

Schedule – Consolidated Deed

National Entitlement Security Trust Deed

Contents

Schedule – Consolidated Deed.....	1
1. Defined meanings	4
2. Constitution of Fund	4
3. Appointment and removal.....	5
4. Liability and indemnity.....	8
5. Trustee powers, delegation and discretion.....	9
6. Fund Administrator	12
7. Contributions by Employers	13
8. Information from Members.....	14
9. Transfer to/from another fund.....	14
10. Participation	15
11. Retirement of Employers	16
12. Termination of the Fund	17
13. Discontinuance of the Fund	18
14. Alteration of trust.....	18
15. Damages and compensation.....	19
16. Remuneration of Trustee and expenses of the Fund	19
17. Accounts records and audits	19
18. Register of Employers and Members.....	19
19. Inspection of deed	20
20. Confidentiality	20
21. Employer information.....	20
22. Payments / claims	21
23. Notices	21
24. Commencement and termination	21
25. Earnings	22

26.	Benefit payment / claims	23
27.	Payments to be made by the Trustee in the event of the Member's death.....	26
28.	Preconditions to entitlement	26
29.	Procedure for payment of Benefits	26
29A.	Lost Beneficiaries	27
30.	Loss of Benefits	27
31.	Acknowledgment	32
32.	Definitions and interpretation	32
	Schedule 1 – Employer Application and Deed of Adherence	38
	Schedule 2 - Administration.....	40
	Schedule 3 – Powers of investment.....	41

National Entitlement Security Trust Deed

Dated 1st June 2002

Party

Nest Nominees Pty Ltd ACN 091 968 124 of Level 26, Tower One International Towers Sydney, Barangaroo NSW 2000 (**Trustee**).

Background

- A. Various Awards and Industrial Agreements applicable to Industry provide for the payment of Employee Entitlements by Employers to Employees.
- B. The Trust has been established:
 - (i) to provide a facility for Employers to pay Employee Entitlements to Employees on their becoming eligible for payment and thereby enable Employers to fund Award, Industrial Agreement and other obligations in relation to Employee Entitlements;
 - (ii) to receive Contributions and hold them until the Employee Entitlements become payable under the terms of this Deed.
- C. The terms and conditions governing the Trust are as set out in this Deed.
- D. The name of the Trust will be as stated in clause 2.2.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Constitution of Fund

2.1 Declaration of trust

The Trustee declares that it stands possessed of, and will continue to hold, the Fund on trust on the terms and conditions set out in this Deed.

2.2 Name of Trust

The Trust established by this Deed will be known as the National Entitlement Security Trust (**NEST**).

2.3 Assets vest in Fund

- (a) Nothing in this Deed will entitle any Employer or Member to any specific asset of the Fund and the Trustee will have an absolute discretion as to which part of the Fund is applied to make payments pursuant to this Deed. All contributions to the Fund immediately vest in the Fund.
- (b) Notwithstanding any equitable or legal right neither the Members (nor any of them) or the Discretionary Beneficiaries (nor any of them) may lodge a caveat against the title to any real property held by the trustee as a trust asset and, in any such event, must bear and pay the trustee's legal costs of and incidental to removal thereof on an indemnity basis.

3. Appointment and removal

3.1 Eligibility

The Fund must be administered by a Trustee, which is a corporation.

3.2 Equal Representation

The Trustee must be a Corporation with Equal Representation. Subject to clause 3.3, no decision may be made by the Trustee in the event of, at any such time, there be no Equal Representation.

3.3 Continuance of Equal Representation

Where a Trustee is without Equal Representation the remaining Board of Directors of the Trustee and an Independent Chairperson will continue the administration of the Fund, but such continued administration must be within the Objectives of the Deed, until such time as the Trustee has Equal Representation.

3.4 Appointment, removal, and role of the Independent Chairperson

- (a) An Independent Chairperson from time to time is appointed and removed by way of a vote resulting in at least 50% of the representatives of Employers' Organisations and 50% of Union representatives on the Trustee's Board of Directors (other than the Chairperson) voting for such appointment or removal, as the case may be, or by way of a vote in which Employer Organisations and Union representatives, which together constitute at least 75% of the Trustee's Board of Directors vote for such appointment or removal, as the case may be, even in the case where there is no Equal Representation.
- (b) Subject to this clause, the Independent Chairperson will not have any voting rights nor will that person possess any other discretion;
- (c) Where the Trustee, which is a corporation, does not have Equal Representation and the Board of Directors, by virtue of 3.3, have continued the administration of the Fund, albeit in the absence of and until such time as the Trustee has Equal Representation, then:
 - (i) it is the role of the Independent Chairperson to ensure that the Objectives of the Deed are met and that the Trustee takes reasonable steps to procure Equal Representation within reasonable time;

- (ii) the presence of the Independent Chairperson on the Board during that period will have the effect that it is deemed that the Trustee has Equal Representation for all purposes under this Deed; and
 - (iii) during a period when there is not Equal Representation the representatives of Employer Organisations or the Unions as the case may be, will be entitled between them to exercise such number of votes that would equal the combined number of votes that could be exercised by the Employer Organisations or the Unions representatives as the case may be and the Independent Chairperson will be entitled to exercise a casting vote only in the event that there is an equality of votes cast pursuant to this sub-paragraph.
- (d) In the event of any equality of votes for any resolution other than a Special Resolution or a vote as to the appointment or removal of the Independent Chairperson pursuant to paragraph (a) of this sub-clause under this Deed and subject to that person's vote being permitted by the Objectives, the Independent Chairperson is entitled to exercise a casting vote on any ballot held by the Board of Directors.
 - (e) An Independent Chairperson is not entitled to vote in either his or her appointment or removal as an Independent Chairperson or in the appointment of another person in the role of Independent Chairperson.
 - (f) The Independent Chairperson may not delegate any of his or her functions, authorities or powers conferred under this clause.
 - (g) The independent Chairperson will be entitled to reimbursement for reasonable expenses for performing his/her functions.
 - (h) In the event that the Independent Chairperson is unable to participate in a meeting of the Board of Directors due to his or her death, resignation, illness or other serious cause preventing his or her attendance, the remaining members of the Board may transact the business of the Board of the Trustee during that absence, provided that:
 - (i) a vote will be held as soon as practicable to elect a new Independent Chairperson in the case of that person's death or resignation; and
 - (ii) during that absence, a person chosen by the meeting will perform the role of Chairperson but will have none of the other functions, including a casting vote, of an Independent Chairperson, and in any case where there is an equality of votes the motion will be declared to be lost.

3.5 When office vacated

The office of Trustee will become vacant if:

- (a) it decides to resign its office and in any such case must give 20 Business Days written notice in writing to the Unions and Employer Organisations participating in the Fund at that time; or
- (b) an order is made or an effective resolution is passed for its winding up, or it is placed in liquidation, receivership or voluntary administration; or
- (c) if an order to such effect is made pursuant to s 70 of the *Trustee Act 1925* of New South Wales (**Trustee Act**).

3.6 Changing Trustee

- (a) If the office of Trustee becomes vacant the existing Trustees must unanimously appoint a corporation to replace the Trustee in accordance with clause 3.1;
- (b) A Trustee must not cease to be a Trustee pursuant to sub-clause 3.5(a) of this clause unless the existing Trustees have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.
- (c) Any change of Trustee must be effected by a deed between the then existing Trustee and the proposed new Trustees which is duly registered pursuant to Part 23 of the *Conveyancing Act 1919* of New South Wales or any equivalent or successor provision to that Part and until any such change of Trustee is registered, the then existing Trustee or Trustees will, notwithstanding anything to the contrary save by order of the Court, remain in office.

3.7 Obligations upon cessation or retirement

A Trustee must on retirement or cessation take such action as is necessary to vest the Fund or cause it to be vested in the new Trustee and will deliver to the new Trustee all books, documents, records and other property relating to the Fund.

3.8 Other matters

- (a) Any determination of the Trustee in acting as Trustee of this Trust may be made:
 - (i) in writing signed by the Chairperson of the relevant meeting of the Trustees at which the determination was made; or
 - (ii) by a resolution of a general meeting of the shareholder members of the Trustee or the Board of Directors of the Trustee acting personally or through alternates or representatives appointed in terms of this Deed and which resolution is duly passed at a meeting attended personally by the Directors or through alternates or representatives as the case may be; or
 - (iii) where any delegation of the Trustee's powers has been made in such manner as the Trustees at or after the time of such delegation resolve or if there is no such resolution then in writing signed by the person or persons to whom such delegation has been made.
- (b) Subject to and in accordance with this paragraph the Trustee will maintain a separate minute book (**Principal Minute Book**), which will be part of the property included in the Trust Fund.
 - (i) The Principal Minute Book will contain minutes of all decisions and determinations of the Trustee and of any Committee of the Board of Directors of the Trustee and a copy of all resolutions adopted referred to in this sub-clause together with the date of the relevant meeting or resolution.
 - (ii) The Principal Minute Book will not contain the reasons for any decision or determination or record the actual votes cast for or against a resolution of the Trustee by individual shareholder members or members of the Board or Committee of the Board, as the case may be.

- (iii) The Board of Directors of the Trustee may determine to keep separate minute books relating to transactions in different States or Territories in which case a minute of the resolution to establish any such separate minute book must be made in the Principal Minute Book.
- (c) The minute book referred to in sub-clause (b) of this clause will be available for reasonable inspection by any Member and by all Directors and retired Directors but nothing in sub-clause (b) above will prevent any of the Directors keeping a separate record or note of the deliberations of the Trustee in such form as that Director thinks fit which will not be part of the Trust Fund and will remain the property of that Director and will not be available for inspection.
- (d) Every Trustee which is a company or corporation established pursuant to sub-clause 5.8 may exercise or concur in exercising any of the powers and may execute or concur in executing any of the trusts constituted by or under this Deed by a resolution of such company or corporation or by a resolution of its board of directors or governing body or may delegate the right and power or to execute or concur in executing any such trust to one or more representatives appointed for the purpose by its board of directors or governing body and if more than one is so appointed such representatives will act jointly and severally according to the terms of their appointment;

4. Liability and indemnity

4.1 No personal liability

The Trustee and each of its officers from time to time will not be responsible for:

- (a) any loss or damage occasioned to the Fund or any part of the Fund or to any Employer or person by the exercise of any discretion or power conferred on the Trustee by this Deed or by law or by any alleged failure to exercise any such discretion or power other than conscious wilful default or wilful neglect or otherwise whether by itself, its servants or employees; or
- (b) any breach of duty or trust whatsoever, unless the same will be proved to have been committed, made or omitted in personal conscious fraudulent or wilful bad faith by the Trustee or the relevant Director. Without limiting the generality of the above, the Trustee and its officers will not be liable for any prejudice suffered by a Member arising out of computation by the Trustee of any benefit.

4.2 Indemnity

- (a) The Trustee and its officers from time to time if acting in good faith will be indemnified out of the assets of the Fund against all liabilities incurred by it or them in the execution or attempted execution or in respect of the failure to execute any of the trusts, authorities, and discretions contained in this Deed or by being the Trustee of the Fund.
- (b) Without limiting the generality of sub-clause 4.2(a), the indemnity provided will apply to any payment made in respect of an Employer or Member to any person whom the Directors of the Trustee bona fide believe to be entitled to the payment.
- (c) The Trustee will have a lien on and may apply the Fund for the above indemnity and also for the payment of all proper legal and other costs, charges and expenses of

administering or winding up the Fund and otherwise of performing its duties under this Deed.

4.3 Indemnity for payments

Each Employer hereby indemnifies the Fund in respect of any shortfall of contributions, which should otherwise have been made by it to the Fund in terms of this Deed.

4.4 Indemnity for directors

Any indemnity or release or waiver specified to be in favour of the Trustee in this Deed will in the case of a corporate trustee be also read so as to extend to the personal liability of each director of that corporate trustee.

5. Trustee powers, delegation and discretion

5.1 Powers and discretions

Subject always to the Objectives, the Trustee in the exercise of the powers, authorities and discretions vested in it by this Deed will have the discretions conferred on it by the express terms of this Deed and which are otherwise not contrary to law.

5.2 Interpretation

Subject to the right of a Member to due administration of this Trust any decision as to the interpretation and effect of this Deed by the Trustee will be final.

5.3 General powers

Subject to this Deed and always to the Objectives, the Trustee has all the powers in respect of the Fund that it is possible under the law to confer on a trustee and as though it were the absolute owner of the assets of the Fund and acting in its personal capacity.

5.4 Specific powers

- (a) Without limiting the generality of clause 5.3, and in addition to any other powers conferred on the Trustee by this Deed, the Trustee has the following specific powers:
 - (i) to open bank accounts and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection with those bank accounts;
 - (ii) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
 - (iii) to establish Reserve Accounts and such other accounts and sub-accounts as it thinks fit within the Fund, and to close or merge such accounts;
 - (iv) to insure or re-insure any risks, contingencies or liabilities of the Fund with an insurance company, mortgage insurance company, re-insurance company or other provider of insurance or re-insurance;

- (v) to deduct any management expenses from any Benefit or any amount payable to or in respect of a Member or other person and to pay only the residual amount in respect of the said Benefit or other amount;
- (vi) to appoint, remove and suspend employees, managers, administrators, agents, representatives, advisers, nominees and custodians to perform such services (whether permanent or temporary) as the Trustee considers appropriate, and in connection with any such appointment, to determine an appointee's duties and conditions of appointment;
- (vii) to act on the advice or opinion of any qualified adviser (whether or not such advice or opinion was sought or obtained by the Trustee);
- (viii) to seek, obtain and act on the advice or opinion of any consultant, claims assessor, barrister, solicitor, broker, accountant, medical practitioner, Insurance Company or other professional person;
- (ix) to indemnify, or undertake to indemnify, any person in respect of any claim, matters or things relating to the Fund or to the rights of Members, former Members or Beneficiaries in respect of the Fund;
- (x) to commence, carry on or defend proceedings relating to the Fund or to the rights of Members, former Members and Beneficiaries;
- (xi) to settle, compromise or submit to arbitration or to a court of law, any doubts, disputes, claims, controversies or difficulties whatsoever arising out of or relating to this Deed or the construction of any provision in this Deed, the Fund or the rights of Members and Beneficiaries and to act on the award or determination of the arbitrator or court or, (where a Member submits a dispute to the Superannuation Complaints Tribunal) on a determination of the Superannuation Complaints Tribunal;
- (xii) to disclose information relating to the Fund, including information it has about any Member and the interest of any Member in the Fund, subject to any restriction imposed by any Law;
- (xiii) to develop and maintain an Anti-Money Laundering/Counter-Terrorism Financing Program in the format required by the Anti-Money Laundering and Counter Terrorism Financing Act 2006 or as otherwise required by the Relevant Requirements and to engage in appropriate Member identification procedures, transaction reporting and suspicious matter reporting as required by the Relevant Requirements;
- (xiv) to establish a committee or committees for any purpose determined by the Trustee, with any such committee being appointed, constituted and regulated on the basis determined by the Trustee from time to time.
- (xv) to make any other rules or regulations or to adopt procedures not inconsistent with the provisions of this Deed in relation to the calculation and rounding-off of contributions or Benefits or interest, or to the determination of periods of time and other matters as appropriate to facilitate the administration of the Fund; and
- (xvi) to make any other rules, procedures or regulations not inconsistent with the provisions of this Deed for the management of the Fund;

- (b) The powers conferred on or exercisable by the Trustee under this Deed are additional to and not in substitution for the powers conferred on or exercisable by the Trustee at law.

5.5 Investment powers

Without limiting clause 5.1, but subject always to the Objectives and to the proper performance by the Trustee of its duties under its constitution and at law, the Trustee may in its capacity as Trustee of the Fund invest in, dispose of or otherwise deal with property and rights in its absolute discretion in accordance with schedule 3.

5.6 Power of delegation

Subject to clause 5.8 and 6, the Trustee may not delegate any functions, authorities or powers exercisable by the Trustee (including a power which the Trustee has a duty to exercise) to any person.

5.7 Exercise of discretion

Subject to law and the Objectives, the exercise of the Trustee's discretion will be absolute.

5.8 Creation of separate funds

The Trustee will, in addition to the powers conferred by this Deed in relation to the Fund, have the power to become Trustee of other funds (not forming part of the assets of the Fund) established in an Industry and that are established to fulfil functions the same as or similar to those described in paragraphs A, B and C of this Deed. Where such other funds are established:

- (a) those other funds will be established and controlled in accordance with the provisions of separate Trust Deeds to which other persons may also be party;
- (b) the Boards of Directors of those separate Trust Funds may be different persons from the members from time to time of the Board of the Trustee of the Fund;
- (c) in managing those other Funds the Trustee will incorporate separate legal entities in which the assets of those separate Funds will invest; and
- (d) the assets of the Fund and the other Trust Funds may at any time be merged and the control and management of the merged Fund administered according to the provisions of this Deed as amended or any deed that replaces or succeeds this Deed, subject to decisions pursuant to the relevant deeds to do so by the Trustee and the Board or Boards of the separate Trust Funds.

5.9 Separate funds under this deed

- (a) The Trustee may establish and maintain separate funds within the Fund each of which will constitute a separate Trust and be subject to this Deed.
- (b) The Trustee will have power to cause to be incorporated separate corporations in which such separate funds may be vested and to transfer those separate funds to those corporations.
- (c) In relation to the separate funds established under this sub-clause the Trustee will have the power to determine and confer all necessary delegations and authorities to separate

boards of Management (whether or not those boards are at law directors of separate incorporated legal entities) that will have power to manage and control those separate funds pursuant to the terms of this Deed.

- (d) The Trustee will have power, from time to time, to merge the separate funds established under this sub-clause (subject to relevant decisions to that effect being taken by the separately incorporated corporations under paragraph (b) above) into a single, combined Trust under this Deed.

5.9 Power to apply to become an Approved Worker Entitlement Fund

Subject to this Deed and always to the Objectives, the Trustee has the power to apply (on behalf of NEST) to become an Approved Worker Entitlement Fund.

6. Fund Administrator

6.1 Fund Administrator

(a) Appointment

Without limiting the generality of the power conferred on the Trustee either by law or pursuant to the terms of this Deed the Trustee will appoint a Fund Administrator of the Fund on such terms and conditions as the Trustee thinks fit and subject to those terms and conditions, the Trustee may remove the Fund Administrator and appoint another in its stead. To the extent that such an appointment and the hereafter given be deemed to or will constitute a delegation of its powers, any such delegation is hereby authorised.

(b) Powers of Fund Administrator

The Trustee may vest in a Fund Administrator such duties and powers in relation to administration and management of the Fund as it thinks fit and may likewise alter or extend the duties and powers of a Fund Administrator. Subject to the foregoing and to any directions by the Trustee a Fund Administrator will have the following duties and powers:

- (i) the collection of amounts Contributed or to be Contributed to the Fund and the transfer of money and assets to and from any investment manager who is approved by the Trustee from time to time for the purpose of investing the Fund in accordance with this Deed and schedule 3;
- (ii) the collection, recording and dissemination of membership, contributions and other information for the purposes of the Fund;
- (iii) the establishment and maintenance of basic accounts and membership contribution and other necessary records including the Member Accounts;
- (iv) the calculation of payments as required by the Trustee or an Employer and the payments in accordance with this Deed; and
- (v) the provision and maintenance of any computer network and associated enquiry facilities necessary to support the administration of the Fund.

7. Contributions by Employers

7.1 Employee Entitlements Contributions

Each Employer must pay to the Trustee, or as directed by it, on such dates as agreed with the Trustee an amount equal to the Minimum Contribution for each Member employed or whose services are used by that Employer, in accordance with the terms of the Relevant Industrial Agreement in relation to the Employees of that Employer.

7.2 Statement

Each Employer must ensure that a written statement accompanies all Contributions, made by it, setting out in respect of each Member:

- (a) the amount of the Contribution;
- (b) the length of the Relevant Service, if appropriate; and
- (c) any other matters relevant to the calculation or making of the Contributions.

7.3 No Action – Employee notification

Notwithstanding any rule of law or principle of equity, the Trustee will not be obliged to take any action to ensure or procure that an Employer fulfils its obligations under clause 7.1 or to investigate whether any Contribution has been properly made or calculated. However the Trustee must notify the Employee immediately if it becomes aware of any failure of the Employer.

7.4 Reliance on information

The Trustee will be entitled, without investigation, to rely on and accept as accurate all information including documents provided to it in writing by or on behalf of an Employer to fulfil the Employer's obligations under this clause.

7.5 Employer indemnity

Without limiting clause 4 of this Deed, each Employer indemnifies and agrees to keep indemnified the Trustee from and against all costs, losses, expenses, liabilities, claims and demands which the Trustee may suffer or incur as a result of or in relation to any refund of Contributions or any act or omission of the Trustee, caused by any act or omission by an Employer and done or omitted in reliance on information provided to it in writing by or on behalf of an Employer.

7.6 Interest

Interest is payable by an Employer to the Trustee in respect of Contributions due (in accordance with sub-clause 7.1) but unpaid from the date they became due until the date on which they are paid at a rate no greater than the current published cash rate plus two percent.

7.7 Expenses

An Employer must reimburse the Trustee in respect of all reasonable expenses including all legal and related expenses incurred by the Trustee (or on its behalf by the Fund Administrator or otherwise) in obtaining payment by any Employer of any outstanding Contributions.

7.8 Payments by Employers

The Trustee will be entitled to accept and hold payments made by any Employer in respect of Members who are employed or whose services are used by another Employer, as though such payments were contributions made by the latter Employer pursuant to clause 7.1.

7.9 Payments and credits / Members Account

All contributions by any Employer will be allocated as directed by it and credited to personal accounts opened in the names of the Members and styled the Members' Account.

7.10 Member Balances

All monies payable to a Member including any distributions of income pursuant to clause 25 will be credited to the personal account of the Member styled Member Balances.

8. Information from Members

8.1 Must furnish information

A Member when requested by the Trustee must furnish any information the Trustee considers necessary for the purposes of the Fund.

8.2 Compliance

If a Member fails to comply with the provisions of clause 8.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.

8.3 Incorrect information

Where a Member furnishes information affecting the Benefit payable to the Member and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the benefit to amounts that would have applied had full and accurate information been supplied.

9. Transfer to/from another fund

9.1 Transfers from another fund

Subject to the relevant Industrial Agreement, the Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed, which applied in respect of the similar fund.

9.2 Transfers to another fund

Subject to the relevant Industrial Agreement, the Trustee may transfer out of the Fund in respect of a Member, an amount to another similar fund in which the Member or an Employer of that Member will participate.

10. Participation

10.1 Employer Application

An Employer who desires to be admitted to the Fund must apply to the Trustee for admission to the Fund by completing an Employer Application and Deed of Adherence in the form of schedule 1 to this Deed.

10.2 Employer admission

The Trustee may admit an Employer to the Fund if:

- (a) the application by the relevant Employer for admission to the Fund is acceptable to the Trustee, the Trustee will by notice in writing to the Employer admit the Employer to the Fund; or
- (b) the Trustee receives payment from that Employer of Contributions on behalf of its Employees for the purposes of this Fund even though the Employer has not completed an application.

10.3 Employer bound by deed

By completing an Employee Application and Deed of Adherence or making a Contribution to the Fund, an employer becomes bound to the terms of this Deed and to the Administration provisions set out in schedule 2.

10.4 Commencement

An Employer is admitted to the Fund on a date specified by the Trustee in the notice referred to in clause 10.2 and if no date is so specified then on the date of that notice.

10.5 Conditions of membership

The Trustee, subject to the terms of the relevant industrial agreement, the terms of the relevant award or by an Employer, may impose conditions on:

- (a) a Member's admission;
- (b) his or her rights and duties as a Member; and
- (c) Benefits for that Member.

10.6 Membership ceases

A person ceases to be a Member, subject to the terms of the Relevant Industrial Agreement, or the terms of the relevant Award if:

- (a) the Trustee has received written confirmation from the Member requesting that their membership ceases, and the Member is no longer employed under a Relevant Industrial Agreement, and the Member's entitlements have been paid;
- (b) the Member dies.

10.7 Supply of information

Each Employer and Member must on request by the Trustee provide all information, documents and evidence within that person's possession or control as may be required by the Trustee for the purposes of the Fund.

10.8 Member information

The Trustee must give to a Member:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
- (b) within 6 months after at the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting period; and
- (c) on payment of an amount standing to the credit of a Member Account a written statement setting out details of the payment made.

10.9 Employer information

The Trustee must give to an Employer:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
- (b) following the end of each month in which an Employer makes a Contribution, a record showing the amount of that Contribution; and
- (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

10.10 Availability of online information

Online information will be provided by way of a Web-site operated by the Fund Administrator appointed under clause 6. Members will be entitled to access online their personal Member information specified in sub-clause 8 above and Employers will be entitled to access online their Employer information specified in sub-clause 9 above.

11. Retirement of Employers

11.1 Termination

- (a) The participation in the Fund of an Employer may be terminated by the Trustee on 5 Business Days written notice to the relevant Employer if:
 - (i) where an Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a receiver or receiver and manager or an administrator is appointed to it; or
 - (ii) where an Employer is or includes a partnership, the partnership is dissolved; or

- (iii) where an Employer is or includes a natural person or persons not in partnership, that person or any of those persons dies or becomes bankrupt; or
 - (iv) an Employer ceases to carry on business; or
 - (v) if the Employer fails at any time to comply within 7 days with a request by the Trustee to declare in writing that it is bound by the terms of this Deed.
- (b) The participation in the Fund of an Employer may also be terminated if the Employer, who is not in arrears in respect of its contributions to the Fund, is not otherwise bound to join and remain a member of the Fund pursuant to an Industrial Agreement.
- (c) However, nothing in this clause will remove any obligation on the part of any Employer to make any unpaid Contribution to the Fund.

11.2 Replacement of retiring Employers

Subject to clause 11.1 of this Deed, if an Employer at any time:

- (a) undergoes amalgamation or reconstruction; or
 - (b) disposes of all or any part of its business in respect of which the relevant Employer, prior to such disposal, employed or used the services of Members,
- then:
- (c) that Employer must procure that, in the case of paragraph (a), the amalgamated or reconstructed entity and, in the case of paragraph (b), the donee (**Successor**), forthwith executes an undertaking in a form required by the Trustee to be bound by the terms of this Deed as and from the date of amalgamation, reconstruction or disposal, as the case may be; and
 - (d) if the Successor becomes an Employer within a reasonable period:
 - (i) the relevant Members, if employed or used by the Successor, will not be regarded as having been made redundant; and
 - (ii) all contributions made to the Fund, subject to the terms of the Relevant Industrial Agreement or the terms of the relevant Award by that Employer will be regarded by the Trustee as having been made by the Successor.

12. Termination of the Fund

12.1 Date of termination

The trusts of this Deed will terminate:

- (a) on the Vesting Date; or
- (b) at the option of the Trustee, if there are at any time no Employers or Members of the Fund and the Trustee considers that all payments due or likely to become due from the Fund pursuant to this Deed have been paid and discharged.

12.2 Obligations of Trustee in termination

On termination under clause 12.1 of this Deed, the Trustee must realise all assets then remaining in the Fund and apply the Fund as follows:

- (a) first, in payment of all costs and expenses incurred in relation to the winding up of the Fund from the Revenue Account in accordance with clause 25.1;
- (b) secondly, in payment to Members of amounts credited to their respective Member Balances; and
- (c) thirdly, if applicable, in payment to all Employers who have contributed pro-rata to their respective contributions which still remain in the Fund.

13. Discontinuance of the Fund

The Trustee may at any time resolve by Special Resolution to discontinue the Fund, in which case:

- (a) the Trustee will give 1 month's written notice to each Employer of its intention to discontinue the Fund;
- (b) the Fund will be closed to new entrants from the expiration of the notice;
- (c) no further Contributions may be accepted in respect of the Members from the expiration of the notice *provided that* payments due on or before the date of expiration of the notice will not be affected; and
- (d) the Trustee will be entitled to wind up the Fund, in which case the provisions of clause 12.2 will apply.

14. Alteration of trust

14.1 Objectives, Members' and Employers' interests

The Trustee may by supplemental deed modify, repeal, amend or alter in any respect whatsoever the trusts, powers and provisions in the Deed *provided that* such addition, repeal, amendment or alteration does not in the opinion of the Trustee unreasonably prejudice the Objectives or the interests of Members or Employers.

In determining whether such an addition, repeal, amendment or alteration will unreasonably prejudice the Objectives or the interests of the Members or Employers, no intended addition, repeal, amendment or alteration will be made which reduces or detrimentally affects any accrued Benefits except where permitted by the law, the terms of the Relevant Industrial Agreement or the terms of the relevant Award.

Any such changes are to be notified to Employers by publishing on the Web-site.

14.2 Effective date

Any such addition, repeal, amendment or alteration will be effective from the date specified for that purpose in such deed.

14.3 Special Resolution

The Trustee is permitted to alter the Trust Deed only by way of a Special Resolution.

15. Damages and compensation

Nothing in this Deed will in any way affect the right of a Member or his or her legal personal representative or other person to claim damages or compensation by common law or statute governing compensation to a Member injured or dying as a result of an accident arising out of or in the course of employment. Except as may be provided in this Deed, the amount payable in terms of this Deed, must not be reduced by reason of any payment of damages or compensation as set out above.

16. Remuneration of Trustee and expenses of the Fund

16.1 Remuneration and Expenses of Officers and Employees

- (a) The Trustee will, except and to the extent that is otherwise provided, pay out of the Fund all expenses of and incidental to the formation, management promotion and administration of the Fund including any such expenses paid by the Unions or Employers on behalf of the Trustee.
- (b) The Trustee shall appoint as officers or employees such persons as the Trustee may from time to time require to assist in the operation and administration of the Fund and pay any remuneration and reasonable expenses from the Fund.

16.2 Remuneration of Trustee

The Trustee will not be entitled to any remuneration.

17. Accounts records and audits

17.1 Preparation

The Trustee must:

- (a) keep or cause to be kept such accounts, registers and records as are required for the proper operation of the Fund in accordance with the provisions of this Deed; and
- (b) at the end of each Accounting Period prepare or arrange to have prepared a statement of income and expenditure and a balance sheet showing the state of the Fund, which will be audited by properly qualified Auditor appointed by the Trustee. The appointment of the Auditor will be on such terms as the Trustee may think fit and the Trustee may remove any such Auditor and appoint another in his or her stead and may give notice in advance of the 30th June in the year of making such decisions provided that the Auditor as removed will be required to complete and deliver to the Trustee the financial audit in respect of the financial year in which that notice is given.

18. Register of Employers and Members

The Trustee must keep or cause to be kept a register of Employers which will record the name and residential address of each Employer and of Members and, in respect of each Member, all

material particulars known to the Trustee relating to that person's employment and circumstances, and subject to the provisions of the *Privacy Act 1988 (Cth)*.

19. Inspection of deed

A copy of this Deed will be kept by the Trustee at its registered office and will be open to inspection by any Employer or Member at all reasonable times.

20. Confidentiality

20.1 Without prejudice to any right of the Trustees under the general law to refuse disclosure of any document and subject to the provisions of the *Privacy Act 1988 (Cth)* it is hereby declared that the Trustee will not be bound to disclose to any person other than an Employer or Member any of the following documents that is to say:

- (a) any document disclosing any deliberation of the Trustee (or any of them) as to the manner in which the Trustee should exercise any power or any discretion conferred upon the Trustee by this Deed or disclosing the reasons for any particular exercise or non-exercise of any such power or any such discretion or the material upon which such reasons will be or might have been based.
- (b) any other document relating to the exercise or proposed exercise of any power or any discretion conferred on the Trustee by this Deed, not being legal advice obtained by the Trustee at the cost of the Trust Fund or the minutes of the Trustee kept pursuant to this Deed.

20.2 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person other than an Employer or Member:

- (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;
 - (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iii) the material upon which those reasons were or might have been based;
- (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
- (c) any reason for any exercise or non-exercise of any power or discretion.

21. Employer information

Subject to the provisions of the *Privacy Act 1988 (Cth)* each Employer must keep the Trustee fully informed by providing written details of all matters which the Employer knows or ought reasonably to know concerning the death, disablement, resignation, termination or retirement of any Member employed by it or any other matter relevant to the payment of Contributions or Benefits under this Deed.

22. Payments / claims

22.1 Evidence

Any payment from the Fund will be subject to the production of such evidence, the performance of such acts and the execution of such documents and within such time as the Trustee may reasonably require from time to time.

22.2 Method

Subject to this Deed, any amounts payable from the Fund will be payable at the place and in the manner determined by the Trustee from time to time and it will be sufficient, for the purposes of this Deed, for the Trustee to make payment by cheque and mail the cheque to the payee at the last known address known to the Trustee of that payee.

22.3 Australian currency

All payments will be expressed and paid in Australian currency unless otherwise specifically agreed between the Employer and the Trustee.

22.4 Deductions

The Trustee will have power to deduct any taxes, duties or similar imposts from any amount payable to or in respect of an Employer or Member and to pay the residual amount in respect of the said benefit. The amount of any deduction must be disclosed to Members and Employers in the provision of Member Information as specified in clause 10.8, Employer Information as specified in clause 10.9 or through Online Information, as specified in clause 10.10.

22.5 Claims

These will be in accordance with clause 26 and the administration provisions set out in schedule 2.

23. Notices

The Trustee may give notices to an Employer or a Member either personally, by mail, fax or email to that person's address last known to the Trustee or, in respect of a Member, by enclosure in the Member's pay advice. In the case of service by post, the notice is deemed received if posted within Australia to an Australian address, 2 Business Days after posting.

24. Commencement and termination

The Contributions by the Employer in respect of a Member will commence on the date that person becomes a Member and will cease on the date that person ceases to be in the service of the Employer or to be a Member, whichever is the earlier.

25. Earnings

25.1 Revenue Account

- (a) The Trustee will establish a Revenue Account to which will be credited from time to time: -
 - (i) the income and receipts of the Fund (but not Contributions);
 - (ii) any amounts carried to the credit of the Revenue Account pursuant to the provisions hereof.
- (b) All losses and outgoings (including income tax, if any) incurred by the Fund will be debited to the Revenue Account.
- (c) Any capital profits arising from the realisation thereof will be credited to the Revenue Account.
- (d) If authorised by the Relevant Industrial Agreement, the Trustee may deduct amounts by 30 June each year from this account to be credited to Employer's Member Accounts or Member Balances as so authorised.
- (e) The Trustee may deduct amounts remaining from time to time and by 30th June in each year from this account which in its discretion are to be distributed for the benefit of Employers and Members (or their legal personal representative or a Dependant). The amounts distributed to Employers and Members will be carried to the credit of:
 - (i) Employer Credit Accounts and Member's Accounts in accordance with the ratio stipulated in the Relevant Industrial Agreement; or
 - (ii) Employer Credit Accounts if the Relevant Industrial Agreement is silent on this issue.

25.2 Reserve Accounts

- (a) The Trustee may establish and maintain one or more Reserve Accounts in connection with the Fund.
- (b) The Trustee may close or merge any one or more of the Reserve Accounts established under clause 25.2, as the Trustee considers appropriate.
- (c) Subject to this Deed and the relevant requirements applicable to Approved Worker Entitlement Funds, the Trustee may determine the purposes for which a Reserve Account may be used, and the credits, debits or other adjustments (including allocation of a surplus or deficiency) that may be made to a Reserve Account.
- (d) Without limiting clause 25.2(c), the Trustee may credit to a Reserve Account:
 - (i) such portions of income generated by the Fund and amounts credited to the Revenue Account as the Trustee determines necessary to provide for payment of administration expenses of the Fund, and/or to cover operational risks of the Fund;
 - (ii) earnings on the investments of the Reserve Account (if positive);

- (iii) any moneys receivable by the Trustee in trust for the Reserve Account pursuant to this Deed;
 - (iv) any accretions to or profits on realisation of investments in the Reserve Account;
 - (v) any other moneys, assets or investments which are payable to the Reserve Account or become subject to the trusts of the Reserve Account;
 - (vi) any other money not required for the payment of Benefits in accordance with this Deed and which it is, in the opinion of the Trustee, appropriate to transfer to the Reserve Account, including for the purposes of establishing the Reserve Account; and
 - (vii) any surplus allocated to the Reserve Account in accordance with this Deed.
- (e) Without limiting clause 25.2(c), the Trustee may debit from a Reserve Account:
- (i) loss realised and arising from the sale or disposal of investments in the Reserve Account;
 - (ii) earnings on investments of the Reserve Account (if negative);
 - (iii) amounts paid from the Reserve Account in accordance with this Deed; and
 - (iv) any Deficiency allocated to the Reserve Account in accordance with this Deed.

26. Benefit payment / claims

26.1 Payment

Subject always to the terms of the relevant Industrial Agreement, the terms of the relevant award, and any applicable law in relation to discretionary powers of the Trustee as it relates to the Objectives, if the Trustee in its absolute discretion considers that a Member is entitled to Employee Entitlements and it considers that an Employer has exhausted existing entitlements (for which clause 26.2 will apply) it has accrued for a particular employee, the Trustee must pay the Benefit (or appropriate portion thereof) directly to the Member, but only to an amount no greater than the Member's Account balance.

26.2 Considerations under this clause

In determining whether to make a payment directly to the Member, the Trust must consider whether:

- (a) the Employer is subject to an Insolvency Event;
- (b) the Member is claiming entitlements accrued in the Fund for that Member as an Employee by a former Employer;
- (c) any other considerations, subject always to the Objectives, noted in schedule 2 that allows a payment of a benefit directly to a Member; or
- (d) any other matters which the Trustee considers relevant.

26.3 Reimbursement or credit

If, notwithstanding that a Member is entitled to a Benefit, a Member informs the Trustee, according to clause 26.1, that an Employer has made a payment to that Member in respect of Employee Entitlements, the Trustee may on receipt of an acknowledgment by the Member of receipt of such payment or other satisfactory proof of payment, reimburse the relevant Employer or credit the relevant Employer Credit account with the amount so paid to the Member, provided that in no event will the Trustee be obliged to pay an amount exceeding the amount of Benefit in respect of the Member.

26.4 Administration provisions

Administrative provisions in relation to claims under this clause 26 are set out in schedule 2.

26.5 Members to be informed

Where a payment is made to an Employer pursuant to clause 26.3, the Trustee must inform the Member in writing within 3 Business Days.

26.6 Operation

This clause 26 operates where:

- (a) there is an Employer and the Member is an Employee of that Employer; and
- (b) the Member is not a GRP Member.

26A. Redundancy and severance payment / claims

26A.1 GRP Member Election

- (a) A Member may, at any time, by written notice to the Trustee in such form (if any) as the Trustee approves, elect to become a GRP Member.
- (b) An election made under clause 26A.1(a) is irrevocable and take effect on the expiration of 20 Business Days after receipt by the Trustee. Before it takes effect, the election may be revoked by notice in writing to the Trustee in such form (if any) as the Trustee approves.
- (c) A GRP Member's entitlement to a Benefit must be determined in accordance with this clause 26A. Except in the circumstances outlined in clauses 26A.2 to 26A.6, the GRP Member can only claim a Benefit where his or her employment is terminated due to genuine redundancy.

26A.2 GRP Member – Benefit Payments (Redundancy)

Where the employment of a GRP Member is terminated due to genuine redundancy, and the GRP Member has provided a written request to the Trustee within 20 Business Days (or such longer period as the Trustee may allow) of the termination of his or her employment, the Trustee must pay to the GRP Member (or as the GRP Member directs) a Benefit equal to the amount standing to the credit of the GRP Member in his or her Member's Account in respect of redundancy.

26A.3 GRP Member – Benefit Payments (Death)

Where a GRP Member dies, the Trustee may pay the amount standing to the credit of the GRP Member's Member Account to one or more of the Legal Personal Representative and the Dependents of the GRP Member in some manner and proportions and subject to such conditions as the Trustee in its sole discretion determines

26A.4 GRP Member – Benefit Payments (TPD)

Where the employment of a GRP Member ceases due to the GRP Member being TPD, the Trustee must pay to the GRP Member or as he or she directs, the amount standing to the credit of the GRP Member in his or her Member Account.

26A.5 GRP Member – Benefit Payments (Retirement)

Where the employment of a GRP Member ceases due to his or her retirement on or after age 65, the Trustee must pay to the GRP Member the amount standing to his or her credit in this Member's Account provided that the GRP Member has made a written request for payment of their Benefit within 20 Business Days or such longer period as the Trustee may allow.

26A.6 GRP Member – Miscellaneous

- (a) For the purposes of the definition of TPD and clause 26A.4, the terms "gainfully employed" and "last retirement day" have the same meaning as those terms have in the Tax Act.
- (b) Notwithstanding any provision of this Deed, a GRP Member or any other person claiming through the GRP Member will not be entitled to be paid a benefit until the Trustee has received a written claim from the GRP Member or other person (as the case may be) together with such other information or evidence as the Trustee may require that the relevant severance event has occurred.
- (c) Whether the GRP Member's employment has ceased due to a genuine redundancy will be determined by the Trustee in its absolute discretion. In making that determination, the Trust must:
 - (i) give the GRP Member notice of the Trustee's proposed determination;
 - (ii) where the proposed determination is adverse to the GRP Member, inform the GRP Member that he or she has 10 Business Days to make submissions in respect of the Trustee's proposed determination; and
 - (iii) take into account any submissions made.
- (d) If the Trustee makes a final determination that the employment of the GRP Member was not terminated due to genuine redundancy, it must advise the GRP Member of its decision within 5 Business Days.
- (e) Any determination by the Trustee under this clause 26A is final and the GRP Worker will not have any right of appeal or review.
- (f) Where the Trustee determines to pay a Benefit to the GRP Member, it must do so within a reasonable time after having made its final determination and otherwise in accordance with clause 29.1.

- (g) Where a Benefit is paid to the GRP Member under this clause 26A, a corresponding debit will be made to the Worker's Account of the GRP Worker.

27. Payments to be made by the Trustee in the event of the Member's death

In the event of the death of a Member, the Member's Benefits will form part of their estate and will pass to their Legal Personal Representative.

28. Preconditions to entitlement

28.1 Preconditions to entitlement

A Member has no entitlement to a Benefit nor does an Employer have the right to a reimbursement or credit to a Member Account, until an Employer has lodged a properly completed claim form available from the Fund Administrator from time to time, with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement, according to the terms of the relevant Industrial Agreement or the terms of the relevant Award, to that Benefit.

28.2 Obligation of Trustee to pay entitlement

The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's, or Employer's entitlement and that the relevant Industrial Agreement or Award permits the payment. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.

29. Procedure for payment of Benefits

29.1 Payment of Benefits

The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines, payments may be by way of Electronic Funds Transfer.

29.2 Notifying the Trustee of changes of details

Every Member and Employer must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member or Employer changes address of:

- (a) the Member's or Employer's place of residence and full postal address; and
- (b) the bank account (if any) to which the Member or Employer requires that the Benefit be paid.

29.3 Receipt and release

Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

29A. Lost Beneficiaries

29A.1 Application

This clause operates where there is an Employer and Employee (and that Employee is a Member) of that Employer.

29A.2 Forfeiture of Benefits

- (a) If the Trustee, having taken reasonable steps, is unable to locate:
 - (i) an Employer;
 - (ii) a Member; or
 - (iii) where the Member has died, the Member's legal personal representative or Dependants,

to, or in respect of, whom an amount standing to the credit of a Member's Account may become payable ("**Lost Beneficiary**"), then, upon the Trustee resolving that the Lost Beneficiary cannot be located, the balance credited to the Worker's Account of the Lost Beneficiary is forfeited to the Scheme and, subject to clause 29A.2(b), will be transferred into the General Reserve Account.

- (b) The Trustee may only make a payment from, or otherwise apply, amounts derived from forfeited amounts transferred into the General Reserve Account in a manner consistent with the purposes set out in section 58PB(4) of the Fringe Benefits Tax Assessment Act 1986.

29A.3 Lost Beneficiaries

For the purposes of Clause 29A.2(a):

- (a) reasonable steps to locate a Lost Beneficiary may consist of, or include, the Trustee sending a notice to the Lost Beneficiary at their last known place of address as set out in the records of the Trustee stating that the Lost Beneficiary may be entitled to a Benefit from the Scheme and requesting the Lost Beneficiary to contact the Trustee; and
- (b) the Trustee may rely on the fact that:
 - (i) the notice is returned to the Trustee; or
 - (ii) the Lost Beneficiary fails to respond to the notice.

30. Loss of Benefits

This clause operates where there is an Employer and Employee (who is a Member) of that Employer.

30.1 Loss of Benefits

Any Member:

- (a) subject always to s 302B of the *Bankruptcy Act 1966* whose Benefits by the commission of an act of bankruptcy or execution of a deed of assignment or arrangement under that Act, whether by the person's own act or operation of law, become payable to or vested in any person, company, government or other public authority; or
- (b) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member unable to manage his or her own affairs; or
- (c) who assigns or charges or attempts to assign or charge his or her Benefit,

forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

30.2 Dependants to be considered

Benefits which are lost by reason of clause 30.1 must be held for the Dependants of any Member (as the case requires) until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to any one or more of them in such proportions and amounts between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys. Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 30.3.

30.3 General Reserve

Any amounts that form part of the Fund to which no Member or Employer is entitled, to the best of the Trustee's knowledge, will be transferred to the General Reserve Account.

30A. Net Income

30A.1 Calculation of Net Income

In calculating the Net Income of the Fund:

- (a) any whole or part of a profit, gain, receipt or deemed receipt by the Trustee (whether of money or real, personal or other property) (**Receipt**) which is (or the value of which is) assessable income under the Tax Act, is deemed to be included in the Net Income of the Fund, except for franking credits under Division 207 or other relevant division of the Tax Act unless the Trustee expressly includes those franking credits;
- (b) any Receipt which is a CGT discount amount (Discount Amount) under Division 115 of the Tax Act that is not assessable income is also deemed to be included in the Net Income of the Fund; and
- (c) any other Receipt of the Trustee which is not (or the value of which is not) assessable income under the Tax Act is deemed to be part of the capital of the Fund,

30A.2 Trustee declaration in relation to Net Income

Notwithstanding clause 30A.1, the Trustee may, on or before 11.30pm Australian Eastern Standard Time on the last day of the Accounting Period, declare in writing that:

- (a) whether the whole or any part of a particular Receipt is included in the Net Income regardless of its characterisation under the Tax Act or clause 30A.1; or
- (b) clause 30A.1 does not apply in which case whether any Receipt (or part thereof) is Net Income is to be determined by the Trustee according to generally accepted accounting standards adopted by any of the principal accounting bodies in Australia as used by the Trustee, or such other method or methods as the Trustee considers appropriate in the circumstances from time to time, as if clause 30A.1 had no operation and effect.

30A.3 Losses and outgoings

In ascertaining the Net Income of the Fund:

- (a) any loss or outgoing (or any part of a loss or outgoing) which is an allowable deduction under the Tax Act is applied to reduce the Net Income; and
- (b) any loss or outgoing (or any part of a loss or outgoing) which is not an allowable deduction, is not applied to reduce the Net Income.

30A.4 Trustee declaration in relation to losses and outgoings

Notwithstanding clause 30A.3, the Trustee may, on or before 11.30pm Australian Eastern Standard Time on the last day of the Accounting Period, declare in writing:

- (a) whether the whole or any part of a particular loss or outgoing should be applied to reduce the Net Income regardless of its characterisation under the Tax Act; or
- (b) that clause 30A.3 does not apply and where such declaration is made the question of whether any loss or outgoing should be debited to the income (revenue) or capital account of the Fund is to be determined by the Trustee according to generally accepted accounting standards adopted by any of the principal accounting bodies in Australia as used by the Trustee as clause 30A.3 had no operation and effect.

30B. Characterisation of Income

30B.1 Recording of categories

The Trustee may in the books of account and records of the Trust separately record each of the following categories of income or capital which under the Tax Act:

- (a) are dividends:
 - (i) which are partly or fully franked;
 - (ii) which are unfranked;
 - (iii) to which a foreign tax credit attaches; or
 - (iv) to which any other separately identifiable taxation consequence or benefit is attached or arises from time to time;
- (b) are income or capital:
 - (i) which has an Australian source;

- (ii) which has an ex-Australian source;
 - (iii) to which a foreign tax or other credit attaches;
 - (iv) which is exempt or otherwise liable not to be taxed; or
 - (v) which has or gives rise to any other separately identifiable taxation consequence or benefit from time to time;
- (c) are notional receipts or deemed receipts including:
- (i) franking credits under section 207-35(1) of the Tax Act;
 - (ii) so much of the income of another trust of which this Trustee is a beneficiary, that is included under section 97 of the Tax Act in the calculation of the income or Net Income of this Trust, but which does not represent a distribution or tangible distribution of income of the other trust in which the Trustee can actually demand immediate payment thereof;
 - (iii) so much of a net capital gain that is attributable to an increase of what would otherwise have been a relevant amount of capital proceeds for a CGT event as a result of the market value substitution rule in section 116-30 of the Tax Act;
 - (iv) so much of a net capital gain that is attributable to a reduction of what would have otherwise been a relevant cost base or reduced cost base of a CGT asset as a result of the market value substitution rule in section 112-20 of the Tax Act;
 - (v) an amount taken to be a dividend paid to the Trustee pursuant to Division 7A of the Tax Act and section 109D(1) of the Tax Act in particular;
 - (vi) an amount of attributable income under an attribution/accruals regime, such as Part X of the Tax Act (about controlled foreign companies) or Division 6AAA of Part III of the Tax Act (about non-resident transferor trusts);
 - (vii) amounts included in the Trust's assessable income arising from the operation of Part IVA of the Tax Act or any specific or general anti-tax avoidance provision of the Tax Act; and
 - (viii) any other amounts which may be included in the assessable income of the Trustee under the Tax Act for any reason but which are not capable for any reason of being recognised or substantiated for accounting purposes or constituting the basis of an entitlement to call or demand payment of the same.

30B.2 Other categories of income and capital

The Trustee may identify and separately record and maintain in the books of account and records of the Trust, income or capital having or in respect of which there is attached individual or unique characteristics or qualities other than those referred to in clause 30B.1.

30B.3 Retention of separate identity

Net Income or capital to which a beneficiary becomes entitled, and which can be identified from the books and records of the Trust as being of a category referred to in clause 30B.1 or

30B.2 retains its separate identity or status on passing to or being received by a beneficiary or when the beneficiary otherwise becomes entitled to it.

30C. Distribution of Net Income

A determination by the Trustee by which Net Income or capital is distributed or accumulated under the provisions of this Deed may separately deal with the whole or part of a category of Net Income or capital of a category referred to in clauses 30B.1 or 30B.2, so that all or part of that Net Income or capital may be specifically paid, applied or set aside for the benefit of any one or more of the beneficiaries or exclusive of the others or accumulated to the extent to which Net Income or capital is permitted to be accumulated by this Deed.

30D. Allocation of Losses and Outgoings

30D.1 Exercise of discretion by Trustee

Losses and outgoings of the Trust may, at the discretion of the Trustee, be allocated against and deducted from any one or more of the categories of income or capital referred to in clause 30B.1 or 30B.2, in any manner the Trustee sees fit (including but not limited to any whole or part thereof), to the extent permissible by the Tax Act (if relevant).

30D.2 Where discretion not exercised

If the Trustee does not exercise the power conferred by clause 30D.1 in respect of an Accounting Period for the Trust, losses and outgoings of the Scheme for that accounting period will be allocated first against and deducted from income which does not constitute fully or partly franked dividends, income to which a tax credit or rebate attaches, or which is exempt from taxation.

30E. Recoupment of Losses

30E.1 Determination to recoup losses

If losses on income (revenue) account arise in one or more Accounting Periods of the Trust, the Trustee may recoup those income (revenue) account losses from the capital of the Fund and/or any profit, gain, receipt or deemed receipt and in the same or one or more subsequent Accounting Periods as the Trustee may determine from time to time.

30E.2 Determination not to recoup losses

Without limiting clause 30E.1, the Trustee may determine not to recoup part or all of any revenue losses carried forward from a prior Accounting Period, from the Net Income of the current Accounting Period.

30F. Written Declarations and Distributions

30F.1 Timing of exercise of discretion

The exercise of any power, authority or discretion by the Trustee under this Deed in relation to the determination and application (including distribution) of Net Income (**Discretion**) must be made by oral or written declaration (**Declaration**) on or before 11.30pm Australian Eastern Standard Time on the last day of the Accounting Period.

30F.2 Exercise of discretion at later time

Notwithstanding clause 30F.1, and subject to clause 30F.3, the Trustee may exercise its Discretion by making a Declaration later than the time set out in clause 30F.1 if there is a statutory rule or provision in the Tax Act or an administrative practice by the Commissioner of Taxation that allows such Discretion to be exercised or Declaration to be made at a later time.

30F.3 Distribution where no Determination made

If clause 30F.2 does not apply or the Trustee has not made a valid Declaration under clause 30F.1, then the entire Net Income for an Accounting Period vests absolutely and immediately at that specified time in the Income Beneficiaries, in equal proportions.

30G. Net Income provisions prevail where inconsistency

The provisions set out in clauses 30A to 30F comprise additional provisions of the Trust Deed and prevail over any other provision in the Trust Deed, to the extent of any inconsistency.

31. Acknowledgment

Each Member agrees on becoming a Member that a payment made to a Member from the Fund is a payment made pursuant to any obligations that arise pursuant to Awards and Industrial Agreements and will be in full or part (as the case may be) recognised as a payment that satisfied these obligations in the circumstances.

32. Definitions and interpretation

32.1 Definitions

In this document unless the context otherwise requires:

Accounting Period means the period from the date of establishment of the Trust to 30 June next and thereafter each period of 12 months ending on 30 June in each year and if the Vesting Date is not 30 June in any year then the last accounting period will be the period commencing on 1 July immediately preceding the Vesting Date to the Vesting Date. The Trustee may alter the Accounting Period to a period of 12 months ending on any other date;

Approved Worker Entitlement Fund has the meaning given in section 58PB of the *Fringe Benefits Tax Assessment Act 1986*.

Auditor means the auditor appointed by the Trustee;

Award means a document endorsed by an Industrial Authority as the source of employment conditions in an Industry;

Benefit means any amount payable by the Trustee out of a Member Account to or in respect of a Member;

Board of Directors means the board of directors of the Trustee;

Business Day means a day other than a Saturday, Sunday, a public holiday or a bank holiday in the state of New South Wales;

Contribution means a payment to the Fund either by an Employer or a Member in accordance with the provisions of this Deed;

Corporation means a corporation under the terms of the *Corporations Act 2001*;

Deed means this document as amended altered, modified or varied from time to time;

Deed of Adherence means the document set out in schedule 1;

Dependant means a death benefits dependant within the meaning of the *Income Tax Assessment Act 1997* (Cth);

Discretionary Beneficiaries means:

- (a) the Members;
- (b) the Employers; or
- (c) the legal personal representative or a Dependant of a deceased Member;

Employee means a person who is nominated by an Employer to the Trustee in writing as eligible to be a Member;

Employee Entitlements means any dollar amount payable to a Member under an Industrial Agreement to which that Member has a right and which is identified as such in the Industrial Agreement including the following entitlements:

- (a) annual leave and annual leave loading,
- (b) sick leave,
- (c) long service leave,
- (d) redundancy,
- (e) severance or
- (f) any other amount from time to time payable by an Employer to a Member accepted by the Trustee;

Employer means an employer required to pay Contributions in respect of its Employees and includes for the purposes of this Deed a contractor of labour and who or which is admitted as a participant in the Fund in accordance with the provisions of clause 10 and who has not ceased to be an Employer;

Employer Credit Account means an account into which all excess Contributions by an Employer are added plus all earnings are added pursuant to clause 25;

Employer Application means the document set out in schedule 1;

Employer Organisation means:

- (a) an employer organisation which is accepted by the Trustee as an Employer Organisation;

- (b) any other employer organisation which by reason of the re-organisation or amalgamation of an Employer Organisation is the successor in whole or in part of that Employer Organisation; and
- (c) any Federally or State registered counterpart of an Employer Organisation provided the Federally registered counterpart is only an Employer Organisation if both the State and Federal counterparts confirm this in writing to the Trustee and then the Federally registered body is an Employer Organisation to the exclusion of (and not in addition to) its State registered counterpart;

Equal Representation means the requirement that the shareholders and Board of Directors of the Trustee, which is a corporation, must consist of representatives from Employer Organisations and Unions, in accordance with the constitution of the Trustee;

Fund means all money, investments and property paid, transferred to or accepted by the Trustee pursuant to this Deed, all accretions and additions thereto, and all accumulations of income, investments and property from time to time representing such money, investments, property, accretion and additions;

Fund Administrator means the person, organisation, firm or company appointed as administrator under this Deed and initially will be Coverforce Pty Limited ACN 078 907 883;

General Reserve Account means an amount that will be transferred pursuant to clause 30.3 This amount will be allocated from time to time in accordance with a determination by the Trustee;

GRP means genuine redundancy payment.

GRP Member means a Member who has made an election in accordance with Clause 26A of this Deed to receive a Redundancy Payment;

Income Beneficiaries means any of the Discretionary Beneficiaries;

Independent Chairperson means a person that is appointed by the Trustee's Board of Directors, is a person of public standing, and does not hold an official position within either an Employer Organisation or a Union at the time of its appointment;

Industrial Agreement means an agreement:

- (a) between an Employer or an employer association and a union of employees; or
- (b) between an Employer and its Employees; or
- (c) an Award,

whether or not it has been certified by, approved by or registered with an Industrial Authority;

Industrial Authority means the Australian Industrial Relations Commission or its successor and any person with power to certify, approve or register an Industrial Agreement;

Industry means all sectors of commerce and industry;

Insolvency Event means any of the following:

- (a) the Employer has a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* or similar official appointed to the Employer or over any of the assets or undertaking of the Employer;
- (b) the Employer suspends payment of its debts generally which are not in bona fide in dispute;
- (c) the Employer is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001*;
- (d) the Employer enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the Employer ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up or dissolution of the Employer, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Employer, otherwise than for the purpose of an amalgamation or reconstruction;
- (h) if the Employer is a partnership, the partnership is dissolved or the Employer resolves to dissolve the partnership; or
- (i) if the Employer, being an individual, becomes, or is declared, bankrupt or dies.

Legal Personal Representative has the meaning given to that expression in the Tax Act;

Member means an Employee who has been accepted by the Trustee as a Member;

Member Account or **Member's Account** means an account established pursuant to clause 7.10 and a Member may have more than one account;

Member Balances means an account into which all amounts owing to a Member are added;

Minimum Contribution means the Member's contribution rate specified in an Industrial Agreement, which applies in respect of the Member's Employee Entitlements;

Net Income of the Trust means the surplus of gross income over losses and outgoings on income or revenue account of the Trust (as determined by the Trustee under clauses 30A and 30B of this Deed) in any accounting period;

Objectives means:

- (a) the funding and protection of entitlements pursuant to obligations by Employers under an Industrial Agreement to pay Employee Entitlements to Members; and
- (b) making payments, where found appropriate, in terms of clause 25.1;

Online Information means information that is available electronically through the Internet or similar electronic medium;

Redundancy Payment means a payment to be made to or in respect of a GRP Member under clause 26A;

Relevant Industrial Agreement means an:

- (a) Industrial Agreement; or
- (b) Industrial Agreement for a particular Employer, that specifically stipulates payments, in relation to an Employee's Employee Entitlements and for the purpose of the Objectives of this Deed, to go into the Fund.

Relevant Service means, in respect of a Member, service by that Member for or on behalf of an Employer;

Reserve Account means an account established under clause 25.2;

Special Resolution means a vote of the Trustee's Board of Directors resulting in at least 75% of Employer Organisation and 75% Union representatives of the Trustee's Board of Directors effecting a resolution under this Deed.

State means a State or Territory of Australia;

Tax Act means the *Income Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth) as the case may be (and as amended or substituted from time to time);

Terms of the relevant Industrial Agreement means the terms relating to the operation of laws binding on the discretion of the Trustee and those aspects of the relevant Industrial Agreement that establish Employee Entitlements, so far as they exist between an Employer and an Employee.

Terms of the relevant Award means the terms relating to the operation of laws binding on the discretion of the Trustee and those aspects of an Award that establish Employee Entitlements, so far as they exist between an Employer and an Employee.

TPD means a GRP Member stops being gainfully employed before his or her last retirement day because the GRP Member is suffering from ill-health (whether psychological or physical) and two legally qualified medical practitioners have certified that because of the ill-health, the GRP Member is unlikely to ever be gainfully employed in a capacity for which he or she is reasonably qualified because of education, experience or training;

Trustee means the trustee for the time being of the Fund;

Unions means each of:

- (a) Australian Manufacturing Workers' Union (AMWU);
- (b) Communications Electrical and Plumbing Union (CEPU);
- (c) Australian Workers' Union (AWU);
- (d) Construction Forestry Maritime Mining Energy Union (CFMEU);
- (e) The Textile, Clothing and Footwear Union of Australia (TCFUA); and

- (f) any other union, which is accepted by the Trustee as a union for the purposes of the Fund.

Vesting Date means the first of the following to occur:

- (a) 80 years from the date of this Deed; and
- (b) an earlier date nominated by the Trustee;

Web-site means the web-site established on the Internet by the Fund Administrator;

32.2 Interpretation

In this Deed:

- (a) the headings are for convenience of reference only and will not affect the interpretation of this Deed;
- (b) words importing the singular include the plural and vice versa and words importing the masculine, feminine or neuter genders include all genders as the case may require;
- (c) a person includes a body corporate and includes a person in the capacity of a trustee;
- (d) the words and expressions defined are indicated by capital letters for convenience. The absence of a capital letter will not alone imply that the word or expression is used with a meaning different from that given by its definition;
- (e) any references to clauses and schedules are construed as references to this Deed;
- (f) a party includes the party's executors, administrators, successors and permitted assigns;
- (g) the schedules form part of this Deed;
- (h) references to any statutory enactment will mean and be construed as references to such enactment as amended, modified or replaced from time to time;
- (i) the perpetuity period in relation to all dispositions made by the Deed will be the Vesting Date; and
- (j) if any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

32.3 Applicable law

The law applicable to the Fund will be the law of New South Wales.

Schedule 1 – Employer Application and Deed of Adherence

Employer Application

ABN: _____

Name of Organisation _____ ACN: _____

Type of Organisation (eg company partnership trust sole trader) _____

Office Address: _____

Mailing Address: _____

Email Address: _____ Website Address: _____

Telephone: _____ Fax: _____

Contact Person: _____ Contact Persons Mobile Telephone: _____

Description of Business: _____

Bank Account Name: _____

BSB Number: _____ Bank Account Number: _____

Important notices:

By signing this application the above named Employer agrees to contribute their Employees Entitlements into the National Entitlement Security Trust (NEST) in accordance with the Trust Deed and as provided for within the Employers relevant Industrial Agreement.

The Employer agrees to pay those Entitlements monthly in arrears and within 7 calendar days from the end of any monthly period.

The Employer agrees to cooperate with the NEST administrator, Coverforce Pty Limited and any rules the administrator may set out from time to time as published on the NEST website.

Signed Director _____

Print Name _____

Dated _____

Deed of Adherence

THIS DEED POLL IS MADE BY _____ **(Name of Organisation)**

ACN/ABN _____ **Of** _____ **(Address)**

BACKGROUND. The Employer is required to make contributions to the National Entitlement Security Trust (NEST) pursuant to an enterprise bargaining agreement, award or industrial agreement (which may or may not be registered) in relation to its employees, and is to be bound by the NEST Trust Deed in relation to those contributions.

OPERATIVE PROVISIONS. Defined Meanings: Defined terms in this deed poll have the same meaning as in the NEST Trust Deed.

Participating Employer: With effect from the date of this deed poll, the Employer acknowledges and agrees that it is bound by the NEST Trust Deed as a participating Employer within the meaning of the NEST Trust Deed in respect of its employees who are from time to time engaged by the Employer.

Contributions: The Employer will make contributions into NEST as specified in their enterprise bargaining agreement, award or industrial agreement as the case may be. The Employer will make those contributions in a manner specified by the funds administrator Coverforce Pty Limited.

Benefit: This deed poll is given in favour of NEST Nominees Pty Ltd of Level 31, 2 Park Street, Sydney NSW 2000 who is the Trustee of the Trust known as NEST.

Understanding: The Employer acknowledges that it has read and understood the NEST Trust Deed.

Governing Law and Jurisdiction: This deed poll is governed by and construed under the law in the state of New South Wales.

Stamp Duty: The Employer will pay any stamp duty if applicable in respect of this deed.

**EXECUTED AS A DEED POLL
SIGNED SEALED AND DELIVERED**

BY _____
(Employer Name)

Secretary/Director

In the presence of:

Print Name

Witness

Print Name

Director

Print Name

Schedule 2 - Administration

Administration provisions for NEST

Subject to the provisions of the Deed, the following explains how the Fund Administrator is to administer the Deed.

NEST Registration

An Employer registering to participate in the Trust will be required to provide the following:

- a signed and completed Employer Application form and Deed of Adherence (refer schedule 1 of this Deed); and
- details of each applicable Employee's full name, date of birth, address, hourly rate of pay and contract hours of employment.

Contributions Payments

Contributions for employee entitlements into the Trust are paid monthly in arrears. The type and value of employee entitlements an Employer contributes into the Trust is entirely determined within the Employers Relevant Industrial Agreement.

An Employer's monthly contribution is due and payable within 7 calendar days from the end of any monthly period. Contributions are paid in Australian currency and may be paid via direct debit, direct credit or cheque.

Claims

Employers will pay a claim for Employee Entitlements in the same manner that Employers currently pay these Employee Entitlements. Employers will however, be entitled to reimbursement from the Trust for an amount calculated in accordance with clause 26 of the Deed.

The Fund Administrator will reimburse the Employer immediately upon receipt and completion of a signed NEST claim form available from the Fund Administrator, in accordance with clause 28. Reimbursements to Employers are paid by direct credit or by cheque. An Employer must exhaust its existing accrued Employee entitlements before claiming from the Fund.

Employees may claim directly from the Fund, in accordance with the Deed if:

1. The current Employer becomes insolvent (see clause 26).
2. The Employee is claiming Entitlements transported from a previous Employer (see clause 9 or clause 26).
3. The Employer's relevant industrial agreement specifically requires Employees to claim directly from the Fund.

Reporting (clause 10.8, 10.9 and 10.10)

NEST will provide the following reporting mechanisms for Employers, which will be available via the Internet or upon request from the Fund Administrator.

1. Individual Member Accounts providing all current and historic detailed information on all NEST transactions.
2. An annual report of NEST providing all relevant information pertaining to the management and performance of the trust.

Schedule 3 – Powers of investment

Powers of investment

The Trustee has determined that the investment of those contributions representing employee entitlements which from the capital of the Trust must be invested in accordance with and in the manner that complies with the rules for investment as stated within this schedule.

Investment Rules

1. The Trustee has the option of appointing a suitably experienced and knowledgeable 'Investment Committee' comprising appropriately qualified and experienced people for the delegation of investment management, monitoring and implementation of employee entitlement trust funds.
2. All investments must be approved by the Trustee and have undergone adequate research and due diligence.
3. The principle consideration of the Trustee is to protect the 'Employee Entitlements' original capital invested, from any size of loss of capital.
4. The Trustee has the authority and right to appoint or remove anyone from the Investment Committee.
6. No borrowing is allowed from the fund or on behalf of the fund.
7. No more than 5% of the total assets of the fund are to be invested in an entity controlled by an entity (or an associate of that entity) that makes contributions to the fund.
8. The assets of the fund are not to be used to provide or facilitate any form of financial assistance, including a loan to an entity that makes a contribution to the fund, a person in respect of whom contributions to the fund are made or an associate of a contributor or an associate of a person in respect of whom contributions are made.