

Deed of Replacement of Trust Deed of Prime Super

ABN: 60 562 335 823; RSE No: R1000276

(Prime Super or Fund)

Prime Super Pty Ltd
(ABN 81 067 241 016; RSE Lic. No: L0000277)
(as trustee of Prime Super)
(Trustee)

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Deed of Replacement of Trust Deed of Prime Super

This Deed Poll is made on:

20TH FEBRUARY

2013

By:

Prime Super Pty Ltd (ABN 81 067 241 016)

(in its capacity as trustee of Prime Super)

of Level 15, 190 Queen Street, Melbourne, Victoria, Australia

(Trustee)

Introduction:

- A. Prime Super (ABN 60 562 335 823; RSE No. R1000276) (**Fund**) is an indefinitely continuing superannuation fund that is registered with the Australian Prudential Regulation Authority as a registerable superannuation entity and is regulated under the *Superannuation Industry (Supervision) Act 1993 (SIS Act)*.
- B. The Trustee is the trustee of the Fund.
- C. The Fund was established by a Trust Deed dated 16 November 1993 (**Original Trust Deed**).
- D. The Original Trust Deed has been amended and replaced from time to time.
- E. As at the date of this Deed, the governing rules of the Fund are contained in a Trust Deed dated 18 April 2012 (**Current Trust Deed**).
- F. Clause 40 of the Current Trust Deed confers on the Trustee the power to, by deed, amend, add to, vary or rescind any provision of the Current Trust Deed provided that, unless the Law permits or the members of the Fund consent, no amendment may be made or become effective that would adversely affect, or has the potential to adversely affect, the right or claim to accrued benefits, or the amount of those accrued benefits of any member.
- G. The Trustee desires to effect the incorporation of certain amendments to the governing rules of the Fund as contained in the Current Trust Deed by adopting a new trust deed in the form annexed to this Deed (**Amended Trust Deed**) and that the Amended Trust Deed should operate as the governing rules of the Fund on and from the date of this Deed.
- H. The amendments that will be effected to the governing rules of the Fund by the replacement of the Current Trust Deed with the Amended Trust Deed incorporate changes that are necessary for the Trustee to be authorised to offer, and to offer, a "MySuper Product" to members of the Fund (**MySuper Changes**). A "MySuper Product" is defined, and related provisions prescribed, in the *Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act)* as amended by the *Superannuation Legislation Amendment (MySuper Core Provisions) Act 2012 (Cth) (SIS MySuper Amendment Act)*. In addition, further amendments to the SIS Act will come into effect on 1 July 2013 by virtue of the *Superannuation Legislation Amendment (Trustee Obligations and Prudential Standards) Act 2012 (SIS Trustee Obligations Amendment Act)*.
- I. The Trustee intends, considers and wishes to record, for the avoidance of doubt, that the adoption of the Amended Trust Deed contained in this Deed:

1. complies with the amendment power contained in clause 40 of the Current Trust Deed;
2. complies with the Relevant Law, including section 60 of the SIS Act, regulations 4.05 and 13.16 of the *Superannuation Industry (Supervision) Regulations* 1993;
3. will satisfy the requirements of section 29TC of the SIS Act and enable the Trustee to attest, in the MySuper authorisation application for the Fund, that the Amended Trust Deed and governing rules of the Fund establishing the MySuper product contained in the Amended Trust Deed comply with section 29TC of the SIS Act;
4. will not resetttle or create a resettlement of the Fund as constituted and governed by the Current Trust Deed immediately prior to the Trustee's execution of this Deed.

This Deed Witnesses:

1. Definitions

Unless the subject matter or context otherwise requires, a fact, person, thing, word, or expression that is defined in the Current Trust Deed will, when used in this Deed, including the recitals to this Deed, have the same respective meaning as in the Current Trust Deed.

2. Inconsistency

If there is an inconsistency between any provision of this Deed and a provision of the Current Trust Deed, the provision of this Deed will prevail over those of the Current Trust Deed to the extent of the inconsistency.

3. Replacement of the Current Trust Deed

3.1 Power to Replace

The Trustee exercises its rights under clause 40 of the Current Trust Deed in replacing the Current Trust Deed with the Amended Trust Deed in the manner contained in this Deed.

3.2 Replacement

- (a) The Current Trust Deed is replaced by the Amended Trust Deed in the form contained in the annexure to this Deed.
- (b) The Trustee adopts the Amended Trust Deed as the governing rules of the Fund on and from the date of this Deed.

3.3 Trustee Bound by Amended Trust Deed

The Trustee agrees to be bound by the Amended Trust Deed on and from the date of this Deed.

3.4 Acknowledgment of No Resettlement

The Trustee intends that the execution of this Deed and adoption of the Amended Trust Deed as the governing rules of the Fund on and from the date of this Deed does not, and should not, constitute a resettlement of the Fund.

3.5 Members to be Bound by Amended Trust Deed

The Trustee intends that the each Member of the Fund is to be bound by the Amended Trust Deed on and from the date of this Deed.

4. General

4.1 Governing Law

This Deed is governed by the laws of Victoria.

Executed by the Trustee as a Deed Poll:

Executed by Prime Super Pty Ltd (ACN 067 241 016) as trustee of Prime Super in accordance with Section 127 of the *Corporations Act 2001* (Cth) by:)
)
)
)

Director

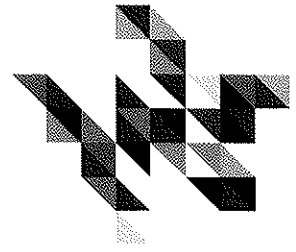
Director/Secretary

Name (please print)

Name (please print)

Annexure – Amended Trust Deed

(As Annexed)



Trust Deed of Prime Super

**ABN: 60 562 335 823
RSE No: R1000276**

Prime Super Pty Limited

**ABN: 81 067 241 016
RSE Licence No: L0000277
(Trustee)**

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Trust Deed of Prime Super

This Trust Deed is made as a deed poll on: 20TH FEBRUARY 2013

By:

Parties

Prime Super Pty Limited

ABN: 81 067 241 016

of Level 15, 190 Queen Street, Melbourne, Victoria, Australia
(Trustee)

Introduction:

- A. Prime Super is an indefinitely continuing superannuation fund that is registered with APRA as a registrable superannuation entity and regulated under the SIS Act.
- B. The Trustee is the trustee of Prime Super.
- C. This Deed contains the operative governing rules of Prime Super and is effective on and from the date of this Deed.

This Deed Witnesses:

1. Definitions

1.1 Defined Terms in this Deed

In this Deed, unless the context otherwise requires:

Account means an account established and maintained by the Trustee under this Deed for administering the Fund on behalf of Members, and includes an Accumulation Account or Pension Account, as described in this Deed, or any other account that the Trustee determines to operate subject to the Law.

Account Based Pension means a pension that meets the definition, description and standards of an account-based pension under the SIS Regulations, and specifically Regulations 1.03(1) and 1.06(9A).

Accumulation Account means any accumulation account established and maintained by the Trustee under clause 27.

Actuary means:

- (a) a person who is fellow or an accredited member of the Institute of Actuaries of Australia (**Institute**) or any body which replaces or succeeds the Institute (**Fellow**);
- (b) a partnership where at least one of the partners is a Fellow who provides actuarial advice; or

- (c) a company which employs a Fellow for the purpose of providing actuarial advice.

AFS Licence means an Australian financial services licence as defined in section 9 of the Corporations Act.

Allocated Pension means a pension that meets the definition, description and standards of an allocated pension under the SIS Regulations, and specifically Regulations 1.06(4) and 1.07A.

Annuity means an annuity within the meaning of section 10 of the SIS Act and Regulation 1.05 of the SIS Regulations.

Approved Superannuation Entity means any superannuation entity, annuity, retirement savings account, eligible rollover fund, eligible non-resident non-complying superannuation fund, or any other superannuation fund or benefit arrangement, into which or from which a Beneficiary's Superannuation Interest can be transferred, rolled over or allocated into, or from, the Fund, without contravening the Law.

Balance Date means 30 June in each year or any other date that the Trustee determines for accounting purposes to be the balance date for the end of a 12 month financial year (or such other period) of the Fund.

Beneficiary means a Member, a Dependant, a trustee for a Dependant, the Member's Legal Personal Representative, a Reversionary Beneficiary, or any other person who is entitled under the Law to be paid a Benefit in respect of a Member's Superannuation Interest in the Fund.

Beneficiary Nomination means a Binding Nomination; a Beneficiary Statement of Wishes; or any other form of written nomination given by a Member to the Trustee stating how the Member directs or wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

Beneficiary Statement of Wishes means any written nomination howsoever called in a form prescribed by the Trustee given by a Member to the Trustee stating how the Member wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member.

Benefit means a benefit, pension or monetary amount which is paid, or may become payable, by the Trustee to a Beneficiary as a Superannuation Benefit, subject to the Trustee being satisfied of the Beneficiary's entitlement to the amount or to receive the payment under the Law.

Binding Nomination means any written nomination howsoever called in a form prescribed by the Trustee and as permitted under the SIS Regulations given by a Member to the Trustee directing how the Trustee is to pay all or part of a Benefit in respect of the Member on the death of the Member.

Child has the same meaning as in the SIS Act.

Child Contribution means a payment made to the Fund as a Contribution by a person on behalf of a Member that is a Child, and permitted under the Law.

Co-contribution Act means the *Superannuation (Government Co contribution for Low Income Earners) Act 2003* (Cth).

Complying Superannuation Fund means a trust or fund that is a:

- (a) superannuation fund within the meaning of section 10 of the SIS Act;

- (b) regulated superannuation fund within the meaning of section 19 of the SIS Act;
- (c) complying superannuation fund within the meaning of section 45 of the SIS Act; and
- (d) Australian superannuation fund within the meaning of section 295-95 of the Income Tax Act.

Concessional Taxation Treatment means any and all of the most favourable concessions under the Income Tax Act that are available to a superannuation fund or relating to superannuation, including Taxation concessions in respect of:

- (a) Contributions accepted by the Fund;
- (b) income and earnings derived from the investments of the Fund;
- (c) Benefits; and
- (d) any other matter concerning the Fund, Trustee or Beneficiaries as governed under this Deed.

Condition of Release means a condition of release as defined in Regulation 6.01(2) of the SIS Regulations.

Constitution means a company constitution as defined in section 9 of the Corporations Act.

Constitutional Corporation means a body corporate that is:

- (a) a trading corporation; or
- (b) a financial corporation,

and formed within the limits of the Commonwealth of Australia and within the meaning of paragraph 51(xx) of the Constitution of the Commonwealth of Australia.

Contribution means a gross payment made to the Fund (prior to deduction of any Taxation payable in respect of the payment) and accepted by the Trustee as a contribution to the Fund by or on behalf of a Member in accordance with this Deed, including:

- (a) any Child Contribution, Employer Contribution, Government Contribution, Member Contribution or Spouse Contribution;
- (b) a payment that is otherwise permitted as, or deemed to be, a contribution under the Law; and
- (c) a Rollover Payment or any other amounts which are transferred or rolled over to the Fund from an Approved Superannuation Entity.

Corporations Act means the *Corporations Act 2001* (Cth).

Deed means this Trust Deed and includes any schedule, annexure or appendix to this Trust Deed.

Dependant has the same meaning as in the SIS Act.

Director means a person who is a director, as defined in Section 9 of the Corporations Act, of the Trustee.

Eligible Person means any individual who is permitted under the Law to be admitted as a member of a Complying Superannuation Fund.

Employee means a person who is an employee within the meaning of section 12 of the SGA Act.

Employer means the employer (as defined in the Income Tax Act) of an Employee who is accepted by the Trustee to participate as an Employer Sponsor or from whom the Trustee accepts an Employer Contribution.

Employer Contribution means a gross payment to the Fund made as an employer contribution on behalf of a Member by the Member's Employer.

Employer Sponsor has the same meaning as in the SIS Act and, for the avoidance of doubt, includes a Standard Employer Sponsor and an employer that is not a Standard Employer Sponsor.

Family Law Act means the *Family Law Act 1975* (Cth).

Financial Year means a period of twelve months ending on the Balance Date.

Fixed Term Pension means a pension (also known as a **life expectancy pension**) payable for a fixed term based on the life expectancy of the primary Pensioner or his or her Spouse that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(7) and 1.07B.

Flexi Pension means a pension (also known as a **commutable lifetime pension**) that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(6) and 1.07B.

Fund (or **Prime Super**) means the superannuation fund known as Prime Super (ABN: 60 562 335 823) and RSE registration number R1000276.

Gainfully Employed has the same meaning as in the Law.

Government Contribution means a co-contribution made by the Commonwealth of Australia on behalf of a Member under the Co-contribution Act.

Income Tax Act means the *Income Tax Assessment Act 1936* (Cth) and/or *Income Tax Assessment Act 1997* (Cth) as the context requires.

Insured Component means the amount (if any) paid to or received by the Trustee under a Policy of Insurance to provide for funding the payment of a Member's Benefit or for any other purpose in relation to a Member less any part of that amount that the Trustee determines in its discretion to credit to a Reserve Account or to any other Account in respect of the Member in accordance with this Deed.

Insurer means any insurer or assurer selected by the Trustee to provide a Policy of Insurance under this Deed.

Investment Strategy means the investment strategy of the Fund determined by the Trustee under clause 12.5 as required under the Law.

Law means:

- (a) any provision of any statute, regulation, proclamation, ordinance or by-law; or

- (b) any declaration, determination, direction or ruling made by any Responsible Authority,

which:

- (a) applies to the Trustee;
- (b) applies to the Fund or any part of the Fund;
- (c) the Fund must satisfy to qualify for Concessional Taxation Treatment;
- (d) the Trustee or the Fund must satisfy to avoid any penalty, detriment or disadvantage which is or may be incurred or become payable in connection with the Fund or anything done or to be done under this Deed;
- (e) the Trustee or the Fund must comply with to ensure that the Trustee remains an approved trustee for the Fund or continues to hold an RSE Licence; or
- (f) the Trustee or the Fund must satisfy in order for the Trustee to be authorised to offer a MySuper Product,

and for the avoidance of doubt, section 35B of the *Trustee Act 1936* (SA) does not apply to the Trustee, the Fund or this Deed.

Legal Personal Representative has the same meaning as in the SIS Act.

Lifetime Pension means a pension (also known as a **non-commutable complying pension**) payable for the lifetime of the primary Pensioner that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(2) and 1.07B.

Market-Linked Pension means a market linked pension (also known as a **Term Allocated Pension** or **Growth Pension**) as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulations 1.06(8) and 1.07C.

Member means an Eligible Person who is admitted to membership of the Fund by the Trustee under this Deed and **Membership** means membership of the Fund.

Member Contribution means a gross payment to the Fund made by a Member as a contribution.

Minimum Benefits means the minimum benefits of a Member within the meaning of the Benefit Protection Standards contained in Part 5 of the SIS Regulations.

MySuper Product means a class of beneficial interest in the Fund that is a "MySuper product" as defined in section 10(1) of the SIS Act (**MySuper product**) because:

- (a) in relation to that class, this Deed satisfies the characteristics of a MySuper product in section 29TC (Characteristics of a MySuper product) of the SIS Act and any other relevant requirement of the Law; and
- (b) the Trustee is authorised under section 29T (Authority to offer a MySuper product) of the SIS Act to offer that class as a MySuper product.

Nominated Beneficiary means a person, being a Legal Personal Representative or Dependant, nominated in writing by a Member under a Beneficiary Nomination as the desired recipient of a Benefit that is or becomes payable following the death of that Member.

Non-commutable Allocated Pension means a non-commutable allocated pension as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

Non-commutable Income Stream means a non-commutable income stream as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

Non-commutable Pension means a non-commutable pension (including pensions known as a **Non-commutable Market Linked Pension** or a **Non-commutable Term Allocated Pension**) as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulation 6.01(2).

Old-Age Pension means an old-age pension as defined under paragraph 51(xxiii) of the Constitution of the Commonwealth of Australia.

Pension means a Benefit that is provided by the Fund as a pension or superannuation income stream, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and that the Trustee determines in its discretion to offer to Members and pay from the Fund, and may as determined by the Trustee include any of the following pensions as described in this Deed:

- (a) Account Based Pension;
- (b) Allocated Pension;
- (c) Fixed Term Pension;
- (d) Flexi Pension;
- (e) Lifetime Pension;
- (f) Market-Linked Pension;
- (g) Non-commutable Allocated Pension;
- (h) Non-commutable Income Stream;
- (i) Non-commutable Pension;
- (j) Old-Age Pension;
- (k) Transition to Retirement Income Stream; or

any other commutable or non-commutable pension or other income stream that the Law permits the Trustee to pay from the Fund.

Pension Account means any pension account established and maintained by the Trustee under clause 27 for the payment of a Pension.

Pensioner means a Member or Beneficiary who is entitled to receive or has applied to receive a Pension and is in receipt of a Pension under this Deed, including a primary pensioner and, following the death of the primary pensioner, any reversionary pensioner.

Permanent Incapacity in relation to a Member (as applicable):

- (a) who has ceased to be Gainfully Employed, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is

unlikely, because of the ill-health, to engage in gainful employment for which the Member is reasonably qualified by education, training or experience; or

- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term **Permanent Incapacity** (or the term **Total and Permanent Disability** or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means permanent incapacity as defined in Regulation 6.01(2) of the SIS Regulations;

and **Permanently Incapacitated** has a corresponding meaning.

Permanent Incapacity Benefit means a Benefit a Member is entitled to receive upon the Member becoming Permanently Incapacitated.

Policy of Insurance means any policy of insurance or assurance obtained by the Trustee on behalf of a Member or group of Members for the life, endowment, term, disablement, accident, income protection or sickness of a Member, or any insurance product permitted by Law, including an individual policy, a group policy, and a policy under which the proceeds will be payable to the Trustee on the occurrence of an insured event in respect of a Member.

Prescribed Event means a Condition of Release or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Law.

Preservation Age has the same meaning as given by Part 6 of the SIS Regulations and the Income Tax Act.

Preservation Age Benefit means the Benefit a Member is entitled to receive upon the Member reaching his or her Preservation Age.

Qualified Advisor means an investment manager, custodian, accountant, auditor, barrister, lawyer, actuary, real estate agent, medical practitioner or other professional person who the Trustee considers is capable of providing a service in connection with the Fund or this Deed.

Reserve Account means any reserve account established and maintained by the Trustee under clause 28.

Responsible Authority means, as applicable to the Law, the Australian Prudential Regulation Authority (**APRA**), Australian Securities and Investments Commission, the Australian Transaction Reports and Analysis Centre, the Office of the Australian Information Commissioner, the Australian Taxation Office, the Commissioner of Taxation, the Department of Family and Community Services, the Superannuation Complaints Tribunal and any other government or statutory authority or office which is responsible for administering or regulating the Law.

Reversionary Beneficiary means a Beneficiary who succeeds a Member to the entitlement of the Member to the payment of a Benefit, including a person who is nominated by a primary pensioner, or appointed by the Trustee in the Trustee's discretion, as a reversionary pensioner to continue receiving a Pension established for the primary pensioner following the death of the primary pensioner.

Rollover Payment means any payment of a Member's Benefit rolled over by the Trustee within the Fund or to any other Approved Superannuation Entity or payment rolled over to the Trustee on behalf of a Member from any Approved Superannuation

Entity and includes any roll-over superannuation benefit within the meaning of section 306-10 of the Income Tax Act.

RSE Licence has the same meaning as in section 10 of the SIS Act.

SGA Act means the *Superannuation Guarantee (Administration) Act 1992* (Cth).

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

SIS Regulations means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

Spouse has the same meaning as in the SIS Act.

Spouse Contribution means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted under the Law.

Standard Employer Sponsor has the meaning set out in the SIS Act.

Superannuation Benefit means a superannuation fund payment made from the Fund as described in Item 1 of the Table in section 307-5(1) of the Income Tax Act and includes any Superannuation Death Benefit or any Superannuation Member Benefit.

Superannuation Death Benefit means a superannuation death benefit as described in section 307-5 of the Income Tax Act and includes any payment to a Beneficiary from the Fund after another person's death, because the other person was a Member.

Superannuation Interest means a superannuation interest as defined in section 995-1(1) of the Income Tax Act.

Superannuation Member Benefit means a superannuation member benefit as described in section 307-5 of the Income Tax Act and includes any payment to a Beneficiary from the Fund because the Beneficiary is a member of the Fund.

Tax means any tax, surcharge, levy, impost, duty or other amount that is paid or payable by, or allowable taxation deduction to, the Trustee on behalf of the Fund or any Member or any Beneficiary in respect of any Benefit, or any person in respect of any Contribution, including income tax, capital gains tax, payroll tax, land tax, goods and services tax, and stamp duty and Taxation has a corresponding meaning.

Temporary Incapacity in relation to a Member:

- (a) who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental), that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term **Temporary Incapacity** (or the term **Temporary Disability** or any other equivalent term) in that Policy of Insurance that insures the Member for that contingency; or
- (c) means temporary incapacity as defined in Regulation 6.01(2) of the SIS Regulations;

and **Temporarily Incapacitated** has a corresponding meaning.

Temporary Incapacity Benefit means a Benefit a Member is entitled to receive upon the Member becoming Temporarily Incapacitated.

Transition to Retirement Income Stream means a pension that meets the definition, description and standards of a transition to retirement income stream under the SIS Regulations, and specifically Regulations 1.06(9A) and 6.01(2).

Trustee means the party named as the Trustee in this Deed or any person who subsequently assumes the role of the trustee of the Fund under this Deed.

1.2 Defined Terms in an Act

An expression used in this Deed which is defined in an Act but is not otherwise defined in this Deed, is deemed to have the same meaning in this Deed as it has in the Act unless the context otherwise requires.

2. Interpretation

In this Deed, unless the context otherwise requires:

- (a) Headings and underlinings are only for convenience and emphasis respectively and do not affect the interpretation of this Deed;
- (b) A reference to the singular include the plural and vice versa;
- (c) A reference to a gender includes any gender;
- (d) A reference to a natural person includes any company, partnership, joint venture, association, trust or other body corporate;
- (e) A reference to any thing includes a part of that thing;
- (f) A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed;
- (g) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (i) A reference to a party to any document includes that party's successors and permitted assigns;
- (j) A matter which is stated as being included in the scope of an expression or a clause does not limit the scope and generality of that expression or that clause;
- (k) A reference to **\$** or **Dollars** means the lawful currency of the Commonwealth of Australia.

3. Fund is Subject to Requirements of the Law

3.1 Deemed Inclusion of Law and Powers under the Law

This Deed must be read and construed so as to also include in addition to the clauses in this Deed:

- (a) all relevant prohibitions, requirements of, and standards and covenants prescribed in, the Law with which the Fund or the Trustee (for both) must comply or satisfy (for so long as they are required by the Law) in order for:
 - (i) the Fund to obtain or maintain the status of a Complying Superannuation Fund;
 - (ii) the Fund to qualify for Concessional Taxation Treatment;
 - (iii) neither the Fund nor the Trustee to become liable for any penalty or obligation under the Law for which it would not otherwise be liable; or
 - (iv) the Fund and the Trustee to offer, and the Trustee to be authorised by the relevant Responsible Authority to offer, a MySuper Product; and
- (b) all relevant discretions, powers and authorities conferred by the Law on the Trustee under which the Trustee may act.

3.2 Trustee's Powers and Compliance with Law

Without limitation to the operation of clause 3.1, in relation to the Trustee's exercise of its powers, discretions, authorities and obligations relevant to the management, administration and control of the Fund under this Deed, the Trustee:

- (a) may do anything that it is permitted to do or not restricted from doing under the Law;
- (b) must do everything that it is required to do under the Law in order to satisfy the Law, including complying with any direction by a Responsible Authority in relation to a MySuper Product; and
- (c) must refrain from doing anything that it is prohibited from doing under the Law, or which would cause a breach of, or non-compliance with, the Law.

3.3 Inconsistency between Deed and Law

Despite anything to the contrary in this Deed, if there is any inconsistency or conflict between a provision of this Deed and a relevant provision of the Law, the Law will prevail over this Deed to the extent of that inconsistency or conflict.

3.4 Deemed Inclusion of Conditions regarding Pensions

Where the Trustee determines to issue a Pension from the Fund on the basis that it qualifies as a pension (or a particular type of pension) under the Law, any condition, standard or requirement of the Law which is required to be satisfied in order for the Pension to qualify as a pension (or as a particular type of pension) under the Law is deemed to be included in this Deed for so long as it is so required.

3.5 Certain Provisions Void

Without limitation to the operation of clause 3.3, a provision of this Deed is void to the extent that it:

- (a) would prevent this Deed from satisfying the requirements of section 29TC (Characteristics of a MySuper product) of the SIS Act;
- (b) is inconsistent with:
 - (i) the obligations that apply to the Trustee under section 29VN (Additional obligations of a trustee in relation to a MySuper product) of the SIS Act; or
 - (ii) the obligations that apply to the Directors under section 29VO (Additional obligations of a director of a corporate trustee in relation to a MySuper product) of the SIS Act;
- (c) would prevent the Trustee from giving effect to an election made in accordance with sections 29SAA (Election to transfer accrued default amounts) to a MySuper product or 29SAB (Election to transfer assets attributed to a MySuper product if authorisation cancelled) of the SIS Act, or a requirement in regulations made for the purposes of sub-section 29SAA(3) of the SIS Act;
- (d) would have the effect of allowing the Trustee:
 - (i) to indemnify itself out of the assets of the Fund for any amount expended out of capital of the Trustee managed and maintained by the Trustee to cover the operational risk of the Fund;
 - (ii) to indemnify itself out of any assets of the Fund that do not form part of a reserve maintained for the purpose of covering the operational risk relating to the Fund, any amount that relates to that risk, without first exhausting the reserve and any other financial resources managed and maintained by the Trustee to cover the risk;
- (e) specifies:
 - (i) a person or persons (whether by name or in any other way, directly or indirectly) from whom the Trustee may or must acquire a service;
 - (ii) an entity or entities (whether by name or in any other way, directly or indirectly) in which one or more of the assets of the Fund may or must be invested;
 - (iii) (whether by name or by reference to an entity) a financial product or financial products:
 - (A) in or through which one or more of the assets of the Fund may or must be invested; or
 - (B) in relation to which one or more assets of the Fund may or must be used to make payments,

provided that sub-clauses (i), (ii) and (iii) above do not apply if the relevant person, entity or financial product is specified, or is required to be specified, in the law of the Commonwealth of Australia, or a State or Territory of Australia;

- (f) purports to preclude a Director from voting on a matter relating to the Fund, other than in circumstances described in section 68C(3) (Voting by a director of a corporate trustee – governing rules) of the SIS Act; or
- (g) relates to any other matter expressed by Law to be void.

4. Complying Superannuation Fund

The Trustee must use all reasonable endeavours to ensure that the Fund operates at all relevant times as a Complying Superannuation Fund.

5. Trustee Holds Fund on Trust

The Trustee must continue to hold the Fund upon trust for the Beneficiaries subject to the trusts, powers, authorities, discretions and obligations contained in this Deed.

6. Composition of the Fund

The Fund consists of all cash, monies, investments and other property held by or on account of the Trustee under this Deed including:

- (a) Contributions made to the Fund under this Deed;
- (b) any other monies or assets (including Rollover Payments) paid or transferred to the Trustee under this Deed;
- (c) income arising from investments of the Fund;
- (d) any accretions to or profits arising from investments of the Fund;
- (e) any other distribution, dividend or gift paid to and accepted by the Trustee as an accretion to the Fund;
- (f) the proceeds (including bonuses) of any Policy of Insurance received by the Fund; and
- (g) any other money, property or investment which is or becomes held by or on account of the Trustee on the trusts of this Deed.

7. Details of the Trustee

7.1 Qualifications and Requirements

The Trustee must at all times:

- (a) be a Constitutional Corporation;
- (b) not be a disqualified person within the meaning of the SIS Act;
- (c) hold an RSE Licence; and
- (d) hold an AFS Licence.

7.2 Appointment and Retirement of Trustee and Directors to comply with Law

- (a) If the Fund does not have a trustee at any time then the former Trustee (if it has the capacity), and otherwise at least two thirds in number of the

shareholders of the former Trustee at the time when it ceased to be the Trustee of the Fund, may appoint a new Trustee by instrument made in writing.

- (b) The appointment, retirement or removal of a Trustee or a Director must comply with the Law.

7.3 Cessation of Trustee

The Trustee ceases to be the trustee of the Fund when:

- (a) the Trustee retires provided that upon its retirement the Trustee appoints a new Trustee as its replacement (**Replacement Trustee**) and the Replacement Trustee satisfies clause 7.1 at the date of its appointment; or
- (b) it is disqualified or removed from the office of Trustee by operation of the Law.

7.4 Continuity of Office

A Trustee that ceases to be the trustee of the Fund must do everything reasonably necessary or required to vest the Fund in the new Trustee and to deliver all records and other books in the outgoing Trustee's possession or control to the new Trustee.

7.5 Notification to Responsible Authority

- (a) The Trustee must give notice in writing to the Responsible Authority of any matter that constitutes a notifiable event in accordance with the Law.
- (b) The Trustee must inform APRA in writing of any event that may affect the Trustee's ability to perform, in a proper manner, its duties as trustee of the Fund as required by the SIS Act.

8. Proceedings of the Trustee

8.1 Meetings

Subject to the terms of this Deed, and the terms of the Trustee's Constitution, the Trustee may meet, adjourn and regulate its meetings concerning the business of the Fund as the Trustee sees fit.

8.2 Inconsistency

If any term of the Trustee's Constitution is inconsistent with a term of this Deed, the term of this Deed prevails to the extent of the inconsistency.

9. General Powers of the Trustee

9.1 Trustee has Complete Management and Control

The Trustee has complete management and control of the Fund and may, without limitation:

- (a) exercise all the powers, discretions and rights of a natural person beneficially owning the Fund in order to administer, manage, maintain and invest the Fund and perform its duties in respect of all proceedings, investments and matters concerning the Fund; and

- (b) do all things it considers necessary, desirable or expedient for the proper application, administration, maintenance and preservation of the Fund,

subject to this Deed and the Law.

9.2 Trustee May do all Acts in Exercise of Powers/Obligations

Subject to clause 3.2, the Trustee may do all acts and things, including accepting Contributions and paying Benefits, which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's discretions, powers, authorities and obligations under the Deed.

9.3 Powers Additional to Powers Given under the Law

Subject to clause 3.3, the Trustee's powers, authorities and discretions under this Deed are in addition to, and not in substitution for, the powers, authorities and discretions vested in or exercisable by the Trustee under the Law.

9.4 Conflicts of Interest

- (a) The Trustee may exercise or concur in exercising all the powers and discretions contained in this Deed or otherwise conferred by the Law notwithstanding that:
 - (i) any person who is a Director or shareholder of the Trustee:
 - (A) has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or as a shareholder or director or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise howsoever) in the mode or result of exercising such power or discretion; or
 - (B) may benefit either directly or indirectly as a result of the exercise of any such power or discretion; and
 - (ii) the Trustee for the time being is the sole Trustee of the Fund.
- (b) The Trustee may prevent a Director from voting on any resolution if:
 - (i) that Director has a material personal interest in relation to the resolution; or
 - (ii) that Director has a conflict of a kind described by the Law in relation to the resolution; or
 - (iii) necessary to ensure compliance by the Trustee, Board or that Director with the Law or any Trustee policy or guideline dealing with conflicts of interest or duty.

10. Specific Management Powers of the Trustee

Without limitation to clause 9, but subject to clause 12, the Trustee has the following powers:

- (a) **Appoint and Pay Managers and Others**

To appoint, remove or suspend employees, administrators, clerks, agents, representatives, nominees and other persons as the Trustee considers appropriate, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, fees and charges.

(b) **Legal Proceedings**

- (i) To settle, compromise or submit to arbitration or to a court of law, any doubt, dispute, claim, controversy or difficulty whatsoever arising out of or relating to this Deed or the construction of any provision in this Deed, the Fund or the rights of a Beneficiary and to act on the award or determination of the arbitrator or court, or where a Beneficiary submits a dispute to a Responsible Authority, on a determination of the Responsible Authority; and
- (ii) To commence, carry on or defend proceedings relating to the Fund or to the rights of a Beneficiary or a former Beneficiary.

(c) **Compound Debts**

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund.

(d) **Arbitration**

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator.

(e) **Receipts and Discharges**

To make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund.

(f) **Bank Accounts**

To open and maintain bank accounts for the Fund and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques.

(g) **Seek Advice**

To act on the advice of any Qualified Advisor (whether or not that advice was obtained by the Trustee) in relation to any matter concerning the Fund without being liable to any person in respect of anything done or not done by the Trustee in good faith based on that advice.

(h) **Disclose Information**

To disclose information relating to the Fund, including information it has about any Member and the interest of any Member in the Fund, subject to any restriction imposed by any Law.

(i) **Signatories**

To determine who is entitled to give and sign in respect of the Fund or any part of the Fund for receipts, acceptances, endorsements, releases, contracts and other documents.

(j) **Borrow and Raise Money, Give Indemnity and Security**

- (i) To give undertakings and indemnities, enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit, including borrowing or raising money, giving a guarantee or indemnity in respect of any obligation assumed or undertaken by the Trustee in connection with the Fund and to secure such obligation by charge or mortgage or any other form of encumbrance over all or part of the Fund; and
- (ii) To indemnify, or undertake to indemnify, any person in respect of any claim, matter or thing relating to the Fund or to the rights of a Beneficiary in respect of the Fund.

(k) **Receive Distributions, Dividends & Gifts**

To receive any distribution, dividend or gift which is tendered to the Fund.

(l) **Maintain Property**

To repair, paint, alter, rebuild, improve and generally maintain any property whether real or personal and whether freehold or leasehold for the time being comprising part of the Fund.

(m) **To Pay Rates and Taxes**

To pay all rates, taxes, costs, charges, insurance premiums, expenses and outgoings of whatever nature payable in connection with the maintenance, upkeep and management of the property comprising the Fund.

(n) **Lease Property**

To lease or sub-lease any property (whether real or personal) comprising part of the Fund for such period and at such rent and subject to such terms and conditions as the Trustee may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases.

(o) **Sell Property**

To sell or otherwise dispose of any property comprising part of the Fund at such price and upon such terms and conditions and in such manner as the Trustee thinks fit.

(p) **Undertaking and Contracts**

To give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit.

(q) **Insurance and Premiums**

To effect a Policy of Insurance for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender, vary, assign or otherwise deal with a Policy of Insurance as the Trustee thinks fit.

(r) **Proxies and Powers of Attorney**

To give a proxy or a power of attorney (with or without powers of substitution) and appoint a representative for voting or acting on behalf of the Trustee in relation to the Fund and any property comprising part of the Fund.

(s) **Purchase Annuity**

To purchase an Annuity to provide all or a part of the Pension payable in respect of a Beneficiary.

(t) **Insurance of Property**

To insure and keep insured any property whether real or personal and whether freehold or leasehold for the time being comprising part of the Fund.

(u) **Insurance of Trustee and Directors**

To insure and keep insured any liability of the Trustee or the Directors or the liability of the Fund to indemnify or reimburse the Trustee or the Directors, as the case may be.

(v) **Qualified Advisors**

The Trustee may from time to time appoint (and may remove) any Qualified Advisor to advise the Trustee on matters that it considers desirable for the proper management and administration of the Fund.

(w) **MySuper Product**

To apply for and maintain authorisation from the relevant Responsible Authority to offer a MySuper Product.

11. Investment Powers of the Trustee

11.1 General Investment Powers of the Trustee

- (a) Without limitation to clause 9, but subject to clause 12, the Trustee may in the name of the Trustee or in the name of any custodian or nominee selected by the Trustee, invest the whole or any part of the Fund in any investment and in any manner (whether in Australia or elsewhere or whether involving liability or not) which the Trustee considers to be a suitable investment for the Fund having regard to the Investment Strategy, this Deed and the Law.
- (b) For the avoidance of doubt, the Trustee may, but is not obliged to, in its absolute discretion, arrange the investments of the Fund so that they form a single common scheme or more than one investment option.

11.2 Specific Investment Powers of the Trustee

The Trustee may, subject to any requirements under the Law, invest the assets of the Fund in any one or more of the following:

- (a) **Authorised Trustee investments:** any investment from time to time authorised by law for the investment of trust money.
- (b) **On deposit:** on deposit with any bank, building society, credit co-operative, trustee company or other registered financial institution or with any other

person approved by a Responsible Authority or any Employer in any type of account either with or without security at such rate of interest and on such terms as the Trustee may determine.

- (c) **Acquisition of securities:** in the acquisition by subscription or by purchase or otherwise of fully or partly paid shares, stock, debentures, bonds, notes or other securities, obligations or other financial instruments howsoever called in any company (including any Employer).
- (d) **Acquisition of units:** in the acquisition of units, sub-units or other fractional interests howsoever called whether divided or undivided in or of any unit trust (whether fixed or flexible), managed investment scheme (as defined under section 9 of the Corporations Act) or such other scheme that is in the nature of a unit trust.
- (e) **Acquisition of property:** in the acquisition of any property (whether real or personal) or any interest in property whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income at the date it is acquired or purchased.
- (f) **Acquisition of mortgages:** in the acquisition of mortgages over freehold or leasehold property or other form of property as the Trustee considers appropriate either by direct loan or by purchase at a discount or otherwise.
- (g) **Acquisition of businesses:** in the acquisition of an interest in any business (including a business of primary production) or a partnership (including a limited partnership).
- (h) **Derivative transactions, options and warrants:** in derivative contracts including options and warrants in compliance with clause 12.7.

11.3 Dealing with Investments as Beneficial Owner

The Trustee may deal with any investment of the Fund as authorised by this Deed as fully and effectively as a person absolutely and beneficially entitled to do so as if it is dealing with its own property.

11.4 The Trustee may have Interest in Investments

- (a) The Trustee may make or vary any of the investments authorised under this Deed even if the Trustee may directly or indirectly have a personal interest in or may personally benefit from the investment.
- (b) The Trustee and a Director must disclose details of their interest in any investment in any manner that is required under the Law.

11.5 Policies of Insurance

- (a) The Trustee may obtain and maintain insurance over risks and liabilities in respect of the Fund including:
 - (i) Policies of Insurance on behalf of a Member to secure the Benefit of a Member; and
 - (ii) insurance in respect of the Fund's assets, the Trustee's liabilities or both.

- (b) A Member may request the Trustee to obtain a Policy of Insurance and may specify the type of Policy of Insurance to be obtained. The Trustee has no responsibility to the Member or the Dependants of the Member to obtain that Policy of Insurance.
- (c) The Trustee may debit the premiums or any part thereof for any Policy of Insurance and any additional fees or costs charged by the Trustee incidental to administering the Policy of Insurance to:
 - (i) a Reserve Account; or
 - (ii) the Account of the Member for whom the Policy of Insurance is obtained,
 in such proportions and manner as the Trustee may determine from time to time.
- (d) The Trustee is at liberty to reduce or abandon insurance cover in relation to a Member with the Member's consent or if the Member's age, ill-health or other circumstances makes it too costly or impracticable to effect or continue that insurance cover.
- (e) Unless the Trustee determines otherwise, the Insured Component for funding the payment of a Member's Benefit or for any other purpose in relation to a Member must, subject to the Law, be equal to the amount (if any) paid to, or received by, the Trustee under the Policy of Insurance in order to provide the Insured Component less any part of that amount that the Trustee determines in its discretion to credit to a Reserve Account or to any other Account applicable to the Member.
- (f) The Trustee is not liable for any loss suffered by the Fund or any Beneficiary as a result of:
 - (i) no, insufficient or inadequate insurance being effected by the Trustee whether the loss was foreseeable or not; or
 - (ii) an Insurer failing to pay out on a Policy of Insurance, or an insurer failing to pay out under any other policy of insurance effected by the Trustee, in whole or in part for whatever reason.

11.6 Prudent Investment Rules

Subject to clause 12, and without limiting the matters that the Trustee may take into account when exercising a power of investment, the Trustee may, so far as it considers it is appropriate to do so in respect of the Fund, have regard to the:

- (a) purpose of the Fund and the needs and circumstances of the Members;
- (b) desirability of diversifying the Fund's investments;
- (c) nature of and risk associated with the existing investments and property of the Fund;
- (d) need to maintain the real value of the capital or income of the Fund;
- (e) risk of capital or income loss or depreciation;
- (f) potential for capital appreciation;

- (g) likely income return and timing of income return;
- (h) length of the term of the proposed investment;
- (i) liquidity and marketability of the proposed investment during, and on the determination of the term of the proposed investment;
- (j) aggregate value of the Fund;
- (k) effect of the proposed investment in relation to the tax liability of the Fund;
- (l) likelihood of inflation affecting the value of the proposed investment or other property of the Fund; or
- (m) costs (including commissions, fees, charges and duties payable) of making the proposed investment.

12. Compliance with the Law - Investments

12.1 General Requirement

The Fund may only be invested in a manner that will not cause the Fund or the Trustee to be in breach of the Law.

12.2 Borrowing by the Trustee

The Trustee may borrow money or maintain an existing borrowing of money only in a manner that is not prohibited under the Law.

12.3 Lending to Members

The Trustee may only allow any money of the Fund to be lent, or any financial assistance using the resources of the Fund to be given, to a Member or a relative of a Member in a manner that is not prohibited under the Law.

12.4 Acquisition of Certain Assets from Members or a Related Party

The Trustee may only intentionally acquire or allow to be acquired on behalf of the Fund an asset from a related party of the Fund in a manner that is not prohibited under the Law.

12.5 Statement of Investment Strategy

The Trustee must formulate, prepare and maintain an investment strategy that sets out the investment objectives of the Fund and the policy to achieve those objectives and incorporates any other matters which are necessary for the Trustee to comply with the Deed and the Law.

12.6 Member Investment Choice

- (a) The Trustee may choose in the Trustee's absolute discretion to adopt and offer to Members (or a specific class of Members) a choice of two or more individual investment options (**Investment Options**) from which a Member (or a class of Members) may choose one Investment Option or a combination of individual Investment Options (**Member Investment Choice**).
- (b) The Trustee must give directions to the Members (or each Member of the class of Members):

- (i) identifying the investment objectives of each Investment Option;
 - (ii) providing all information which the Trustee reasonably believes a person would reasonably need for the purpose of understanding the objectives, effect of, and any risk involved in, each of those Investment Options, as if each Investment Option offered was the Investment Strategy for the Fund as a whole;
 - (iii) providing full information of the range of directions that can be given by the Trustee and the circumstances in which they can be changed; and
 - (iv) identifying the particular Investment Option the Trustee will adopt for a Member (or each Member of a class of Members) if no choice is made by the Member (or each Member of the class of Members), unless it is a condition of membership that the Member must choose a particular Investment Option or combination of Investment Options.
- (c) In determining two or more individual Investment Options to offer as a choice to Members, the Trustee must consider:
 - (i) the circumstances of the Fund as a whole in making the Member Investment Choice available as part of the Fund's Investment Strategy; and
 - (ii) regularly monitor the changes in circumstances of the Fund as a whole to assess whether an Investment Option remains appropriate.
- (d) If the Trustee offers Member Investment Choice, the Trustee must if required under the Law advise the Responsible Authority of the number of Investment Options which are offered as choices.
- (e) The Trustee may cease to offer or make any variation to the offering of Member Investment Choice. If so, the Trustee must:
 - (i) give Members the opportunity to provide further directions to the Trustee; and
 - (ii) advise Members of the default Investment Option that will be adopted unless the Member instructs otherwise.
- (f) Subject to the Law, the Trustee may from time to time:
 - (i) alter the Member Investment Choice investment options in respect of the Fund or any investment option within the Fund;
 - (ii) restrict or limit the class of Members who may invest in an investment option;
 - (iii) close an investment option to either new Members or to additional investments of existing Members in the investment option;
 - (iv) combine two or more investment options;
 - (v) split an investment option into two or more investment options;
 - (vi) terminate an investment option by cashing the investments of the investment option and reinvesting those monies into one or more other investment options or a single common fund; or

- (vii) undertake such other action as the Trustee considers appropriate, desirable or necessary.

12.7 Derivative Transactions

The Trustee may invest in derivative transactions provided that:

- (a) the proposed derivative transaction complies with the Investment Strategy;
- (b) if required under the Law, the Trustee has adopted an appropriate risk management statement or policy in respect of derivatives; and
- (c) if the derivative transaction involves the creation of a charge over the assets of the Fund, then the Trustee must prepare a risk management statement or policy as required under the Law.

13. Covenants by the Trustee and Directors

13.1 Covenants by the Trustee

The Trustee must comply with each standard and covenant that is prescribed under the Law. In particular, the Trustee covenants:

- (a) to comply and act in accordance with each of the covenants prescribed under the Law that are applicable to the Trustee or the Fund, including (with effect from 1 July 2013):
 - (i) the general covenants in section 52(2);
 - (ii) the investment covenants in section 52(6);
 - (iii) the insurance covenants in section 52(7); and
 - (iv) the covenants relating to risk in section 52(8);of the SIS Act, as if those covenants were contained in this Deed; and
- (b) if the Trustee offers a MySuper Product, to comply with any additional obligations imposed on the Trustee by Law in relation to the MySuper Product.

13.2 Covenants by the Directors

- (a) This clause 13.2 shall be deemed to operate as if the Directors were parties to this Deed.
- (b) Each of the Directors covenants to comply and act in accordance with each of the covenants prescribed under the Law that are applicable to the Directors, including the covenants in section 52A of the SIS Act, as if those covenants were contained in this Deed.
- (c) If the Trustee offers a MySuper Product, each Director must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the obligations in section 29VN of the SIS Act.
- (d) The reference in this clause to exercising a reasonable degree of care and diligence refers to the degree of care and diligence that a superannuation entity director would exercise in the Trustee's circumstances.

- (e) In clause 13.2(d), a **superannuation entity director** is a person whose profession, business or employment is or includes acting as director of a corporate trustee of a superannuation entity and investing money on behalf of beneficiaries of the superannuation entity.

14. Trustee's Discretion

14.1 Absolute Discretion

- (a) The Trustee has, in the exercise, non-exercise or partial exercise of a power or authority, an absolute, unfettered and uncontrolled discretion in its exercise, non-exercise or partial exercise.
- (b) The Trustee must not be subject to the direction of any other person (unless otherwise expressly required by the Law) in the exercise or non-exercise or partial exercise of any power, authority or discretion by the Trustee.

14.2 No Requirement to Give Reasons

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion by the Trustee.

14.3 Trustee's Decision Final

The decision of the Trustee in relation to any dispute on the interpretation of this Deed or the rights or obligations of a Beneficiary or the Trustee or any other person under this Deed will be final and binding on all interested persons.

14.4 Exercise of Discretion by Person Other than Trustee

A discretion given to the Trustee must not be exercised by any other person without the consent of the Trustee, unless permitted by the Law.

15. Delegation by Trustee

15.1 Trustee's Right to Delegate

Subject to the Law, the Trustee may delegate any power, authority, discretion or obligation exercisable by the Trustee to any person (**Delegate**) in a manner and on terms that the Trustee thinks fit.

15.2 Variation or Revocation to Delegation

The Trustee may vary or revoke any delegation and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

15.3 Scope of Delegation

The Delegate may only exercise a power, authority, discretion or perform an obligation, and only has powers for that purpose, that the Trustee expressly delegates to the Delegate.

15.4 Delegation to Member

A Member may be a delegate of the Trustee under clause 15.1 and may exercise any power vested in the Member in that position without prejudice to the Member's rights as a Member.

16. Remuneration of Trustee and Reimbursement for Expenses

16.1 Right to Charge Fees and Receive Remuneration

- (a) Subject to clause 16.1(d), the Trustee is entitled to charge and receive professional fees or other remuneration from the Fund for any amount and for any duties or services performed by the Trustee in its capacity as trustee of the Fund as set out under this Deed or in any product disclosure statement or other disclosure document provided by the Trustee to the Members or as permitted by Law.
- (b) The Trustee may, in accordance with the Law, charge fees to a Member as determined by the Trustee, for providing financial advice to the Member.
- (c) A Director is entitled to receive remuneration from the Fund as determined by the Trustee for any duties or services performed by the Director in relation to the Fund.
- (d) Any fees charged by the Trustee in relation to a MySuper Product must comply with any relevant requirement of the Law including sections 29V and 29VA of the SIS Act.

16.2 Indemnity and Reimbursement

Without limitation to clause 17.2, the Trustee is entitled to be indemnified by and reimbursed from the Fund for and in respect of:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, insurance, disposal of or other dealings with the investments of the Fund;
- (b) all fees, wages and expenses of any Qualified Advisor from time to time engaged by the Trustee under this Deed;
- (c) all Tax paid or payable by the Trustee in connection with the Fund and any Beneficiary on any account whatsoever;
- (d) all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund; and
- (e) any other costs, charges and expenses incurred or to be incurred in relation to the management or administration of the Fund.

17. Protection and Indemnity of the Trustee

17.1 Limitation of Liability - General

Subject to the Law, the Trustee will not be liable for any claim, liability, cost, loss, damage or expense incurred by or arising out of any act or omission in connection with this Deed or the Fund or the exercise, purported exercise or attempted exercise, or the performance, purported performance or attempted performance, of the Trustee's powers, discretions and duties.

17.2 Indemnity of Trustee

Subject to the Law, the Trustee is entitled to be indemnified out of the Fund for all liabilities incurred by the Trustee in the exercise, purported exercise or attempted

exercise of the trusts, powers, authorities and discretions given to the Trustee in this Deed.

17.3 Indemnity of Director

If a Director incurs a liability in respect of conduct or circumstances for which the Trustee is or would be entitled to be indemnified out of the Fund, the Director is entitled to be indemnified out of the Fund in respect of that liability.

17.4 Lien on Fund to Satisfy Indemnity

The Trustee may exercise a lien on, and use an asset of, the Fund for the purposes of satisfying the indemnity given to the Trustee and the Directors provided that the existence or exercise of the lien does not contravene the Law.

18. Accounting Records

18.1 Form of Accounting Records

The Trustee must establish and maintain accounting records in a form that:

- (a) correctly records and explains the transactions and financial position of the Fund;
- (b) enables the annual financial statements of the Fund to be prepared;
- (c) enables those accounting records to be conveniently and properly audited in accordance with this Deed and the Law; and
- (d) enables the annual returns of the Fund to be prepared and lodged in accordance with the Law.

18.2 Retention of Accounting Records

The Trustee must retain the accounting records for at least the minimum period required by the Law, and if the Law does not prescribe a minimum retention period, at least 10 years, after the end of the Financial Year to which the accounting records relate.

19. Valuation of the Fund

Following each Balance Date and any other date that the Trustee considers appropriate or is required under the Law, the Trustee must obtain a valuation of the Fund. The valuation must be reflected in the accounting records of the Fund.

20. Calculation of Investment Return and Earnings

- (a) Following each Balance Date, the Trustee may determine the investment return and investment earnings of the Fund for that Financial Year.
- (b) Subject to the Law, the Trustee must determine the investment return to be credited or debited to a Member's Benefit in a way that is fair and reasonable as between all the Members and the various kinds of Benefit of each Member.
- (c) At any point in time during a Financial Year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the

Fund for the purpose of applying that investment return in calculating the withdrawal benefit of a Member at that time.

21. Eligibility and Procedure for Membership

21.1 Eligible Person may Apply

An Eligible Person may apply to the Trustee to become a member of the Fund or the Trustee may invite an Eligible Person to become a member of the Fund. The Trustee has discretion in deciding whether or not to accept an Eligible Person as a Member.

21.2 Application Form

The Trustee may require as a condition of accepting an Eligible Person as a member of the Fund that the Eligible Person completes a written application in the form that the Trustee determines. The application form may make provision for:

- (a) all information which is required under the Law to be provided by the Trustee to the applicant and to be provided by the applicant to the Trustee;
- (b) the applicant providing (if the applicant chooses to do so) the Tax File Number of the applicant and an acknowledgement by the Trustee and/or Employer; and
- (c) the applicant providing the nomination of a Nominated Beneficiary.

21.3 Acceptance of Membership Application

- (a) If the Trustee accepts an application for membership from an Eligible Person, the Eligible Person becomes a member of the Fund on a date determined by the Trustee or, if the Trustee does not make a determination, on the date the application for membership is accepted by the Trustee.
- (b) The Trustee may accept an application for membership notwithstanding that the Eligible Person will have at that time a nil balance in the Fund if the Trustee is reasonably satisfied that the Fund may receive a Contribution made by or on behalf of the Eligible Person or the Eligible Person may become entitled to a Benefit on the death of a Member.

21.4 Deemed Acceptance of Application

Notwithstanding clauses 21.2 and 21.3, even if a completed written application form for membership is not requested by the Trustee or not provided by an Eligible Person, the acceptance by the Trustee of the payment of a Contribution made by or on behalf of the Eligible Person will be deemed to be acceptance of the Eligible Person as a Member on the date that the Contribution is accepted by the Trustee.

21.5 Members Bound by Deed

Each Eligible Person, on admission as a Member, is deemed to have approved of, and becomes bound by, this Deed as it relates to the rights and obligations of the Member.

21.6 Trustee to Notify Members of their Rights

The Trustee must notify each Member in writing of that Member's rights to receive Benefits from the Fund and of any other information in the form and at the times required under the Law.

21.7 Trustee May Impose Conditions on Members

The Trustee may impose, remove or vary any conditions on the rights and obligations of a Member.

21.8 Classification of Different Classes of Members

- (a) The Trustee may establish different classes of membership and classify Members into different classes of membership with rights and entitlements pertaining to each class as the Trustee may determine from time to time.
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as ordinary Members in one class of membership.
- (d) The Trustee may offer a MySuper Product as a class of membership of the Fund if the Trustee is authorised to do so by the appropriate Responsible Authority.

22. Cessation of Membership

22.1 How it Occurs

Subject to the Law and the Trustee's discretion to determine otherwise, each of the following events is a trigger event having the effect of causing a Member to cease his or her membership in the Fund:

- (a) when the Trustee requires that a Member cease membership of the Fund to comply with the Law including the Family Law Act or any agreement made under that Act;
- (b) when the Member makes a request to the Trustee for a transfer or rollover of the Member's Benefit in accordance with this Deed and the Trustee completes that request; or
- (c) when the Trustee determines to cease the Member's membership in accordance with this Deed.

22.2 When it Occurs

A person ceases to be a Member on:

- (a) the date on which Trustee pays out of the Fund all the Member's Benefit to or on behalf of the Member, whether by rollover, transfer or payment of Benefit; or
- (b) in the case of a Member who has died, the date on which the Trustee pays, or commences the payment of, a Superannuation Death Benefit in respect of the Member.

22.3 Member's Rights not Affected

A Member's cessation of Membership will not affect or exclude any rights or obligations of that Member:

- (a) which accrued prior to the date of cessation; and
- (b) as a former Member on and from the date of cessation.

23. Members Providing Information to the Trustee

23.1 Upon Request by Trustee

A Member must provide to the Trustee any information that the Trustee requests of the Member if the Trustee considers the information necessary or desirable in connection with the administration of the Fund, including information about the Member's medical history or a request to undergo a medical examination by a medical practitioner acceptable to the Trustee.

23.2 Member's Failure to Comply

If a Member fails to comply with the request by the Trustee, the Trustee may suspend the acceptance of any Contributions in respect of that Member or withhold any Benefits payable in respect of that Member or impose any other conditions on the membership of that Member as the Trustee considers necessary or appropriate, but subject to the Law.

23.3 Information Incorrect or Misleading

If a Member provides information to the Trustee which affects or is likely to affect the Benefit payable to or in respect of the Member and the information supplied is incorrect or misleading or any relevant information is in the opinion of the Trustee deliberately withheld by the Member, the Trustee may alter or amend the Benefit of that Member in a manner that the Trustee considers necessary or appropriate, but subject to the Law.

23.4 Member's Updated Information to Trustee

A Member may at any time give the Trustee updated information about his or her details including address, marital status, status of employment and Nominated Beneficiaries.

24. Disclosure of Information

Unless required under the Law, the Trustee is not required to disclose to Members or other persons:

- (a) internal working documents of the Fund;
- (b) information or documents that would disclose personal information of another person if, in the circumstances, the disclosure would be inappropriate or unreasonable;
- (c) trade secrets or confidential information having commercial value that would be reduced by the disclosure; or
- (d) information or documents for which the Trustee, in its capacity as trustee of the Fund, owes another person a duty of non-disclosure.

25. Participation of Employers

25.1 Application to Participate

Any person who is an employer-sponsor may on request to, or on the invitation from, the Trustee make application to the Trustee to be admitted as an Employer for the purposes of participating in the Fund.

25.2 Approval by Trustee

An application by an employer-sponsor to participate in the Fund must be in a form that the Trustee determines and the acceptance or rejection of the application is at the discretion of the Trustee.

25.3 Execution of Participating Employer Admission Form

The Trustee may require as a condition of accepting a proposed Employer's application to participate in the Fund, that the proposed Employer sign a Participating Employer Admission Form in a form determined by the Trustee. Upon acceptance by the Trustee, the proposed Employer must be admitted as an Employer subject to the terms of this Deed and the Participating Employer Admission Form.

25.4 Employer May Contribute

An Employer may make Employer Contributions to the Fund on behalf of such of the Employees of the Employer who become Members.

25.5 Deemed Admission

The acceptance by the Trustee of a Contribution from an employer-sponsor will be deemed to constitute the employer-sponsor's admission as a participating Employer.

26. Contributions

26.1 Member Contributions

The Trustee may accept a Member Contribution if acceptance of the Member Contribution is permitted under the Law.

26.2 Employer may Contribute Employer Contributions

The Trustee may accept an Employer Contribution in respect of a Member if acceptance of the Employer Contribution is permitted under the Law.

26.3 Employer Contributions Pursuant to Agreement with Trustee

If an Employer contributes to the Fund in respect of a Member under any agreement with the Trustee under which the Employer agrees, or is required, to pay Contributions to the Fund, the Employer must separately specify to the Trustee the amount of those Contributions under the agreement and the amount of Contributions (if any) made pursuant to this clause 26.

26.4 Other Contributions

The Trustee may accept any other Contributions to the Fund made by or in respect of a Member, including any Child Contribution, Government Contribution or Spouse Contribution, if acceptance of the Contribution is permitted under the Law.

26.5 No Obligation to Contribute

A Member does not have any obligation to make a Contribution to the Fund and may remain a Member even if a Contribution is not made by or in respect of that Member.

26.6 Contributions may be made in Cash or by Transfer of Assets In Specie

Subject to the Law, the Trustee may in its absolute discretion accept any Contribution being paid either in cash or by the transfer of an asset to the Fund provided that:

- (a) the asset is an authorised investment pursuant to this Deed and the Investment Strategy;
- (b) acceptance of the asset as a Contribution is acceptable to the Trustee and not prohibited under the Law;
- (c) the amount of the Contribution which is satisfied by the transfer is or includes the market value of the asset so transferred;
- (d) the market value is reduced by the value of any consideration given for the transfer of the asset;
- (e) the Trustee is satisfied that the transfer is permitted under the Law; and
- (f) unless the Trustee otherwise determines, the value of any assets to be transferred must be based on the current market value of those assets.

26.7 Limitation on Accepting Contributions

The Trustee must not accept any Contribution if the acceptance of the Contribution would contravene the Law or this Deed.

26.8 Spouse Membership

- (a) When a person has become a Member in respect of whom Spouse Contributions may be made, the Spouse must satisfy the Trustee of that status at each time a Spouse Contribution is made by that Spouse.
- (b) If Contributions are made under this Deed by an Employer of a Member in respect of whom Spouse Contributions are also made, a second account in the name of the Spouse must be established in the Member's Accumulation Account to receive the Contributions by the Employer.

26.9 Contribution Splitting

After the end of each Financial Year, the Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member in the previous Financial Year, with the split amount transferred or rolled over as a Rollover Superannuation Benefit to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted under the Law.

26.10 Employer to remit Contributions Promptly

All Contributions made on behalf of a Member (including by an Employer deducting an amount from the salary or wages payable to the Member) must be paid to the Trustee as required under the Law.

27. Accounts

27.1 Separate Member Accounts

- (a) The Trustee must establish an Account in respect of each Member.
- (b) The Trustee may operate the Account as the Trustee sees fit, subject to the Law.

27.2 Credits to Accounts

Subject to the Law and where applicable, the following amounts may be credited to the Account of a Member:

- (a) Contributions made by or on behalf of the Member;
- (b) the proceeds of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee and which the Trustee determines to credit to the Member's Account;
- (c) any amount transferred or rolled over to the Fund from another Approved Superannuation Entity in respect of the Member;
- (d) the investment return (if positive) of the Member's Benefit as determined by the Trustee;
- (e) any amount transferred from another Account in respect of a Member; and
- (f) any other amount as the Trustee may from time to time determine.

27.3 Debits to Accounts

Subject to the Law and where applicable, the following amounts may be debited to the Account of a Member:

- (a) any Benefit paid to a Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of the Member and which the Trustee determines to debit to the Member's Account;
- (e) without limitation to clause 43, the proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Account, or Benefits paid from the Member's Account, or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity, each as the Trustee may determine;
- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (g) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;

- (h) any amount transferred from another Account to that Account in respect of a Member;
- (i) any amount that the Trustee has mistakenly credited into a Member's Account including instances where the amount is applicable to an Account other than the Account of the Member; and
- (j) any other amount as the Trustee may from time to time determine.

27.4 Amount of Benefit

Unless otherwise expressly provided in this Deed or required or prohibited under the Law, the amount of the Benefit that is payable to or in respect of a Member will be determined by the Trustee, subject to the Law.

28. Reserve Account

28.1 Establishment and Type

- (a) The Trustee may establish and maintain a reserve account for the Fund as the Trustee sees fit.
- (b) The Trustee may create and operate separate Reserve Accounts dealing with any reserve that is permitted under the Law.

28.2 Credits

Subject to the Law, the Trustee may credit a Reserve Account with:

- (a) any part of an Insured Component that the Trustee determines to credit to the Reserve Account; or
- (b) any reserves or any other amount which the Trustee so determines in the Trustee's discretion.

28.3 Investment Return on Reserve Account

Any amount held in a Reserve Account that does not form part of any Account and any investment return (positive or negative) derived by the Fund on that Reserve Account must be credited or debited (as the case may be) to that Reserve Account.

28.4 Purpose and Use

- (a) A Reserve Account may be used by the Trustee for the purpose of:
 - (i) giving effect to any reserving strategy established by the Trustee;
 - (ii) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy;
 - (iii) providing a Benefit to a Beneficiary or former Beneficiary, including augmenting any Accumulation Account on any basis that does not breach the Law; or
 - (iv) assisting the Trustee to identify the value of assets that may have been exchanged or segregated as current pension assets or non-current pension assets or that are dealt with as a sub-fund, segment, class or part of the Fund,

or for any other purpose and contingency that the Trustee may determine in its discretion.

- (b) The Trustee may from time to time:
 - (i) alter the purpose for which it established a Reserve Account;
 - (ii) restrict or limit the use of moneys held within a Reserve Account;
 - (iii) close a Reserve Account;
 - (iv) combine two or more Reserve Accounts;
 - (v) invest moneys held within a Reserve Account; or
 - (vi) otherwise deal with any matter relating to one or more Reserve Accounts as the Trustee see fit.

29. Fund to Provide Benefits

29.1 Purpose

The Trustee must ensure that the Fund is maintained solely for the purpose of providing the Benefits described in this Deed.

29.2 Compliance with the Act when paying Benefits

- (a) Subject to clause 29.2(b), the Trustee may pay or deal with any Benefit to or in respect of a Member if the Trustee's action is permitted under this Deed or under the Law in respect to a member of a Complying Superannuation Fund.
- (b) The Trustee must not pay or deal with any Benefit to or in respect of a Member under this Deed if the Law prohibits the Benefit to be so paid or dealt with in respect to a member of a Complying Superannuation Fund.

29.3 Trustee's Procedural and Information Requirements for Paying Benefits

- (a) Subject to the Law, all Benefits shall be determined by the Trustee in accordance with the Deed and only become payable after application by the person claiming the Benefit made in the form and within the period as the Trustee may prescribe either generally or in a particular case.
- (b) Without limitation to clause 14.3, but subject to the Deed and the Law, any decision of the Trustee as to whether a Benefit is payable and regarding the amount and application of any Benefit is final and conclusive against all persons.
- (c) Without limitation to clause 23.1, the Trustee may require any person who is entitled to receive, or makes a claim for, a Benefit to provide the Trustee with such information and evidence in order to satisfy the Trustee that the person is entitled to the Benefit in accordance with the Deed. The Trustee may withhold or suspend payment of a Benefit or refuse to consider any claim for a Benefit until such time as that person provides such information and evidence to the Trustee's satisfaction.

29.4 **Proof of Entitlement by Beneficiaries**

Any person claiming to be entitled to a Benefit must, if requested by the Trustee, produce to the Trustee satisfactory evidence of that entitlement and do the acts and execute the documents that the Trustee may reasonably require.

30. **Entitlement to Payment of Benefits on satisfying Prescribed Event**

The Trustee is entitled to pay any Benefit that the Trustee is permitted under the Law to pay to or in respect of a Member upon the Member satisfying a Prescribed Event.

31. **Manner of Payment of Benefits**

31.1 **Lump Sum, Pension, or Annuity**

Unless otherwise expressly provided in this Deed or required or prohibited under the Law, the Trustee may determine to pay a Benefit to a Beneficiary at the request of the Beneficiary in any one or more of the following forms:

- (a) one or more lump sums;
- (b) by way of a transfer of a Fund asset in specie;
- (c) one or more Pensions; or
- (d) the purchase of one or more Annuities.

31.2 **Preservation Age Benefit**

Subject to the Law, the Trustee may allow a Member to elect to receive the Preservation Age Benefit in any manner and **form permitted under the Law**.

31.3 **Death Benefits and Beneficiary Nominations**

- (a) The Trustee may allow a Member to make a Beneficiary Nomination in accordance with this Deed.
- (b) A Member who wishes to make a Beneficiary Nomination may request the Trustee to provide to the Member the information that the Trustee reasonably believes that Member reasonably needs for the purpose of understanding the Member's rights to make a Beneficiary Nomination in accordance with this Deed. The Trustee must comply with that request.
- (c) A Member who has given a Beneficiary Nomination to the Trustee may:
 - (i) amend or revoke the Beneficiary Nomination by giving to the Trustee a notice of amendment or revocation of that Beneficiary Nomination; or
 - (ii) replace the existing Beneficiary Nomination by giving to the Trustee a new Beneficiary Nomination.
- (d) Unless sooner revoked by the Member, a Binding Nomination given to the Trustee ceases to have effect at the end of any period determined by the Trustee or prescribed by the Law after the day it was first signed, or last confirmed or amended, by the Member.

- (e) If it appears to the Trustee at the time of receiving a Beneficiary Nomination that an item of information given by the Member in the Beneficiary Nomination is not sufficiently clear to allow the Trustee to pay the Death Benefit in accordance with the Beneficiary Nomination, the Trustee must seek to clarify the item as soon as practicable after the Trustee receives the Beneficiary Nomination.
- (f) The Trustee is not responsible or liable to a Member or that Member's Dependants, Legal Personal Representatives, or any other person for anything arising from the Member's Beneficiary Nomination being invalid or ineffective due to the Beneficiary Nomination:
 - (i) having ceased to have effect; or
 - (ii) nominating a Nominated Beneficiary who at the time of the Member's death is not the Legal Personal Representative or a Dependant of the Member or otherwise not permitted under the Law to be the recipient of the Member's Death Benefit.
- (g) If the Trustee holds a Binding Nomination in respect of a deceased Member, the Trustee must pay the Death Benefit to the person or persons referred to as the Nominated Beneficiary in the Beneficiary Nomination if:
 - (i) the person, or each of the persons, is the Legal Personal Representative or a Dependant of the deceased Member; and
 - (ii) the proportion of the Death Benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the Beneficiary Nomination; and
 - (iii) the Beneficiary Nomination is in effect.
- (h) If the Trustee holds a Beneficiary Nomination which is not valid for any reason, the Trustee must pay or apply the Death Benefit to or for the benefit of:
 - (i) a person nominated in writing as a Nominated Beneficiary by the deceased Member in the Beneficiary Nomination provided that the Trustee is satisfied that the person was a Dependant of the deceased Member at the time of death of the Member;
 - (ii) any one or more of the Dependants of the deceased Member;
 - (iii) the Legal Personal Representative of the deceased Member; or
 - (iv) any other person permitted by the Law,

in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion, but in so doing the Trustee may have regard to the wishes of the deceased Member as to the intended recipient of the Death Benefit evidenced by the Beneficiary Nomination.
- (i) If the Trustee does not hold a Beneficiary Nomination, the Trustee must pay or apply the Death Benefit to or for the benefit of:
 - (i) any one or more of the Dependants of the deceased Member;
 - (ii) the Legal Personal Representative of the deceased Member; or

- (iii) any other person permitted by the Law,

in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion.

31.4 **Permanent Incapacity Benefit - Lump Sum or Pension**

If a Member is incapable of making an election to receive the Permanent Incapacity Benefit as a lump sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms, the election may be made on behalf of the Member by the Member's Legal Personal Representative or guardian.

31.5 **Other Benefit Payments**

The amount of any other Benefit and the manner in which it is paid to the Member may be determined by the Trustee subject to the Law.

32. **Benefits Payable as a Pension**

32.1 **Type of Available Pensions, Agreed Pension and Pension Agreement**

- (a) The Trustee may determine the type, manner or form of a Pension that is to be provided from the Fund under this Deed, subject to the Law (**Available Pension**) and may specify any additional or ancillary terms, conditions or governing rules applicable to the Available Pension (**Pension Rules**).
- (b) The Trustee and a Member (**Pensioner**) may agree in writing in a form prescribed by the Trustee on a particular Available Pension to be provided to the Pensioner (**Agreed Pension**) and that completed form together with the Pension Rules applicable to the Agreed Pension constitutes the agreement in writing between the Trustee and the Pensioner for the payment of the Agreed Pension from the Fund (**Pension Agreement**).
- (c) Any Pension Agreement made under this clause must be read and construed in conjunction with, and will be deemed to form part of, this Deed as between the Trustee and the Pensioner but does not otherwise constitute an amendment to this Deed.
- (d) If there is any inconsistency between any provision or requirement of the Pension Agreement and:
 - (i) any provision or requirement of this Deed - then the provision or requirement of the Pension Agreement prevails; or
 - (ii) any relevant provision or requirement under the Law - then the provision or requirement under the Law prevails;

to the extent of that inconsistency.

32.2 **Management of Pension**

The Trustee must manage any Pension in accordance with the Pension Agreement and the Law.

32.3 **Variation to Pension**

The Trustee may vary the Pension from time to time as long as the variation complies with:

- (a) any relevant requirement under the Law;
- (b) any on-going actuarial advice that is required to be obtained or maintained; and/or
- (c) any Pension Agreement for that Pension.

32.4 **Minimum Standards imposed by Law**

If the Agreed Pension is:

- (a) an Allocated Pension;
- (b) an Account Based Pension;
- (c) a Lifetime Pension;
- (d) a Fixed Term Pension;
- (e) a Market Linked Pension;
- (f) a Flexi Pension;
- (g) a Transition to Retirement Income Stream;
- (h) a Non-commutable Allocated Pension;
- (i) a Non-commutable Pension;
- (j) a Non-commutable Income Stream; or
- (k) any other Pension,

then the Pension Rules in the Pension Agreement that apply, respectively, to each Agreed Pension above must specify all of the requirements of the 'minimum standards' specified in the Law which must be met for the Agreed Pension to qualify, respectively, as:

- (a) an Allocated Pension;
- (b) an Account Based Pension;
- (c) a Lifetime Pension;
- (d) a Fixed Term Pension;
- (e) a Market Linked Pension;
- (f) a Flexi Pension;
- (g) a Transition to Retirement Income Stream;
- (h) a Non-commutable Allocated Pension;
- (i) a Non-commutable Pension;
- (j) a Non-commutable Income Stream; or
- (k) any other Pension.

To the extent that any minimum standards imposed by Law that are applicable to an Agreed Pension are not expressly contained in this Deed or the Pension Rules of the Agreed Pension, those minimum standards are deemed to be included in the Pension Agreement of the Agreed Pension.

33. Postponement of Benefit Payments

33.1 To Facilitate Administration

Subject to the Law, the Trustee may for the purpose of facilitating the administration of the Fund postpone the commencement of the payment of any Benefit for any period not exceeding six months after the happening of the event upon which the Benefit becomes payable.

33.2 At Request of Beneficiary

Subject to the Law, the Trustee may at the request in writing of a Beneficiary entitled to receive payment of a Benefit withhold payment of that Benefit for any a period of time that is agreed between the Trustee and the Beneficiary.

34. Unclaimed Benefits

- (a) Where the Trustee is unable to locate a Beneficiary to whom a Benefit is payable the Trustee may, subject to the Law, pay all or part of that Benefit to another Approved Superannuation Entity without the consent of the person entitled to it.
- (b) The Trustee must comply with the Law in relation to any Benefits that the Law:
 - (i) treats as unclaimed money; or
 - (ii) requires to be transferred to an Approved Superannuation Entity.

35. Transfers from Approved Superannuation Entities

35.1 Trustee May Take Superannuation Interest

If a person is or was a member of or a beneficiary under any other Approved Superannuation Entity, the Trustee may at the request of that person receive from the trustee of the other Approved Superannuation Entity the whole or any part of the Superannuation Interest of that person in the other Approved Superannuation Entity.

35.2 Transfer from an Approved Superannuation Entity without Member consent

The Trustee may arrange for the transfer into the Fund of assets with:

- (a) the person responsible for another superannuation entity;
 - (b) a person who is (or was) a participant in another superannuation entity; or
 - (c) any other person who can transfer assets into the Fund,
- on conditions agreed between the Trustee and the other person.

35.3 **Member Subject to Fund**

A person whose interest in another Approved Superannuation Entity is transferred to the Fund under this clause becomes a Member and is subject to the rights and obligations of a Member under this Deed. If the Trustee so determines, the person becomes a Member effective from the date on which the person's interest was transferred to the Fund.

35.4 **Trustee to Hold Subject to this Deed**

The Trustee must hold any Superannuation Interest of a person transferred to the Trustee under this clause as part of the Fund in an Accumulation Account for that person.

35.5 **Payment of Special Unpreserved Benefits**

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a preserved Benefit in the Approved Superannuation Entity, then subject to the Law and any other conditions pertaining to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of the Beneficiary.

36. **Transfers to Approved Superannuation Entities**

36.1 **Trustee May Transfer with Member's Consent**

The Trustee may, if the Member consents and subject to any conditions that the Trustee determines, transfer to an Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).

36.2 **Trustee May Transfer without Member's Consent**

The Trustee may, and where required under the Law must, without the Member's request or consent, transfer to an Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).

36.3 **Trustee must Transfer upon Member's Request**

- (a) The Trustee must if requested by a Member, but subject to the Law, transfer to an Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer (the **Transferred Amount**).
- (b) If the Trustee requires further information in relation to the request, the Trustee must within a reasonable timeframe after receiving the request, ask the Member for the information.

36.4 **Receipt of Transferred Amount**

The receipt by the proper officer of the other Approved Superannuation Entity of the Transferred Amount will be a sufficient discharge to the Trustee. Neither the Trustee nor any Employer is responsible, or liable to a Beneficiary, for the payment or disposal by the trustee of the other Approved Superannuation Entity of the Transferred Amount.

36.5 Power of Attorney

Each Member irrevocably appoints the Trustee as the attorney for the Member for the purpose of securing the Member's participation in the Approved Superannuation Entity to which the transfer of the Transferred Amount is made and the Trustee may act unilaterally in the name of the Member for that purpose.

36.6 Extinguishment of Rights

Upon the Trustee completing the transfer of the Transferred Amount in respect of a Member all of the rights and interests of that Member in the Fund and under this Deed (and all rights and interests of any Beneficiary entitled to claim in respect of the Member) in respect of the Transferred Amount will come to an end.

36.7 Adjustment of Other Benefits upon Transfer

The Trustee may make any adjustments to the Benefit of the other Members of the Fund as the Trustee considers appropriate in the circumstances of any transfer but subject to the Law.

36.8 Compliance with the Law

No Benefit may be transferred to another Approved Superannuation Entity if the Trustee or the Fund would breach a relevant requirement under the Law.

37. Transfers within the Fund

- (a) The Trustee must, if requested by a Member but subject to the Law and this Deed, make transfers between the different classes of the Fund in which the Member is, or will be, a participant or eligible to participate, of the whole or any part of any Benefit of that Member as requested by the Member as at the date of transfer.
- (b) Subject to the Law and this Deed, the Trustee may, and where required by the Law must, without the Member's request or consent, transfer to any Account in which the Member is or will be a participant or eligible to participate the whole or any part of any Benefit of that Member as at the date of transfer.

38. Members May Request Rollover Payment

If a Member wishes to make a Rollover Payment of all or any of the Member's Benefit, the Member must complete and provide to the Trustee all documentation required under the Law to enable the Rollover Payment to be completed in accordance with the Law.

39. Availability of Deed

The Trustee must keep a copy of this Deed and make it available for inspection during normal business hours by any person who is, or was within the preceding 12 months, a Beneficiary.

40. Amendment of Deed

40.1 Who may Amend

The Trustee may at any time amend, add to, vary or rescind any provision of this Deed (including this clause) (the **Amendment**) subject to this clause and the Law.

40.2 How Amendment Effected

An Amendment must be made by a deed poll executed by the Trustee.

40.3 Date of Amendment

An Amendment may be effective from the date on which the Amendment is made or from an earlier or later date that is specified for that purpose in the deed effecting the Amendment.

40.4 No Adverse Amendment

If a proposed Amendment would adversely affect, or has the potential to adversely affect, the right or claim to accrued Benefits, or the amount of those accrued Benefits of any Beneficiary, the proposed Amendment must not be made or become effective unless:

- (a) the Trustee has obtained that Beneficiary's consent in writing to the Amendment by following the procedure specified in the Law; or
- (b) the Law permits the proposed Amendment to be made by the Trustee without that Beneficiary's consent.

40.5 Notice to Members

If and as required under the Law, the Trustee must give to each Member a written statement explaining the nature and purpose of the Amendment and the effect of the Amendment on the entitlement of the Members.

40.6 Notice to Responsible Authority

If required under the Law, the Trustee must lodge a copy of the deed poll effecting the Amendment with the Responsible Authority.

40.7 Employer Sponsor

Notwithstanding clause 40.1, no Amendment may authorise or permit the making of any payment out of the Fund to an Employer Sponsor.

40.8 Amendments concerning Compliance with the Law

If a proposed Amendment is to be made to enable the Fund to comply with the Law, the Amendment may be made without the consent of any Beneficiary even if the Beneficiary's Benefit may be adversely altered by the Amendment.

40.9 Restriction on Amendments

An Amendment must not be made to this Deed (including an Amendment to this clause) if it would have the effect or result that the Fund does not have or will not continue to have a Constitutional Corporation as the trustee of the Fund.

40.10 Amendment Binding

Each Amendment is binding on an Employer, Beneficiary and any other person who is bound or who claims to be bound by this Deed.

40.11 MySuper Product Amendments

If the Trustee is authorised to offer a MySuper Product, no Amendment may be made that has the effect that section 29TC (Characteristics of a MySuper product) of the SIS Act is no longer satisfied in relation to that MySuper Product.

41. Procedure for Giving Notices

41.1 Notices by the Trustee

Any notice to be given by the Trustee under or for the purpose of the Deed may be given to a person:

- (a) in any way permitted by the Law including by ordinary post, facsimile, email or other electronic means; and
- (b) at the option of the Trustee:
 - (i) at the person's place of employment;
 - (ii) at such other address last notified to the Trustee;
 - (iii) to the person's Employer on behalf of the person; or
 - (iv) at an internet, intranet, email or other electronic address;and is deemed to be received by the person on the earlier of:
 - (v) 3 business days after the notice is sent by mail; and
 - (vi) in all other cases, the day that the notice is received at or, in the case of electronic media, becomes accessible at the current address.

41.2 Notices to Trustee

Without limitation to clause 41.1, any notice from a Beneficiary or his or her representative (who is permitted to provide notices to the Trustee on behalf of the Beneficiary) to the Trustee given under or for the purpose of the Deed:

- (a) can be given in any way permitted by the Law including by ordinary post or facsimile; or
- (b) may be hand delivered to the Trustee at the Trustee's registered address or such other address the Trustee may notify the Beneficiary from time to time,

and is deemed to be received by the Trustee on the earlier of:

- (c) 3 business days after the notice is sent by mail; and
- (d) in all other cases, the day that the notice is received at or, in the case of electronic media, becomes accessible to the Trustee at the Trustee's current address.

42. Complaints Procedure and Dispute Resolution

42.1 If Required under the Law

The Trustee must, if required under the Law, establish and maintain arrangements for complaints and enquiries by a Beneficiary in a manner prescribed under the Law.

42.2 Rights of Beneficiaries

A Beneficiary has the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to that Beneficiary.

42.3 Trustee to Deal within Prescribed Time

The Trustee must deal with any enquiries or complaints as prescribed under the Law and its internal complaints handling system.

43. Tax

- (a) If the Trustee is, or believes that it will become, liable for any Tax in respect of:
- (i) the receipt of a Contribution (including any excess Contributions and Contributions made without a Tax File Number) or transfers to the Fund;
 - (ii) the holding or disposal of an asset of the Fund;
 - (iii) the receipt of income or a gain of the Fund;
 - (iv) a transaction or document concerning the Fund; or
 - (v) a payment out of the Fund;
- then the Trustee may:
- (vi) deduct an amount equal to the Tax or an amount which is a fair and reasonable estimate of the Tax from that Contribution, transfer, asset, income, gain, transaction, document or payment as the Trustee thinks proper; and
 - (vii) set aside and retain the Tax in the Fund upon trust for ultimate payment, or pay the Tax, to the Responsible Authority.
- (b) Any amount which would otherwise be or deemed to be contributed, transferred, credited, allocated or otherwise set apart in respect of a Beneficiary or other person shall be reduced or otherwise adjusted in the manner and to the extent that the Trustee determines to be appropriate in taking account of the Tax referred to in clause 43(a).
- (c) The Trustee may at any time recalculate the Tax in respect of a Beneficiary or former Beneficiary.
- (d) If a person fails to provide the required information under clause 43(a) within fourteen (14) days of a request, the Trustee may determine the Tax in respect of the person on the basis of any assumptions which in the circumstances are reasonable and the person has no claim against the Trustee or the Fund for any loss suffered as a result of any such assumptions being incorrect.

- (e) Where a person makes or has made a statement to the Trustee that is:
 - (i) in the opinion of the Trustee, relevant to the Trustee's determination of Tax in respect of the person; and
 - (ii) reasonably believed by the Trustee to be untrue or misleading either by misstatement or omission,

then the Trustee may recalculate the Tax in respect of the person having regard to what the Trustee reasonably considers to be the true circumstances of the person or matter.

44. Termination and Closure of the Fund

44.1 Grounds for Termination

The Fund must be terminated if:

- (a) there is no Member in the Fund and no Beneficiary with any interest in the Fund; or
- (b) the Trustee resolves to terminate the Fund.

44.2 Notice of Termination

Upon the termination of the Fund, the Trustee must give notice in writing to the Responsible Authority, each Employer and each of the Members, that the Fund has or is to be terminated as from a specified date (**Termination Date**).

44.3 Winding up of the Fund

On and from the Termination Date:

- (a) no further Contributions may be made or accepted other than any arrears of Contributions due prior to the Termination Date;
- (b) the Trustee must pay out of the Fund any expenses incurred by the Trustee or on behalf of the Fund;
- (c) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with clause 44.4 and the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (d) the Trustee must otherwise continue to administer the Fund in accordance with the Deed; and
- (e) the Trustee must take all other necessary steps, including lodging a final return with the Responsible Authority, to wind up the Fund in accordance with the Law.

44.4 Priority of Distribution

- (a) As soon as practicable after the Termination Date and after making such allowance as the Trustee considers appropriate for the costs and expenses incurred and likely to be incurred in terminating the Fund, to the extent that the Fund is sufficient to do so, the Trustee must make such provisions from or

within the Fund as it considers necessary to provide for payment in full of the following Benefits and in the following order of priority:

- (i) all Benefits which had become payable to or in respect of any person prior to the Termination Date but which have not yet been fully paid;
 - (ii) Benefits which were required to be preserved in the Fund in respect of Members who ceased service prior to the Termination Date;
 - (iii) Minimum Benefits;
 - (iv) all Benefits (excluding any amount payable under 44.4(a)(iii)) which would be payable in respect of Members assuming all Members were eligible to retire on the Termination Date; and
 - (v) any additional Benefits as the Trustee determines.
- (b) Any amount remaining in the Fund after the abovementioned provisions have been made (including the satisfaction of all Taxes, liabilities, costs and expenses) must be realised and the proceeds distributed by the Trustee to the Beneficiaries or, at the Trustee's sole discretion, to such former Beneficiaries as the Trustee deems to be fair and equitable.
- (c) Notwithstanding any provision made in accordance with clause 44.4(a), if the Fund, at any time, proves to be insufficient to provide in full for the Benefits described in 44.4(a), all Benefits then remaining unpaid shall be reduced in such manner and proportions as the Trustee, deems to be fair and equitable.

44.5 Method of Payment on Wind Up

Subject to the Law, any Benefit provided pursuant to this clause 44.4:

- (a) may be provided in such form (whether deferred or other Annuity, the right of participation in an Approved Superannuation Entity, cash, life insurance policies or in any other form whatsoever) as the Trustee determines; and
- (b) is in lieu of, and in full satisfaction of, any Benefit which, but for this clause, would otherwise have been or become payable under this Deed; and

all decisions of the Trustee as to the amount, form and method of provision of Benefits pursuant to this clause 44 are final and binding on all persons.

44.6 Dissolution and Closure of the Fund

Upon the satisfactory winding up of the Fund by the Trustee pursuant to this clause, the Fund will be deemed to be dissolved and closed.

45. No Personal Claim of Members or Dependants For Interest

No Beneficiary or person claiming through or on behalf of a Beneficiary is entitled to claim payment of any interest in the Fund, except as provided in this Deed.

46. Governing Law

This Deed is governed by the laws of the State of Victoria and all interested persons accept the jurisdiction of the Courts of Victoria.

Signature Page

Signed by the Trustee as a deed poll on the Date of this Deed specified on page 6 of this Deed:

Executed by **Prime Super Pty Limited (ABN)**
81 067 241 016) in accordance with Section)
127 of the *Corporations Act 2001:*)

Director



Director/Secretary



Name (please print)

ALAN BOWMAN

Name (please print)

LECKWAN BAIRD