

Australian Eligible Rollover Fund

Deed of Amendment

Perpetual Superannuation Limited (**Trustee**)

Jacques Martin Administration and Consulting Pty Limited
(**Administrator**)

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123
www.minterellison.com

Details

Date 13 August 2013

Party

Name Perpetual Superannuation Limited
ABN 84 008 416 831
Short form name **Trustee**
Notice details Level 12, 123 Pitt Street, Sydney New South Wales

Name Jacques Martin Administration and Consulting Pty Limited
ABN 24 006 787 748
Short form name **Administrator**
Notice details Ground Floor, Tower 1, 201 Sussex Street, Sydney New South Wales

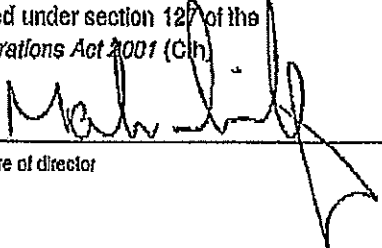
Background

- A The Trustee is the trustee of an eligible rollover fund known as the 'Australian Eligible Rollover Fund' (the **Fund**) which was established under a trust deed dated 20 June 1994, as amended from time to time (**Trust Deed**).
- B Clause 16 of the Trust Deed permits the Trustee to make amendments in writing to the Trust Deed with the consent of the Administrator if certain conditions are met.
- C With the Administrator's consent, the Trustee wishes to amend the provisions of the Trust Deed on the terms set out in this Deed of Amendment.

Signing page

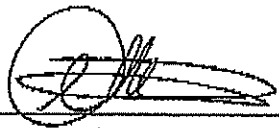
EXECUTED as a deed.

Executed by **Perpetual Superannuation Limited** under section 127 of the *Corporations Act 2001 (Cth)*



Signature of director

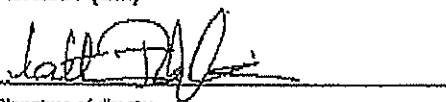
MARK SMITH
Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

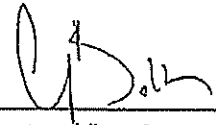
THORNTON CHRISTENSEN
Name of director/company secretary (print)

Executed by **Jacques Martin Administration and Consulting Pty Limited** under section 127 of the *Corporations Act 2001 (Cth)*



Signature of director

Catherine Fitzgibbon
Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

GREGORY BRIAN BALLARD
Name of director/company secretary (print)

Agreed terms

1. Amendments

The Trustee amends the Trust Deed by:

- (a) deleting all of the provisions and Schedules of the Trust Deed; and
- (b) inserting in their place the provisions set out in Appendix A to this Deed of Amendment.

2. Effective time

The amendments in clause 1 of this Deed of Amendment take effect from the date of execution of this Deed of Amendment.

3. Saving Provision

Despite any other provision in this Deed of Amendment to the contrary, if any amendment in this Deed of Amendment is not consistent with, or breaches the restrictions in, the amendment power contained in clause 16 of the Trust Deed, that amendment will be of no effect and the provisions purported to be amended will continue to be determined in accordance with the provisions of the Trust Deed as they existed prior to the date of the amendment.

4. No resettlement of trust

This Deed of Amendment will be construed only as operating to amend the Trust Deed and, except as provided for in clause 1, not establishing a new or different trust or managed investment scheme.

Appendix A

Trust Deed for the Australian Eligible Rollover Fund

Appendix to Deed of Amendment

Table of Contents

1.	Purpose, Definitions and Interpretation	7
2.	Establishment of the Fund	9
3.	Membership	10
4.	Payments to the Fund for Members	10
5.	Benefit Entitlement	11
6.	Payment of Benefits	12
7.	Records and Accounts	13
8.	Assets, Investments, Borrowings	15
9.	Trustee	15
10.	Trustee's powers	16
11.	Administrator	17
12.	Fees	18
13.	Reimbursement of Expenses	19
14.	Administration	20
15.	Termination of Fund	21
16.	Amendment of Deed	22
17.	Compliance	22
17A.	Compliance with Superannuation Law	22
18.	Saving Provision	23
19.	Miscellaneous	23

Trust Deed for the Australian Eligible Rollover Fund

1. Purpose, Definitions and Interpretation

Purpose

1.1 This deed sets out the terms on which the Fund is established.

Definitions

1.2 Unless the contrary intention appears:

Account means an account maintained under clause 7.5.

Accumulated Credit of a Member means the balance of the Member's Account.

Administrator means the Administrator for the time being under clause 11.

Auditor means the auditor appointed for the Fund under clause 7.2.

Authorisation Date means the date from which the Trustee is authorised by the Superannuation Authority to operate an Eligible Rollover Fund or such earlier date as determined by the Trustee.

Basic Fees means fees to which the Trustee or Administrator is entitled under clause 12.1 or 12.2.

Child has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Commencement Date means the day on which the Fund is established under clause 2.1.

Constitutional Corporation means a body corporate that is:

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

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

Consumer Price Index for a date means the consumer price index number (all groups weighted average of eight capital cities) published by the Australian Bureau of Statistics for the last quarter ending before that date, or if that index is discontinued and replaced then the replacement index.

Death Benefit of a Member means a benefit payable following the death of the Member.

Deed means this trust deed.

Dependant of a Member includes:

- (a) a Spouse;
- (b) a Child;
- (c) any other person who the Trustee believes is, or was at the date of death, wholly or partially dependent on the Member.

Distribution Date means a date determined by the Trustee under clause 7.7 for the declaration of a Fund Earning Rate.

Distribution Period means a period commencing on the Commencement Date or the day after a Distribution Date and ending on the next Distribution Date.

Eligible Rollover Fund has the same meaning as in Superannuation Law.

Expense Reserve means an account maintained under clause 7.13.

Financial Year means a year ending on 30 June, or any part of such a year occurring at the commencement or termination of the Fund.

Flagging Order has the same meaning as in the Family Law Act 1975.

Flag Lifting Agreement has the same meaning as in the Family Law Act 1975.

Fund Earning Rate means a rate declared under clause 7.8.

Investment Fluctuation Reserve means an account maintained under clause 7.12.

Legal Personal Representative of a deceased person means the executor or administrator of the person's estate.

Member means a person who has been admitted under clause 3.1 and has not ceased to be a Member under clause 3.2.

Non-Member Spouse has the same meaning as in the Family Law Act 1975.

Payment Flag has the same meaning as in the Family Law Act 1975.

Payment Split has the same meaning as in the Family Law Act 1975.

Plan means a group of Members, and related Account balances, designated under clause 3.3.

Required Payment Date means any date at which a Member's benefit must be paid or commence to be paid under Superannuation Law.

Shortfall Component has the same meaning as in the Superannuation Guarantee (Administration) Act.

Split means the division of a Member's interests in the Fund pursuant to a Flag Lifting Agreement, a Splitting Order or a Superannuation Agreement.

Splitting Order has the same meaning as in the Family Law Act 1975.

Spouse has the same meaning as in the Superannuation Industry (Supervision) Act 1993.

Sub-fund means a part of the Fund maintained under clause 7.14.

Superannuation Agreement has the same meaning as in the Family Law Act 1975.

Superannuation Authority means the Australian Prudential Regulation Authority, Australian Securities & Investments Commission or the Commissioner of Taxation or any other government authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds.

Superannuation Law means:

- (a) the Superannuation Industry (Supervision) Act 1993;
- (b) the Corporations Act 2001;
- (c) the Tax Act;
- (d) the Family Law Act 1975;
- (e) the Regulations prescribed under the Acts referred to in paragraphs (a) to (d) inclusive; and
- (f) any other replacement or additional Commonwealth or State law or administrative rulings, prudential standards, circulars, guidelines or instruments which relate to superannuation

arrangements and which apply to the Fund, or which the Trustee must comply with to obtain the maximum tax concessions available to the Fund or to avoid any penalties.

Tax Act means the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Taxation Administration Act 1953 and any other Commonwealth tax legislation as amended or enacted from time to time and any regulations enacted, promulgated or made thereunder.

Trustee means the trustee of the Fund.

Working Day means any day on which banks generally are open for business in Sydney but excluding Saturdays and Sundays.

Interpretation

1.3 Unless the contrary intention appears:

- (a) a reference to the Deed or any other document includes any variation or replacement of any of them;
- (b) a reference to a clause is a reference to a clause of the Deed;
- (c) a reference to a statute, ordinance, code or other law includes regulations, modification orders, prudential standards, binding determinations, declarations, notifications, orders, class orders, determinations, rulings and any other instruments made or issued under or in connection with it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) a power to appoint includes a power to vary or cancel the appointment;
- (f) headings are for convenience only and do not affect the interpretation of any provision;
- (g) if a period of time is specified and dates from a given day or the date of an act or event, it is to be calculated exclusive of that day;
- (h) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (i) if a period of time expires on a day that is not a Working Day then it is extended to expire on the next Working Day;
- (j) **amend** includes delete or replace;
- (k) **including** when introducing a list of items does not exclude a reference to other items of the same class;
- (l) **person** includes a firm, a body corporate, an unincorporated association or an authority;
- (m) **related body corporate** has the meaning given to it in the Corporations Law;
- (n) **tax** includes any duty or governmental impost;
- (o) [deleted]
- (p) to the extent of any inconsistency, the provisions of clauses 2.3, 8.3A and 17A override all other provisions of the Deed.

2. Establishment of the Fund

Establishment

2.1 The Fund is established on the acceptance by the Trustee of the first payment to the Fund.

No interference by Members

- 2.2 Each Member has a beneficial interest in the assets of the Fund. However, except to the extent expressly provided for in the Deed or required by law, a Member may not:
- (a) interfere with the rights or powers of the Trustee in its dealings with the assets of the Fund;
 - (b) otherwise claim any interest in any particular part or asset of the Fund.

Purpose of the Fund

- 2.3 Notwithstanding any other provision of the Deed, with effect from the Authorisation Date, the only purpose of the Fund is to be a temporary repository for amounts transferred or rolled over to the Fund from other regulated superannuation funds in circumstances allowed by Superannuation Law.

3. Membership

Admission

- 3.1 A person becomes a Member if the Trustee accepts a payment into the Fund for the person.

Membership ceases

- 3.2 A person ceases to be a Member when:
- (a) all benefits which are or may be payable in respect of the Member have been paid; or
 - (b) all the Member's entitlement to benefits is terminated.

Plans

- 3.3 The Trustee may designate Members for whom payments are received from a particular fund or funds as belonging to a plan within the Fund, to which the Trustee may give a name. The Trustee must treat the Account balances of those Members, to the extent they are attributable to payments from that source, as forming part of the Plan. However, a Plan does not constitute any separate trust or fund.
- 3.4 A Member may have an Account balance that is partly in one Plan and partly in another, if payments have been received for the Member from different sources.

4. Payments to the Fund for Members

Types of payment

- 4.1 The Trustee may only accept payments into the Fund which are:
- (a) payments of Shortfall Components; or
 - (b) otherwise permitted by Superannuation Law to be received into an Eligible Rollover Fund.
- 4.2 The Trustee must accept payments into the Fund which Superannuation Law requires it to accept.
- 4.3 The Trustee may refuse to accept any payment to the Fund which it is not required to accept under Superannuation Law.

Incorrect payment

- 4.4 If the Trustee finds that it has received a payment which cannot be accepted into the Fund, the Trustee must repay it to the person who paid it. If Superannuation Law permits, the Trustee may deduct an amount for expenses incurred in relation to the payment.

5. Benefit Entitlement

Entitlement

- 5.1 A Member is entitled to payment of a benefit equal to the Member's Accumulated Credit if:
- (a) the Member requests the payment in a form approved by the Trustee and the Administrator; and
 - (b) the request is for the whole of the Member's Accumulated Credit; and
 - (c) the payment is permitted by Superannuation Law.

Minimum benefit

- 5.2 A Member's benefit must not be less than the amount required by Superannuation Law.

Death

- 5.3 On the death of a Member a benefit equal to the Accumulated Credit is payable.

Preservation

- 5.4 If the Trustee considers it necessary under Superannuation Law to preserve a Member's benefit, then the Trustee must:
- (a) pay the benefit under clause 6.1 or 6.2 to a fund or organisation which deals with it as Superannuation Law requires; or
 - (b) retain it in the Fund until it may be paid under Superannuation Law.

Required Payment Date

- 5.5 If a Member reaches the Required Payment Date, the Trustee must pay the Member the Member's Accumulated Credit or apply it under clause 6.1, 6.2 or 6.3.

Trustee determinations

- 5.6 A benefit is only payable if:
- (a) the Deed permits it; and
 - (b) the Trustee has received notice, and any evidence it requires, of the event which causes the benefit to be payable.
- 5.7 The Trustee may act on any proofs or presumptions which it considers satisfactory whether or not they are strictly legal proofs or presumptions.

Assignments

- 5.8 The Trustee must not recognise any purported assignment of a benefit, other than under the Family Law Act 1975.

Family Law Act Splits

- 5.9 In order to give effect to a Split the Trustee must reduce:
- (a) the amount in the Member's account; or
 - (b) any benefit payable to the Member from the Fund.

- 5.10 Subject to Superannuation Law, the manner and basis of the reduction of clause 5.9 (including the apportionment of actual or anticipated costs, charges and expenses between the Member and the Non-Member Spouse) is as determined by the Trustee.
- 5.11 If required by Superannuation Law, the Trustee may transfer the entitlement or benefit of the Non-Member Spouse to another superannuation fund.
- 5.12 If, at the time a benefit becomes payable in respect of a Member, a Payment Flag or Flagging Order applies to the interest, the Trustee will defer payment of the benefit until the Payment Flag or Flagging Order is lifted, unless a payment is to be made to a successor fund (as defined in Superannuation Law).
- 5.13 In giving effect to this clause, the Trustee will not reduce the interest or benefit payable in respect of any other Member.

6. Payment of Benefits

Payment

- 6.1 If a person entitled to a benefit asks the Trustee to:
 - (a) apply it to purchase an annuity in the name of the Member or of the Member and one or more Dependants; or
 - (b) pay it to another fund,and the payment complies with Superannuation Law, the Trustee must comply with the request as soon as is reasonably practicable in accordance with the Superannuation Law.

Payment to other fund without consent

- 6.2 The Trustee may pay all or part of a benefit to another fund without the consent of the person entitled to it if Superannuation Law permits.

Unclaimed benefits

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

Death Benefits

- 6.4 The Trustee must pay a Member's Death Benefit to one or more of the Member's:
 - (a) Dependants; and
 - (b) legal personal representative,in proportions which the Trustee decides. The Trustee may determine the form in which the benefit is paid, which must be a form permitted by Superannuation Law.

Member's wishes

- 6.5 A Member may give the Trustee a notice (in a form approved by the Trustee) indicating how the Member would prefer the Member's Death Benefit to be distributed among the Member's Dependants and Legal Personal Representative. The Member may give a new notice at any time. A notice given under this clause is given for information only and does not limit the Trustee's discretion on the distribution of the Death Benefit.

Trustee's discharge

- 6.6 The Trustee is discharged from all obligations in respect of a benefit if the Trustee pays it in good faith to or on behalf of a person the Trustee believes to be entitled to it.

Financial incapacity

- 6.7 If the Trustee believes that a person who is entitled to a benefit is unable to manage his or her own financial affairs, and Superannuation Law permits, the Trustee may:
- (a) pay the benefit to another person to be used for the advantage of the person entitled to it; and
 - (b) accept the other person's receipt as a good discharge.
- The Trustee is not responsible for the application of the benefit by the person to whom it is paid.

Tax

- 6.8 The Trustee may deduct from a payment from the Fund any amount which it is required to deduct for tax.

7. Records and Accounts

Records

- 7.1 The Trustee must keep records for the Fund:
- (a) of the matters;
 - (b) for the period; and
 - (c) in the manner,
- prescribed by Superannuation Law.

Accounts and audit

- 7.2 The Trustee must appoint an auditor who satisfies Superannuation Law.
- 7.3 For each Financial Year the Trustee must prepare any financial statements for the Fund required by Superannuation Law.

Audit certificate

- 7.4 The Trustee must ensure that, for each Financial Year, the Auditor:
- (a) audits the accounts and records of the Fund; and
 - (b) reports in writing to the Trustee,
- within the time specified by Superannuation Law.

Member Accounts

- 7.5 The Trustee must record in an Account for each Member:
- (a) amounts paid to the Fund in respect of the Member;
 - (b) amounts debited to the Account for tax, losses or expenses;
 - (c) amounts paid as benefits or transferred to other funds from the Account;
 - (d) amounts which the Trustee is required to credit or debit pursuant to clause 5 or clause 12.3A;
 - (e) any other matters which the Trustee considers appropriate.

Tax, expenses and losses

- 7.6 The Trustee may debit to a Member's Account:
- (a) tax incurred by the Trustee;

- (b) expenses of the Fund;
- (c) losses of the Fund;
- (d) provisions for (a), (b) and (c),

in proportions which the Trustee considers appropriate and which are consistent with Superannuation Law.

Distribution Date

7.7 The Trustee must declare a Distribution Date at least once in each Financial Year.

Fund Earning Rate

7.8 The Trustee must declare:

- (a) as soon as practicable after a Distribution Period ends, a Fund Earning Rate to be applied as at the Distribution Date to Accounts that remain at the date of declaration; and
- (b) whenever it considers appropriate, an interim Fund Earning Rate to be applied to the Accounts of a Member as at the date when a benefit or transfer becomes payable from them,

for the period since the last date as at which a distribution was made to those Accounts.

7.9 In determining a Fund Earning Rate the Trustee must comply with Superannuation Law and take into account:

- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
- (b) the realised and unrealised losses and expenses of the Fund (including any tax that is or may be incurred by the Trustee), which are not directly debited to an Account;
- (c) the appropriateness of averaging earnings, losses and expenses over several Distribution Periods.

7.10 A Fund Earning Rate may be positive or negative.

7.11 The Trustee must distribute earnings or losses to Accounts on their daily balances at the Fund Earning Rate which applies to them.

Investment Fluctuation Reserve

7.12 The Trustee must maintain a reserve account called the Investment Fluctuation Reserve to handle any differences between the actual earnings or losses of the Fund and the total amount distributed to Accounts for a Distribution Period.

Expense Reserve

7.13 The Trustee must maintain a reserve account called the Expense Reserve to hold provisions for tax and expenses, and apply the Expense Reserve to pay tax and expenses.

Sub-funds

7.14 The Trustee may maintain the Fund in separate parts, to which the Trustee may give a name. A Sub-fund does not constitute a separate trust or fund. A Plan may constitute or be included in a Sub-fund. For any Sub-fund the Trustee must:

- (a) select the assets which comprise it; and
- (b) apply clauses 7.6 to 7.13 separately to the Sub-fund and the Accounts it represents.

7.15 The Trustee must maintain the Sub-funds in such a way as to identify the assets of the Fund which are attributed to each Sub-fund.

7.16 The Trustee may transfer assets between different Sub-funds.

- 7.17 The Trustee must divide an Account into sub-accounts representing the proportions in which the Account is attributed to different Sub-funds.

8. Assets, Investments, Borrowings

Assets

- 8.1 The Fund consists of:
- (a) money or other assets that the Trustee holds for the purposes of the Fund; and
 - (b) investments that the Trustee makes and all income on those investments.

Investments

- 8.2 The Trustee may invest all money which is not required to meet current payments in any manner in which it could invest if it were personally entitled to the money, including:
- (a) in investments authorised by the law relating to investment of trust funds;
 - (b) in policies of life insurance;
 - (c) in trusts or common funds;
 - (d) on deposit or loan, with or without security;
 - (e) in real property;
 - (f) in shares, stocks, notes, options, debentures or other securities;
 - (g) in options, hedging contracts, futures contracts and other financial instruments.
- 8.3 To the extent that Superannuation Law permits, the Trustee may:
- (a) mix investments with investments of other people or trusts; and
 - (b) vary, replace, encumber and deal with the investments,
- as if it were dealing with its own property.

Single diversified investment strategy

- 8.3A Notwithstanding any other provision of the Deed, with effect from the Authorisation Date, all assets of the Fund must be invested in accordance with a single diversified investment strategy.
- 8.4 [Deleted]
- 8.4A [Deleted]

Restrictions

- 8.5 The Trustee must invest in a manner which complies with Superannuation Law.
- 8.6 The Trustee may only make a loan or give financial assistance to a person if that complies with Superannuation Law.

Borrowing

- 8.7 The Trustee may borrow or raise money up to any amount and may secure payment or repayment in any manner which it thinks fit. The Trustee may only do so if Superannuation Law permits.

9. Trustee

Nature

- 9.1 The Trustee must be a Constitutional Corporation.

Trustee must retire

9.2 The Trustee must retire as trustee of the Fund if Superannuation Law requires.

Trustee may retire

9.3 The Trustee may retire as trustee of the Fund on giving 6 months' written notice to the Administrator of its desire to do so or any lesser time as the Trustee and the Administrator agree.

9.4 On the retirement of a Trustee it must appoint another Constitutional Corporation as Trustee. The Trustee must consult the Administrator before doing so.

9.5 The appointment of a Trustee must comply with Superannuation Law.

Deed

9.6 A retirement or appointment of Trustee may be made by deed, which need not be registered.

Assets

9.7 On retirement the retiring Trustee must:

- (a) vest the assets of the Fund or cause them to be vested in the new Trustee; and
- (b) deliver to the new Trustee all books, documents, records and other property relating to the Fund.

The costs and expenses incidental to the change may be recouped from the Fund.

10. Trustee's powers

Trustee's powers

10.1 The Trustee may do anything it considers appropriate to administer the Fund and comply with Superannuation Law, including:

- (a) giving receipts and discharges;
- (b) conducting and settling legal proceedings;
- (c) referring claims to arbitration;
- (d) compromising any claim;
- (e) giving any guarantee or indemnity;
- (f) insuring any risks;
- (g) acting as an underwriter;
- (h) making rules for rounding off payments to the Fund and benefits;
- (i) making rules in relation to minimum benefit payments and minimum balances retained in the Fund;
- (j) providing for and transferring liability for any tax;
- (k) electing to be bound by any legislation;
- (l) convening and conducting meetings of Members or groups of Members in a manner consistent with Superannuation Law; and
- (m) setting down rules for convening and conducting meetings of Members or groups of Members in a manner consistent with Superannuation Law;
- (n) undertaking activities for the development, promotion or marketing of the Fund.

Delegation

10.2 The Trustee may appoint any person (including the Administrator) to administer the Fund or to manage investments of the Fund or both. The appointment must:

- (a) be in writing on terms which the Trustee considers appropriate; and
- (b) comply with Superannuation Law.

10.3 The Trustee may delegate any of its powers, duties and discretions to any person.

Custodian

10.4 The Trustee may appoint a person to perform custodial functions in relation to any assets of the Fund on terms which the Trustee considers appropriate if the appointment is consistent with Superannuation Law. In particular, the Trustee may appoint a Custodian which is a related body corporate, and may be reimbursed for its fees, so long as the appointment is on arm's length terms.

Consultation

10.5 The Trustee must consult with the Administrator before making any appointment or delegation, other than of a custodian.

Trustee's discretion

10.6 The Trustee and any officer of the Trustee may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise.

10.7 The Trustee is completely unrestricted in the exercise of its powers and discretions.

Trustee's liability

10.8 The Trustee is only liable for its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it.

Trustee's indemnity

10.9 In addition to its rights under clause 13, the Trustee may recover from the Fund any loss incurred in relation to the Fund unless:

- (a) it results from the Trustee's dishonesty or an intentional or reckless failure to exercise the degree of care and diligence required of it; or
- (b) the law prevents it.

10.10 The benefit of clauses 10.8 and 10.9 also applies to:

- (a) any directors or employees of the Trustee;
- (b) a former Trustee or any person who previously fell within (a).

11. Administrator

Replacement

11.1 The Administrator may appoint another person to replace it as Administrator if that person agrees to accept the position and the Trustee approves.

11.2 If:

- (a) an order is made or an effective resolution is passed for the winding up of the Administrator; or
- (b) the Trustee reasonably believes it is in the best interests of the Members to remove the Administrator, and gives the Administrator written notice to that effect,

the Administrator ceases to hold office and another person may take its place by written agreement with the Trustee. The Trustee must obtain the retiring Administrator's approval to the appointment of the new Administrator.

Performance

- 11.3 The Administrator must perform any aspect of the administration of the Fund which the Trustee delegates to it, and in doing so must comply with the Trustee's directions.

Liability

- 11.4 The Administrator is only liable for its acts or omissions which are dishonest or constitute an intentional or reckless failure to exercise the degree of care and diligence required of it. However, if this clause purports to confer greater protection on the Administrator than is permitted under Superannuation Law in respect of an activity of the Administrator, then it is modified to confer the level of protection permitted by Superannuation Law in respect of that activity.

Discretions

- 11.5 The Administrator and any director or employee of the Administrator may exercise individually or jointly a power or discretion even though that person has another interest in the result of the exercise.
- 11.6 The Administrator is completely unrestricted in the exercise of its powers and discretions.

12. Fees

Basic Fees

- 12.1 The Trustee is entitled to a quarterly fee from the Fund calculated at the rate of 0.25% per annum of the gross value of the Fund as at each calculation date of 31 March, 30 June, 30 September and 31 December and subject to a minimum of \$25,000 per annum (indexed in accordance with movements in the Consumer Price Index).
- 12.2 The Administrator is entitled to a Member fee from the Fund of 25 cents per Member per week and a benefit fee in respect to each benefit paid to a member of \$25 (both amounts to be indexed in accordance with movements in the Consumer Price Index). The Trustee may agree with the Administrator to vary this rate from time to time.

Hourly fees

- 12.3 In addition to the foregoing the Trustee is entitled to a fee of \$150 (indexed in accordance with movements in the Consumer Price Index after the date this rule was adopted) for each hour spent by each officer of the Trustee in connection with one or more of the following:
- (a) identifying or locating Members;
 - (b) preparing and distributing any periodical or other report or document required by law to be prepared;
 - (c) convening and holding any meetings with any actual or prospective contributor, trustee of a fund or policy committee (within the meaning of Superannuation Law) or any representative of any of those persons;
 - (d) convening and holding any meetings of Members, implementation of any resolutions and communications to Members;
 - (e) any court proceedings, arbitration, dispute or claim concerning the Fund;
 - (f) any inspections or audits or requests for documentation or information by a Superannuation Authority;

- (g) determining who may be entitled to a benefit on the death of a Member;
- (h) inquiries or complaints from Members or other beneficiaries;
- (i) processing and paying unclaimed benefits in accordance with the requirements of Superannuation Law.

Family Law Act related fees

12.3A The Trustee is entitled to a maximum fee of \$200 in respect of each of the following:

- (a) a Payment Flag;
- (b) a Payment Split;
- (c) implementing a Flag Lifting Agreement that does not provide for a Payment Split;
- (d) an order terminating the operation of a Payment Flag;
- (e) an application made in accordance with Superannuation Law for information about a superannuation interest; or
- (f) any other thing done by the Trustee in relation to a Flag Lifting Agreement, a Superannuation Agreement, a Flagging Order, a Splitting Order or any other order made in accordance with the Family Law Act 1975.

12.3B The Trustee may debit or charge any fee referred to in clause 12.3A from a Member or Non-Member Spouse in accordance with Superannuation Law.

Time for payment of fees

12.4 Other than for fees which are set out in clause 12.3A, fees are payable to the Trustee and the Administrator respectively within 28 days after the end of each quarter.

Changes to fees

12.5 For any one or more Members, the Trustee may agree with the Administrator to change:

- (a) the amount of any fee;
- (b) the basis on which the fee is payable;
- (c) the time at which the fee is payable;
- (d) the period over which the fee is payable;
- (e) any two or more of (a) to (d).

12.6 In doing so, the Trustee may discriminate between Members.

13. Reimbursement of Expenses

The Trustee and the Administrator are, in addition to their fees, entitled to recover out of the Assets of the Fund the following costs, charges and expenses which either of them incurs in relation to the Fund, unless they result from the relevant party's dishonesty or intentional or reckless failure to exercise the degree of care and diligence required of it:

- (a) disbursements in connection with the acquisition or disposal of any asset, including commission and brokerage;
- (b) audit fees;
- (c) any tax or reimbursement of tax properly charged to the Trustee (whether by any taxing authority or any other person) in connection with the Trust on any account, but excluding any tax payable personally by the Trustee on its own account;

- (d) costs in relation to any borrowing;
- (e) costs of postage of all documents posted to any Member;
- (f) costs of any valuation of assets;
- (g) expenses incurred in connection with the bank or building society accounts of the Trustee;
- (h) fees payable to attorneys, actuaries, administrators, managers, custodians, consultants, agents, advisers, experts and other persons engaged by the Trustee;
- (i) costs in connection with the initiation, carriage and settlement of any court or tribunal proceedings or other form of resolution of disputes;
- (j) costs in connection with the retirement of the Trustee and the appointment of any successor;
- (k) costs in connection with the preparation and distribution of any periodical or other report or document required by law to be prepared;
- (l) costs in connection with the preparation and distribution of any disclosure or marketing document or any advertisement in relation to the Fund;
- (m) costs in connection with the preparation and execution of the Deed and any deed amending the Deed;
- (n) costs of preparing and printing accounts, distribution statements and cheques;
- (o) costs associated with compliance with the requirements of Superannuation Law.

14. Administration

Deed

14.1 A Member may inspect a copy of the Deed at the Trustee's office during the Trustee's usual business hours.

Giving information

14.2 Every person participating in the Fund or claiming a benefit must give the Trustee any information or documents that the Trustee requires to administer the Fund.

14.3 The Trustee must give:

- (a) each member;
- (b) the Superannuation Authority;
- (c) the trustee of any other fund to which a benefit is transferred;
- (d) any other person,

any information which must be given under Superannuation Law at a particular time.

Dispute resolution

14.4 If Superannuation Law requires, the Trustee must take reasonable steps to ensure that arrangements are in force under which:

- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
- (b) inquiries or complaints will be considered and dealt with within 90 days after they were made.

Confidentiality

- 14.5 The Trustee must treat as confidential information relating to Members or persons entitled to receive benefits which it acquires as Trustee and only use the information for the purposes of the Fund or as required by law.

Notices

- 14.6 Any notice or other written communication in connection with the Fund is given to a person if it is:
- (a) handed to the person; or
 - (b) delivered to the person's last known address; or
 - (c) posted by ordinary post from within Australia to the person's last known address.
- 14.7 If the notice or communication is posted, it is taken to be received on the third business day after posting.

Member authorisation

- 14.8 The Trustee may treat an authorisation purported to be given by a Member as given by the Member.

Governing law

- 14.9 The Fund and the Deed are governed by the law in force in New South Wales.

15. Termination of Fund

Termination

- 15.1 The Fund must be terminated if:
- (a) the office of the Trustee becomes vacant for any reason and a new Trustee is not appointed within 30 days of the vacancy commencing; or
 - (b) the Trustee and the Administrator agree in writing that the Fund should be terminated from a particular date.
- 15.2 As from the termination date the Trustee may refuse to accept any further payments to the Fund if Superannuation Law permits.

Application of Fund

- 15.3 On termination, the Trustee must apply the Fund assets in the following order of priority:
- (a) to provide for all expenses and liabilities (other than benefits) for which the Trustee is or reasonably believes it may become liable and any fees to which it is or reasonably believes it may become entitled in respect of the Fund;
 - (b) to provide in respect of each Member:
 - (i) any benefit which became payable before the termination date; or
 - (ii) if (i) does not apply – a benefit equal to the Member's Accumulated Credit.

Payment of benefits

- 15.4 A person may not receive a benefit under clause 15.3 before Superannuation Law permits.
- 15.5 If a person dies before receiving a benefit provided under clause 15.3, the Trustee must pay it as a Death Benefit.
- 15.6 If Superannuation Law permits, the Trustee may pay the benefits provided under clause 15.3 to another Eligible Rollover Fund.

15.7 If the Fund is terminated under clause 15.1(a), clauses 15.2 and 15.3 apply to the person who becomes Trustee 30 days after the vacancy commenced.

16. Amendment of Deed

Power to amend

- 16.1 The Trustee may amend any of the provisions of the Deed including this clause 16.
- 16.2 The Trustee must not make an amendment without the Administrator's consent unless:
- (a) there is no Administrator; and
 - (b) the Trustee has been unable to obtain the agreement of the retired Administrator under clause 11.2 to the appointment of a new Administrator which it would be consistent with the Trustee's duties under Superannuation Law to appoint.

Form of amendment

16.3 An amendment must be in writing.

Date of effect

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

Limitation of power

- 16.5 No amendment may alter a benefit entitlement contrary to Superannuation Law.
- 16.6 No amendment may enable an individual to be appointed as Trustee unless Superannuation Law permits.

17. Compliance

- 17.1 All the standards which Superannuation Law requires to be included in the governing rules of a superannuation fund and an Eligible Rollover Fund form part of this Deed, whether or not they are explicitly stated in the Deed.
- 17.2 However, if
- (a) a standard is no longer required to be included; or
 - (b) the Superannuation Authority does not require it to be complied with,
- then that standard ceases to be included by this clause.
- 17.3 A standard included by clause 17.1 prevails over any other clause which is inconsistent with it.

17A. Compliance with Superannuation Law

Clause paramount

17A.1 Despite anything expressed or implied to the contrary in any other provision of the Deed, if there is a conflict between this clause 17A and any other provision of the Deed (including any provision which purports to override this clause 17A), this clause 17A prevails.

Deed subject to Superannuation Law

17A.2 The provisions of the Deed are to be read as subject to the Superannuation Law and if there is any inconsistency between the provisions of the Deed and the Superannuation Law, the requirements of the Superannuation Law prevail.

Requirements (and Discretions) of Superannuation Law

17A.3 The Trustee:

- (a) must do or procure to be done or refrain from doing, such acts, matters and things as in the opinion of the Trustee may be necessary to comply with a requirement of the Superannuation Law; and
- (b) can (but is not obliged to) do or procure to be done or refrain from doing, such acts, matters and things as in the opinion of the Trustee may be desirable to act in accordance with a provision of the Superannuation Law that is not a requirement of the Superannuation Law,

including making such election or elections as required under, contemplated by or pursuant to the Superannuation Law.

18. Saving Provision

If a provision of the Deed would otherwise be wholly or partly invalid because it:

- (a) subjects the Trustee to direction by another person; or
- (b) permits a person to exercise a discretion without the consent of the Trustee,

then the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

19. Miscellaneous

Severance

- 19.1 Any provision of the Deed which is prohibited or unenforceable in any jurisdiction is ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of the Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

Waiver

- 19.2 No failure to exercise and no delay in exercising any right, power or remedy under this agreement operates as a waiver. No single or partial exercise of any right, power or remedy precludes any other or further exercise of that or any other right, power or remedy.

Continuing effect

- 19.3 In spite of the termination of the Fund, the provisions of the Deed continue in effect to the extent that they are required to regulate any remaining rights or duties of the parties.

