made under the pension during the first financial year (or part thereof) during which the pension is payable;
- (c) in respect of each subsequent financial year during which the pension is payable, the Pension Member may nominate in writing the level of pension payments to be made under the pension with effect from the following 1 July; and
- (d) if the Pension Member has not made a nomination under paragraph (c), the level of pension payments to be made during the following financial year will continue at the level that applied in the previous financial year, subject to any adjustments necessary to ensure compliance with paragraph (a).

## **5.4 Commutation**

An Account Based Pension or Transition to Retirement Pension may only be commuted where the commutation complies with the minimum standards under Rule 3.1 or 3.2 (as applicable) and Rule 3.3, and is otherwise permitted by Superannuation Law.

# **6. Death Benefit**

## **6.1 Death benefit**

- (a) Subject to Superannuation Law, upon the death of a Pension Member, the Death Benefit payable in respect of the Member will be equal to the sum of the balance of

the Account or Accounts in the Pension Division referable to each of the Member's Account Based Pensions and Transition to Retirement Pensions.

- (b) Subject to Rule 6.2, the Trustee will pay a benefit in respect of a Member under this Rule 6.1 by way of one or more lump sums in accordance with clause 12.13, provided that this is not inconsistent with the restrictions under Rule 3.1 or 3.2 (as applicable) and Rule 3.3 or Superannuation Law or unless otherwise agreed with the Trustee.

## **6.2 Reversionary pension**

- (a) Subject to Superannuation Law, a Pension Member may give the Trustee a notice in a form approved by the Trustee:
  - (i) nominating a reversionary beneficiary; and
  - (ii) electing that the Trustee continue to pay the Pension Member's pension to the reversionary Beneficiary upon the death of the Pension Member, subject to such terms and conditions as may be specified from time to time by the Trustee.
- (b) If permitted by the Trustee, the Pension Member may revoke the nomination and nominate a new reversionary beneficiary by notice to the Trustee in accordance with paragraph (a).
- (c) Subject to Superannuation Law, if at the time of the death of a Pension Member, their Account Based Pension has a reversionary beneficiary nomination in place and the relevant reversionary beneficiary satisfies the requirements of regulation 6.21(2A) of the SIS Regulations, the Trustee will continue to pay the pension to the reversionary beneficiary in accordance with this Division until the earliest of:
  - (i) the balance of the Pension Account reaches zero;
  - (ii) Superannuation Law requires the balance of the Pension Account to be cashed as a lump sum;
  - (iii) the reversionary beneficiary fully commutes the pension under Rule 5.4 (where available); and
  - (iv) the death of the reversionary beneficiary.
- (d) If the nominated reversionary beneficiary does not satisfy the requirements of regulation 6.21(2A) of the SIS Regulations, the Trustee will pay the Pension Member's benefit in accordance with clause 12.13.
- (e) Unless the Trustee has otherwise determined or agreed in respect of a particular Pension Account, a reversionary beneficiary may not nominate another reversionary beneficiary.
- (f) On the death of a reversionary beneficiary in receipt of pension payments from a Pension Account under this Division, the Trustee must pay a lump sum benefit equal to the Pension Account balance in accordance with clause 12.13.



- (g) Rule 5 and this Rule 6.2 will apply to Pension Accounts payable to a reversionary beneficiary, except where varied by the specific terms and conditions which apply in respect of a Pension Account as agreed between the Trustee and the Pension Member or reversionary beneficiary concerned.

## **6.3 No duplication of benefits**

For the avoidance of doubt:

- (a) where a Pension Member is a Member of one or more other Divisions of the Fund, the Member will only be entitled to benefits calculated under this Schedule 3 in respect of their membership of the Pension Division; and
- (b) where a Pension Member has more than one Account in the Pension Division, the benefits payable from each such Account will only be payable once.