

DIVERSA TRUSTEES LIMITED

Mason Stevens Super TRUST DEED

Deed of variation

THIS DEED is made on 15th day of September

2017

BY **Diversa Trustees Limited** ABN 49006421638 of Level 20, 357 Collins St
Melbourne, Vic 3000 ("**Trustee**")

RECITALS

- A** The Managed Australian Retirement Fund was originally established pursuant to a trust deed made on 1 June 1988 ("**Fund**").
- B** The trust deed was amended by a deed of variation dated 1 July 1994 which replaced the terms of the trust deed in their entirety.
- C** The trust deed was then replaced a deed of variation dated 20 August 2003 which replaced the terms of the trust deed in their entirety ("**Trust Deed**").
- D** The Trust Deed has subsequently been amended by a deed of variation made on 1 July 2006, an amending deed made on 27 August 2009, and a deed of variation made on 9 August 2013.
- E** The Trustee is the trustee of the Fund.
- F** The Trustee wishes to consolidate prior amendments to the Trust Deed and change the name of the Fund from "Managed Australian Retirement Fund" to "Mason Stevens Super".
- G** The Trustee wishes to amend the Trust Deed pursuant to clause 19.1 of the Trust Deed and the Trustee considers that the amendments do not adversely affect a member's right or claim to accrued benefits or the amount of those accrued benefits.

OPERATIVE PROVISIONS

- 1 This Deed is the consolidation of the Trust Deed and subsequent amending deeds and deeds of variation and constitutes an amendment of the Trust Deed.
- 2 The Trust Deed shall be construed and take effect as amended in this document.
- 3 The Trust Deed is amended replacing the separate deeds dated 20 August 2003, 1 July 2006, 27 August 2009 and 9 August 2013 with this consolidated deed with effect from the date of execution of this Deed.

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1 Definitions and interpretations

1.1 Definitions

In this Deed unless the context otherwise requires the following expressions have the meanings given to them in this **clause 1**.

"Activity Fee" has the same meaning as that term has under SIS.

"Administration Fee" has the same meaning as that term has under SIS.

"Advice Fee" has the same meaning as that term has under SIS.

"allocate" includes allocating a credit or debit.

"amend" includes delete or replace.

"asset" includes any cash, property or right.

"Auditor" means a person appointed under **clause 14.4(a)** to perform the functions of auditor of the Fund.

"Authorised Investment" means an investment which the Trustee is authorised to make under **clause 9.1**.

"Binding Death Benefit Nomination" means a notice to the Trustee given by an applicant or Member directing the Trustee pursuant to **clause 12.10** to pay all or part of the benefit payable on their death to a person or persons nominated in the notice.

"Buy-Sell Spread" has the same meaning as that term has under SIS.

"Child" in relation to a Member, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the Member;
- (b) a child of the Member's Spouse; and
- (c) someone who is a child of the Member within the meaning of the *Family Law Act 1975*.

"Commodities" means any tangible personal property, currency, interest rate, financial index or indices (including any share index) or such other tangible or intangible thing determined by the Trustee for the purposes of this definition.

"Deed" means this document as amended from time to time.

"Dependant" of a Member means any person who is or was at the relevant time:

- (a) a Spouse of the Member;
- (b) a Child of the Member;
- (c) dependent upon the Member for maintenance or support; or
- (d) a person with whom the Member had an interdependency relationship (within the meaning of SIS).

"Derivative" has the meaning set out in section 761D of the Corporations Act 2001.

"Eligible Person" means a person who is eligible under Superannuation Law to join, and remain a member of, a Regulated Superannuation Fund.

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

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

"Exit Fee" has the same meaning as that term has under SIS.

"Expense" includes any costs, expenses, charges and liabilities whatsoever which are incurred by the Trustee in connection with the management, administration, operation or promotion of the Fund and the exercise of the Trustee's powers and discretion as trustee of the Fund and includes any Taxes and other imposts and insurance premiums payable in relation to any insurance taken out by the Trustee in relation to the Trustee and any directors and officers of the Trustee in respect of the performance of their duties in respect of the Fund.

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

"Fund" means the superannuation trust fund previously known as the Managed Australian Retirement Fund constituted by the trust deed dated 1 June 1988, now known as Mason Stevens Super and which is constituted by this Trust Deed.

"Index Linked Securities" means any investment whose economic performance is dependent on changes in any index.

"Insurance Fee" has the same meaning as that term has under SIS.

"Insurance Investments" means any investment offered by an insurance company or life office, whether the same involves a deposit, a loan, payment of premiums, acquisition of a right or interest in or arising out of insurance or life policies, or in a statutory fund or any similar investment.

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

"Investment Fee" has the same meaning as that term has under SIS.

"Investment Portfolio" means an investment portfolio referred to in clause 9.5(c)(i).

"Land" includes:

- (a) land of any tenure and any estate or interest whether vested or contingent in land;
- (b) buildings or parts of buildings whether the division is horizontal vertical or made in any other way;

- (c) a lot comprised in a building units plan or group titles plan;
- (d) an easement, right, privilege, share, interest or benefit in, over, derived from or attached to Land.

"Land Swaps" means any investment whose economic performance is dependent on changes in the performance or relative performance of any Land or any agreement, arrangement or understanding tied to the changes in the performance of any Land or relative performance of any Land.

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

"Member Account" means an account maintained for a Member under **clause 6.7**.

"Month" means a calendar month.

"MySuper product" is a class of beneficial interest in the Fund able to be offered pursuant to an authorisation granted to the Trustee under section 29T of SIS.

"Offer Document" means any document issued by the Trustee offering membership of the Fund.

"Operational Risk Reserve" means a Reserve Account of the Fund established in accordance with **clause 6.6**.

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

"person" includes partnerships, associations or corporations as the context may require.

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

"Preserved Benefit" means:

- (a) the amount of any benefit or any part of a benefit; or
- (b) in relation to a Member who has not become entitled to a benefit, the Member Account or Accrued Benefit or any part of it,

which comprises the amount of the Member's Preserved Benefit for the purposes of SIS, or as otherwise determined by the Trustee, and which has not become unrestricted non-preserved benefits under SIS.

"Repos" means agreements, arrangements or understandings with a person whereby any Investments are transferred to or Investments are acquired from that person on the basis that the transaction will be reversed on a predetermined rate and at an agreed price.

"Reserve Account" means an account kept pursuant to **clause 6.5**.

"Retire" has the meaning assigned to that expression in SIS and **"Retires"**, **"Retired"** and **"Retirement"** have corresponding meanings.

"Reversionary Beneficiary" means, in relation to a Member, a person whom under **clause 11.9D** the Member nominated on commencement of the Member's pension benefit, as the person entitled to receive the Member's pension benefit on the Member's death.

"Review Period" means a period of up to 12 months determined by the Trustee.

"RITS" means the Reserve Bank Information & Transfer System.

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

"Sub-Fund" has the meaning given to that term in **clause 2.9**.

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

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

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

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

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

"Switching Fee" has the same meaning as that term has under SIS.

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

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

“Total and Permanent Disablement” in relation to a Member means:

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

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

1.2 Definitions from SIS

In this Deed unless the context otherwise requires, the following expressions have the meanings given to them in SIS:

- “Approved Trustee”;
- “Compassionate Ground”;
- “Constitutional Corporation”;
- “Eligible Rollover Fund”;
- “Legal Personal Representative”;
- “Regulated Superannuation Fund”;
- “Severe Financial Hardship”;
- “Spouse”.

1.3 Statutes

References in this Deed to any statutory enactment include, and shall be construed as, references to the enactment as amended, modified, consolidated, replaced or re-enacted from time to time.

1.4 Plurals and Genders

Words importing the singular number include the plural and vice versa and words importing any gender include all genders.

1.5 Clauses

Any reference in this Deed to a clause is a reference to the corresponding clause of this Deed.

1.6 Headings and sub-headings

The use of headings in this Deed is for convenience only, and headings do not form part of, and are not to be used in the interpretation of, any provision of this Deed.

1.7 Bodies and associations

References to authorities, institutes, associations and bodies whether statutory or otherwise, in the event of any such authority, institute, association or body ceasing to exist or being reconstituted, renamed or replaced or its powers or functions being transferred to any other authority, institute, association or body, is deemed to refer respectively to the authority, institute, association or body established or constituted to replace it or succeeding to its powers or functions or any of them.

2 Constitution of trust

2.1 Trust

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

2.2 Commencement

The date of the Fund's commencement is 1 June 1988.

2.3 Name of Fund

The superannuation trust fund constituted under this Deed is known as "Mason Stevens Super".

2.4 Fund

The trust fund of the Fund includes:

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

2.5 Interest in the Fund

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

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

2.6 Participating Employers and Members bound by Deed

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

2.7 Purpose

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

2.8 Compliance

- (a) The Trustee may comply with any requirement of Superannuation Law or any other law notwithstanding that:
 - (i) compliance with the Superannuation Law or other law conflicts with an express provision of this Deed;
 - (ii) the Superannuation Law or other law is not required to be included in this Deed.
- (b) The Trustee is not taken to have committed any breach of trust by virtue of any act or thing done to comply with any Superannuation Law or any other law.
- (c) Notwithstanding any other provision in this Deed:
 - (i) the Trustee in the exercise of its powers under this Deed is not subject to the direction of any other person except where the Superannuation Law permits the direction to be given to the Trustee by that person and a provision of the Deed permits the person to give the direction to the Trustee. In all other cases the Trustee may disregard any direction given by that person, and the Trustee may alone exercise the power, authority or discretion;
 - (ii) where any discretion under this Deed may be exercised by a person other than the Trustee:
 - (A) the person on whom the discretion is conferred may not exercise that discretion in any case unless the Trustee consents to the exercise of the discretion in the manner in which the person proposes to exercise the discretion;
 - (B) the provision conferring the discretion is deemed to require the consent of the Trustee to the exercise of the discretion; and
 - (C) the person on whom the discretion is conferred may exercise the discretion with the Trustee's consent.

2.9 Sub-Funds

- (a) The Trustee may establish separate Sub-Funds for the purpose of offering participation in or membership of the Fund on differing terms (including, by

way of example, differing terms as to the range of Investment Portfolios which may be selected).

- (b) The Trustee may issue separate Offer Documents for each Sub-Fund.
- (c) The Trustee may differentiate between the terms of participation or membership applicable to Participating Employers and Members on the basis of the terms applicable to a Sub-Fund.

3 MySuper Product

3.1 MySuper product

Subject to the Superannuation Law, the Trustee may offer one or more MySuper products from 1 July 2013 or such later date as the Trustee determines and the Trustee may adapt an existing product of the Fund as a MySuper product.

3.2 MySuper product characteristics

A MySuper product offered by the Trustee:

- (a) must be invested in accordance with a single diversified investment strategy;
- (b) must offer the same options, benefits and facilities to all the Members who hold the same MySuper product except to the extent otherwise allowed by the Superannuation Law;
- (c) must not attribute amounts to Members who hold the MySuper product in a way that streams gains or losses that relate to any assets of the Fund to only some of those Members unless permitted by the Superannuation Law;
- (d) may permit an Employer to subsidise fees payable by Members in relation to the MySuper product provided that subsidisation does not favour one Member who is an employee of the Employer over another employee of that Employer who also holds the MySuper product;
- (e) will only have limitations imposed on the source or kind of contributions made by or on behalf of a Member who holds the MySuper Product that are permitted by the Superannuation Law;
- (f) must offer insurance arrangements which comply with the Superannuation Law;
- (g) must otherwise conform with the characteristics of a MySuper product as prescribed under SIS.

3.3 MySuper product fees

The Trustee may only charge fees of one or more of the following kinds in relation to a MySuper product offered by the Trustee:

- (a) an Administration Fee;
- (b) an Investment Fee;
- (c) a Buy-Sell Spread;

- (d) a Switching Fee;
- (e) an Exit Fee;
- (f) an Activity Fee;
- (g) an Advice Fee;
- (h) an Insurance Fee;
- (i) any other kind of fee for MySuper products permitted under the Superannuation Law.

3.4 Charging rules for MySuper product

The Trustee may only charge a fee in relation to a MySuper product offered by the Trustee during a period if the fee satisfies one of the charging rules for MySuper products and any applicable general fee rule set out in SIS in relation to that period.

3.5 Transfer of interests

Subject to the Superannuation Law and any rules determined by the Trustee, a Member may elect to transfer an interest in the Fund to or from a MySuper product offered by the Trustee.

3.6 Trustee's powers

Notwithstanding any other clause in this Deed the Trustee has the power to do all things necessary or desirable to establish and maintain one or more MySuper products in accordance with the Superannuation Law.

4 Participating employers

4.1 Application for participation as a Participating Employer

An Employer who wishes to provide retirement and other approved ancillary benefits for its Employees may apply to become a Participating Employer in a form acceptable to the Trustee.

4.2 Trustee may reject application for participation

The Trustee may:

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

4.3 Participation without application

If permitted under Superannuation Law, the Trustee may determine to accept an Employer as a Participating Employer, notwithstanding that a duly completed application in the form prescribed by the Trustee has not been received, on such terms and conditions and effective from such date as the Trustee determines, where the Employer has:

- (a) nominated Employees for whom the Employer wishes to contribute to the Fund; and
- (b) delivered to the Trustee a contribution for the credit of those Employees or any of them.

4.4 Date of admission

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

4.5 Information to be given to Employers or prospective Employers

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

4.6 Terms of Participation

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

4.7 Termination of Participation

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

4.8 Substituted Employer

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

the Trustee may elect to accept the performance by that other person of the obligations of the Participating Employer under this Deed in place of the performance of those obligations by the Participating Employer.

- (b) Acceptance by the Trustee of performance of a Participating Employer's obligations by another person discharges the Participating Employer from any further obligations under this Deed.

4.9 Consequences of termination

On termination of a Participating Employer's participation taking effect:

- (a) no persons shall be admitted as Members as Employees of the former Participating Employer;

- (b) the former Participating Employer must not make further contributions to the Fund except contributions due prior to the date of termination.

4.10 Rights of Employer maintained

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

5 Members

5.1 Eligibility

An Eligible Person can apply for membership of the Fund.

5.2 Application after nomination by Participating Employer

- (a) An Employee nominated for membership of the Fund by a Participating Employer, may apply to become a Member in a form acceptable to the Trustee.
- (b) Where an Employee is nominated for membership by a Participating Employer but fails to make application for membership in acceptable form within the time period prescribed by the Trustee, or where the Trustee and Participating Employer otherwise agree, the Participating Employer may make application to the Trustee on the Employee's behalf in a form acceptable to the Trustee.

5.3 Application by other Eligible Persons

An Eligible Person (other than an Employee of a Participating Employer) may otherwise apply to become a Member in a form acceptable to the Trustee which may, if determined by the Trustee, include written applications, electronic applications, telephone applications or a combination of two or more of these methods.

5.4 Applicant to provide information

An applicant who wishes to become a Member must:

- (a) have any medical examination; and
- (b) provide any information or take any other steps,

which the Trustee requests in relation to the application.

5.5 Admission to membership

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

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

5.6 Date of admission

An applicant becomes a Member on the date determined by the Trustee or, if the Trustee makes no determination, the date of acceptance of the first contribution or rollover for the credit of the Member.

5.7 “Deemed” Members

An Employee whose Participating Employer has applied for membership of the Fund on the Employee’s behalf becomes a Member on the date of acceptance of the first contribution or rollover for the credit of the Member or, if the Trustee so determines, upon acceptance by the Trustee of the Participating Employer’s application for the Employee’s membership.

5.8 Information to be given to Members or prospective Members

The Trustee must:

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

5.9 Subsequent failure to provide Information

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

5.10 Termination of Membership

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

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

6 Valuations, allocation of earnings and member accounts

6.1 Revaluation of assets

- (a) The Trustee:
 - (i) must as soon as practicable after the last day of each Financial Year;
 - (ii) may at any other time,

determine the value of the assets of the Fund (taking into account income earned but not received, and expenses incurred but not paid).

- (b) The Trustee may revalue any asset of the Fund at any time, and in doing so may determine the basis for valuation and take into account costs and expenses involved in the acquisition, maintenance or sale of the asset.

6.2 Change in value of the Fund

- (a) The Trustee must:
 - (i) stipulate consecutive Review Periods up until the Fund is terminated;
 - (ii) subject to **clause 6.3** determine the net change in the value of the assets of the Fund for each Review Period.
- (b) In determining the net change in value of the assets of the Fund for a Review Period, the Trustee may take into account, in relation to the Review Period:
 - (i) investment returns on the assets of the Fund;
 - (ii) expenses, and any provision for expenses, in connection with the Fund;
 - (iii) capital gains and losses on realisation of any of the assets of the Fund;
 - (iv) unrealised gains and losses arising on revaluation of any of the assets of the Fund;
 - (v) allowance for capital appreciation and depreciation on any of the assets of the Fund;
 - (vi) write-offs of bad debts;
 - (vii) the appropriateness of averaging the net earnings of the Fund over two or more Review Periods;
 - (viii) any reserves maintained by the Trustee; and
 - (ix) any other factors which the Trustee considers appropriate.
- (c) The net change in value of the assets of the Fund for a Review Period may be positive or negative.

6.3 Change in value for Investment Portfolios or Sub- Funds

Where the Trustee:

- (a) adopts a different investment strategy for different Sub-Funds, the Trustee must determine the change in value of the assets of the Fund for that Review Period which is attributable to each Sub-Fund;

- (b) maintains two or more Investment Portfolios during a Review Period, the Trustee must determine the change in value of the assets of the Fund for that Review Period which is attributable to each Investment Portfolio,

instead of determining the change in value of the assets of the Fund for that Review Period.

6.4 Allocation of change in value to Member benefits

The Trustee must on determining a change in value of the assets of the Fund:

- (a) for the Fund;
- (b) for any Sub-Fund; or
- (c) for any Investment Portfolio,

determine the extent to which, and the manner in which, that change in value is to be allocated to Members Accounts.

6.5 Reserves

- (a) The Trustee may maintain a reserve or reserves for:
 - (i) the Fund;
 - (ii) any Sub-Fund;
 - (iii) any Investment Portfolio or a number of Investment Portfolios,for any purposes which the Trustee determines and Superannuation Law permits.
- (b) The Trustee may allocate any amounts to a reserve which the Trustee determines, including:
 - (i) amounts deducted from contributions or Members Accounts as provision for expenses and other liabilities;
 - (ii) earnings on the Fund's investments, capital gains on realisation of any of the Fund's investments, and any other accretions to or arising out of the Fund's investments;
 - (iii) any contributions by a Participating Employer not allocated to any Member's Account;
 - (iv) any other amount received by the Trustee in respect of the Fund and not allocated to any Member's Account.
- (c) Without limiting **clause 6.5(a)**, the Trustee may if Superannuation Law permits use a reserve to:
 - (i) allocate any amount to Members' benefits, in a manner that is equitable to all Members in respect of whom the reserve is maintained;

- (ii) allocate any amount to be applied in determining the amount of a change in value of the assets of the Fund, a Sub-Fund or Investment Portfolio or Investment Portfolios, which is available for allocation to Members Accounts;
- (iii) pay any expenses or other liabilities which are payable out of the Fund;
- (iv) apply the reserve or any part for such other purposes in respect of the Fund as the Trustee determines.

6.6 Operational Risk Reserve

- (a) Further to the powers given to the Trustee to establish Reserve Accounts under **clause 6.5** the Trustee may establish and maintain an Operational Risk Reserve necessary to compensate for operational risks that it has identified in its risk management framework having taken into account the Trustee's risk appetite and appropriate risk controls.
- (b) An Operational Risk Reserve must:
 - (i) be separately identifiable from Member Accounts and other Reserve Accounts;
 - (ii) provide an unrestricted commitment of financial resources to address losses arising from operational risks in a timely manner; and
 - (i) be maintained in accordance with the Superannuation Law.

6.7 Member Accounts

- (a) The Trustee must keep a Member Account for each Member, and may divide Member Accounts into sub-accounts or notional sub-accounts.
- (b) The Trustee must allocate to a Member Account:
 - (i) any contributions made by or for the credit of the Member;
 - (ii) any amounts transferred from another Superannuation Entity or an amount debited from another Member's benefit for the credit of the Member;
 - (iii) the proceeds of any Policy of Insurance taken out by the Trustee in respect of the Member; and
 - (iv) any other amounts which the Trustee determines to credit to the Member's Account.
- (c) The Trustee shall allocate to each Member Account:
 - (i) changes in the value of the Fund, a Sub-Fund or an Investment Portfolio or Investment Portfolios, as applicable to the Member;
 - (ii) any charges applicable to that Member;

- (iii) any share of expenses or liabilities of the Fund the Trustee determines to allocate to the Member, and any particular expenses or liabilities of the Fund applicable to that Member;
 - (iv) any other debits or credits applicable to the Member or which the Trustee decides to allocate to the Member.
- (d) Without limiting **clause 6.5(c)**, where Superannuation Law permits, the Trustee may at the request or direction of a Member debit from the Member Account of that Member an amount comprising part or all of a contribution or contributions made for the credit of the Member and:
- (i) allocate the amount to the benefit of another Member; or
 - (ii) transfer the amount to another Superannuation Entity for the credit of the person nominated by the Member.

7 Management of trust

7.1 Powers of Trustee

The Trustee has all the powers over and in respect of the property and assets constituting the Fund which it could exercise if it were the absolute and beneficial owner. Without in any way limiting the generality of the foregoing or of any other provision of this Deed which gives powers to the Trustee, the Trustee has full and absolute powers of:

- (a) purchase and sale of any Authorised Investment and investment of the proceeds of any sale of Authorised Investments;
- (b) leasing and accepting surrenders of leases (or agreeing so to do) with power to compromise with lessees and others;
- (c) executing and paying for repairs and improvements;
- (d) instituting, prosecuting, compromising, settling or defending legal proceedings, including to secure compliance with the terms of this Deed or to recover any loss suffered by Members in respect of their investment under this Deed;
- (e) attending and voting at meetings;
- (f) paying all outgoings reasonably and properly incurred in connection with the Fund or this Deed, including any administrator's or investment manager's fees or remuneration;
- (g) opening and operating accounts with financial institutions;
- (h) subject to the limitations contained in SIS, lending money;
- (i) developing, improving, subdividing, building, rebuilding, altering, extending, replacing, repairing, managing, operating, leasing and otherwise dealing with any Authorised Investment and purchasing such plant, equipment and fittings as are necessary having regard to the purposes for which an Authorised Investment is from time to time being used or intended to be used;

- (j) entering into, performing and enforcing agreements;
- (k) drawing, endorsing, discounting, selling, purchasing and otherwise dealing with bills of exchange either alone or jointly and in particular commercial bills but so that the totality of the moneys for the time being the subject of liability on the part of the Trustee whether as drawer, acceptor or endorser of any and all of such bills of exchange and whether alone or jointly or severally with other persons are liabilities of the Fund;
- (l) entering into agreements with joint or co-owners of assets, an interest in which constitutes an Authorised Investment held by the Fund, for such purposes as the Trustee may consider conducive to the interests of the Fund;
- (m) entering into agreements (whether in the nature of partnerships, joint ventures or otherwise) for the development of authorised investments with other reputable, financial, solvent and stable persons and corporations;
- (n) setting aside out of the capital and income of the Fund such moneys as may be required to meet the obligations of the Trustee under this Deed;
- (o) collecting and accepting contributions to the Fund and crediting the contributions to any account with a financial institution;
- (p) allocating any amounts by way of income, capital or contributions to any investment manager;
- (q) paying or otherwise dealing with benefits in accordance with this Deed;
- (r) insuring or re-insuring any risks, contingencies or liabilities of the Fund;
- (s) taking out, or otherwise acquiring or surrendering any Policy of Insurance, and paying premiums;
- (t) determining as and when the need arises, who are Dependants of a deceased Member;
- (u) exercising any rights of ownership attaching to any asset of the Fund whether alone or jointly with other persons having rights of ownership, and meeting out of the assets of the Fund any liability attaching to ownership of any asset of the Fund, whether alone or jointly with other persons;
- (v) varying or transposing any investments into or for any other Authorised Investment and varying the terms of any document or security;
- (w) maintaining a register of Participating Employers and register of Members;
- (x) irrevocably electing that the Fund shall become a Regulated Superannuation Fund; and
- (y) doing such other things as may appear to the Trustee to be appropriate or desirable for the purposes of administering the Fund or which are incidental to any or all of the above powers.

7.2 Delegation of Trustee Powers

- (a) The Trustee may delegate any functions, authorities, discretions or powers exercisable by the Trustee (including a power which the Trustee has a duty to exercise) to any person upon such terms and conditions as it determines.
- (b) The Trustee is not liable or responsible for any act or omission, error of judgment, negligence or breach of trust of a delegate.
- (c) The Trustee may:
 - (i) revoke any delegations;
 - (ii) exercise any delegated function, authority, discretion or power itself concurrently with or to the permanent or temporary exclusion of a delegate.

7.3 Appointment of administrator, custodians and advisers

- (a) The Trustee may:
 - (i) appoint in writing on such terms as it determines a person to administer the Fund;
 - (ii) delegate to an administrator such matters as it determines from time to time related to the administration of the Fund.
- (b) The Trustee may:
 - (i) appoint in writing on such terms as it determines any person eligible for appointment in accordance with Superannuation Law as a custodian, to receive, hold and retain registration of any of the assets of the Fund (whether or not those assets are located in Australia).
 - (ii) by the terms of appointment of a custodian, allow the custodian to appoint and remove agents or sub-custodians to carry out the custodian's duties or any of those duties.
- (c) The Trustee may engage accountants, actuaries, bankers, barristers, solicitors, brokers, consultants, valuers and such other professional advisers from time to time, to give such advice, as the Trustee determines.
- (d) The Trustee is not liable for the neglect, default or misconduct of any person appointed or engaged by it, nor for allowing trust funds or securities to remain in the custody or control of any person so appointed or engaged for any time.
- (e) The Trustee is not liable for following the advice of any adviser engaged by the Trustee under this clause.

7.4 Remuneration of delegates and advisers

The Trustee may pay from the Fund, as an Expense, such remuneration as it determines to any delegate appointed by it or adviser engaged by it.

7.5 Exercise of discretion

Any exercise by the Trustee of any power, discretion or authority of the Trustee may be made by a resolution of the corporation or by a resolution of its board of directors or other governing body.

7.6 Trustee not required to give security

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

7.7 Remuneration of Trustee

The Trustee is entitled to be remunerated from the Fund for its services as trustee, with such amount to be set out in the current product disclosure statement prepared by the Trustee in respect of the Fund or a Sub-Fund or as otherwise notified to Members in writing by the Trustee.

7.8 Registration in name of nominee or custodian trustee

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

7.9 Director may be a Member

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

7.10 Discretions absolute

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

8 Trustee

8.1 Constitutional Corporation

The Trustee must be a Constitutional Corporation and an Approved Trustee in respect of the Fund.

8.2 Removal of Trustee

The office of the Trustee becomes vacant if:

- (a) the Trustee becomes a disqualified person as defined in Section 120(2) of SIS;
- (b) an order is made by a court removing the Trustee; or
- (c) the Superannuation Regulator removes or suspends the Trustee in accordance with the Superannuation Law.

8.3 Trustee may retire

The Trustee may retire if the Trustee has arranged for a Constitutional Corporation to become the new Trustee.

8.4 Appointment of new Trustee

- (a) If the Superannuation Regulator removes the Trustee, the Trustee must by deed retire from office and appoint in its stead the Constitutional Corporation approved by the Superannuation Regulator for the purpose.
- (b) If the Trustee resigns from office, the Trustee must by deed retire from office and appoint in its stead the Constitutional Corporation nominated by it and approved by the Superannuation Regulator for the purpose.

8.5 Vesting of Fund in New trustee

A Trustee vacating office shall do all acts and execute all documents necessary to transfer the assets of the Fund to the new trustee to the extent that those assets are in the name of the current Trustee. The retiring Trustee shall deliver to the new trustee all books, documents, records and other property whatsoever relating to the Fund. The costs and expenses incidental to this are an Expense of the Fund.

8.6 Defects in Appointment

The acts of the Trustee are valid despite any defects that may be discovered in its appointment.

8.7 Covenants by new trustee

- (a) A new trustee must execute upon appointment a deed which provides that the new trustee undertakes to be bound by all the covenants and obligations on the part of the Trustee from the date of appointment.
- (b) From the date of appointment of a new trustee:
 - (i) the retiring trustee is absolved and released from all covenants and obligations under this Deed except for liability for any breach prior to the new appointment;
 - (ii) the new trustee is entitled to exercise all the powers and rights and, is subject to all the covenants and obligations, of the Trustee in all respects as if the new trustee had been originally named as a party to this Deed.

8.8 Covenants by Trustee

The Trustee covenants:

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

9 Investments

9.1 Authorised investments

- (a) Subject to **clause 9.4**, the Trustee may invest the Fund in any manner in which the Trustee could invest if it were personally entitled to the assets of the Fund.
- (b) Without in any way limiting **clause 9.1(a)**, the Trustee may invest in the following:
 - (i) moneys deposited (whether for a term or at call) with any financial institution (with or without interest) or with any person, including short term money market investments;
 - (ii) stock, bonds, shares, notes, options, debentures, loan securities or any other securities of any corporation or securities of any government, semi-governmental body or public authority, whether in Australia or any other country, and whether or not listed on a securities exchange in Australia or any other country;
 - (iii) Commodities;
 - (iv) the purchase, lease or other acquisition of Land and any improvements, fixtures and fittings erected or installed or to be erected or installed, or rights conferring options, rights of first refusal or otherwise relating to the acquisition of Land;
 - (v) the purchase, lease, hire or other acquisition of any personal property and any share or estate or interest in personal property;
 - (vi) units or sub-units or other rights or interests (however described) in any trust, managed investment scheme or other mutual or common fund or pooled superannuation trust;

- (vii) bills of exchange, promissory notes and other negotiable instruments whether purchased or discounted which have been either drawn, issued, endorsed or accepted by a corporation;
- (viii) any Derivative including but not limited to any one or more of:
 - (A) a futures contract;
 - (B) a swap, cap, floor or collar;
 - (C) a swaption;
 - (D) a forward agreement;
 - (E) an option; or
 - (F) options over any of the above Derivatives;

whether or not entered into or acquired for the purpose of hedging against or minimising any loss concerning Authorised Investments held by the Trustee;
- (ix) Insurance Investments;
- (x) the investment of money on security (by way of a registrable or registered first mortgage) of any Land;
- (xi) discounting of loans, mortgages or leases;
- (xii) the purchase of a secondary mortgage market security;
- (xiii) RITS in respect of investments mentioned elsewhere in this definition and included in RITS;
- (xiv) Repos;
- (xv) Index Linked Securities;
- (xvi) Land Swaps;
- (xvii) infrastructure and other alternative investments, whether directly, through managed investment schemes and other collective arrangements, special purpose vehicles and investment companies;
- (xviii) the making of any other investments the Trustee considers to be appropriate in the circumstances including, without limitation, participating in a business.

9.2 Appointment of investment manager

- (a) The Trustee may appoint on such terms as it determines one or more bodies corporate ("**investment managers**") to manage the investments of the Fund or any part of the Fund.
- (b) An investment manager may only be appointed if the following conditions are satisfied:

- (i) the appointment is in writing;
 - (ii) the investment manager is eligible under the Superannuation Law to be appointed to act;
 - (iii) the terms of the appointment comply with any applicable Superannuation Law.
- (c) The Trustee may delegate to an investment manager the whole or any part of the Trustee's powers, authorities and discretions relating to the investment, selling, receiving, variation and disposal of assets of the Fund.

9.3 Underwriting of assets

The Trustee may:

- (a) underwrite or sub-underwrite, or join with others in underwriting or sub-underwriting, the subscription of any asset;
- (b) delegate to any investment manager general authority to enter into and carry out underwriting or sub-underwriting agreements and the like, whether for the Fund alone or for the Fund in conjunction with other funds and institutions.

9.4 Investment restrictions

The Trustee must:

- (a) invest the assets of the Fund on arm's length terms;
- (b) take all reasonable steps to ensure that the Fund complies with the restrictions on dealing with related parties under Superannuation Law; and
- (c) ensure that the Fund's investments otherwise comply with Superannuation Law.

9.5 Investment strategy

- (a) The Trustee must set investment objectives for the Fund, and formulate an investment strategy to achieve those objectives, in accordance with Superannuation Law.
- (b) The Trustee may set different investment objectives, and formulate different investment strategies to achieve those objectives, for different parts of the Fund or a Sub-Fund.
- (c) The Trustee may:
 - (i) set different investment objectives for 2 or more Investment Portfolios;
 - (ii) formulate an investment strategy for each Investment Portfolio;
 - (iii) divide the assets of the Fund or a Sub-Fund between the different Investment Portfolios;

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

10 Expenses and charges

10.1 Payment of Expenses

- (a) The Trustee may pay from the Fund's assets (or reimburse itself or any other party for) any Expenses incurred in the administration of the Fund.
- (b) The Trustee may account for the expenses paid or payable from the Fund by:
 - (i) deducting any Expenses from income of the Fund which has not been allocated;
 - (ii) debiting a reserve;
 - (iii) debiting amounts from Member Accounts,

as determined by it from time to time, for Expenses generally or for any particular expense or class of Expenses.

10.2 Charges

- (a) The Trustee may in its discretion from time to time levy charges for exit from the Fund, the administration of the Fund, the switching of investment strategies or for any other purpose determined by the Trustee.

- (b) Any charges levied may be applied, as determined by the Trustee:
 - (i) as remuneration of the Trustee;
 - (ii) to cover any expense (partly or wholly).
- (c) Unless the Superannuation Law provides otherwise the Trustee will comply with the general fee rules in Part 11A of SIS and to the extent that any provision relating to the charging of fees in this Trust Deed is not consistent with the general fee rules, the general fee rules will apply.

11 Contributions

11.1 Employer Contributions

A Participating Employer must make such contributions for the credit of its Employees who are Members as is agreed from time to time with the Trustee.

11.2 Member Contributions

- (a) A Member may contribute any amount if the Trustee agrees.
- (b) A Member who is an Employee is not obliged to contribute to the Fund.
- (c) Where a Member who is an Employee of a Participating Employer has agreed to pay regular contributions, the Trustee may arrange with the Participating Employer for the Member's contributions to be deducted by the Participating Employer from the Member's salary.
- (d) Despite the preceding provisions of this **clause 11.2**, where a Participating Employer on admission to participation notifies the Trustee that Employees of that Participating Employer who become Members are required to contribute to the Fund, those Members must contribute to the Fund on the basis prescribed unless the Participating Employer subsequently notifies the Trustee (either generally or in relation to a particular Employee or group of Employees) that Member contributions need not be made.

11.3 Contributions by other persons

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

11.4 Payment of Contributions

- (a) A contribution may be paid in cash or by transfer of assets which are authorised investments to the Fund. The person paying the contribution is responsible for payment of all stamp duty, brokerage fees, commission and other costs, charges and expenses in respect of the transfer.
- (b) The Trustee:
 - (i) may refuse to accept all or any part of any contribution from any person without giving any reason;
 - (ii) must refuse to accept a contribution where the Trustee is aware that Superannuation Law prohibits acceptance of the contribution by the trustee of a Regulated Superannuation Fund;

- (iii) where under Superannuation Law the Trustee is required to refund all or part of an amount paid to the Trustee as a contribution, must refund that amount;
- (iv) may make such adjustments to an amount refunded as the Trustee considers appropriate and Superannuation Law permits.

11.5 Cessation of contributions

Contributions must cease to be made for a Member:

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

12 Benefits

12.1 Payment of Benefits

The amount of a benefit payable under this Deed is determined in accordance with this **clause 12**.

12.2 Deduction of Tax from Benefits

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

12.3 Reduction of Benefit payable

If at any time:

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

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

12.4 Benefits payable to Members

A benefit becomes payable in respect of a Member when the Member:

- (a) Retires;
- (b) attains age 65 and asks the Trustee to pay the benefit;
- (c) suffers Total and Permanent Disablement;

- (d) suffers Temporary Disablement, where the terms of the Member's membership of the Fund entitle the Member to a benefit on Temporary Disablement;
- (e) otherwise ceases Service with a Participating Employer and asks the Trustee to pay the benefit, where the Member was admitted under **clause 5.2**,

or where Superannuation Law otherwise permits payment of the benefit and the Trustee agrees to pay the benefit.

12.5 Amount of benefit payable

- (a) Where a benefit is payable in respect of a Member other than on Temporary Disablement the amount of the benefit is equal to the Member's Account.
- (b) Where a benefit is payable in respect of a Member pursuant to Temporary Disablement, the amount of and terms on which the benefit is paid will be in accordance with the Policy of Insurance pursuant to which the benefit is paid.

12.6 Severe Financial Hardship and Compassionate Grounds

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

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

12.7 Deferral of benefit payments

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

12.8 Death benefit nominations

- (a) Where a pension is payable to a Member from the Fund, the Trustee may offer the Member the option of nominating a Reversionary Beneficiary pursuant to **clause 12.12** on commencement of the pension.

- (b) The Trustee may offer Members, other than a Member who has nominated a Reversionary Beneficiary, the option of making a Binding Nomination.
- (c) The Trustee may offer all Members, including Members who have made a Binding Nomination or who have nominated a Revisionary Beneficiary, the option of making a Non-lapsing death benefit direction under clause **12.11**.
- (d) A Member other than a Member who has nominated a Reversionary Beneficiary, may make a Non-binding death benefit nomination under clause **12.12**.
- (e) All death benefit nominations and Non-lapsing death benefit directions must comply with any requirements prescribed by SIS and must be in such form and subject to such terms and conditions as are set out in this Deed or as otherwise determined by the Trustee from time to time.
- (f) A Member may change a nomination or direction at any time in a form approved by the Trustee for that purpose.

12.9 Payment of death benefits

- (a) where there is a Reversionary Beneficiary, then, subject to clause **12.13**, the Trustee must pay the death benefit to the Reversionary Beneficiary;
- (b) where there is a Binding Nomination or Non-lapsing death benefit direction in respect of all or part of the benefit, then, subject to clauses **12.11(c)** and **12.11(d)**, the Trustee must pay the benefit or that part of the benefit to the person or persons nominated, and if more than one person is nominated in the proportions specified;
- (c) otherwise, the Trustee holds the amount of the benefit upon trust to be paid to any one or more of the Member's Dependants and legal personal representative in the proportions the Trustee decides.
- (d) If the Trustee after making reasonable enquires is unable to identify any Dependants or legal personal representative of a deceased Member, the Trustee may pay the benefit to any individual, where the benefit can be paid to that person in accordance with Superannuation Law.
- (e) Where the Trustee has paid the full amount of a death benefit payable in respect of a Member, the Trustee must not pay any further amount as a death benefit in respect of that Member.

12.10 Binding Death Benefit Nominations

- (a) A Member who has not nominated a Revisionary Beneficiary may provide the Trustee with a Binding Death Benefit Nomination nominating one or more of the Member's Dependants and legal personal representative to be paid their death benefit entitlement and the proportions of that payment.
- (b) A Member may revoke a Binding Death Benefit at any time, including by issuing a new Binding Death Benefit or a Non-lapsing death benefit direction.
- (c) If a nominated Dependant pre-deceases the Member or is no longer eligible to receive a death benefit payment under Superannuation Law,

then that portion of a Member's death benefit entitlement will be paid in accordance with **clauses 12.9(c) and (d)**.

12.11 Non-lapsing death benefit directions

- (a) The Trustee may offer a Member the opportunity to enter into a death benefit agreement with the Trustee which will be taken to override any Binding Nomination of the Member or nomination of a Reversionary Beneficiary.
- (b) Under a death benefit agreement the Member, with the Trustee's consent, will be entitled to determine who will receive their death benefit after their death.
- (c) A death benefit agreement can be offered in respect of each different interest of the Member in the Fund (where applicable).
- (d) If the death benefit agreement provides for the payment of a death benefit in a manner which is inconsistent with the Superannuation Law the Trustee will pay that part of the death benefit that relates to the part of the agreement that does not comply with the Superannuation Law in accordance with **clauses 12.9(c) and (d)**.

12.12 Non-binding death benefit nominations

- (a) A Member may at any time:
 - (i) nominate one or more Dependants to receive any benefit payable on the Member's death; and
 - (ii) specify the proportions and manner in which the benefit referred to in paragraph (i) is to be paid,

in a manner acceptable to the Trustee.
- (b) A Member may vary any nomination or specification given under paragraph (a) in a manner acceptable to the Trustee.
- (c) A nomination made under this clause **12.12** is not binding on the Trustee. However, the Trustee may consider a nomination when exercising its discretion to pay a benefit under clause **12.9(c)**.

12.13 Revisionary Benefit Nomination

- (a) A Member may on commencement of the payment of the Member's pension benefit, nominate a Dependent to receive a revisionary pension on their death.
- (b) A person nominated to receive a revisionary pension must be eligible to receive a revisionary pension under the Superannuation Law at any time of nomination and at the time of the Member's death.
- (c) If a Revisionary Benefit is not entitled under Superannuation Law to be paid a revisionary pension, the death benefit must be paid in accordance with **clauses 12.11(c) and (d)**.

12.14 Partial payments

- (a) If a Member requests, the Trustee may pay an amount out of the Member Account which comprises unrestricted non-preserved benefits under SIS (subject to Superannuation Law and clause **12.14(b)**).
- (b) Despite any other provision of this clause **12** but subject to Superannuation Law, the Trustee may impose conditions and restrictions on partial payment of benefits, including (for example):
 - (i) limits on how often partial payments are made;
 - (ii) a minimum amount for a partial payment;
 - (iii) a minimum balance that must remain in the Member Account after a partial payment.

12.15 Benefit payment standards

Notwithstanding any other provisions of this Deed, any benefit which is a Preserved Benefit must be:

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

12.16 Form of benefit payments

A benefit is payable as a lump sum. However, if a person who is entitled to the benefit requests, the Trustee may pay all or any part of the benefit as a pension (unless Superannuation Law requires that the benefit is paid as a pension).

12.17 Payment of lump sum benefits

Where a benefit is payable as a lump sum, the Trustee:

- (a) must pay the benefit as soon as practicable after it becomes payable; and
- (b) may pay the benefit in more than one instalment.

12.18 Payment of pension benefits

- (a) Where a benefit is payable as a pension, the Trustee may:
 - (i) pay the pension from the Fund;
 - (ii) use the benefit to purchase a pension or an annuity; or
 - (iii) rollover the benefit to a Superannuation Entity nominated by the Member.
- (b) The Trustee and a person to whom a benefit is payable may agree on the terms on which the pension is payable, but the terms must comply with any

standards prescribed under Superannuation Law for the payment of allocated pensions or account based pensions.

- (b) If a person to whom a pension is payable requests and Superannuation Law permits, the Trustee may:
 - (i) commute to a lump sum all or any part of the capital value of the person; and
 - (ii) vary the terms on which the pension is payable as the Trustee considers appropriate.
- (c) If a Member dies while in receipt of a pension, unless the Member has nominated a Revisionary Beneficiary, the Trustee must pay the balance in the Member's Account in accordance with **clause 12.8**.
- (d) On the death of a Revisionary Beneficiary, subject to contrary requirements under the Superannuation Law, the balance of the value of the pension will be paid by the Trustee to one or more of the Revisionary Beneficiary's Dependents and legal personal representatives in such proportion as the Trustee may decide in its absolute discretion.

12.19 Payment to a Superannuation Entity

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

12.20 Release to Trustee

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

12.21 Evidence of entitlement to benefits

- (a) Any person claiming a benefit from the Fund must on request by the Trustee produce to the Trustee such information or evidence, and execute such documents, as the Trustee reasonably requires to establish the person's entitlement to the benefit.
- (b) The Trustee when deciding a person's entitlement to a benefit may rely on such proofs or presumptions as the Trustee considers satisfactory, whether or not the proofs or presumptions relied on are strictly legal proofs or presumptions.
- (c) The Trustee may refuse to pay a benefit to any person until the Trustee's requirements for information, evidence or documents have been complied with to the Trustee's satisfaction.

12.22 Incapacity

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

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

12.23 Transfer to Eligible Rollover Fund

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

12.24 Benefits subject to Payment Split

- (a) Despite any other provision in this Deed or the terms of any agreement in relation to a Member's benefits, the Trustee may:
 - (i) create a new interest for the Spouse or former Spouse of a Member to give effect to a Payment Split; or
 - (ii) transfer or roll over the entitlement of the Spouse or former Spouse of a Member under a Payment Split,

and in either case the Trustee must reduce the amount of the Member's benefit by an amount determined by the Trustee to account for the interest or entitlement of the Member's Spouse or former Spouse.

- (b) On the death of a person:
 - (i) who is a Non-member Spouse of a Member;
 - (ii) who is not a Member; and
 - (iii) in respect of whom a Payment Split is in operation in relation to the Member's benefit,

the Trustee must pay the amount of the Non-Member Spouse's interest under the Payment Split, calculated in accordance with the Family Law Requirements, as if the Non-Member Spouse were a Member or as otherwise prescribed under the Family Law Requirements.

- (c) In this **clause 12.24**:

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

Family Law Requirements means any requirements under:

- (i) The Family Law Act and the regulations to it;
- (ii) SIS; or
- (iii) any other legislation,

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

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

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

12 Transfer from another fund

12.1 Arrangements for transfer to the Fund

The Trustee may make arrangements with:

- (a) any Member;
- (b) any Participating Employer;
- (c) employer or former employer of a Member; and
- (d) any Superannuation Entity,

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

12.2 Member's consent

The Trustee must not give effect to an arrangement referred to in **clause 12.1** unless it is satisfied that the Member gave written consent to the transfer or rollover of the entitlement to the Fund or that under Superannuation Law their written consent is not required including where the transfer results from a successor fund transfer.

12.3 Value of transfer

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

13 Transfer to another fund

13.1 Member or Employer may request transfer

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

13.2 Member's consent to transfer out

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

- (a) the Trustee has received the Member's written consent to the payment; or
- (b) the Member's written consent is not required under Superannuation Law.

13.3 Transfers without Member consent

The Trustee may pay to a Superannuation Entity any amount comprising the Member Account of a Member (or any part of the Member Account) without the consent of the Member or a Participating Employer, where:

- (a) Superannuation Law permits the transfer (including by way of a successor fund transfer); and
- (b) the Trustee is of the opinion that the transfer is in the best interests of the Member.

13.4 Partial transfers

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

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

13.5 Transfer of assets

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

13.6 Receipt sufficient discharge

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

14 Accounts and audit

14.1 Records to be kept

The Trustee must keep or cause to be kept a complete record of such matters as are required to comply with its obligations under this Deed and Superannuation Law, including (but not limited to):

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

14.2 Accounting Records

The Trustee must:

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

14.3 Accounts

The Trustee must:

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

14.4 Auditor

- (a) The Trustee must from time to time appoint a person who is an “approved auditor” (as defined in section 10 of SIS) to audit the accounts and statements of the Fund.
- (b) The Trustee must ensure that, for each Financial Year, the Auditor audits the accounts and statements of the Fund and reports in writing to the Trustee within the time specified in the Superannuation Law.
- (c) The Trustee shall fix the remuneration of the Auditor, and that remuneration is payable as an Expense.
- (d) The Trustee may at any time remove an Auditor from office.
- (e) The Auditor may retire from office on 1 Month’s notice to the Trustee, but must not retire within a period of 3 Months before or after the end of a Financial Year without the consent of the Trustee.

14.5 Auditor’s access

The Trustee must allow the Auditor access at all reasonable times to all the books and records under the Trustee’s control, and give to the Auditor such information and explanations as the Auditor requires for the performance of the Auditor’s duties.

14.6 Information for Members

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

15 Registers

15.1 Participating Employers Register

The Trustee must keep a Register of Participating Employers, in which the Trustee will enter the following information:

- (a) the name and address of each Participating Employer;
- (b) the date on which the name of each Participating Employer was entered in the Register;
- (c) details of Members for whom the Participating Employer contributes;
- (d) the date on which a Participating Employer ceases participation in the Fund;
- (e) such other details as the Trustee determines.

15.2 Members Register

The Trustee must keep a Register of Members, in which the Trustee will enter such of the following information as the Trustee has available to it:

- (a) the name, current residential address and date of birth of each Member;
- (b) the date on which the name of each Member was entered in the Register as a Member;
- (c) the name of each Participating Employer which contributes for the Member;
- (d) the date on which a Member ceases to be employed by the Employer Group;
- (e) the date on which the Member benefit is paid;
- (f) such other details as the Trustee determines.

16 Termination of the fund

16.1 Circumstances of Termination

The Fund terminates on a date determined by the Trustee in any of the following circumstances:

- (a) If at any time during the term of the Fund any legislation is enacted having the effect in the opinion of the Trustee of materially diminishing the amount of income of the Fund available for distribution to the Members, and the Trustee determines that the Fund shall be wound up;
- (b) If the Trustee determines that it would be in the best interests of Members to terminate the Fund;
- (c) If the office of the Trustee becomes vacant for any reason and a new Trustee is not appointed.

16.2 Termination Procedure

On termination of the Fund, the Trustee must:

- (a) give notice in writing to all Participating Employers and Members that the Fund is to terminate;
- (b) pay any outstanding expenses, including expenses associated with termination of the Fund, and make provision for any outstanding liabilities or anticipated expenses;
- (c) realise the assets of the Fund;
- (d) calculate the Member Account ("**Interest in the Fund**") of each Member as at the termination date, taking into account the realisable value of the assets of the Fund, the level of credit in the Reserve Account, any unallocated earnings and any expenses which remain outstanding.

16.3 Distribution

- (a) The Trustee must on calculation of the Interest in the Fund of each Member:
 - (i) where a benefit has become payable in respect of the Member, pay the amount of the Interest in the Fund as a benefit in accordance with this Deed;
 - (ii) otherwise, notify the Member in writing of the amount of the Interest in the Fund and request that the Member nominate within 1 Month of receipt of the request a Superannuation Entity to which the Interest in the Fund is to be transferred.
- (b) The Trustee must use its best endeavours to obtain a nomination of a Superannuation Entity from each Member.
- (c) The Trustee must pay or apply the Interest in the Fund of any Member in accordance with the nomination received from the Member where the nominated Superannuation Entity agrees to accept that amount.
- (d) If the Trustee does not receive from any Member within the time period prescribed a nomination which the Trustee is able to implement, the Trustee may make such arrangements in relation to payment of the Member's Interest in the Fund as Superannuation Law permits.

16.4 Receipt for Distribution

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

17 Trustee's indemnity

17.1 Trustee's entitlement to indemnity

Subject to **clause 17.2**, the Trustee:

- (a) is not liable for any loss to the Fund arising from any act or omission by the Trustee;
- (b) is entitled to be indemnified out of the Fund for any liability or loss incurred by it while acting as Trustee.

17.2 No indemnity for breach

Clause 17.1 does not apply to exempt the Trustee from liability for or indemnify the Trustee against:

- (a) a breach of trust where the Trustee:
 - (i) failed to act honestly in a matter concerning the Fund; or
 - (ii) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise;
- (b) a monetary penalty under a civil penalty order issued under SIS;
- (c) the payment of an amount payable under an infringement notice;
- (d) liability for the costs of undertaking a course of education in compliance with an education direction;
- (e) liability for an administrative penalty imposed under section 166 of the SIS Act.

17.3 Indemnity for Directors

References in this **clause 17** to "Trustee" include directors of the Trustee acting in that capacity.

17.4 Trustee not liable for actions Trustee is obliged to perform

The Trustee is not liable to any person for:

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

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

17.5 Discharge on receipt by Trustee

The receipt of the Trustee or a person duly authorised by the Trustee in that behalf is a sufficient discharge to any person for any money paid or other property

transferred to the Fund and such person is not obliged to enquire further as to the authority of the Trustee or such person to receive the money or property.

18 Limitation on liability of participating employers and members

18.1 No liability to make payments

Notwithstanding any other provision of this Deed, a Participating Employer or Member does not by virtue of participation in the Fund have any liability to make any payment to the Fund or payments to the Trustee.

18.2 No obligation to indemnify Trustee

No Participating Employer or Member shall be under any obligation personally to indemnify the Trustee or any creditor of the Trustee in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the Trustee in relation to, arising from or in connection with the Fund, whether arising from or by reason of participation in the Fund or any relationship with the Trustee arising from participation. Any such liability is expressly excluded. The only rights, if any, of indemnity of the Trustee and its respective creditors are limited to having recourse to the Fund.

19 Amendment of Deed

19.1 Form of amendments

The Trustees may at any time by supplemental deed, minute, resolution or oral resolution, repeal and replace or amend, alter or add to any or all of the provisions of the Trust Deed.

19.2 Members' rights

In exercising their discretion pursuant to **clause 19.1** the Trustees may take into account whether a Member's right or claim to accrued benefits and the amount of those accrued benefits would be altered adversely so as to result in a breach of Superannuation Law.

19.3 Effective Date of Amendment

An amendment may have a retrospective or prospective effect.

20 General Provisions

20.1 Notices

- (a) Any notice which is required to be or which may be given to any Participating Employer or Member may be delivered to the Participating Employer or Member personally or sent through the post addressed to the Participating Employer or Member at the address according to the records of the Trustee or electronically where the Trustee has the member's or Participating Employer's email address.
- (b) If sent by post a notice is deemed to have been delivered on the day following the posting of the notice.
- (c) If sent electronically, a notice is deemed to have been determined on the day that it was sent provided that the Trustee does not receive a 'bounce

back' notice that the Member's or Participating Employer's email address is included.

20.2 Prohibition on reversion of assets

No part of the Fund shall in any circumstances whatsoever revert to or be paid to the Trustee or the Participating Employers or any of them, except as expressly provided in this Deed.

20.3 Governing Law

All matters arising in relation to this Deed and the interpretation thereof shall be governed by the law of the State of Victoria.

20.4 Workers' Compensation not affected

- (a) Nothing in this Deed in any way affects the right of a Member or Legal Personal Representative or other person to claim damages or compensation for any accident arising out of and in the course of a Member's employment or payment for long service leave.
- (b) An amount payable under this Deed shall not be reduced by reason of any payment that may be made in respect of damages or compensation or for sick leave, but this **clause 20.4(b)** does not affect the terms of any Policy of Insurance under which a benefit is payable.

20.5 Severance

- (a) If any provision of this Deed is void or voidable or unenforceable or illegal, but would not be void or voidable or unenforceable or illegal if it were read-down and it is capable of being read-down, it shall be read-down accordingly.
- (b) If notwithstanding **clause 20.5(a)**, a provision of this Deed is void or voidable or unenforceable or illegal:
 - (i) if the provision would not be void or voidable or unenforceable or illegal as aforesaid if a word or words (as the case may be) were omitted, that word or those words are hereby severed; and
 - (ii) in any other case, the whole provision is hereby severed,and the remainder of this Deed has full force and effect.

20.6 Disputes

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

EXECUTED as a deed.

THE COMMON SEAL of **DIVERSA**
TRUSTEES LIMITED is affixed in the
presence of

Company Secretary/Director

Robert Good
Name of Company Secretary/Director (print)

Director

Name of Director (print)

Good Good