

Waterfront Place
1 Eagle Street Brisbane QLD 4000
GPO Box 9925 QLD 4001
Tel (07) 3228 9333
Fax (07) 3228 9444
www.corrs.com.au

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Fiducian Portfolio Services Limited

Deed of Variation to the Trust Deed of Fiducian Superannuation Service

Date

By

Fiducian Portfolio Services Limited ACN 073 845 931 of Level 8, 70 Pitt Street, Sydney, NSW 2000 (**Trustee**)

Background

- A Fiducian Superannuation (**Plan**) was established by a Deed Poll made on 9 January 1997, and rules made under that Deed Poll, as amended (**Trust Deed**).
 - B The Plan as established under the Trust Deed is currently constituted by 2 separate and distinct trust funds (**Divisions**) each of which are separately invested and accounted for as provide in the Trust Deed and identified as:
 - Division I - **Fiducian Superannuation Service**
 - Division II - **Fiducian Pooled Superannuation Trust**
 - C The Trustee is the trustee of each of the Divisions of the Plan.
 - D The Trustee wishes to amend the Trust Deed in the manner set out in this document for the purposes of:
 - (a) separating the provisions applicable to Division I from the provisions applicable to Division II; and
 - (b) amending the provisions applicable to Division I.
 - E The Trustee is of the opinion that the amendment of the Trust Deed in the manner set out in this document is authorised under clause 22.1 of the Trust Deed.
-

Agreed terms

- 1 Supplemental deed
 - (a) This document is supplemental to and constitutes an amendment of the Trust Deed.
 - (b) From the execution of this document, the Trust Deed takes effect, and must be construed, as amended in this document.

2 Amendment

2.1 Deletion and replacement of Division I provisions

The Trust Deed is amended by:

- (a) the deletion of all of the provisions of the Trust Deed insofar as the terms of the Trust Deed apply to the operation of Division I but not otherwise, including:
 - (i) all clauses of the Trust Deed; and
 - (ii) the Rules of Division I set out in the First Schedule; and
- (b) the replacement of those provisions with the provisions attached to this document, as the provisions of the Trust Deed applicable to the operation of Division I,

and on and from the date of this document, the provisions of the Trust Deed applicable to the operation of Division I are the provisions attached to this document.

2.2 Continuation of Division I

The operation of Division I continues under the terms of the Trust Deed as amended in this document, and this document does not re-declare or re-settle the terms of the trust in respect of Division I.

Executed as a deed.

**Executed by Fiducian Portfolio
Services Limited**

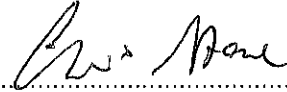
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.....
Director

INDAY SINGH

.....
Name of Director (print)



.....
Company Secretary/Director

CHRIS STONE

.....
Name of Company Secretary/Director
(print)

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1 Interpretation

1.1 Definitions

In this Deed:

allocate includes allocating a credit or debit.

Allocation Date means a date identified by the Trustee under **clause 5.2(a)(i)**, in respect of the Fund, a Sub-Fund or an Investment Portfolio, as a date on which the Trustee determines the net change in the value of the assets of the Fund, or that Sub-Fund or Investment Portfolio, under **clause 5.2(b)**.

Allocation Period means a period ending on an Allocation Date and starting the day after the previous Allocation Date.

amend includes delete or replace.

asset includes any cash, property or right.

Benefit Specification has the meaning given to that term in **clause 3.5**.

Binding Nomination means a notice to the Trustee given by an applicant or Member directing the Trustee to pay all or part of the benefit payable on their death to a person or persons nominated in the notice, and the notice complies with the following:

- (a) each person nominated is within a class of persons the Trustee has prescribed as eligible to be nominated in a Binding Nomination;
- (b) the notice is in a form prescribed by the Trustee for a Binding Nomination;
- (c) the notice otherwise complies with form and content requirements prescribed by the Trustee for a Binding Nomination; and
- (d) the notice was given or confirmed within the period before the Member's death prescribed by the Trustee for a Binding Nomination.

Deed means this trust deed as amended from time to time.

Eligible Person means a person who is eligible under Superannuation Law to join a Regulated Superannuation Fund.

Employee has the meaning given to that term in section 15A of SIS, and in relation to any Participating Employer means an employee of that Participating Employer.

Employer has the meaning given to that term in section 15A of SIS, and in relation to a Member, or former Member, at any time, means an employer of that Member at that time.

Expenses means the following costs, charges and expenses or such proportion of those costs, charges and expenses as the Trustee determines may be reasonably and properly incurred in or about the administration of the Fund:

- (a) all fees including legal, accounting, consulting and other fees, Taxes, charges, expenses and outgoings which the Trustee may incur or become liable for in connection with and relating to the establishment or determination of the Fund and the preparation and execution of this Deed;
- (b) all fees, including legal fees and accounting fees in connection with any amendment or proposed amendment of this Deed;
- (c) the costs of preparing, printing and issuing offers to participate in the Fund including the costs of preparation, approval and registration of any Offer Document, and including legal, valuation, listing, printing and graphic design fees payable in respect of any Offer Document and further to the costs of preparing printing and issuing brochures advertising the Fund;
- (d) the costs of maintaining and auditing the books of account, accounts and the Fund's records of Members and Participating Employers in accordance with this Deed and the law generally;
- (e) all acquisition costs, maintenance costs and disposal costs of any investment of the Fund;
- (f) the costs of research and development of, investigating, acquiring, renting, installing and maintaining establishing and developing computer hardware and software systems required for the administration of the Fund;
- (g) an auditor's reasonable fees and expenses in connection with the auditing of the accounts of the Fund, and all other functions of the auditor performed in respect of the Fund;
- (h) charges on financial institution accounts operated solely for the use of the Fund by the Trustee;
- (i) stamp duties on cheques, payment orders, financial institution account debits taxes and other similar Taxes;
- (j) stamp duties, financial institutions duties and similar Taxes;
- (k) any amounts paid in respect of Taxes assessed, charged or imposed by or under any Federal or State law upon the taxable income of the Fund (including capital gains realised or unrealised in respect of the Fund);
- (l) fees payable to and all expenses incurred in connection with any dealing with a Superannuation Regulator, the Superannuation Complaints Tribunal or any other government entity in respect of the Fund;
- (m) the fees of any solicitor, barrister, accountant, computer expert, stockbroker or other expert employed by the Trustee or relied on by the Trustee in the discharge of the Trustee's duties;
- (n) the cost of any trustee indemnity policy taken out by the Trustee;

- (o) costs of preparing, printing and issuing information, accounts, other statements, cheques and payment orders required to be given to Members pursuant to this Deed or Superannuation Law;
- (p) costs of making all payments and distributing all notices and other documents issued in respect of the Fund to all or any Members or other persons in accordance with this Deed or Superannuation Law;
- (q) disbursements incurred in convening or holding any meetings of Members and implementing any resolution passed at such meetings including the costs of hiring a venue or venues and providing services at the venue, catering, travel expenses, legal and other fees of experts or consultants incurred in relation to the meeting and an allowance to the Trustee for the reasonable costs of the time expended by the Trustee's employees and agents in relation to the preparation for the holding of such meetings;
- (r) disbursements and costs incurred in connection with the retirement or removal of the Trustee under this Deed and the appointment of another in substitution;
- (s) except where the court otherwise directs, disbursements and costs by or on behalf of the Trustee in or in connection with the initiation, carriage and settlement of any court proceedings (including any negotiations and demands relating to those proceedings) against the Trustee in respect of the Fund and arising howsoever;
- (t) all Taxes whatsoever (whether parliamentary municipal or otherwise and whether assessed charged or imposed by or under Federal or State law or by Federal State or local authorities and whether on a capital or revenue value or any other basis and even though of a novel character) which may be or are assessed charged or imposed in respect of the Fund of any part of the Fund;
- (u) costs of the preparation and lodgement of any taxation returns or returns required under SIS or any Federal, State or local law;
- (v) any fees incurred in respect of obtaining any determinations or valuations required by an actuary or valuer;
- (w) any commission or brokerage paid other than in respect of an application or agreement to procure applications for membership of the Fund;
- (x) any fees and expenses payable to any investment manager;
- (y) any fees or expenses payable to any administrator;
- (z) any fees and expenses paid to any custodian or sub-custodian;
- (aa) any other disbursement reasonably and properly incurred by the Trustee for or on behalf of the Fund or in the administration of the Fund.

Family Law Act means the *Family Law Act 1975* (C'wlth).

Family Law Requirements means any requirements under:

- (a) the Family Law Act and the regulations to it;

- (b) SIS; or
- (c) any other legislation,

in relation to superannuation benefits of parties or former parties to a marriage and incidental matters.

Financial Year means each successive period of 12 Months commencing on 1 July and ending on 30 June, or any part of such period that may occur at the commencement or termination of the Fund.

Fund means the superannuation trust fund constituted under this Deed.

Investment Portfolio means an investment portfolio referred to in **clause 8.4**.

Insured Benefit means the proceeds payable under a Policy of Insurance covering a Member or group of Members.

Member means a person whom the Trustee has accepted as a Member and who has not ceased to be a Member.

Member Account means an account maintained for a Member under **clause 5.6**.

Month means a calendar month.

Net Asset Value means the value of the assets of the Fund (as valued appropriate to the nature of the assets, having regard to Superannuation Law and accepted accounting principles) less provision for any unpaid Expenses or outstanding liabilities at the time of calculation.

Non-Member Spouse has the meaning given to that term in the Family Law Act.

Offer Document means any document issued by the Trustee offering membership of the Fund or participation in the Fund as a Participating Employer.

Ordinary Resolution means a resolution passed at a meeting duly convened and held, by a majority of the persons voting at the meeting on a show of hands or, if a poll is taken, by a majority of votes given on the poll.

Participating Employer means an Employer which the Trustee has accepted as a Participating Employer to the Fund and which has not ceased to be a Participating Employer.

Payment Split has the meaning given to that term in the Family Law Act.

Policy of Insurance means any policy of insurance or assurance of any kind covering a Member, or a group of Members.

Reversionary Beneficiary means, in relation to a Member, a person:

- (a) whom the Member nominated as the person entitled to receive the Member's pension benefit on the Member's death:
 - (i) on commencement of the Member's pension benefit, in a form acceptable to the Trustee; or

- (ii) on commencement of the Member's pension benefit in another Superannuation Entity, where the Trustee has determined to accept that nomination for the purposes of the Fund; and
- (b) who:
 - (i) is a Dependant of the Member, and is otherwise eligible under Superannuation Law to be a Reversionary Beneficiary of the pension (at the time of the nomination and at the time of the Member's death); and
 - (ii) where the Reversionary Beneficiary is the Member's Spouse at the time of nomination, is the Member's Spouse at the time of the Member's death.

SIS means the *Superannuation Industry (Supervision) Act 1993* and includes the regulations to that Act.

Special Resolution means a resolution passed at a meeting duly convened and held, by a majority consisting of not less than 75% of the persons voting at the meeting on a show of hands or, if a poll is taken, by a majority consisting of not less than 75% of the votes given on the poll.

Sub-Fund has the meaning given to that term in **clause 2.8**.

Superannuation Entity means any entity which provides superannuation or similar benefits and which the trustee of a Regulated Superannuation Fund may, in accordance with the Superannuation Law, transfer or rollover a Member's benefit entitlement to, or accept a transfer or rollover of benefits from. A Superannuation Entity includes an Eligible Rollover Fund.

Superannuation Law means any requirement of a law or a Superannuation Regulator:

- (a) prescribed for the operation of Regulated Superannuation Funds; or
- (b) which must be complied with in order to:
 - (i) obtain the maximum tax concessions available to Regulated Superannuation Funds; or
 - (ii) avoid any penalty.

Superannuation Regulator means the governmental body or bodies having responsibility for the regulation of, or the administration of tax concessions available to, Regulated Superannuation Funds, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities & Investments Commission;
- (c) the Australian Taxation Office; and
- (d) AUSTRAC.

Tax means all forms of taxes, duties, governmental imposts and surcharges together with interest, penalties, charges, fees and other amounts payable on or in respect of them.

Temporary Disablement in relation to a Member means the definition of “temporary disablement” or a corresponding term in the Policy of Insurance taken out by the Trustee to provide income continuance benefits for a Member or group of Members and, where the Trustee has taken out different Policies of Insurance for different Members or groups of Members, means the definition in the Policy of Insurance applicable to that Member.

Total and Permanent Disablement in relation to a Member means:

- (a) for an Insured Benefit, the definition of “total and permanent disablement” or a corresponding term in the Policy of Insurance and, where the Trustee has taken out different Policies of Insurance for different Members or groups of Members, means the definition in the Policy of Insurance applicable to the Member; or
- (b) otherwise, ill-health, whether physical or mental, such that the Trustee is satisfied that the Member is unlikely because of ill-health ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

Trustee means the Trustee for the time being of the Fund.

1.2 Definitions from SIS

- (a) The following terms have the meanings given to them in SIS:
 - Compassionate Ground;
 - Constitutional Corporation;
 - Dependant;
 - Eligible Rollover Fund;
 - Legal Personal Representative;
 - Regulated Superannuation Fund;
 - RSE Licence;
 - Severe Financial Hardship.
- (b) **Spouse:**
 - (i) has the meaning given to that term in SIS, except in **clause 11.21**;
 - (ii) in **clause 11.21**, has the meaning given to that term in the Family Law Act.

1.3 Construction

Unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) “includes” means includes without limitation;

- (e) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and substitutes (including persons substituted by novation);
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) this or any other document includes the document as varied or replaced and despite any change in the identity of the parties;
 - (v) "\$" or "dollars" is a reference to the lawful currency of Australia; and
 - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions.

1.4 Headings

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

1.5 Compliance with Superannuation Law

- (a) The Trustee may comply with any requirement of Superannuation Law or any other law despite any other provision of this Deed.
- (b) The Trustee is not taken to have committed any breach of trust:
 - (i) by complying with a requirement of Superannuation Law;
 - (ii) by failing to comply with any requirement of Superannuation Law.
- (c) Despite any other provision in this Deed:
 - (i) the Trustee in the exercise of the Trustee's powers is not subject to the direction of any other person except where the Superannuation Law permits the direction to be given to the Trustee by that person; and
 - (ii) where any provision of this Deed would permit any person to give a direction to the Trustee other than as permitted by the Superannuation Law:
 - (A) the Trustee must disregard any direction given by that person; and
 - (B) the Trustee may alone exercise the power, authority or discretion which is by the terms of this Deed subject to the direction of that other person.

- (d) Despite any other provision in this Deed, where any discretion under this Deed may be exercised by a person other than the Trustee:
 - (i) the person on whom the discretion is conferred may not exercise that discretion in any case unless the Trustee consents to the exercise of the discretion in the manner in which the person proposes to exercise the discretion;
 - (ii) the provision conferring the discretion is deemed to require the consent of the Trustee to the exercise of the discretion; and
 - (iii) the person on whom the discretion is conferred may exercise the discretion with the Trustee's consent.
- (e) The provisions of Part 6 of SIS override any provision of this Deed which is inconsistent with them.

1.6 Severance

- (a) The whole or any part of a provision of this Deed is read down if, and to the extent that, it is necessary to ensure that the provision is not void, voidable, unenforceable or illegal.
- (b) The whole or any part of a provision of this Deed is severed if, and to the extent that, it is necessary to ensure that the provision is not void, voidable, unenforceable or illegal.

2 Constitution of trust fund

2.1 Declaration of trust

The Trustee declares that the Trustee holds the assets of the Fund upon the trusts, terms and conditions of this Deed.

2.2 Commencement

The date of the Fund's commencement is 9 January 1997.

2.3 Name of Fund

The name of the Fund is **Fiducian Superannuation Service** or any other name the Trustee determines.

2.4 Trust fund

The trust fund of the Fund includes:

- (a) the initial investment settled on commencement of the Fund;
- (b) such contributions as may be made from time to time by Participating Employers, Members and other persons;
- (c) all assets in which the Fund is from time to time invested; and
- (d) all earnings from time to time arising from contributions or investments.

2.5 Interest in the Fund

Each Member has a beneficial interest in the Fund, but that interest does not:

- (a) entitle the Member other than as provided in this Deed or permitted by law:
 - (i) to interfere with the rights or powers of the Trustee in the Trustee's dealings with the Fund;
 - (ii) to exercise any rights, powers or privileges in respect of any authorised investments;
 - (iii) to require the transfer to the Member of any of the assets of the Fund;
- (b) confer any interest in any particular part of the Fund.

2.6 Participating Employers and Members bound by Deed

The terms and conditions of this Deed are binding on the Trustee, each Participating Employer and each Member and all persons claiming through them respectively as if each such Participating Employer and Member had severally been a party to this Deed.

2.7 Purpose

The Fund is a Regulated Superannuation Fund. The Fund must be maintained solely for one or more of the core or ancillary purposes identified in SIS as the purposes for which a Regulated Superannuation Fund must be solely maintained.

2.8 Sub-Funds

- (a) The Trustee may determine to identify separate Sub-Funds for the purpose of offering participation in or membership of the Fund on differing terms (for example, differing terms as to the range of Investment Portfolios which may be selected).
- (b) The Trustee may issue separate Offer Documents for each Sub-Fund.
- (c) The Trustee may differentiate between the terms of participation or membership applicable to Participating Employers and Members on the basis of the terms applicable to a Sub-Fund.

2.9 Badging

- (a) The Trustee may enter into arrangements with third parties (**Sponsors**) for the Sponsor to offer participation in or membership of the Fund on behalf of the Trustee.
- (b) The Trustee may issue a separate Offer Document for the offer by a Sponsor, which may carry the name of the Sponsor or a name selected by the Sponsor.
- (c) The Trustee may (subject to Superannuation Law) differentiate between the terms of participation or membership applicable to Participating Employers and Members introduced through a Sponsor.

3 Participating Employers

3.1 Application for participation as a Participating Employer

An Employer wishing to provide superannuation benefits for Employees may apply to become a Participating Employer in a form acceptable to the Trustee.

3.2 Trustee may reject application for participation

The Trustee may:

- (a) accept or reject an application to become a Participating Employer without giving any reason;
- (b) impose any conditions when accepting an application;
- (c) at any time, remove or vary any condition so imposed.

3.3 Date of admission

An applicant becomes a Participating Employer on the date determined by the Trustee.

3.4 Information to be given to Employers or prospective Employers

The Trustee must give a new or prospective Participating Employer such information as is prescribed by Superannuation Law.

3.5 Benefit Specification

- (a) A Participating Employer may:
 - (i) specify in an application terms and conditions of membership for that Participating Employer's Employees (for example, contributions payable by the Participating Employer or those Employees, or Insured Benefits applicable to those Employees);
 - (ii) at any time apply to the Trustee to vary terms and conditions of membership for that Participating Employer's Employees,
and, if the Trustee agrees, Employees of that Participating Employer who are admitted as Members are subject to those terms and conditions.
- (b) The document setting out the terms and conditions of membership is the Participating Employer's "**Benefit Specification**".
- (c) The same Benefit Specification may apply in respect of Employees of two or more Participating Employers, if those Participating Employers request and the Trustee agrees. A Benefit Specification in respect of two or more Participating Employers may identify one "Principal Employer", that has special rights and obligations and on or more "Associated Employers".

3.6 Instructions from Participating Employers

The Trustee may regard any instruction given or purported to be given by an officer of a Participating Employer as a valid instruction.

3.7 Termination of participation

- (a) A Participating Employer may at any time by notice in writing to the Trustee terminate the Participating Employer's participation in the Fund as from a date specified in the notice and accepted by the Trustee.
- (b) The Trustee may by notice in writing given to a Participating Employer terminate the Participating Employer's participation in the Fund on a date determined by the Trustee and specified in the notice.

3.8 Substituted Employer

- (a) Where:
 - (i) the whole or substantially the whole of the assets of a Participating Employer's business are acquired by another person; or
 - (ii) another person commences to employ all or any Members formerly employed by a Participating Employer,

the Trustee may elect to accept the performance by that other person of the obligations of the Participating Employer under this Deed in place of the performance of those obligations by the Participating Employer.
- (b) Acceptance by the Trustee of performance of a Participating Employer's obligations by another person discharges the Participating Employer from any further obligations under this Deed.

3.9 Consequences of termination of participation

On termination of a Participating Employer's participation:

- (a) no new Employees of the former Participating Employer will be admitted as Members; and
- (b) the former Participating Employer must not make further contributions to the Fund except contributions due prior to the date of termination.

3.10 Member benefits on termination of participation

The Trustee must make arrangements for the benefit entitlements of Employees of a former Participating Employer who are Members (**Existing Members**), which may include, for example;

- (a) Existing Members are eligible to retain their membership of the Fund, on terms determined by the Trustee;
- (b) benefit entitlements of Existing Members are transferred to another Superannuation Entity, on terms agreed between the Trustee and that other Superannuation Entity;
- (c) any reserve or unallocated amount attributable to the former Participating Employer is:
 - (i) allocated to Existing Members, or otherwise allocated in a manner determined by the Trustee in accordance with Superannuation Law; or

- (ii) transferred to another Superannuation Entity as an unallocated amount, to be applied for the benefit of the Existing Members or Employees of the former Participating Employer or otherwise as permitted under Superannuation Law.

3.11 Rights of Employer maintained

Neither membership of the Fund nor anything contained in this Deed in any way prejudices or affects the right of a Participating Employer to dismiss any Employee or to vary the terms of an Employee's employment, and neither membership of the Fund nor the rights or benefits of a Member under this Deed may be used as grounds for granting or increasing damages in any action brought by any Employee against the Participating Employer whether in respect of any alleged wrongful dismissal or otherwise.

4 Members

4.1 Eligibility

Any Eligible Person is eligible to become a Member, subject to this **clause 4**.

4.2 Application for membership

- (a) An Employee nominated for membership of the Fund by a Participating Employer, may apply to become a Member.
- (b) A Participating Employer may apply for an Employee to become a Member.
- (c) Any Eligible Person, other than an Employee of a Participating Employer, may apply to become a Member.
- (d) An application for membership must be in a form acceptable to the Trustee.
- (e) If Superannuation Law permits, the Trustee may admit an Eligible Person as a Member without having received an application for membership, on such terms and conditions and effective from such date as the Trustee determines.

4.3 Applicant to provide information

An applicant for membership must:

- (a) have any medical examination; and
- (b) provide any information or take any other steps, which the Trustee requests in relation to the application.

4.4 Admission to membership

- (a) The Trustee may:
 - (i) accept or reject an application to become a Member without giving any reason;

- (ii) impose any conditions when accepting an application; and
 - (iii) at any time remove or vary any condition so imposed.
- (b) The Trustee must reject an application unless the applicant is an Eligible Person.

4.5 Date of admission

An Eligible Person becomes a Member on the date determined by the Trustee or, if the Trustee makes no determination, on the earlier of:

- (a) the date the Trustee accepts the application for membership in respect of the Eligible Person;
- (b) the date the Trustee accepts the first contribution or rollover for the credit of the Member.

4.6 Information to be given to Members or prospective Members

The Trustee must:

- (a) provide to prospective Members, prior to accepting an application for membership, such information as is prescribed by Superannuation Law; and
- (b) provide such information to a new Member as is prescribed by Superannuation Law.

4.7 Subsequent failure to provide information

If a Member fails after admission to provide information or evidence as and when required by the Trustee and to its satisfaction, the Trustee may refuse to accept any further contributions by or for that Member.

4.8 Termination of membership

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

- (a) the Member's benefit being paid in full;
- (b) transfer or rollover of the full amount of that Member's Member Account to another Superannuation Entity.

5 Allocation of net earnings and Member Accounts

5.1 Valuation of assets

The Trustee must ensure that assets of the Fund are valued at such intervals as are appropriate, having regard to Superannuation Law, the nature of the assets and accepted accounting principles.

5.2 Change in value of the Fund

- (a) The Trustee:
 - (i) must identify at least one Allocation Date in each Financial Year;

- (ii) may determine a number of consecutive Allocation Periods for a Financial Year in respect of the Fund, a Sub-Fund or an Investment Portfolio, of any duration (for example, Allocation Periods may be each Month, each week or each day during the Financial Year); and
 - (iii) (to avoid doubt) may determine different Allocation Periods for different Sub-Funds or Investment Portfolios.
- (b) As at each Allocation Date, the Trustee must determine the net change in the value of the assets of the Fund, Sub-Fund or Investment Portfolio for the Allocation Period. A net change in value may be expressed in such manner as the Trustee determines (for example as a crediting rate or unit price), and may be expressed differently for different Sub-Funds or Investment Portfolios.
- (c) The Trustee may as the Trustee considers appropriate determine methodologies to allocate to benefits paid during an Allocation Period an estimate of any net change in value for the period since the last Allocation Date (for example, an interim crediting rate).
- (d) In determining the net change in value of the assets of the Fund, a Sub-Fund or an Investment Portfolio for an Allocation Period, the Trustee may take into account, in relation to the Allocation Period:
 - (i) investment returns on the assets of the Fund, Sub-Fund or Investment Portfolio;
 - (ii) expenses, and any provision for expenses, in connection with the Fund, Sub-Fund or Investment Portfolio;
 - (iii) capital gains and losses on realisation of any of the assets of the Fund, Sub-Fund or Investment Portfolio;
 - (iv) unrealised gains and losses arising on revaluation of any of the assets of the Fund, Sub-Fund or Investment Portfolio;
 - (v) allowance for capital appreciation and depreciation on any of the assets of the Fund, Sub-Fund or Investment Portfolio;
 - (vi) write-offs of bad debts;
 - (vii) any reserves maintained by the Trustee; and
 - (viii) any other factors which the Trustee considers appropriate.
- (e) A net change in value of the assets of the Fund, a Sub-Fund or an Investment Portfolio for an Allocation Period may be positive or negative.

5.3 Allocation of change in value to Member benefits

The Trustee must on determining a change in value of the assets of the Fund, a Sub-Fund or an Investment Portfolio determine the extent to which, and the manner in which, that change in value is to be allocated to benefits. A net change in value of a Sub-Fund or Investment Portfolio is to be allocated among Members whose benefits are invested in that Sub-Fund or Investment Portfolio.

5.4 Reserves

- (a) The Trustee may maintain a reserve or reserves for:
 - (i) the Fund;
 - (ii) any Sub-Fund;
 - (iii) a sub-plan of a Participating Employer;
 - (iv) any Investment Portfolio, or a number of Investment Portfolios, for any purposes which the Trustee determines and Superannuation Law permits.
- (b) The Trustee may allocate any amounts to a reserve which the Trustee determines, including:
 - (i) amounts deducted from contributions or Member Accounts as provision for expenses;
 - (ii) earnings on investments, capital gains on realisation of investments, and any other accretions to or arising out of investments;
 - (iii) where Superannuation Law permits, any contributions by a Participating Employer not allocated to any Member Account.
- (c) Without limiting **clause 5.4(a)**, the Trustee may if Superannuation Law permits use a reserve to:
 - (i) allocate any amount to Members' benefits in a manner that is equitable to all Members in respect of whom the reserve is maintained;
 - (ii) allocate any amount to be applied in determining the amount of a net change in value of the assets of the Fund, or the Sub-Fund or Investment Portfolio or Investment Portfolios, which is available for allocation to benefits;
 - (iii) pay any expenses which are payable out of the Fund.

5.5 Segregation of assets

The Trustee may treat any part of the Fund as a separate trust fund for any purpose.

5.6 Member Accounts

- (a) The Trustee must keep a Member Account for each Member, and may divide Member Accounts into sub-accounts or notional sub-accounts.
- (b) The Trustee may allocate to a Member Account such amounts as the Trustee determines are referable to the Member.
- (c) Without limiting **clause 5.6(b)**, the Trustee may allocate to a Member Account:
 - (i) any contributions made by or for the credit of the Member;

- (ii) any amount transferred from another Superannuation Entity for the credit of the Member;
- (iii) any part of a contribution made for the credit of another Member which that other Member has requested or directed is to be allocated to that Member Account, where Superannuation Law permits the allocation and the Trustee determines to make the allocation;
- (iv) any Insured Benefit received in respect of the Member;
- (v) any amount the Trustee determines to allocate to the Member under **clause 5.4**;
- (vi) fees and charges applicable to that Member;
- (vii) Expenses applicable to that Member (other than Expenses payable out of reserves or provisions maintained by the Trustee);
- (viii) insurance premiums payable under a Policy of Insurance applicable to the Member.

6 Management of Fund

6.1 Trustee to have powers of absolute owner

The Trustee has all the powers over and in respect of the assets of the Fund which the Trustee could exercise if the Trustee were a natural person and the absolute beneficial owner.

6.2 Examples of Trustee's powers

Without limiting **clause 6.1** or any other provision of this Deed which gives powers to the Trustee, the Trustee may do anything the Trustee considers appropriate to administer the Fund including:

- (a) leasing and accepting surrenders of leases with power to compromise with lessees and others;
- (b) conducting and settling legal proceedings;
- (c) settling, compromising or submitting to mediation or arbitration any claims relating to the Fund or the Trustee;
- (d) developing, improving, subdividing, repairing, managing, and otherwise dealing with any investment;
- (e) purchasing plant, equipment and fittings;
- (f) borrowing, and giving security for that borrowing over any of the assets of the Fund where permitted under Superannuation Law;
- (g) insuring any risks;
- (h) electing to be bound by legislation.

6.3 Delegation of Trustee powers

- (a) The Trustee may delegate any of the Trustee's powers and discretions to any person.
- (b) The Trustee may:
 - (i) revoke any delegation; or
 - (ii) exercise any delegated power or discretion itself despite the delegation.

6.4 Service providers

The Trustee may appoint any of the following on terms which the Trustee considers appropriate:

- (a) an investment manager, to manage investments of the Fund;
- (b) an administrator to administer the Fund;
- (c) a custodian to hold assets of the Fund;
- (d) any other service provider in relation to the administration and operation of the Fund.

6.5 Remuneration of delegates and service providers

The Trustee may pay from the Fund, as an expense of the Fund, such remuneration as the Trustee determines to any delegate appointed by or service provider engaged by the Trustee.

6.6 Trustee not required to give security

The Trustee is not required to give bond or security for the due and faithful administration of the Fund or for the discharge of the trusts of this Deed.

6.7 Remuneration of professional persons

Any person who is an actuary, accountant, solicitor, barrister or other professional person and is a director of the Trustee, who is called on or whose firm is called on to perform any service in relation to the Fund, is entitled to make the same professional charges for services that the person would make had he or she not been a director of the Trustee.

6.8 Registration in name of nominee or custodian

The title to any property forming part of the Fund may be registered in the name of a custodian, nominee or other delegate of the Trustee.

6.9 Director may be a Member

- (a) A director, officer or Employee of the Trustee is not, subject to the Superannuation Law, by virtue of that person's office, or of powers being delegated by the Trustee to that person, disqualified from being a Member or from exercising any rights or deriving any benefits as a Member.

- (b) A director or other executive officeholder of a Participating Employer is not by virtue of that person's office, or of any powers being delegated by the Participating Employer to that person, disqualified from being a Member or from exercising any rights or deriving any benefits as a Member.

6.10 Discretions absolute

- (a) The Trustee has an absolute and uncontrolled discretion in the exercise of all of the Trustee's powers, authorities and discretions, and may exercise or refrain from exercising all or any of those powers, authorities and discretions at any time.
- (b) The powers, authorities and discretions conferred on the Trustee by this Deed are in addition to any powers, authorities and discretions conferred by any statute upon the Trustee, and nothing in this Deed limits any such powers, authorities and discretions.

7 Trustee appointment and removal

7.1 Eligibility

The Trustee must:

- (a) be a Constitutional Corporation; and
- (b) hold a RSE Licence in respect of trusteeship of the Fund.

7.2 Removal or retirement of Trustee

The Trustee ceases to hold office if:

- (a) the Trustee becomes a disqualified person for the purposes of Part 15 of SIS;
- (b) an order is made by a court removing the Trustee;
- (c) a Superannuation Regulator:
 - (i) removes or suspends the Trustee in accordance with the Superannuation Law; or
 - (ii) revokes the Trustee's RSE Licence in respect of trusteeship of the Fund;
- (d) the Members remove the Trustee in accordance with Superannuation Law; or
- (e) the Trustee retires.

7.3 Appointment of new Trustee

- (a) Where the Trustee retires from office, the retiring Trustee must appoint a new Trustee before the retirement takes effect.
- (b) Where the Members remove the Trustee, the Members must appoint a new Trustee in accordance with Superannuation Law.

- (c) Where the office of Trustee is otherwise vacant, and a new Trustee has not been appointed by a court or Superannuation Regulator:
 - (i) the former Trustee may appoint a new Trustee if permitted under Superannuation Law;
 - (ii) if not, the Members may appoint a new Trustee by voting at a meeting in accordance with the requirements of Superannuation Law for replacement of a trustee of a public offer entity at a meeting of beneficiaries.
- (d) The appointment of a Trustee must comply with Superannuation Law.

7.4 Handover from retiring Trustee

If the Trustee changes, the retiring Trustee must as soon as practicable:

- (a) give the new Trustee all documents and other property relating to the Fund under the retiring Trustee's control;
- (b) do all things necessary to vest the Fund in, or as directed by, the new Trustee; and
- (c) give reasonable assistance to the new Trustee to facilitate the change of Trustee.

7.5 Delay in appointment

A delay in the appointment of a Trustee does not invalidate that appointment.

7.6 Validity of acts and determinations

Any act or determination of a Trustee is valid despite any defect in the Trustee's appointment.

7.7 Covenants by trustee

The Trustee covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise in relation to all matters affecting the Fund the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to ensure that the Trustee's duties and powers are performed and exercised in the best interests of members;
- (d) to keep the assets of the Fund separate from any money and assets that are held by the Trustee personally or that are money or assets of a Participating Employer;
- (e) not to enter into any contract or do anything that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers.

8 Investments

8.1 Authorised investments

- (a) Subject to **clause 8.2**, the Trustee may:
- (i) invest the Fund in any form of investment;
 - (ii) at any time, vary an investment or realise an investment and reinvest an amount resulting from the realisation in any form of investment,
- as if the Trustee were personally entitled to the assets of the Fund.
- (b) The Trustee's power to invest the Fund includes power to enter into, acquire and dispose of options, hedging contracts, futures contracts and other financial instruments or arrangements where economic performance is dependant on any change in interest rate, currency value or exchange rate or the economic performance of another security or commodity.
- (c) The Trustee may:
- (i) undertake any activity (including carrying on or participation in a business);
 - (ii) encumber or otherwise deal with any assets of the Fund;
 - (iii) exercise any right attaching to any assets of the Fund,
- as if the Trustee were personally entitled to the assets of the Fund.

8.2 Investment restrictions

The Trustee:

- (a) must not make any investment unless:
- (i) the Trustee and the other party to the investment are dealing with each other at arm's length; or
 - (ii) where the investment is not at arm's length, the investment complies with Superannuation Law; and
- (b) must ensure that the Fund's investments comply with Superannuation Law.

8.3 Investment strategy for the Fund

The Trustee must set investment objectives for the Fund, and formulate an investment strategy to achieve those objectives, in accordance with Superannuation Law.

8.4 Investment Portfolios

- (a) Despite **clause 8.3**, the Trustee may set different investment objectives, and formulate different investment strategies to achieve those objectives, for different parts of the Fund or a Sub-Fund.

- (b) The Trustee may:
 - (i) set different investment objectives for two or more Investment Portfolios;
 - (ii) formulate an investment strategy for each Investment Portfolio;
 - (iii) divide the assets of the Fund or a Sub-Fund between the different Investment Portfolios;
 - (iv) invite Members to nominate the Investment Portfolio, or combination of Investment Portfolios, to apply to them; and
 - (v) determine:
 - (A) which categories of Members may make a nomination;
 - (B) when, how and in what manner Members may change their nominations;
 - (C) the minimum amount which may be invested in an Investment Portfolio;
 - (D) any other matters which the Trustee considers appropriate.
- (c) The Trustee may from time to time change the investment objectives, strategies, Investment Portfolios and the assets of the Fund which comprise the Investment Portfolios.
- (d) The Trustee is not responsible or liable for:
 - (i) the potential profitability of an Investment Portfolio nominated by a Member, in comparison with any other Investment Portfolio the Member, or any other Member, could have nominated; or
 - (ii) monitoring the performance or progress of the Investment Portfolio of any Member, other than as required by Superannuation Law.

9 Remuneration, fees and charges, and Expenses

9.1 Remuneration of Trustee

The Trustee may pay itself out of the Fund by way of remuneration for services as trustee a fee of up to 2% per annum of the Net Asset Value, calculated as at the close of business on the last day of each Month (or such shorter period as the Trustee may determine) and payable within 14 days of that date.

9.2 Change to or additional fees

- (a) The Trustee may in its discretion:
 - (i) change the fees, or the basis of calculation of the fees, payable pursuant to this **clause 9**; or
 - (ii) levy from time to time an additional fee or fees in respect of:
 - (A) entry into the Fund;
 - (B) contributions to the Fund;

- (C) exit from the Fund;
- (D) administration of the Fund;
- (E) the switching or transfer from one Investment Portfolio to another, or from one Sub-Fund to another; or
- (F) any other purpose determined by the Trustee,

provided that any such change or additional fee or fees is objectively ascertainable from the current Offer Document and provided further that at least 30 days prior written notice of the proposed change or levying of any such additional fee or fees is given to all Members in respect of whom the fee is charged.

- (b) The Trustee must allocate any such additional fees as a provision or reserve for payment of Expenses.

9.3 Imposition of additional fees

The fees charged under **clause 9.2** can be imposed in such manner and at such intervals as the Trustee determines.

9.4 Trustee may accept lesser fee

The Trustee may in its discretion, whether in respect of the Fund or in respect of one or more Investment Portfolios or in respect of a Member or in respect of one or more Members, elect to accept a remuneration with respect to any period which is less than the amount to which the Trustee is entitled in accordance with this **clause 9**.

9.5 Commission and brokerage

The Trustee may make a payment of commission or brokerage, out of any fees levied by the Trustee in respect of entry into the Fund or contributions to the Fund, if the maximum amount of the proposed payment or rate of payment is disclosed in an Offer Document.

9.6 Payment and reimbursement of Expenses

- (a) The Trustee is entitled to be indemnified out of the Fund and is, unless otherwise determined by the Trustee, entitled to be reimbursed out of the assets of the Fund in respect of all Expenses to the extent to which such Expenses are properly incurred and reasonable in amount.
- (b) Expenses are paid from the Fund:
 - (i) firstly out of amounts allocated as provisions or reserves for payment of those Expenses;
 - (ii) otherwise, by deducting amounts from:
 - (A) income of the Fund which has not been allocated;
 - (B) reserves;
 - (C) Member Accounts or Member benefits,

as determined by the Trustee from time to time, for Expenses generally or for any particular Expense or class of Expenses.

9.7 Adviser's charge

- (a) A Member may from time to time agree with the Member's financial adviser to pay to the adviser a fee for the continued provision by the adviser of advice in relation to the Member's membership of the Fund (**Adviser Fee**).
- (b) The Member can agree to pay an Adviser Fee on a regular or irregular basis.
- (c) Where the Member has agreed with the Member's adviser to pay an Adviser Fee the Member can elect to arrange for the payment of the Adviser Fee as a deduction from the Member's Account.
- (d) Where a Member chooses to pay for the Adviser Fee as a deduction from the Member's Account pursuant to **clause 9.7(c)** the Member must:
 - (i) notify the Trustee in writing of the Member's election to do so;
 - (ii) confirm to the Trustee in writing the details of the Adviser Fee payable including the amount of the Adviser Fee and the intervals at which the Adviser Fee is to be paid; and
 - (iii) instruct the Trustee in writing to effect payment of the Adviser Fee by increasing the fees payable pursuant to **clause 9.2** by the amount of the Adviser Fee confirmed by the Member at the intervals confirmed by the Member.
- (e) The Trustee shall act in accordance with a Member's instructions in this regard.
- (f) Any such Adviser Fee will be in addition to any fees otherwise imposed by the Trustee under **clause 9.2**.
- (g) Any such Adviser Fee cannot be taken by the Trustee as part of the Trustee's remuneration and must be paid directly to the financial adviser concerned as instructed by the Member.

10 Contributions

10.1 Employer contributions

A Participating Employer must make such contributions for the credit of the Participating Employer's Employees who are Members as is prescribed in the Benefit Specification or otherwise agreed from time to time with the Trustee.

10.2 Member contributions

- (a) A Member may contribute any amount if the Trustee agrees.
- (b) A Member who is an Employee is not obliged to contribute to the Fund.
- (c) Where a Member who is an Employee of a Participating Employer has agreed to pay regular contributions, the Trustee may arrange with the

Participating Employer for the Member's contributions to be deducted by the Participating Employer from the Member's salary.

- (d) Despite the preceding provisions of this **clause 10.2**, where a Benefit Specification prescribes that Employees of that Participating Employer who become Members are required to contribute to the Fund, those Members must contribute to the Fund on the basis prescribed unless the Participating Employer subsequently notifies the Trustee (either generally or in relation to a particular Employee or group of Employees) that Member contributions need not be made.

10.3 Contributions by other persons

Any person may otherwise make such contributions for the credit of a Member as the Trustee accepts and Superannuation Law permits.

10.4 Payment and allocation of contributions

- (a) A contribution may be paid in cash or by transfer of assets which are authorised investments of the Fund. The person paying the contribution is responsible for payment of all stamp duty, brokerage fees, commission and other costs, charges and expenses in respect of the transfer.
- (b) A contribution may be made directly to a delegate of the Trustee.
- (c) The Trustee may refuse to accept all or any part of any contribution from any person without giving any reason.
- (d) The Trustee must refuse to accept a contribution where the Trustee is aware that Superannuation Law prohibits acceptance of the contribution by the trustee of a Regulated Superannuation Fund.
- (e) Where under Superannuation Law the Trustee is required to refund all or part of an amount paid to the Trustee as a contribution, the Trustee:
 - (i) must refund that amount; and
 - (ii) may make such adjustments to an amount refunded as the Trustee considers appropriate and Superannuation Law permits.
- (f) Where Superannuation Law permits, the Trustee may at the request or direction of a Member allocate part or all of a contribution made for the credit of the Member to the Member Account of another Member.

10.5 Cessation of contributions

Contributions must cease to be made for a Member:

- (a) when the Member's membership ceases; or
- (b) where Superannuation Law prohibits the acceptance of contributions for the Member.

11 Benefits

11.1 Payment of benefits

The amount of a benefit payable under this Deed is determined in accordance with this **clause 11**.

11.2 Deduction of Tax from benefits

The Trustee may deduct from any benefit any amount on account of Tax paid or payable in relation to the benefit of the Member as the Trustee determines, and the recipient is entitled to receive only the net benefit after deduction of any such Tax.

11.3 Reduction of benefit payable

If at any time:

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

the amount of the Insured Benefit applicable to the Member is limited to the amount (if any) the insurer agrees to pay.

11.4 Benefits payable to Members

A benefit becomes payable in respect of a Member:

- (a) on the Member's:
 - (i) retirement as defined in SIS;
 - (ii) death;
 - (iii) Total and Permanent Disablement; or
 - (iv) Temporary Disablement, where the terms of the Member's membership of the Fund entitle the Member to a benefit on Temporary Disablement;
- (b) when the Member:
 - (i) has attained age 65 and asks the Trustee to pay the benefit (unless a benefit is not payable under the Benefit Specification applicable to the Member);
 - (ii) attains an age at which a benefit is payable under the Benefit Specification applicable to the Member; or
 - (iii) terminates employment with a Participating Employer and asks the Trustee to pay the benefit;

- (c) where Superannuation Law otherwise permits payment of the benefit and:
 - (i) the Member asks the Trustee to pay the benefit; and
 - (ii) the Trustee agrees to pay the benefit,(unless a benefit is not payable under the Benefit Specification applicable to the Member).

11.5 Amount of benefit payable

- (a) The amount of a benefit payable in respect of a Member, other than on Temporary Disablement, is the value of the Member's Member Account (subject to any specifications for vesting of contributions set out in the Benefit Specification applicable to the Member and permitted under Superannuation Law), or such part of that value as Superannuation Law permits in respect of the type of benefit that is payable.
- (b) The amount of and terms on which a benefit is paid on a Member's Temporary Disablement will be in accordance with the Policy of Insurance pursuant to which the benefit is paid.

11.6 Severe Financial Hardship and Compassionate Grounds

The Trustee may pay an amount from the Fund to or for the benefit of the Member or the Member's Dependants where:

- (a) the Member has requested payment of the amount;
- (b) the Member or the Member's Legal Personal Representative has satisfied the Trustee that:
 - (i) the Member is in Severe Financial Hardship; or
 - (ii) the amount is required on a Compassionate Ground; and
- (c) Superannuation Law permits.

11.7 Deferral of benefit payments

- (a) If a Member requests, the Trustee may defer payment of all or part of the Member's benefit.
- (b) Where payment of a Member's benefit is deferred, the Trustee may (subject to Superannuation Law) continue to accept contributions for the Member.
- (c) If a Member requests, the Trustee must pay all or any part of the Member's deferred benefit, subject to Superannuation Law and **clause 11.9**.

11.8 Payment of unrestricted non-preserved amounts

If a Member requests the Trustee may pay an amount out of the Member Account which comprises unrestricted non-preserved benefits under SIS, subject to Superannuation Law and **clause 11.9**.

11.9 Restrictions on benefit payments

Despite any other provision of this **clause 11** but subject to Superannuation Law, the Trustee may:

- (a) impose conditions and restrictions on partial payment of benefits, including, for example:
 - (i) limits on how often partial payments are made;
 - (ii) a minimum amount for a partial payment;
 - (iii) a minimum balance that must remain in the Member Account after a partial payment;
- (b) determine not to pay a benefit, where a Member has not ceased Service with a Participating Employer.

11.10 Benefit payment standards

Despite any other provisions of this Deed, any benefit that has become payable but under SIS is subject to a cashing restriction must be:

- (a) retained in the Fund until cashing of the benefit is permitted by Superannuation Law;
- (b) rolled over to another Superannuation Entity; or
- (c) used to purchase a non-commutable life pension or life annuity in accordance with Superannuation Law.

11.11 Form of benefit payments

- (a) A benefit is payable as a lump sum, other than:
 - (i) a death benefit payable to a Reversionary Beneficiary;
 - (ii) a benefit that Superannuation Law prescribes must be paid as a pension.
- (b) However if a person who is entitled to the benefit requests, the Trustee may pay all or any part of the benefit as a pension.

11.12 Payment of lump sum benefits

Where a benefit is payable as a lump sum, the Trustee may pay the benefit in more than one instalment.

11.13 Payment of pension benefits

- (a) Where a benefit is payable as a pension, the Trustee may:
 - (i) pay the pension from the Fund; or
 - (ii) use the benefit to purchase a pension or an annuity.
- (b) A pension paid from the Fund may be any form of pension which the Trustee is permitted under Superannuation Law to provide, and must comply with Superannuation Law applicable to that form of pension.

- (c) The Trustee may offer the person entitled to the pension benefit such options in relation to:
 - (i) the annual amount of the pension;
 - (ii) the frequency of pension payments;
 - (iii) the term for which the pension is payable,
 as Superannuation Law permits for that form of pension, and the person may select from the options offered.
- (d) The amount of and frequency of the instalments of a pension, and the terms on which payment is made, may be varied from time to time by the Trustee in accordance with any standards prescribed by Superannuation Law for that form of pension.
- (e) The Trustee may commute to a lump sum all or part of a pension as permitted by Superannuation Law for that form of pension, but must comply with any standards prescribed by Superannuation Law which impose restrictions on commutation of that form of pension. On commutation on any part of a pension, the Trustee must adjust the amount of the subsequent pension payments to take account of the commutation.
- (f) On the death of:
 - (i) a Member in receipt of a pension where there is no Reversionary Beneficiary; or
 - (ii) a Reversionary Beneficiary (other than a Spouse of a Member in receipt of a market linked pension),
 the Trustee must pay the remaining balance in the Member Account as a death benefit of the Member.
- (g) On the death of a Spouse of a Member in receipt of a market linked pension as a Reversionary Beneficiary, the Trustee must pay the remaining balance in the Member Account either:
 - (i) as a death benefit of the Member; or
 - (ii) to one or more of the Spouse's Dependents (and if more than one in proportions determined by the Trustee) or to the Spouse's Legal Personal Representative.

11.14 Death benefit nominations

- (a) Where a pension is payable to a Member from the Fund, the Trustee may offer the Member the option of nominating a Reversionary Beneficiary on commencement of the pension.
- (b) The Trustee may offer Members (other than a Member who has nominated a Reversionary Beneficiary) the option of making a Binding Nomination.

- (c) A Member (other than a Member who has nominated a Reversionary Beneficiary) may:
 - (i) make a Binding Nomination, where the Trustee has offered the Member that option; or
 - (ii) nominate any one or more of their Dependants or Legal Personal Representative to receive any part or all of the benefit payable on their death.
- (d) A nomination other than a Binding Nomination is not binding on the Trustee.
- (e) A Member may change a Binding Nomination or other nomination at any time in a form approved by the Trustee for that purpose.

11.15 Payment of death benefits

- (a) On the death of a Member:
 - (i) where there is a Reversionary Beneficiary, the Trustee must pay the death benefit as a pension to the Reversionary Beneficiary;
 - (ii) where there is a Binding Nomination, the Trustee must pay the benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified;
 - (iii) otherwise, the Trustee holds the amount of the benefit upon trust to be paid to any one or more of the Member's Dependants and Legal Personal Representative in the proportions the Trustee decides.
- (b) If the Trustee after making reasonable enquires is unable to identify any Dependants or Legal Personal Representative of a deceased Member, the Trustee may pay the benefit to any individual, where the benefit can be paid to that person in accordance with Superannuation Law.

11.16 Payment to a Superannuation Entity

The Trustee may satisfy an entitlement to a benefit by paying the benefit to another Superannuation Entity in accordance with **clause 13**.

11.17 Release to Trustee

The Trustee may require any person to whom an amount is paid or payable under this Deed to give the Trustee a receipt and release for the amount in a form prescribed by the Trustee. A receipt and release given by any such person is a complete discharge to the Trustee for the amount paid.

11.18 Evidence of entitlement to benefits

- (a) Any person claiming a benefit from the Fund must on request by the Trustee produce to the Trustee such information or evidence, and execute such documents, as the Trustee reasonably requires to:
 - (i) establish the person's entitlement to the benefit; or

- (ii) comply with any requirements of Superannuation Law in relation to the identification of benefit recipients.
- (b) The Trustee when deciding a person's entitlement to a benefit may rely on proofs or presumptions the Trustee considers satisfactory whether or not the proofs or presumptions relied on are strictly legal proofs or presumptions.
- (c) The Trustee may refuse to pay a benefit to any person until the Trustee's requirements for information, evidence or documents have been complied with to the Trustee's satisfaction.

11.19 Incapacity

Where a person to whom a benefit is payable is under a legal disability or is in the Trustee's opinion incapable of managing their own affairs for any reason, the Trustee may:

- (a) pay the benefit to another person on trust for the person entitled to the benefit, or otherwise to be used for the advantage of the person entitled to the benefit; and
- (b) accept the other person's receipt as a valid discharge to the Trustee of its obligations in respect of the payment of the benefit.

11.20 Transfer to Eligible Rollover Fund

The Trustee may pay the amount of a Member Account to an Eligible Rollover Fund in any circumstances which the Trustee may from time to time determine are the circumstances in which a Member Account will be paid to an Eligible Rollover Fund, subject to Superannuation Law.

11.21 Benefits subject to Payment Split

- (a) Despite any other provision in this Deed or the terms of any agreement in relation to a Member's benefits, the Trustee may:
 - (i) create a new interest for the Spouse or former Spouse of a Member to give effect to a Payment Split; or
 - (ii) transfer or roll over the entitlement of the Spouse or former Spouse of a Member under a Payment Split,and reduce the amount of the Member's benefit by an amount determined by the Trustee to account for the interest or entitlement of the Member's Spouse or former Spouse.
- (b) On the death of a person:
 - (i) who is a Non-Member Spouse of a Member;
 - (ii) who is not a Member; and
 - (iii) in respect of whom a Payment Split is in operation in relation to the Member's benefit,

the Trustee must pay the amount of the Non-Member Spouse's interest under the Payment Split, calculated in accordance with the Family Law

Requirements, as if the Non-Member Spouse were a Member or as otherwise prescribed under the Family Law Requirements.

12 Transfer from another fund

12.1 Arrangements for transfer to the Fund

(a) The Trustee may make arrangements with any:

- (i) Member;
- (ii) Participating Employer;
- (iii) Employer or former Employer of a Member;
- (iv) Superannuation Entity,

in relation to the transfer or rollover to the Fund of any superannuation entitlement of any Member or any group of Members.

(b) The arrangements may include transfer to the Fund of an amount that is not allocated for the credit of any particular Member or group of Members, which the Trustee may allocate to a reserve in accordance with **clause 5.4**.

12.2 Member's consent

The Trustee must not give effect to an arrangement referred to in **clause 12.1** unless the Trustee is satisfied that:

- (a) the Member gave written consent to the transfer or rollover; or
- (b) under Superannuation Law the Member's written consent is not required.

12.3 Value of transfer

Subject to any arrangement made pursuant to **clause 12.1**, the Trustee must determine the value of any payment, assignment or transfer of assets for the credit of a Member or group of Members and credit the value so determined to provide additional benefits for that Member or those Members respectively.

13 Transfer to another fund

13.1 Member or Employer may request transfer

The Trustee may pay to a Superannuation Entity any amount comprising all or part of the value of a Member Account, at the request of the Member or the Member's Participating Employer.

13.2 Member's consent to transfer out

The Trustee must not pay an amount pursuant to **clause 13.1** at the request of a Participating Employer unless:

- (a) the Trustee has received the Member's written consent to the payment;
- or

- (b) the Member's written consent is not required under Superannuation Law.

13.3 Restrictions on partial transfers

Subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial transfers, including (for example):

- (a) limits on how often partial transfers are made;
- (b) a minimum amount for a partial transfer;
- (c) a minimum balance that must remain in the Member Account after a partial transfer.

13.4 Transfer of assets

The Trustee may pay an amount under **clause 13.1** by transfer of any of the Fund's assets. Any expenses associated with the transfer, including (but not limited to) stamp duty, brokerage fees and commission, must be paid by the Member or the Participating Employer or deducted from the amount transferred.

13.5 Receipt sufficient discharge

The receipt of any entity which appears to the Trustee to be responsible for the management of the Superannuation Entity to which an amount is paid or transferred under **clause 13.1** is sufficient discharge to the Trustee, and neither the Trustee nor the Participating Employer is in any way responsible or liable for the application of that amount.

14 Records, accounts and audit

14.1 Fund records

The Trustee must keep or cause to be kept a complete record of such matters as are required to comply with the Trustee's obligations under this Deed and Superannuation Law, including:

- (a) minutes of all meetings of directors of the Trustee;
- (b) changes of Trustee or the directors of the Trustee;
- (c) reports to Members.

14.2 Accounting records

The Trustee must:

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the Fund;
- (b) keep the accounting records so as to enable:
 - (i) the preparation of accounts, financial statements and returns of the Fund as prescribed by Superannuation Law; and
 - (ii) the accounts, financial statements and returns to be conveniently and properly audited.

14.3 Financial statements

The Trustee must:

- (a) prepare as at the end of each Financial Year such accounts and financial statements of the Fund as are prescribed by Superannuation Law; and
- (b) make such arrangements as are necessary to enable those accounts and financial statements to be audited.

14.4 Auditor

(a) The Trustee must:

- (i) appoint an auditor of the Fund; and
- (ii) instruct the auditor to audit the accounts and financial statements of the Fund and report to the Trustee.

(b) The Trustee may remove an auditor and appoint a replacement.

(c) The Trustee will fix the remuneration of the auditor, and that remuneration is payable as an expense of the Fund.

(d) The Trustee must:

- (i) allow the auditor access at all reasonable times to all the books and records under the Trustee's control; and
- (ii) give the auditor such information and explanations as the auditor requires for the performance of the auditor's duties.

14.5 Information for Members

The Trustee must provide such information to Members and Participating Employers in relation to the records and accounts of the Fund as is prescribed as Superannuation Law.

15 Termination of the Fund

15.1 Perpetuity period

The perpetuity period applicable to the trusts in this Deed is the period of 80 years from the commencement date of the Fund.

15.2 Circumstances of termination

The Trustee may terminate the Fund on giving Members 60 days' notice.

15.3 Termination procedure

- (a) On termination of the Fund, the Trustee shall hold the assets of the Fund on trust for the Members, and the Fund shall be wound up.
- (b) On termination of the Fund, the Trustee must:
 - (i) give notice in writing to the Members and any Participating Employers that the Fund is to commence to be wound up on a specified date (**Closure Date**);

- (ii) call for any arrears of contributions, and not accept further contributions except contributions made in response to a call;
- (iii) pay any outstanding Expenses including Expenses associated with termination of the Fund, and make provision for any outstanding liabilities or anticipated Expenses;
- (iv) realise the assets of the Fund; and
- (v) calculate the benefit entitlement (**Interest in the Fund**) of each Member as at the Closure Date, taking into account the realisable value of the assets of the Fund, any reserves, any unallocated earnings or other unallocated amounts, and any Expenses or liabilities which remain outstanding.

15.4 Distribution on termination

- (a) The Trustee must on calculation of the Interest in the Fund of each Member:
 - (i) where a benefit has become payable in respect of the Member, pay the amount of the Interest in the Fund as a benefit in accordance with this Deed;
 - (ii) otherwise, transfer the Interest in the Fund to another Superannuation Entity.
- (b) The Trustee may decide (subject to Superannuation Law) to transfer all or part of the value of any reserve or other unallocated amount to another Superannuation Entity as an unallocated amount, to be applied for the benefit of the Members or former Members or any group of them or otherwise as the Trustee considers appropriate (for example, to be applied for the benefit of:
 - (i) Members for whom the reserve or other unallocated amount is maintained; or
 - (ii) Employees of the Participating Employer for whom the reserve or other unallocated amount is maintained).
- (c) The Trustee must not transfer a Member's Interest in the Fund to another Superannuation Entity unless:
 - (i) the Trustee has received the Member's written consent to the payment; or
 - (ii) the Member's written consent is not required under Superannuation Law.
- (d) However if the Trustee is not able to obtain the consent of any Member to a transfer of that Member's Interest in the Fund, the Trustee may make such arrangements in relation to payment of the Member's Interest in the Fund as Superannuation Law permits.

15.5 Receipt for distribution on termination

A person entitled to a distribution on termination of the Fund is entitled to that distribution only on delivery to the Trustee of such form of receipt and discharge as may be required by the Trustee.

15.6 Continuing effect of Deed

Subject to Superannuation Law, despite the termination of the Fund the provisions of this Deed continue in effect to the extent that they are required to regulate any remaining rights or obligations.

16 Trustee's liability and indemnity

16.1 Trustee's entitlement to indemnity

Subject to **clause 16.5**, the Trustee is entitled to be indemnified out of the Fund for any liability or loss incurred while acting as Trustee.

16.2 Examples of indemnity

Without limiting the purpose of **clause 16.1** and only for the purpose of confirming that purpose:

- (a) **(Trustee's indemnity for legal fees)** - the Trustee will be indemnified out of the Fund from and against any Expense and liability that may be incurred in prosecuting, defending, settling, mediating or intervening in any action or suit in respect of this Deed in respect of the Fund.
- (b) **(No liability for reliance in good faith on information provided)** - the Trustee will not incur any liability to anyone in consequence of the Trustee relying in good faith on information provided to the Trustee by any Member or any other person on behalf of a Member which proves to be incorrect.
- (c) **(No liability for Taxes paid)** - the Trustee is not liable to account to Members or their Dependants or the Legal Personal Representatives of Members for any payments made by the Trustee in good faith to any duly empowered fiscal authority for Taxes made upon or in respect of the Fund or with respect to any transaction, notwithstanding that any such payment ought or need not have been made.
- (d) **(Trustee may rely on documents etc)** - the Trustee is not liable for any action taken or thing suffered by the Trustee in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, application or other paper or document reasonably believed by the Trustee to be genuine and to have been possessed produced signed or endorsed by the proper parties where liability but for this indemnity would attach by reason solely that such paper or document was not, in fact, genuine or so possessed, produced, passed, signed or endorsed.
- (e) **(Trustee's liability limited to Assets held)** - in no event will the Trustee be bound to make any payment to Members or their Dependants or the Legal Person Representatives of Members except out of the Fund or be

liable to Members or their Dependants or Legal Personal Representatives to any greater extent than the assets of the Fund in respect of the Member vested in or received by the Trustee in accordance with this Deed.

- (f) **(Trustee indemnified for investments with liabilities)** - should the Trustee purchase or otherwise acquire any authorised investment in regard to which there is a liability, the Trustee has a right of indemnity out of the Fund in respect of that liability.

16.3 Trustee's indemnity to be from the Fund

In the event that the Trustee has incurred a liability as Trustee and the Trustee is entitled under this Deed or otherwise as allowed by law to be indemnified as a result of such liability out of the Fund, the Trustee may claim such indemnity from the Fund but the Trustee is not entitled to be indemnified in respect of that liability by an Member unless by a separate agreement with that Member.

16.4 Trustee not liable for loss

Subject to **clause 16.5**, the Trustee is not liable for any loss to the Fund arising from any act or omission by the Trustee (including any act or omission which is a breach of trust).

16.5 No indemnity for breach

Clauses 16.1 and **16.4** do not apply to exempt the Trustee from liability for or indemnify the Trustee against:

- (a) a breach of trust where the Trustee:
- (i) failed to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (b) a monetary penalty under a civil penalty order issued under SIS.

16.6 Indemnity for directors

References in this **clause 16** to "Trustee" include directors of the Trustee acting in that capacity.

16.7 Trustee may rely on advice

- (a) The Trustee may take and act upon:
- (i) the opinion or advice of lawyers instructed by the Trustee in relation to the interpretation of this Deed or any other document or generally as to the administration of a Fund or any other matter in connection with the Fund;
 - (ii) advice, statements or information from any bankers, accountants, auditors, valuers and other service providers in each case believed by the Trustee in good faith to be expert in relation to the matters

upon which they are consulted and who are independent of the Trustee,

and the Trustee is not liable for anything done, suffered or omitted in good faith in reliance upon such opinion, advice, statement or information.

- (b) The Trustee is not responsible for any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any auditor, actuary, valuer, investment manager, custodian, administrator, attorney, banker, receiver, receiver and manager, barrister, solicitor, agent or other person acting as agent or adviser of the Trustee.

16.8 Trustee not liable for legally required acts

The Trustee is not liable to any person for:

- (a) doing or performing any act or thing which the Trustee is, or which the Trustee believes in good faith the Trustee is, required to do or perform; or
- (b) failing to do or perform any act or thing which the Trustee is, or which the Trustee believes in good faith the Trustee is, hindered, prevented or forbidden from doing or performing,

by any statutory provision or a decree, order or judgement of any court or tribunal.

17 Amendment

17.1 Power to amend

- (a) Subject to any restrictions on amendment of trust deeds under Superannuation Law and in **clause 17.4**, the Trustee may by deed supplemental to this Deed alter, modify, add to or delete any of the provisions of this Deed, including this **clause 17**.
- (b) Without limiting **clause 17.1(a)**, the Trustee may amend this Deed as long as the amendment is in accordance with Superannuation Law:
 - (i) to confer a benefit upon the Trustee;
 - (ii) to comply with the requirements of Superannuation Law.

17.2 Date of effect

An amendment may take effect from a date before or after the amendment is made.

17.3 Notification of amendment

The Trustee must give to a Member, within the period prescribed by Superannuation Law, the information required by Superannuation Law concerning the changes effected by the amendment. The failure to so notify a Member Employer does not invalidate the amendment in any way.

17.4 Restriction on amendment

- (a) An amendment must not permit an individual to be eligible for appointment as Trustee of the Fund unless this Deed is amended to provide, and will continue to provide after the amendment is made, that the Fund has as its sole or primary purpose the provision of old-age pensions.
- (b) The purpose of **clause 17.4(a)** is to comply with restrictions on amendments of trust deeds imposed on Regulated Superannuation Funds. If those restrictions are amended, then the restriction in **clause 17.4(a)** shall be construed and applied in a corresponding manner.

18 Limitation on liability of Participating Employers and Members

18.1 No liability to make payments

A Participating Employer or Member does not, only by virtue of participation in the Fund, have any liability to make any payment to the Fund or payments to the Trustee.

18.2 No obligation to indemnify Trustee

A Participating Employer or Member has no obligation personally to indemnify the Trustee or any creditor of the Trustee in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the Trustee in relation to, arising from or in connection with the Fund. Any such liability is expressly excluded. The rights to an indemnity of the Trustee and the Trustee's creditors are limited to having recourse to the Fund.

19 Disputes

The Trustee must establish such procedures to deal with enquiries and complaints in relation to the Fund by Members and other persons as the Trustee determines necessary to comply with Superannuation Law.

20 Policy committees

The Trustee must establish and support policy committees as required by Superannuation Law.

21 Meetings

21.1 Convening meetings

- (a) The Trustee may convene a meeting of Members at any time.

- (b) The Trustee must on the requisition of not less than 50 or one-tenth in number, whichever is the less, of the Members forthwith convene a meeting of the Members.
- (c) The requisition must state the objects of the meeting and the terms of any resolution proposed to be submitted to the meeting. The requisition must be signed by the requisitionists and lodged at the registered office of the Trustee and may consist of several documents in like form each signed by one or more requisitionists. If the Trustee does not convene a meeting of the Members within 21 days from the date of the requisition being lodged, the requisitionists or a majority of them in number may themselves convene the meeting but any meeting so convened must be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Trustee, except that the requisitionists must also give the notice of meeting to the Trustee. The omission to give such notice to or the non-receipt of such notice by the Trustee invalidates the meeting, but the Trustee may waive such omission or non-receipt.

21.2 Notice of meetings

- (a) At least ten Business Days' notice of a meeting specifying the place day and hour of the meeting must be given to Members.
- (b) The Trustee must ensure that any notice of meeting contains adequate notice of:
 - (i) any matters to be considered at the meeting of which the Trustee is aware;
 - (ii) any resolutions to be put to the meeting of which the Trustee is aware; and
 - (iii) a summary of information relating to those matters and resolutions that is relevant to the decision of a Member on how to vote at the meeting.
- (c) The accidental omission to give notice to or the non-receipt of such notice by any Member does not invalidate the meeting.
- (d) Unless a specified period of notice of a meeting is required by Superannuation Law, where a meeting is convened by notice shorter than is required by **clause 21.2(a)**, the meeting is duly convened if so agreed:
 - (i) in the case of a meeting convened in accordance with a requisition of Members – by all the Members entitled to attend and vote at the meeting; or
 - (ii) in the case of a meeting convened by the Trustee – by a majority in number of the Members having a right to attend and vote at the meeting, being a majority that together represent not less than 75% of total balances of Member Accounts.

21.3 Procedures at meetings

- (a) The auditor of the Fund and the representatives of the Trustee are entitled to attend any meeting of Members with or without their respective solicitors and/or counsel and all such persons shall have the right of audience at the meeting.
- (b) No business will be transacted at any such meeting unless a quorum is present when the meeting proceeds to business. A quorum is:
 - (i) for a meeting convened to consider the removal and replacement of the Trustee, the number of Members required under Superannuation Law to vote on the resolution;
 - (ii) for any other meeting, 50 Members or at least 10% of the number of Members whichever is the lesser number.
- (c) If within 15 minutes from the time appointed for any meeting, a quorum is not present, the meeting:
 - (i) if called to consider the removal and replacement of the Trustee, is dissolved;
 - (ii) if called for any other purpose:
 - (A) where an Ordinary Resolution is proposed, is adjourned to the same day in the next week at the same time and the same place;
 - (B) where a Special Resolution is proposed, is adjourned for such period as the chairman directs,

provided the Trustee gives notice to Members of the proposed Ordinary Resolution or Special Resolution, and of the fact that those present in person or by proxy will constitute a quorum at an adjourned meeting and the place, day and hour of such adjourned meeting.
- (d) At a duly convened adjourned meeting, the Members present in person or by proxy form a quorum and have power to pass the resolution to be proposed at the meeting.
- (e) At a meeting convened by the Trustee some person nominated by the Trustee (whether a Member or not) shall preside as chairman. If no such person is present or is present but unwilling to act within 15 minutes after the time appointed for holding the meeting, the Members present shall choose one of their number to preside as chairman.
- (f) The chairman may with the consent of any meeting of Members adjourn the meeting from time to time and from place to place.

21.4 Voting

- (a) Every question submitted to a meeting of Members will be decided in the first instance by a show of hands, however a poll must be taken where:

- (i) Superannuation Law or this Deed requires that the question be decided by a majority which is measured by a percentage of the votes cast; or
 - (ii) a poll is properly demanded.
- (b) On a show of hands every Member who is present in person has one vote and on a poll every Member who is present in person or by proxy has one vote for each one dollar or part of one dollar of the balance of the Member's Member Account at the close of business 48 hours prior to the meeting.
- (c) On a show of hands every Member who is present in person or by proxy has one vote, and on a poll every Member has one vote for each one dollar or part of one dollar of the balance of the Member's Member Account at the close of business 48 hours prior to the meeting.
- (d) A poll may be demanded:
 - (i) by the chairman, or by at least 10 Members holding or representing by proxy at least 10% of the total voting rights of all Members;
 - (ii) either before or immediately after any question is put to a show of hands.
- (e) The demand for a poll may be withdrawn.
- (f) Unless a poll is demanded or required, a declaration by the chairman that a resolution has been carried or carried by any particular majority or lost or not carried by any particular majority will be conclusive evidence of the fact.
- (g) A poll will be taken in such manner and either at once or after an adjournment as the chairman directs, and the result of such poll will be deemed to be the resolution of the meeting in respect of which the poll was taken.
- (h) Any poll demanded at any meeting of Members on the election of the chairman or any question of adjournment will be taken at the meeting without adjournment.
- (i) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which the poll has been demanded.
- (j) No objection will be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting is valid for all purposes. Any such objection made in due time must be referred to the chairman of the meeting and the decision of the chairman will be final and conclusive.
- (k) Votes may be given by proxy in accordance with the following conditions:

- (i) On a show of hands and on a poll votes may be given either personally or by proxy and a proxy has the same right of audience as a Member.
- (ii) The instrument appointing a proxy must be in writing under the hand of the appointor or of the appointor's attorney authorised in writing.
- (iii) Any person may act as a proxy whether or not the person is a Member.
- (iv) An instrument appointing a proxy may be in any form the Trustee approves.
- (v) The instrument appointing a proxy and the power of attorney or other authority (if any) under which the proxy is signed or a certified copy of that power or authority or a legible facsimile transmission copy of the instrument appointing a proxy where that instrument is signed under the hand of the Member must be deposited at the registered office of the Trustee, or at such other place as is specified for that purpose in the notice of meeting, not less than 24 hours prior to the meeting at which the person named in the instrument proposes to vote.
- (vi) An instrument appointing a proxy is not valid unless the instrument complies with the conditions. An instrument appointing a proxy is not valid after the expiration of 12 Months from the date named in the instrument as the date of execution.
- (vii) A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed, provided that no intimation in writing of such death insanity or revocation was received by the Trustee before the commencement of the meeting or adjourned meeting at which the proxy is used.

21.5 Resolution binding

A resolution (whether Ordinary or Special) passed at a meeting of Members duly convened and held is binding upon all the whether present or not present at such meeting and each of the Members and the Trustee are bound to give effect to all resolutions passed accordingly.

21.6 Minutes

The Trustee must keep minutes of all resolutions passed and proceedings at every meeting. Any such minutes if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of any subsequent meeting, will be conclusive evidence of the matters stated in the minutes, and until the contrary is proved every meeting of which minutes have been made will be deemed to have been duly held and convened and all resolutions passed deemed to have been duly passed.

21.7 Telephone and electronic links

- (a) For the purposes of this **clause 21** a Member will be regarded as being present at a meeting of Members if the meeting is so conducted by telephone or other electronic means of confirming that the Member is able to hear the proceedings of the entire meeting and to be heard by all others attending the meeting.
- (b) A meeting conducted in accordance with **clause 21.7(a)** will be treated as having been held at such place as is agreed upon by the Members, provided at least one of the Members present at the meeting was at that place for the duration of that meeting.

21.8 Meeting by notice and written response

- (a) Except as required by any Superannuation Law, in lieu of holding a meeting of Members, the Trustee may send to the Members entitled to receive notice of a meeting or to vote, a notice which contains:
 - (i) the resolutions to be considered and voted on by the Members;
 - (ii) a summary of information relating to the resolutions which the Trustee considers relevant to the decisions as to how to vote on the resolutions;
 - (iii) provision for the Member to indicate the way in which they cast their votes on the resolutions;
 - (iv) an address to return the notice to; and
 - (v) a date by which the notice is to be returned if the Member's vote on the resolutions is to be counted.
- (b) If the number of Members who return a notice would constitute a quorum of a meeting to pass the resolutions had the meeting been convened and those Members attended and voted, then a meeting is deemed to have been held with the Members who returned the notices present and votes cast as set out in the returned notices received by the date set out in the notices. The resolutions will be deemed to have been passed if the resolutions would have been passed had a meeting been held and the votes cast as set out in the returned notices' received by the date set out in the notices.

21.9 Meeting's power to sanction amendments

Without limiting **clause 17**, or the rights and discretions conferred in this Deed, a meeting of Members has, subject to the Superannuation Law, the power by Special Resolution to sanction or assent to any alteration, addition, modification or cancellation proposed by the Trustee of or to any of the covenants or provisions of this Deed and to authorise the Trustee to concur in and execute any deed making any such alteration, addition, modification or cancellation.

22 General provisions

22.1 Prohibition on reversion of assets

No part of the Fund will revert to the Trustee or a Participating Employer, and no amount will be paid from the Fund to the Trustee or a Participating Employer except as expressly provided in this Deed and permitted under Superannuation Law.

22.2 Workers' compensation not affected

- (a) Nothing in this Deed in any way affects the right of a Member or Legal Personal Representative or other person to claim damages or compensation for any accident arising out of and in the course of a Member's employment or payment for long service leave.
- (b) An amount payable under this Deed must not be reduced by reason of any payment that may be made in respect of damages or compensation or for sick leave, but this **clause 22.2(b)** does not affect the terms of any Policy of Insurance under which a benefit is payable.

22.3 Discharge for payment to Trustee

The receipt of the Trustee or a person duly authorised by the Trustee in that behalf is a sufficient discharge to any person for any money paid or other property transferred to the Fund and that person is not obliged to enquire further as to the authority of the Trustee or such person to receive the money or property.

22.4 Governing law

This Deed, and the rights and obligations of the Trustee, the Participating Employers and the Members under this Deed, are governed by the laws applicable in New South Wales. Any proceedings to enforce those rights or obligations may be taken in the courts of New South Wales.

22.5 Notices

- (a) Any notice which is required to be or which may be given to any Participating Employer or Member may be:
 - (i) delivered to the Participating Employer or Member personally;
 - (ii) sent through the post addressed to the Participating Employer or Member at the address according to the records of the Trustee;
 - (iii) sent by fax to the person's current fax number according to the records of the Trustee; or
 - (iv) sent by email to the person's current email address according to the records of the Trustee,subject to any requirements of Superannuation Law in relation to means of sending particular notices.
- (b) If sent by post a notice is deemed to have been delivered on the day following the posting of the notice.

- (c) If sent by fax, a notice is deemed to have been delivered when the sender's fax machine produces a report that the fax was sent in full to the addressee, and that report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.
- (d) If sent by email, a notice is deemed to have been delivered when the information system from which the email was sent produces a confirmation of delivery report which indicates that the email has entered the information system of the recipient, unless the sender receives a delivery failure notification, indicating that the email has not been delivered to the information system of the recipient.

Fiducian Portfolio Services Limited

Deed of Variation to the Trust Deed of Fiducian Superannuation Service

Date 11 APRIL 2016

By

Fiducian Portfolio Services Limited ACN 073 845 931 of Level 4, 1 York Street, Sydney, NSW 2000 (Trustee)

Background

- A Fiducian Superannuation (**Plan**) was established by a Deed Poll made on 9 January 1997, and rules made under that Deed Poll, as amended (**Trust Deed**).
 - B The Plan consists of two divisions, Division I – Fiducian Superannuation Service and Division II – Fiducian Pooled Superannuation Trust.
 - C The Trustee is the trustee of each of the Divisions of the Plan.
 - D The Trustee wishes to make amendments to Division I of the Plan to permit a closure of a Sub-Fund and enable the Trustee to transfer Members between the closed Sub-Fund to another Sub-Fund or to the Fund.
 - E The Trustee is of the opinion that the amendment of the Trust Deed in the manner set out in this document is consistent with clause 17 of Division I of the Trust Deed, which permits the Trustee to modify, add to or delete any of the provisions of Division I subject to Superannuation Law and clause 17.4.
-

Agreed terms

- 1 Supplemental deed
 - (a) This document is supplemental to and constitutes an amendment of the Trust Deed.
 - (b) From the execution of this document, the Trust Deed takes effect, and must be construed, as amended in this document.

2 Amendment

2.1 Amendments to Division I

Division I of the Trust Deed is amended by this deed as set out in Schedule 1.

2.2 Continuation of Division I

The operation of Division I continues under the terms of the Trust Deed as amended in this document, and this document does not re-declare or re-settle the terms of the trust in respect of Division I.

3 Definitions and Interpretation

In this deed, unless the contrary intention appears:

- (a) words defined in the Trust Deed have the same meaning in this deed; and
- (b) this deed must be interpreted in accordance with the rules of interpretation in the Trust Deed.

4 Governing Law

The law that governs the Trust Deed govern this deed.

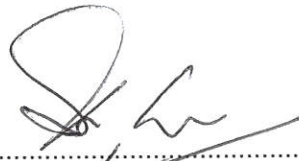
Executed as a deed.

Executed by Fiducian Portfolio
Services Limited)



.....
Company Secretary/Director

Russ Howard MARTIN
.....
Name of Company Secretary/Director
(print)



.....
Director

STEVEN - ANTHONY VAUGHAN
.....
Name of Director (print)

Schedule 1

Amendments to Division I of the Trust Deed

1 Sub-Funds

Insert a new Clause 2.8(d) as follows:

“(d) The Trustee may close a Sub-Fund and thereafter no new Members shall be admitted to the Sub-Fund. The Trustee may reopen a Sub-Fund previously closed.”

2 Arrangements for the Closure of a Sub-Fund

Insert a new Clause 13A as follows:

“13A. Arrangements for the Closure of a Sub-Fund

13A.1 Closure of a Sub-Fund

On the Trustee determining to exercise its powers consistent with clause 2.8(d), the Trustee must:

- (a) determine the closure date of the Sub-Fund (the **First Sub-Fund**); and
- (b) determine the date for transfer (**Transfer Date**) of all Members of the First Sub-Fund to another Sub-Fund (the **Second Sub-Fund**) or the Fund (which day may or may not be the same as the closure date).

13A.2 Member Transfer

A Member who is a member of the First Sub-Fund immediately before the Transfer Date is, on and from that day, transferred from the First Sub-Fund to the Second Sub-Fund or the Fund.

13A.3 Effect of Transfer

On the transfer taking effect:

- (a) the Member ceases to be a Member for the purposes of the First Sub-Fund; and
- (b) the Member becomes a Member of the Second Sub-Fund or Fund; and
- (c) the balance at credit in the Member's Account on the Transfer Date must be transferred from the First Sub-Fund and credited, as soon as practicable, by the Trustee to an account to be established to the credit of the Member in the Second Sub-Fund or Fund; and
- (d) the balance credited to the Second Sub-Fund or Fund pursuant to the transfer under clause 13A.3(c) may be different to the balance at credit in the Member's Account in the First Sub-Fund

as the Trustee may apply any credit, fee, charge or cost arising from the transaction, for example, a buy/sell spread; and

- (e) the investment of amounts credited to the account of the Member in the Second Sub-Fund or Fund, will be invested as far as is practicable in the same manner as they were invested in the First Sub-Fund; and

13A.4 Insurance

Any insurance contracts and arrangements to which the Member is a beneficiary under the First Sub-Fund continue in force and apply to the transferred Member in the same way as they applied to the Member under the First Sub-Fund immediately before the Transfer Date.