

# **DEED OF VARIATION**

**TOP QUARTILE MANAGEMENT LTD**

**ABN 98 006 771 848**

**("the Trustee")**

## **PINNACLE SUPERANNUATION FUND**

**MORROWS LEGAL PTY LTD**

ABN 44 114 947 063

Lawyers

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## Pinnacle Superannuation Fund

This Deed is made on

7/6/2007.

By

Top Quartile Management Limited (ABN 98 006 771 848) of Level 46, 360 Elizabeth Street, Melbourne, Victoria ("Trustee")

### Recitals

- A. The **PINNACLE SUPERANNUATION FUND** (the "Fund") was established by Deed dated 24 February 2003 as amended by a Deeds of Variation dated 27 March 2003 and 16 June 2006 (the "Deed").
- B Clause 23 of the Deed provides that the Trustee may at any time amend all or any of the provisions of the Deed.
- C The Trustee desires to amend the Deed in the manner set out in the Schedule, which amendment is in accordance with the requirements of Clause 23 of the Deed.

### Now this deed witnesses as follows:

- 1 The Trustee amends the Deed by substituting the clauses set out in the Schedule for clauses and provisions of the Deed.
- 2 The Trustee agrees to maintain the Fund that was established by the Deed.
- 3 The Trustee confirms that it holds the assets of the Fund on the trusts specified in the Deed as amended by this Deed.

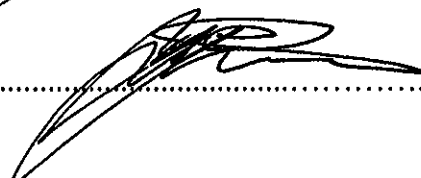
### Executed as a deed

THE COMMON SEAL of TOP QUARTILE )  
MANAGEMENT LTD ABN 98 006 771 848 was )  
hereunto affixed in accordance with its Constitution in the )  
presence of: )

X

  
..... Director

X

  
..... Director/Secretary

**SCHEDULE**  
**Pinnacle Superannuation Fund**  
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# SCHEDULE

## Pinnacle Superannuation Fund

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### 1. Definitions and Interpretation

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#### 1.1 Definitions

In the interpretation of this Deed, the words and phrases set out below shall, unless the context requires otherwise, have the meaning respectively ascribed to them:

**"Accounts"** means a statement of the income and expenditure for a Financial Year, and a statement of the assets and liabilities at the end of that Financial Year and a statement of the source and application of funds for that Financial Year;

**"Act"** or **"the Act"** means the Superannuation Industry (Supervision) Act 1993 and the regulations made thereunder and any other statute affecting the operation of superannuation funds and any amendment thereto;

**"Actuary"** means a Fellow of the Institute of Actuaries of Australia;

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

**"Authorised Investments"** means the investments which the Trustee is authorised to invest in pursuant to Clause 15;

**"Benefit"** means any amount paid or payable by the Trustee out of the Fund to a Member pursuant to this Deed;

**"Custodian"** means the corporation appointed under Clause 14.2, if any;

**"Death Benefits Dependant"** has the meaning assigned to that term in the Tax Act;

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

**"Dependant"** means the Spouse and each child and Adopted Child of a Member and any person who in the opinion of the Trustee is or was at the present time dependant in whole or in part upon the Member for maintenance and support;

**"Determination Date"** means the last day of each calendar month;

**"Eligible Person"** means a person eligible for membership of the Fund;

**"Expense Reserve Account"** means the account established pursuant to Clause 12.3;

**"Financial Year"** means each successive period of twelve (12) months commencing on the first day of July and ending on the thirtieth day of June and the last Financial Year shall be the

period commencing on the first day of July immediately preceding termination and ending on the date of termination of this trust;

**"Fund"** means the Pinnacle Superannuation Fund as constituted by this Deed and includes a reference to each separate sub-plan created under 330 of this Deed;

**"Government Authority"** means in relation to a superannuation fund, such approval of a relevant authority or such compliance with any relevant legislation, regulations or rulings (whether or not the approval of that authority or other person has been given to the Trustee in relation to such compliance) as may be required to ensure that the Fund is regarded as a complying superannuation fund and qualifies for the maximum taxation concessions;

**"GST"** means goods and services tax under the GST Act or any similar tax under similar legislation;

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

**"Investment Account"** means accounts established for a Member pursuant to Clause 12.1;

**"Investment Pool"** means a pool of selected Authorised Investments with a distinctive investment policy created in accordance with Clause 14.5;

**"Investment Units"** means units conferring an equal undivided interest in an Investment Pool in accordance with the provisions of Clause 14.5 and being valued pursuant to Clause 17;

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

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

least two trading days and is continuing, the Trustee may cause a broker approved by the Trustee (being a member of the stock exchange on which such investment is quoted or otherwise an active broker on that stock exchange) to certify the amount (if any) which in their opinion shall be value thereof and the value so certified shall be deemed to be the value of such investment;

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

**"Member"** means:

- (a) an Eligible Person who is accepted by the Trustee for membership of the Fund in accordance with the provisions of this Deed;
- (b) a former Eligible Person who at the relevant time is receiving or entitled to receive Benefits from the Fund;
- (c) any person who is paid a pension pursuant to this Deed, including a pension paid following the death of a member;

**"Register"** means the register of Members maintained by the Trustee pursuant to Clause 23;

**"Relevant Date"** means the date on which the value of any Asset or of an Investment Unit is valued under this Deed;

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

**"Reversionary Beneficiary"** means a Death Benefits Dependant nominated by a Member and in default of a nomination by the Member, a Death Benefits Dependant nominated by the Trustee who is eligible to receive a Benefit upon the death of a Member.

**"Spouse"** has the meaning assigned to that term in the Act;

**"Tax Act"** means the Income Tax Assessment Act 1936 or the Income Tax Assessment Act 1997;

**"Tax Reserve Account"** means the account established pursuant to Clause 12.4;

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

**"Total and Permanent Disablement"** shall have the same meaning as contained in the policy of insurance effected by the Trustee pursuant to Clause 16 to provide Total and Permanent Disablement benefits or such other meaning as is determined from time to time by the Trustee PROVIDED THAT Total and Permanent Disablement shall only be regarded as having occurred in respect of any Preserved Benefits component of any Benefit payable on Total and Permanent Disablement pursuant to this Deed if the Member concerned provides sufficient evidence thereof to the Trustee to satisfy the Act, and "Totally and Permanently Disabled" shall have a corresponding meaning;

**"Trustee"** means the Trustee for the time being of the Fund appointed under the provisions of this Deed.

## **1.2 Interpretation**

In this deed, unless the context otherwise requires:

- (a) a term which is used in this Deed as a defined term and which is defined in the Act shall have the meaning given to that term in the Act;
- (b) a reference:
  - (i) to the singular include the plural and vice versa;
  - (ii) to a gender includes all genders;
  - (iii) to any document (including this deed) include references to that document as amended, consolidated, supplemented, novated or replaced;
  - (iv) to an agreement includes any deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (v) to any person or any party includes:
    - (A) references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and governmental agency as the case requires; and
    - (B) that person's successors, permitted assigns, substitutes, executors and administrators;
  - (vi) to law:



- (A) includes references to any constitutional provision, treaty, decree, convention, statute, act, regulation, rule, ordinance, proclamation, subordinate legislation, by-law, judgment, rule of common law or equity, rule of any applicable stock exchange; and
- (B) is a reference to that law as amended, consolidated, supplemented or replaced;
- (vii) to judgment include references to any order, injunction, decree, determination or award of any court or tribunal;
- (viii) to proceeding include litigation, arbitration, and investigation;
- (c) headings are for convenience only and must be ignored in construing this deed;
- (d) if a period of time is specified and dates from, after or before a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (e) the words including or includes mean including but not limited to or including without limitation;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) this deed must not be construed adversely to a party solely because that party was responsible for preparing it; and
- (h) where any person is required to provide, or may provide, a notice or application in writing to an other person, then the Trustee may, subject to the Act, permit that notice or application to be given in electronic or other form and on such other terms and conditions as the Trustee may determine.

### **1.3 Incorporation of relevant law**

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

### **1.4 Effect of Act**

Notwithstanding any other provision of this Deed, in the event of any inconsistency between the Act and the express provisions of this Deed, the Act prevails to the extent of the inconsistency.

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## **2. Trust**

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- 2.1 The Trustee or any custodian or nominee appointed by the Trustee pursuant to clause 14.2 shall hold all Assets of the Fund upon and according to the trusts contained in this Deed and the Fund shall consist of:

- (a) such contributions as shall be made to the Fund in respect of any Member at any time as set out in this Deed;
  - (b) all assets, property, benefits and policies of insurance in which any moneys forming a part or the whole of the Fund are invested or by which they are represented and all income and gains derived from them.
- 2.2 The trust fund constituted by this Deed is to be called the Pinnacle Superannuation Fund or such other name as the Trustee may from time to time determine.
- 2.3 The Trustee will act as Trustee of the Fund in accordance with the provisions of this Deed.

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### **3. Period of Trust and Termination**

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- 3.1 The trust created by this Deed starts on the date of this Deed and shall terminate, subject to clause 3.4, upon the occurrence of one of the following events:
- (a) if there is no person to whom a Benefit is or may be payable; or
  - (b) the Trustee determines that the liabilities of the Fund at any time exceed the assets of the Fund.
- 3.2 The Trustee shall realise the Assets of the Fund within one hundred and eighty (180) days after the termination of the Fund provided that the Trustee may defer the sale or the realisation of any or all the Assets of the Fund if the Trustee forms the opinion that such sale or realisation is prejudicial to the interests of the Members.
- 3.3 After the sale and realisation of the Fund the Trustee shall after paying costs of the Fund and its winding up distribute the monies as follows:
- (a) where the proceeds of the assets of the Fund are required to be preserved under the Act, the Trustee shall notify each Member of this requirement and request them to nominate in writing within one (1) month a fund approved under the Act for the receipt of the proceeds;
  - (b) where the proceeds are not required to be preserved under the Act, as directed by the Member or if a Member fails to make such a direction, in such manner as the Trustee, subject to the Act, determines is reasonable in all the circumstances.
- 3.4 The trust constituted by this Deed will endure for any period allowed by law for the duration of any trust established by this Deed.

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### **4. The Trustee**

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- 4.1 The Trustee shall at all times be a constitutional corporation approved by the regulator as a trustee of public offer superannuation funds.

4.2 The Trustee shall:

- (a) ensure that the Fund is audited as required under the Act;
- (b) provide information to Members as required under the Act; and
- (c) administer the Fund at all times in accordance with the requirements of the Act.

4.3 Subject to the provisions of this Deed, the Trustee:

- (a) shall have all the powers over and in respect of the Assets constituting the Fund as it would exercise if it were the absolute and beneficial owner thereof;
- (b) shall manage and supply management services to the Fund for the benefit of the Members and may delegate to any company or person on such terms as the Trustee may think fit any of the powers, duties or discretions conferred upon it by this Deed but the Trustee shall remain responsible at all times for the acts of any company or person so appointed; and
- (c) may employ such accountants, actuaries, advisers, auditors, bankers, barristers, brokers, consultants, custodian trustees, investment trustees, managers, solicitors and other persons, firms, corporations, or companies as it considers desirable.

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

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

4.5 Subject to the Act, the Trustee shall appoint in writing some other Approved Trustee to be the new trustee of the Fund prior to the Trustee retiring or being removed as Trustee and effective from the date on which the new trustee is appointed.

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

4.7 The new trustee shall execute a Deed in such form as the Trustee may require undertaking to the Trustee and the Members jointly and severally all the obligations of the retiring Trustee hereunder and from the date thereof the retiring Trustee shall

be absolved and released from all further obligations, under this Deed, except in respect of any antecedent breach. The new trustee shall and may thereafter exercise all the powers and enjoy all the rights and shall be subject to all the duties and obligations of the retiring Trustee as fully as though the new trustee has been originally named as a party to this Deed.

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## **5. Trustee Covenants**

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5.1 The Trustee hereby covenants with the Members to do all those matters required by Section 52 of the SIS Act (as amended from time to time), namely:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another Fund for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets of an Employer;
- (e) not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the entity in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;

- (g) if there are any reserves of the Fund – to formulate and to give effect to a strategy for the prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due; and
- (h) to allow a Member access to any information or any documents prescribed by the Act to be made accessible to the Member.

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## **6. Trustee Fees**

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6.1 The Trustee is entitled, in respect of each of the Members, to be paid by the Fund for supplies made to the Fund the following fees in respect of each Member:

- (a) an initial fee equal to 5% of the aggregate of:
  - (i) the amount of all contributions paid into the Fund in respect of that Member; and
  - (ii) the value of all Authorised Investments (as determined by the Trustee) transferred to the Fund in respect of that Member;
- (b) subject to clause 6.2, a management fee equal to 2% per annum of the amount standing to the credit of the relevant Member's Investment Account as at the Determination Date;
- (c) a Benefit payment fee or a Member transfer fee of \$95 in respect of each Benefit or transfer payment from the Fund (other than a Benefit paid in the form of a pension), which fee will be indexed annually to Average Weekly Ordinary Times Earnings;
- (d) an administration fee of an amount not exceeding \$300 per annum for each Member's Investment Account to be charged on each Determination Date, which fee will be indexed annually to Average Weekly Ordinary Times Earnings;
- (e) a fixed fee not exceeding \$50 (indexed annually to Average Weekly Ordinary Times Earnings) in respect of each occasion on which the Member uses the following services or causes the following events to occur:
  - (i) the dishonour of a cheque or other failure of purported payment by a Member in respect of a contribution; or
  - (ii) a switching of an Authorised Investment in the relevant Member's Investment Account occurring as a result of a request by a Member.
- (f) If a member is receiving a benefit in the form of a pension, a fixed fee not exceeding \$50 (indexed annually to Average Weekly Ordinary Time

Earnings) in respect of each occasion on which an alteration occurs in the amount or timing of pension payments to the member.

- (g) a fee of \$100 for each supply of information pursuant to section 90MZB of the Family Law Act 1975 and a fee of \$250 for each payment split made in accordance with Part VIIIIB of the Family Law Act 1975, which fees will be indexed to Average Ordinary Time Earnings.
- 6.2 The Trustee may, by notice to the Members, elect that the management fee payable under clause 6.1(b), be calculated at the rate of 2% per annum of the value of each Investment Pool as at a Determination Date.
- 6.3 The Trustee may debit a Member's Investment Account with such amounts as the Trustee determines are reasonable and which the Member directs the Trustee in writing to pay to the Member's agent either at the time a contribution is made to the Fund by or on behalf of that Member or at any time whilst the Member remains a Member.
- 6.4 Any amount which the Trustee is entitled to receive under clause 6.1 or 6.2 must, unless the contrary intention is expressed under clause 6.1 or 6.2, be debited to the Member's Investment Account or the relevant Investment Pool, as the case may be, on the day on which it is determined.
- 6.5 The Trustee shall be entitled to accept a lesser amount for all fees or amounts due under this Deed and the Trustee in exercising this power may determine that Members may be charged a differential management fee pursuant to clause 6.1(b).
- 6.6 Except where the Fund makes a loss, the Trustee shall not charge any fees that would give rise to a negative return on any Member's Investment Account balance where that account balance is less than \$1,000.00 (or such other amount prescribed by the Act) PROVIDED always that the Trustee shall be entitled to refuse to accept Members who have account balances of less than \$1,000.00 (or such other amount prescribed by the Act) and/or to pay such a Member's Investment Account balance to the Eligible Rollover Fund or the fund established by the Act for such purposes.
- 6.7 In addition to the Trustee's remuneration the Trustee shall be reimbursed out of the Fund for all out of pocket charges, expenses and outgoings reasonably and properly incurred in the operation of the Fund being:
- (a) costs of convening and holding any meeting of Members and carrying out any directions or resolutions of any such meeting, including any costs it incurs in relation to the establishment and operation of policy committees pursuant to the Act;
  - (b) the cost of all audits of the Fund;
  - (c) costs of acquisitions or disposal of any Authorised Investment including brokerage, commission and stamp duty;
  - (d) bank fees and other charges (including but not limited to debits tax and charges in respect of financial institutions duty) incurred in connection with the bank accounts of the Fund;

- (e) the cost of printing and posting statements, cheques, accounts, distribution statements, reports, notices of meeting and other documents required to be circulated amongst or sent out pursuant to the provisions of this Deed;
- (f) reasonable remuneration of and all costs, charges and expenses incurred by any receiver appointed;
- (g) all costs, duties, taxes, charges, expenses and outgoings or any other government or other charges or imposts whatsoever including GST;
- (h) costs of preparation and execution of this Deed or any supplemental Deed or Deed executed in substitution for this Deed including solicitors costs and any other costs incurred in relation thereto;
- (i) fees and expenses of any accountant, actuary, barrister, solicitor, investment manager, consultant, custodian or other expert from time to time engaged by the Trustee;
- (j) all costs, charges and expenses incurred in relation to the preparation and distribution of any information, memorandum, periodical or other report or document issued in accordance with the Act (other than Member benefit statements).

6.8 The Trustee may allocate amounts to be reimbursed to it under Clause 6.7 amongst such of the Members' Investment Accounts or Investment Pools as it considers appropriate.

6.9 The amount reimbursed to the Trustee under Clause 6.7 in any Financial Year plus the amounts actually paid to the Trustee under Clause 6.1 and 6.2 in respect of that Financial Year must not exceed the maximum amount that could have been paid to the Trustee under Clause 6.1 and 6.2 in respect of that Financial Year.

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

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## **7. Brokerage**

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

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## **8. The Auditor**

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

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## **9. Trustee's Indemnity**

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- 9.1 Except for a wilful, intentional or negligent breach of trust the Trustee and its directors shall in carrying out duties as Trustee be indemnified out of the Assets of the Fund and shall (subject to the Act) have a lien on and may use moneys forming part of the Fund in pursuance of such indemnity. The indemnity under this clause shall (without limiting the indemnity) extend to:
- (a) a payment to a person the Trustee bona fide believed was entitled to the payment;
  - (b) any loss suffered from an act or omission of the Trustee done pursuant to this Deed;
  - (c) all costs incurred in bringing legal proceedings to secure compliance with the provisions of this Deed or to recover any loss to the Fund; and
  - (d) any losses suffered by the Trustee acting upon:
    - (i) advice of or information obtained from barristers or solicitors instructed by the Trustee; and
    - (ii) a statement of or information obtained from a banker accountant valuer or other person independent of the Trustee.

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## **10. Participation and membership**

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- 10.1 The Trustee may accept an application for membership of the Fund from any Eligible Person upon and subject to the terms and conditions of this Deed.
- 10.2 Upon acceptance of the application the person making the application shall become subject to the provisions of this Deed.



- 10.3 The Trustee may in its discretion accept or refuse any application and it shall not be required to assign any reason or ground for a refusal.
- 10.4 Upon receipt of monies paid or received from an applicant or any Authorised Investments transferred to the Fund by an applicant, the monies or Authorised Investments shall, subject to clause 10.2, form part of the Fund and:
- (a) the applicant shall be registered as a Member; and
  - (b) the moneys or Authorised Investments shall be credited to an Investment Account opened in the name of that Member.
- Notwithstanding any other provision of this Deed, the Trustee may decline to accept the transfer of any Authorised Investments from an applicant without giving any reason.
- 10.5 The Trustee may at any time and from time to time accept further moneys by way of additions to the Fund.
- 10.6 The Trustee must not intentionally or recklessly issue an interest in the Fund to a person (not being a Member) except where that person has made application in writing (or such other form permitted by the Act) and has received all information required by the Act.
- 10.7 Where the Trustee receives moneys or Authorised Investments on behalf of an applicant and does not issue the interest in the Fund immediately after receiving the money or Authorised Investments the Trustee shall pay the money or Authorised Investments into a trust account until such time as the relevant interest is issued or the money or Authorised Investments is refunded or transferred back (as the case may be) to the applicant or a person entitled to receive it.
- 10.8 If an application to become a Member is found to contain any mis-statement error mistake or suppression the Trustee may make such adjustments as it in its absolute discretion considers appropriate to the Benefits to be provided by the Fund for that particular Member and/or the contributions (if any) to be paid to the Fund by that Member.

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## **11. Meetings**

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- 11.1 The Trustee may at any time summon a meeting of Members for any purpose.
- 11.2 An application requisitioning a meeting of Members must state the objects of the meeting and the terms to be submitted to the meeting.
- 11.3 The Trustee shall send to each Member a notice by post of any meeting at least ten (10) Business Days before the meeting.
- 11.4 The accidental omission to give such notice to or the non-receipt of a notice by a Member shall not invalidate the meeting.

- 11.5 Any notice convening a meeting of Members shall contain adequate notice of:
- (a) the time and place of the meeting;
  - (b) any matters to be considered at the meeting of which the convenor is aware;
  - (c) any resolutions to be put at the meeting of which the convenor is aware; and
  - (d) a summary of the information relating to those matters and resolutions that is relevant to a holder of those interests on deciding how to vote at the meeting.
- 11.6 The chairman of a meeting shall be:
- (a) a person nominated by the Trustee (whether a Member or not); or
  - (b) where no such nomination is made by the Trustee or if a chairman nominated by the Trustee is not present within fifteen (15) minutes after the time appointed for holding the meeting the Members present shall choose one of their number to be chairman.
- 11.7 All meetings shall, subject to the provisions of this Deed, be subject to direction by the chairman of the meeting.
- 11.8 The chairman shall not have a casting vote.
- 11.9 Subject to clause 11.11, no business shall be transacted at any such meeting unless a quorum of at least twenty five (25) persons holding or representing by proxy at least ten per cent (10%) of the value of the beneficial interests in the Fund are present.
- 11.10 If within thirty (30) minutes from the time appointed for any meeting a quorum is not present the meeting shall stand adjourned to the same day in the next week at the same time and place.
- 11.11 At an adjourned meeting the Members present in person or by proxy (whatever their number or whatever the value of beneficial interests) shall form a quorum.
- 11.12 Subject to clauses 11.13 and 11.19 every question submitted to a meeting of the Members shall be decided by a show of hands where every Member who is present shall have one vote.
- 11.13 Where required by this Deed or the Act that an issue be decided by the value of the beneficial interests for the time being issued then every Member who is present in person or by proxy shall have a vote for each dollar of the value of his beneficial interest in the Fund.
- 11.14 No objection shall be raised as to the qualification of any voter after the conclusion of a meeting.

- 11.15 On a poll votes may be given either personally or by proxy.
- 11.16 The instrument appointing the proxy shall be in writing under the hand of the appointor or of its authorised agent and:
- (a) be in a form which the Trustee has approved;
  - (b) be deposited with the Trustee not less than two (2) clear days before the relevant meeting;
  - (c) be less than twelve (12) months old; and
  - (d) the Trustee shall have received no intimation in writing of the death or insanity of the appointor or any revocation of the proxy.
- 11.17 A poll may be demanded before or immediately after any question is put to a show of hands by:
- (a) the chairman; or
  - (b) by not less than five (5) Members; or
  - (c) one or more Members, holding or representing at least one-tenth ( $\frac{1}{10}$ ) of the value of beneficial interests in the Fund.
- 11.18 If at any meeting a poll is demanded it shall be taken in such manner as the chairman directs.
- 11.19 A demand for a poll may be withdrawn.
- 11.20 Any poll demanded at any meeting on the election of a chairman or any question of adjournment shall be taken at the meeting without adjournment.
- 11.21 The demand for a poll shall not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.
- 11.22 At any meeting a declaration by the chairman that a resolution has been carried or carried by any particular majority lost or not carried by any particular majority shall be conclusive evidence of the fact and shall be binding upon the Trustee and all the Members whether present or not present at such meeting.
- 11.23 A meeting of Members shall have the power by Resolution to sanction or assent to any alteration addition modification or cancellation proposed by the Trustee (as the case may be) of the provisions of this Deed and to authorise the Trustee to concur in and execute any supplemental Deed embodying any such alteration, addition, modification or cancellation proposed by the Trustee.
- 11.24 Minutes of all resolutions passed and proceedings held at every meeting of Members shall be made and signed by the chairman and duly entered in a book to be provided for that purpose by the Trustee and retained for at least 10 years.

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## **12. Administration and Accounts**

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- 12.1 The Trustee shall establish and maintain such accounts and sub-accounts as it may deem necessary for the proper administration of the Fund including an Investment Account in respect of each Member.
- 12.2 The Investment Account in respect of any Member shall have:
- (a) recorded the contributions made to the Fund in respect of the relevant Member and the date upon which such contributions were made;
  - (b) recorded the relevant details of the Assets (including Investment Units) acquired or realised by the Trustee in respect of the Member for the purposes of the Fund, including upon revaluation of the Assets in accordance with clause 17;
  - (c) debited any losses, outgoings, expenses, charges or otherwise in respect of the acquisition, realisation, holding or otherwise of the Assets referred to in clause 12.2(b) above;
  - (d) credited with all interest, dividends, rent or other income in respect of the Assets referred to in clause 12.2(b) above;
  - (e) debited any Tax Liability in respect of assessable contributions, investment income of any description and Benefits attributable to that Member;
  - (f) debited to it any fees or expenses payable in respect of the Member in accordance with clause 6;
  - (g) debited to it the contributions to be made to the Expense Reserve Account or Tax Reserve Account pursuant to clause 12.3 or 12.4;
  - (h) credited or debited such further amounts as are necessary and appropriate to reflect the status of the Investment Account from time to time.
- 12.3 The Trustee may establish an Expense Reserve Account to facilitate payment of the fees and outgoings, expenses and charges referred to in clause 6. For this purpose, the Trustee may, from time to time, debit each Member's Investment Account with such amounts as the Trustee shall, in its absolute discretion, determine.
- 12.4 The Trustee may establish a Tax Reserve Account to facilitate payment of any Tax Liability. For this purpose, the Trustee may, from time to time, debit each Member's Investment Account with such amounts as the Trustee may, in its absolute discretion, determine.
- 12.5 Redemption of monies from the Fund will be for the purpose of payment of Benefits and payments to other approved superannuation funds, expense and tax deductions or any other purpose allowed by the Act or this Deed.

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## **13. Contributions**

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- 13.1 All Members shall contribute or procure contribution to the Fund in such manner and at such times as is agreed with the Trustee.
- 13.2 Notwithstanding anything else in this Deed, the Trustee has the right at any time to decline to accept all or any part of any contribution from any person in respect of any Member without having to give any reasons for so doing.
- 14.3 The Trustee may if requested by a Member roll over, transfer or allot an amount of benefits, for the benefit of the Member's spouse, that is equal to an amount of splittable contributions made in respect of that Member in a manner permitted by the Act.

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## **14. Investment of the assets of the Fund**

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- 14.1 Any power to invest any assets of the Fund given to the Trustee pursuant to this clause shall be subject to the Act and shall be on bona fide arms length terms.
- 14.2 The Trustee shall where required by the Act appoint a corporate body as a custodian to hold on its behalf the title to all of the assets in which the Fund is for the time being invested and the Trustee may:
- (a) pay the custodian out of its own fee such remuneration for its services as the Trustee from time to time determines;
  - (b) give notice to the custodian terminating its appointment and appoint another corporate body to act as custodian;
  - (c) appoint a custodian even where such appointment is not required by the Act.
- 14.3 Where a Custodian is appointed under Clause 14.2, the Trustee shall:
- (a) promptly on receipt of application moneys or Authorised Investments, pay the moneys either to an account in the name of the Custodian or a trust account established for such purposes; and
  - (b) in all information memorandums and other representations relating to the Fund direct that all cheques and other payment orders in respect of applications for an interest in the Fund be drawn in favour of the Custodian.
- 14.4 The Trustee may appoint, in writing, any corporation as an investment manager of the Fund on such terms as the Trustee thinks fit and may delegate any duties or powers to any such corporation PROVIDED ALWAYS that any agreement with an investment manager shall include terms to the effect that the investment manager shall:

- (a) not without the consent of the Trustee exercise any discretion which should properly be exercised by the Trustee;
  - (b) not without the consent of the Trustee appoint any Custodian of the assets of the Fund;
  - (c) provide appropriate information to the Trustee as to the making of and return of the investments of the assets of the Fund; and
  - (d) provide such necessary information to enable the Trustee to assess the capability of the investment manager to manage the investments of the Fund.
- 14.5 The Trustee may create pools of selected Authorised Investments within the Fund ("Investment Pool") which may comprise one or more different Authorised Investments, and have a distinctive investment strategy as determined by the Trustee. The Trustee may debit to each Investment Pool such amounts as it is authorised to charge to an Investment Pool, and for this purpose may realise Assets in the Investment Pool to satisfy any such charge. The Trustee may divide the Investment Pool into Investment Units in respect of a particular Investment Pool and shall credit the Investment Account of each Member entitled to Investment Units in that Investment Pool with the value of such Investment Units. Fractional Investment Units may be created.
- 14.6 Each Member may indicate in its application for membership to the Fund the investment strategy to which the application relates.
- 14.7 If a Member does not nominate an investment strategy in a manner acceptable to the Trustee, then any monies to be invested shall be applied as the Trustee shall nominate.
- 14.8 The Trustee may pool the monies of the Fund with the monies of any other superannuation fund or provident fund of which the Trustee is trustee.
- 14.9 Subject to the Act the Trustee may borrow or raise money by way of a loan from a bank for the purpose of providing temporary finance for the Fund.
- 14.10 Authorised Investments may be purchased sold or otherwise dealt with at a price which is the Market Value of the Authorised Investment as determined by the Trustee from time to time. In determining a Market Value the Trustee may have reference to such recognised financial information as is available from or published by an appropriate independent and commercially recognised source.
- 14.11 Notwithstanding anything else contained in the Deed, the Trustee shall be entitled in relation to any proposed Authorised Investment to appoint a licensed valuer to determine the fair market value of the proposed Authorised Investment.
- 14.12 The Trustee shall establish and keep current a register of all investments of the Fund showing in respect of each investment as applicable:
- (a) the nature of the investment and, if relevant, the Investment Pool to which it relates;

- (b) the date of acquisition thereof by the Trustee;
- (c) the date of maturity thereof;
- (d) the cost thereof;
- (e) the number of each share or unit representing the investment (if applicable);
- (f) the rate per annum of the redemption yield thereon (if applicable); and
- (g) any other information required by the Act or as the Trustee may deem necessary.

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## **15. Authorised Investments**

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- 15.1 Subject to this Deed and the Act, the Trustee has all the powers in respect of the Fund that it is possible under the law to confer on a Trustee and as though it were the absolute owner of the Fund and acting in its personal capacity.
- 15.2 Without limiting clause 15.1, the Trustee in its capacity as Trustee of the Fund has the power to borrow and to incur all types of obligations and liabilities.
- 15.3 Without limiting clause 15.1, the Trustee may in its capacity as Trustee of the Fund invest in, dispose of or otherwise deal with property and rights in its absolute discretion.

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## **16. Insurance**

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- 16.1 The Trustee shall arrange and vary such policies of insurance which relate to one or more Members as it determines necessary to provide some or all of the Benefits payable under this Deed.
- 16.2 The Trustee may from time to time require any Member or any person who has applied to become a Member to:
  - (a) be medically examined;
  - (b) submit other evidence of health habits or pastimes;
  - (c) provide proof of age to the satisfaction of an insurer; and/or
  - (d) take such other steps as may be required by the Trustee or an insurer for the purposes of insurance.
- 16.3 The Trustee may adjust a Member's Benefit in such manner as the Trustee considers appropriate where:

- (a) the Member refuses to undertake any step reasonably required for insurance purposes; or
  - (b) the Member does or omits to do anything that might vitiate or result in the policy monies or any part thereof not becoming payable; or
  - (c) an insurer declares void or refuses to pay for any reason insurance in relation to the Member.
- 16.4 The Trustee may invest or pay part of the Member's Investment Account in paying the premiums in respect of any insurance policy effected or acquired in relation to a Member at the request of the Member.
- 16.5 All premiums paid under any insurance policy effected or acquired in relation to and at the request of a Member as contemplated in clause 16.4 shall be debited to the Member's Investment Account in accordance with clause 12.2 and any proceeds of the insurance policy, including any rebates paid to the Trustee in respect of the insurance policy, shall be credited to the Member's Investment Account in accordance with clause 12.2.
- 16.6 In the event that no such insurance is in force at the time a Member or his Dependents are eligible to receive a Benefit as a result of the death or the Total and Permanent Disablement of the Member the Benefit payable shall be limited to the Member's Investment Account.

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## **17. Investment and buy-back prices**

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- 17.1 The Authorised Investments of the Fund shall be valued at Market Value and in accordance with this Deed and with normal accounting principals at such times as the Trustee determines as appropriate.
- 17.2 All Investment Units in each Investment Pool shall be of equal value.
- 17.3 The Trustee covenants that it will not create or deal with any Investment Units otherwise than at a price calculated in accordance with the terms of this Deed.
- 17.4 The buy-back price of an Investment Unit shall be calculated by dividing the number of Investment Units in the Investment Pool at the Relevant Date into the Market Value of the Assets in that Investment Pool on the Relevant Date (after properly accounting for any fees or expenses properly payable out of the Assets in the Investment Pool) less all costs which would have been incurred on the sale of disposal of the investments comprised in the Investment Pool on the Relevant Date, but the Trustee may in respect of any calculation deem those costs to be a lesser amount or zero.
- 17.5 The investment price of an Investment Unit shall be calculated by dividing the number of Investment Units in the Investment Pool at the Relevant Date in to the Market Value of the Assets in that Investment Pool on the Relevant Date (after properly accounting for any fees or expenses properly payable out of the Assets in the Investment Pool) less all costs which would have been incurred on the purchase



or acquisition of the investments comprised in the Investment Pool on the Relevant Date but the Trustee may in respect of any calculation deem those costs to be a lesser amount or zero.

- 17.6 The Trustee's statement of any determination made under this clause 17 is final and binding on all parties.

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## **18. Transfer from other funds**

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

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## **19. Transfer to other funds**

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- 19.1 The Trustee may:

- (a) at the request of a Member; or
- (b) if the Trustee considers it necessary or desirable,

transfer to the trustee of any other complying superannuation fund (as defined in the Act) a Member's entitlement on such conditions and indemnities as the Trustee may require.

- 19.2 The receipt of such other fund shall be sufficient discharge to the Trustee for such Member who shall cease to have any further or other entitlement to a Benefit under the Deed.
- 19.3 The Trustee shall not be responsible for the payment or disposal by the trustee of the other fund of any entitlement so paid or transferred under clause 19.1.

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## **20. Powers of employer not affected**

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- 20.1 Except as may be expressly provided for in this Deed nothing in this Deed shall be deemed to affect prejudice or alter in any way the powers of an Employer with regard to any dealings whatsoever with any of its Employees.
- 20.2 Any accrued benefit entitlement or Benefits to which a Member or Dependant may be or may claim to be entitled under this Deed shall not be sued or alleged or claimed as damages or grounds for increasing damages in any action or claim by him or by anyone through him against the Trustee or any employer.

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## **21. Limitation of liability**

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- 21.1 No Member shall be under any obligation personally to indemnify the Trustee or have any liability to any creditor of the Trustee in any event including there being any deficiency of the Assets of the Fund as compared with the liabilities of the Trustee in relation thereto, and the rights, if any, of indemnity of the Trustee or of such creditor shall be limited to the Assets of the Fund.

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## **22. Amendment of deed**

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- 22.1 The Trustee may from time to time by deed or resolution in writing amend alter modify add or delete the provisions of the Deed (including the provisions of this sub-clause) but only if:
- (a) no amendments may be made which would cause the Trustee or the Fund not to be in compliance with the Act;
  - (b) the amendments may only be made if they do not adversely affect the balance of and assets recorded in any Member's Investment Account as at the date of such alteration unless the prior consent of the affected Members is obtained; and
  - (c) no amendment may be made if the Fund would be technically insolvent after the amendments.

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## **23. Registers**

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- 23.1 The Trustee shall keep and maintain at the registered office of the Trustee a register of Members. The auditor and each Member shall be entitled free of charge to inspect the register at any time as required by the Act.

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## **24. Copies of Deed**

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- 24.1 A copy of this Deed (and all amendments thereto) shall at all times during business hours be made available by the Trustee for inspection at their registered office.

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## **25. Payment of benefits**

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- 25.1 Subject to the provisions of this Deed, the amount of benefits payable to or in respect of Members upon death, Total and Permanent Disablement or otherwise as permitted by the Act shall be the amount then held in the Investment Account of the relevant Member.

- 25.2 As soon as is reasonably practicable prior to the payment of any Benefit to the Member or to the person or persons entitled to receive the Benefit, the Trustee shall debit or credit (as the case may be) the Member's Investment Account with any amounts referred to in clause 12.2 which amounts have accrued up to the time of such payment and which have not otherwise been so debited or credited.
- 25.3 Following a Member's death the Trustee shall pay the Benefit on death for that Member to the Member's Dependants or legal representative in a lump sum form in such proportion as the Trustee in its absolute discretion shall decide unless the Trustee accepts a written direction from a Member requiring the Trustee to pay the Benefit to a selected Dependant or Dependants and or legal representative of the Member on the death of the Member, in which case the Trustee must follow this direction. The Trustee will at no time be under any obligation to accept such a direction unless the Trustee has given the Member information prescribed by the Act.
- 25.4 Where the Trustee is unable to locate any Dependants or a legal representative the Trustee may in its discretion pay the benefit to any individual person including any individual nominated by the Member provided that such nomination shall in no way bind the Trustee in the exercise of its discretion.
- 25.5 Any Benefit payable to a Dependant may be paid or applied to or in respect of such one or more Dependants to the exclusion of the other or others of them in such shares or proportions and by a single lump sum or by instalments over such period as the Trustee may in all respects in its absolute discretion decide.
- 25.6 With the agreement of the Member or other person or persons to whom the Benefit is payable, the Benefit may be provided by way of a pension in accordance with clause 26 and either clause 27 or 28, as the case requires.
- 25.7 Payment of all Benefits shall be subject to the preservation conditions in force in the Act at the time of payment.
- 25.8 Notwithstanding anything contained herein the Trustee shall be entitled at its absolute discretion to pay to any Member that portion of his or her entitlement in the Fund which represents unrestricted non-preserved benefits or which satisfies a condition of release as defined in the Act.

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## **26. General Pension Conditions**

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- 26.1 The Trustee and the Member may agree that a pension be paid as provided by this Deed and in the absence of agreement, the Trustee may determine the basis on which the pension is paid.
- 26.2 Pensions payable to a person from the Fund must not be assigned or otherwise transferred by that person (except to the extent permitted by this Deed) and must not be mortgaged or encumbered in any manner.

- 26.3 Neither the capital value of any pension payable from the Fund nor any income from it, may be used as a security for a borrowing.
- 26.4 The Trustee may in relation to Members being paid a Pension separate the assets of the Members into a Pension Account for the purpose of enabling the payment of all or part of any liability in relation to the payment of the Pension as those liabilities fall due.

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## **27. Account-based Pension**

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- 27.1 A pension payable under this clause must be paid at least annually to the Member or to a Reversionary Beneficiary.
- 27.2 The annual amount of the pension must not be less than the minimum amounts stated in the Act and the pension payment must comply with the requirements of the Act.
- 27.3 The pension may be paid on such dates and by installments of such amounts as the Trustee and the Member agree or, in the absence of agreement, as the Trustee determines and will cease to be payable if the Member's Benefit is reduced to nil.
- 27.4 The Trustee must not permit a person in receipt of the pension to commute part or the whole of the Pension to a lump sum payment unless all requirements of the Act are satisfied.
- 27.5 The Trustee and the Member may agree or, in the absence of agreement, the Trustee may determine that, on the death of a Member to whom the pension is being paid, a pension may be paid to one or more Reversionary Beneficiaries. The Trustee may pay the pension to any of the Reversionary Beneficiaries as it, in its absolute discretion, determines.
- 27.6 The amount and the terms and conditions of the pension paid to a Reversionary Beneficiary under this clause may, in accordance with the Act, be agreed on by the Reversionary Beneficiary and the Trustee, but in the absence of agreement, the amount and the terms and conditions of the pension will be determined by the Trustee.
- 27.7 The pension payable under this sub-clause ceases to be payable:
- (a) if the Member's Benefit is reduced to nil; or
  - (b) on the death of the Reversionary Beneficiary.
- 27.8 When, in respect of a deceased Member, the pension:
- (a) ceases to be payable to all of the Member's Reversionary Beneficiaries under sub-clause 27.7; or
  - (b) is not payable because the Member has no Reversionary Beneficiary; or
  - (c) is not payable because the Trustee has determined to not pay the pension to any of the Member's Reversionary Beneficiaries -

the balance of that Member's Benefit (if any) may be:

- (d) held by the Trustee on trust for the benefit of such one or more of the Member's Dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines; or
- (e) paid to the Member's legal personal representative.

27.9 If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative of the deceased Member, the Trustee may at its discretion pay the benefit as a lump sum to a person or persons selected by the Trustee.

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## **28. Market Linked Pension**

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28.1 A market linked pension (in this called "the pension") may not be commenced unless permitted by the Act.

28.2 The pension must be paid at least annually to the Member or to a Reversionary Beneficiary during the period selected by the Member as allowed by the Act.

28.3 The annual amount of the pension must be determined in accordance with the Act

28.4 The Trustee must not permit a person in receipt of the pension to commute part or the whole of the Pension to a lump sum payment unless permitted by the Act and all requirements of the Act are satisfied.

28.5 The pension payable under this clause:

- (a) does not have a residual capital value; and
- (b) if it reverts, it must not have a reversionary component greater than 100% of the benefit that was payable before the reversion; and
- (c) if it is commuted, the commuted amount must not exceed the account balance immediately before the commutation.

28.6 The Trustee, at its discretion, may determine to transfer the pension only as permitted by the Act.

28.7 If on the death of the Member or Reversionary Beneficiary, a pension is not transferred as provided in this clause, any assets of the Fund that were funding the pension will be held by the Trustee on trust for the benefit of:

- (a) such one or more of the Member's Dependants, to be paid in a lump sum in such shares and proportions as the Trustee, in its absolute discretion, determines; or
- (b) paid to the Member's legal personal representative.

28.8 If, after making enquiries that the Trustee regards as reasonable, the Trustee is unable to establish that there are any Dependants or a legal personal representative

of the deceased Member, the Trustee may at its discretion pay the benefit as a lump sum to a person or persons selected by the Trustee.

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## **29. Alternative Investment Options**

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The Trustee may undertake an investment strategy in accordance with choices determined from a specified Member provided always that such directions are given in circumstances that comply with the Act.

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## **30. GST**

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

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## **31. Applicable Law**

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

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## **32. Severance**

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

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## **33. Trustee may make a Sub-Plan**

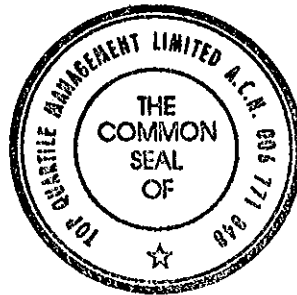
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- 33.1 The Trustee may make a determination as to whether a sub-plan should be made for a certain Member or Members of the Fund.
- 33.2 In making a determination under 33.1, the Trustee must have regard to all relevant matters including the provisions of the Act and any law.

- 33.3 Any sub-plan made pursuant to this clause 33 may be made on such terms and conditions as the Trustee thinks fit not being inconsistent with the provisions of this Trust Deed or the Act or any requirements relating to the Fund.
- 33.4 Notwithstanding any other provision of this Trust Deed, if the Trustee has made a sub-plan comprising a certain Member or Members of the Fund, any information, reports, documents and statements required or permitted by this Trust Deed to be given to that Member or those Members may, unless contrary to the Act, relate specifically to such sub-plan comprising that Member or those Members and not to any other segment of the Fund.
- 33.5 A sub-plan made under this clause 33 may bear such name or style as the Trustee may from time to time determine.

**Executed** as a deed

**The Common Seal of** )  
**Top Quartile Management Limited** )  
 was fixed to this document )  
 in the presence of: )



*[Handwritten signature]*

Signature of director

*[Handwritten signature]*

Signature of ~~director~~/secretary

*Bruce Lindsay McBain*

Name of director (please print)

*Robert Harley Foame*

Name of ~~director~~/secretary (please print)