

BLAKE DAWSON WALDRON

L A W Y E R S

**Deed of Amendment
for the
Kaplan Pooled
Superannuation Trust**

Trust Company Superannuation Services Limited

ABN 49 006 421 638

Level 35, Grosvenor Place
225 George Street
Sydney NSW 2000
Telephone: 02 9258 6000
Fax: 02 9258 6999

Ref: MAV LMEC 02 1377 4752

DEED OF AMENDMENT

DATE 27th April 2005

PARTIES

Trust Company Superannuation Services Limited ABN 49 006 421 638 (Trustee)

RECITALS

- A. By a trust deed dated 14 March 1996 (**Trust Deed**), a trust now known as the Kaplan - Pooled Superannuation Trust (**Trust**) was established.
- B. The Trust Deed has been amended from time to time.
- C. The Trustee is the trustee of the Trust.
- D. Under clause 42, the Trustee may, by supplemental deed, amend the Trust Deed.
- E. The Trustee wishes to amend the Trust Deed as set out in this deed.
- F. The Trustee is of the opinion that the amendments contained in this deed are consistent with, and do not breach the restrictions in, the amendment power contained in the Trust Deed.

OPERATIVE PROVISIONS

- 1. With effect from the execution of this deed, the Trust Deed is amended by inserting immediately before clause 1, the following new Schedule 1 – Part 1 entitled "General".

GENERAL

1.1 Legislative Compliance

The Trustee is fully empowered (without being obliged) to comply with any provision or standard of the Relevant Law which is not a requirement.

1.2 Deemed Compliance

The Trustee is deemed to comply with the Relevant Law and this Trust Deed if:

- (a) the Regulator is satisfied that the Trustee has complied with the Relevant Law;
- (b) the Regulator determines that the Trust will be treated as if it had complied with the Relevant Law; or
- (c) the Regulator has advised the Trustee that it will not take action against the Trustee or the Trust in respect of a failure to comply with the Relevant Law.

1.3 Specific Requirements

- (a) To the extent that any provision (or part of a provision) in this Trust Deed conflicts with Part 6 of SIS
 - (i) that provision (or part of a provision) must be read down, changed, construed or severed to avoid such conflict; and
 - (ii) to the extent that such conflict cannot be avoided, the provision (or part of a provision) will be of no effect.
 - (b) Where a provision of the Relevant Law is required to be included in this Trust Deed in order to comply with the Relevant Law, such provision is deemed to be included in this Trust Deed for so long as the provision is required to be so included.
 - (c) Without limiting paragraphs 1.3(a) and 1.3(b), the following provisions of the Relevant Law (and any corresponding regulations) apply despite any other provisions of this Trust Deed, for so long as the provision of the Relevant Law is required to so apply:
 - (i) section 52 of SIS (Covenants to be included in governing rules);
 - (ii) section 56 of SIS (Indemnification of trustee from assets of entity);
 - (iii) section 57 of SIS (Indemnification of directors of trustee from assets of entity);
 - (iv) section 58 of SIS (Trustee not to be subject to direction);
 - (v) section 59 of SIS (Exercise of discretion by person other than trustee);
 - (vi) section 60 of SIS (Amendment of governing rules); and
 - (vii) section 60A of SIS (Dismissal of trustee of public offer entity).
2. With effect from the execution of this deed, the Trust Deed is amended by inserting immediately after the new Schedule 1 – Part 1, the following new Schedule 1 – Part 2 entitled "Specific Legislative Compliance and Operative Provisions".

SPECIFIC LEGISLATIVE COMPLIANCE AND OPERATIVE PROVISIONS

2.1 Definitions

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

Regulator has the meaning set out in SIS.

Relevant Law means:

- (a) SIS;
- (b) the Corporations Act;
- (c) the Tax Act; and
- (d) any other, replacement or additional Commonwealth or State law or regulations, administrative rulings, circulars, guidelines or instruments which relate to superannuation arrangements and which apply to the Trust or any other present, future or proposed legal requirements which the Trustee is legally obliged to comply with, or which the Trustee must comply with to obtain the maximum tax concessions available to the Trust;

including any proposed requirements which the Trustee believes will have retrospective effect and any provisions of the above items which are necessary to be complied with in order for any pensions paid by the Trust to satisfy any applicable statutory requirements.

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

Tax Act means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth).

2.2 Trustee and licences

The Trustee must hold all relevant licences and authorities as required under the Relevant Law.

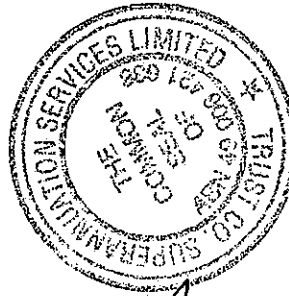
2.3 Overriding Effect of Parts 1 and 2

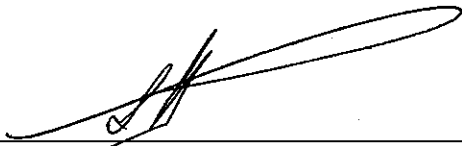
Parts 1 and 2 of Schedule 1 of the Trust Deed operate as follows:

- (a) Definitions defined for the purposes of Parts 1 and 2 of Schedule 1 will apply only to Parts 1 and 2 of Schedule 1;
- (b) Clauses contained in Parts 1 and 2 of Schedule 1 override any inconsistent provisions of the Trust Deed to the extent of the inconsistency.

EXECUTED as a deed.

**THE COMMON SEAL of Trust
Company Superannuation Services
Limited** (ABN 49 006 421 638), the fixing
of which was witnessed by:

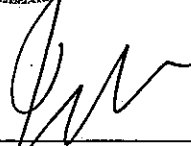




Signature of director

NICHOLAS SETTE

Name



Signature of director/secretary

John Divan

Name

Dated the

29th

day of

December

1998

PROVIDENCE POOLED SUPERANNUATION TRUST

**TRUSTEE: TRUST COMPANY SUPERANNUATION SERVICES LIMITED
A.C.N 006 421 638**

DEED OF AMENDMENT

This Deed of Amendment is made on the 29th December 1998 by:

TRUST COMPANY SUPERANNUATION SERVICES LIMITED

A.C.N 006 421 638

(Trustee)

of 151 Rathdowne Street, Carlton South, Victoria

RECITALS

- A. By Deed dated 21st December 1998 the Trustee became trustee of the Trusts constituted by the Trust Deed.
- B. The Trustee wishes to amend the Trust Deed in the manner set out in this deed.

This deed witnesses:

1. Definitions and Interpretations

1.1 Definitions

In this deed:

Effective Date means 29th December 1998;

Trust Deed means the deed of trust dated 14th March 1996 to which Trust Company of Australia Limited is party;

and defined terms used in this deed have the same meaning as in the Trust Deed unless otherwise defined in this deed.

1.2 Interpretation

In this deed, headings and boldings are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (c) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed and a reference to this deed includes any annexure, exhibit and schedule;
- (d) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (e) a reference to a party to a document includes that party's successors, permitted assigns and substitutes.

2. Amendment of Trust Deed

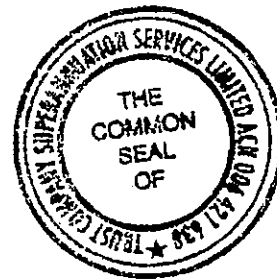
On and from the Effective Date, the Trust Deed is amended in the manner set out below:

- (a) The Trusts are to be collectively known as the Kaplan Funds Management Pooled Superannuation Trusts and the trust that is known as the Providence Pooled Superannuation Trust No. 1 is to be renamed the "Kaplan-Pooled Superannuation Trust". Accordingly, clause 1 is amended by:
 - (i) deleting the word "Providence" where it first appears in the clause and replacing it with the words "Kaplan Funds Management"; and
 - (ii) deleting the words "Providence Pooled Superannuation Trust No. 1" and replacing them with "Kaplan-Pooled Superannuation Trust".
- (b) Clause 2 is amended by deleting the words "the Commissioner" and replacing them with the words "the Regulator".
- (c) The Minimum Investment for Units will be \$25,000. Accordingly, clause 7 is amended by deleting the amount "\$100,000" and replacing it with the amount "\$25,000".
- (d) Clause 11(a) is amended by:
 - (i) deleting the words "rounded up to the next 1/10th of a cent" and replacing them with "calculated to the nearest whole cent"; and
 - (ii) deleting the words "plus an allowance for the Trustee's estimate of the cost the Trust would incur to acquire afresh the Trust Property" and replacing them with the words "plus such amount as determined by the Trustee to make allowance from the transaction costs of acquiring afresh Trust Property".
- (e) Clause 12 is amended by:
 - (i) deleting the word "cash" after the words "redeemed by the Trustee out of the" and replacing it with "funds";
 - (ii) deleting the words "Trust's capital within 1 month" after the words "available from the relevant" and replacing them with "Trust within 30 days";
 - (iii) deleting the words "rounded down to the next 1/10th of a cent" in paragraph (a) and replacing them with "calculated to the nearest whole cent"; and
 - (iv) deleting the words "less an allowance for the Trustee's estimate of the costs the Trust would incur to sell all Trust property" in paragraph (a) and replacing them with the words "less such amount as determined by the Trustee to make allowance for the transaction costs of selling Trust Property".

- (f) Clause 27 is amended by:
 - (i) deleting the semi-colon after the word "of" and inserting the words "0.1% per annum of the Gross Trust Value of the Fund";
 - (ii) deleting paragraphs (a), (b), (c) and (d);
 - (iii) deleting the amount "\$25,000" in the second last sentence and replacing it with the amount "\$20,000"; and
 - (iv) deleting the words "Providence Funds Management Pty Limited A.C.N 007 329 580" in the last sentence and replacing them with the words "Kaplan Funds Management Pty Limited A.C.N 079 218 643".
- (g) Clause 28(j) is amended by deleting the words "the Commissioner" and replacing them with the words "the Regulator".
- (h) Clause 43 is amended by:
 - (i) inserting after the words "Income Tax Assessment Act 1936," the words "Income Tax Assessment Act 1997,";
 - (ii) deleting the words "the Commissioner" and replacing them with the words "the Regulator"; and
 - (iii) deleting the words "'Commissioner' means the Insurance and Superannuation Commissioner" and replacing them with the words "'Regulator' means the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission" as the context requires.

Executed as a Deed:

THE COMMON SEAL of TRUST COMPANY)
 SUPERANNUATION SERVICES LIMITED)
 A.C.N 006 421 638 was hereunto affixed by)
 authority of its directors in the presence of:)



[Handwritten signature]

Director

[Handwritten signature]

Director

DATED 14th March 1996

TRUST COMPANY OF AUSTRALIA LIMITED
ACN 004 027 749
('Trustee')

PROVIDENCE POOLED SUPERANNUATION TRUSTS

MINTER ELLISON
Lawyers
40 Market Street
MELBOURNE VIC 3000
DX 204 MELBOURNE

Telephone (03) 9617 4617
Facsimile (03) 9617 4666
Reference EMF 1044362

PARTY: TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749 of 151
Rathdowne Street, Carlton South, Victoria ('Trustee')

OPERATIVE PART

1. **ESTABLISHMENT:** By this deed the Trustee intends to constitute unit trusts ('Trusts') to be collectively known as the Providence Pooled Superannuation Trusts. Each Trust will be maintained for the benefit of the holders ('Holders') of units in the Trust ('Units'). The Trustee and every Holder is bound by this Deed. A Trust called Providence Pooled Superannuation Trust No. 1 is constituted on the date of this Deed, and the Trustee is appointed Trustee of that Trust. The Trustee may, by supplemental deed, constitute new Trusts governed by this Deed.
2. **SUPERANNUATION LAWS:** Each Trust will be maintained as a pooled superannuation trust as defined in, and for the purposes of, *Superannuation Law* ('PST'). Despite any other provision of this Deed, all provisions of Superannuation Law (if any) that must be included in this Deed from time to time in order for a Trust to be a PST in any year of income are deemed to be included in this Deed, but only for so long as that deemed inclusion is necessary for that purpose (or for such longer period as the Trustee may determine). The Trustee may comply with the requirements of Superannuation Law and any circular, guideline, ruling, announcement or advice given by the Commissioner ('Relevant Requirements') even if the Relevant Requirements are inconsistent with this Deed. A breach of a Relevant Requirement, or of a provision of this Deed which is inconsistent with any Relevant Requirement, does not constitute a breach of trust.
3. **VESTING:** All property, rights and income of a Trust ('Trust Property') vest in the Trustee on trust for Holders.
4. **FUNDS:** The Trustee will hold all Trust Property as a separate fund ('Fund') which is not available to meet the liabilities of any other trust. The Trustee may mingle Trust Property with other property, if permitted under any present or future law. 'Trust Liabilities' include borrowings, liabilities for taxation, accrued costs, charges and outgoings, contingent liabilities and provisions the Trustee approves, unpaid distributions due to Holders and unpaid remuneration due to the Trustee.
5. **UNITS:** The beneficial interest in a Fund is divided into Units. The Trustee may at any time consolidate, divide, issue or allot Units, or grant options to subscribe for Units, with any preferential, deferred or special rights, privileges, conditions or restrictions. Partly paid Units may be created and issued and will be dealt with for all purposes of this Deed as Units, but in the proportion that the amount paid on the Unit bears to its issue price. Fractional Units may be created and issued, calculated to the second decimal place, and will be dealt with for all purposes of this Deed as Units, but in the proportion that the fraction bears to a whole Unit.
6. **INTEREST CONFERRED:** A Unit in a Trust confers on its Holder a beneficial interest in the Trust's Fund as a whole, not in parts or single assets. All Units of the same class in a Trust confer identical interests and rights. A Holder may not interfere with or exercise the powers of the Trustee in respect of any Trust Property, Trust Liability or obligation and has no right to lodge any caveat affecting any Trust Property.

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7. **APPLICATIONS:** Units in a Trust will only be issued to persons who are eligible under Superannuation Law to invest in a PST ('Eligible Investors') An Eligible Investor who intends to subscribe for Units in a Trust must give the Trustee an application (in a form, and communicated to the Trustee by a method, acceptable to the Trustee) and pay the application money to, or as directed by, the Trustee on account of the Trust ('Application Money') The minimum initial amount payable for a subscription for Units is \$100,000 or such other sum determined by the Trustee from time to time ('Minimum Investment') The Trustee may reject any application without giving any reason. Units are created and issued when the Trustee accepts an application (and for the avoidance of doubt acceptance of Application Moneys does not constitute acceptance of an application). Units paid for by a subsequently dishonoured cheque are void. The Trustee may prescribe terms allowing a Holder to apply the proceeds from a redemption of Units in a Trust in the subscription for Units in a different Trust or in another trust of which the Trustee or an associate of the Trustee is the trustee
8. **DURATION OF TRUST:** A Trust begins when the Trustee accepts the first application for Units in the Trust and ends at such time as this Deed, *Superannuation Law* or the law provides or the Trustee determines.
9. **VALUATIONS:** The Trustee is not to be regarded as having any special expertise in valuation. The Trustee may cause Trust Property to be revalued whenever it thinks fit The value of any property must be determined by, or by a method determined by, a qualified valuer appointed and instructed by the Trustee or such other method as the Trustee considers appropriate (including cost, market or any other method, without restriction).
10. **TRUST VALUE:** 'Net Trust Value' is the value of a Trust's Trust Property less its Trust Liabilities The Trustee may calculate Net Trust Value as at any time ('Valuation Time') (not limited to once a day), on the basis of the most recent valuation of each item of Trust Property and determination of Trust Liabilities as at the Valuation Time. The Trustee may make and act upon estimates of the value of any Trust Property or of the amount of any Trust Liabilities where actual valuations or authenticated figures are not available and the Trustee considers there will be no significant detriment to any Holder.
11. **ISSUE PRICE:** Units to be issued in respect of the first application for Units will be issued at a price of \$1 The price at which further Units may be created and issued by the Trustee is:
- (a) the amount (rounded up to the next 1/10th of a cent) derived by **dividing** the **sum** of the Net Trust Value as at the last Valuation Time before the issue of the Units **plus** an allowance for the Trustee's estimate of the cost the Trust would incur to acquire afresh the Trust Property, by the number of Units in issue at the Valuation Time; or
 - (b) such other price as may be determined by the Trustee in accordance with *Superannuation Law*
- ('Issue Price')
12. **REDEMPTION:** Units the subject of a Holder's redemption request (in a form, and communicated to the Trustee by, a method acceptable to the Trustee) will be redeemed by the Trustee out of the cash available from the relevant Trust's capital within 1 month from

the date the request is received or such longer period as the Trustee determines is reasonable. Units redeemed will be cancelled. The price at which a Unit is redeemed is:

- (a) the amount (rounded down to the last 1/10th of a cent) derived by dividing the Net Trust Value as at the last Valuation Time before payment of the proceeds of the redemption of the Unit is made less an allowance for the Trustee's estimate of the cost the Trust would incur to sell all Trust Property, by the number of Units in issue at the Valuation Time; or
- (b) such other price as may be determined by the Trustee in accordance with Superannuation Law

('Redemption Price').

The Trustee may reject a redemption request if the sum payable to the Holder is less than the current Minimum Investment amount. If a redemption request would leave a holding worth, at the Redemption Price, less than the current Minimum Investment amount, the Trustee may treat the request as applicable to all Units held by that Holder in the Trust

13. **SUSPENSION:** The Trustee may suspend the calculation of the Issue Price or the Redemption Price, and the issue or redemption of Units in the Trust, where in the opinion of the Trustee it is impracticable for the Net Trust Value to be calculated because of:
- (a) the closure of, or trading restrictions on, a stock or securities exchange or market on which an investment of the Trust is listed or offered for sale, purchase or exchange;
 - (b) an emergency or other state of affairs or the declaration of a moratorium in a country where the Trust invests or under the law,

for the duration of the event or circumstance, but in any event not exceeding 1 month. An application for Units lodged during a period of suspension, or in respect of which Units had not been issued when the suspension commenced, is taken to be received by the Trustee immediately after the end of the suspension. A Holder's redemption request lodged during a period of suspension, or which was not satisfied when the suspension commenced, is taken to be received by the Trustee immediately after the end of the suspension (except for the purposes of clause 8, for which the actual date of receipt will apply).

14. **ELIGIBLE INVESTORS:** The Trustee may at any time require a Holder to provide the Trustee with evidence that the Holder is an Eligible Investor in relation to any Units. A Holder must advise the Trustee in writing as soon as it becomes aware that it has ceased to be an Eligible Investor in relation to any Units. If, at any time, the Trustee is not satisfied that a Holder is an Eligible Investor in relation to any Units ('**Relevant Units**'), the Trustee may, by notice in writing to the Holder, redeem the Relevant Units. Any such redemption shall be effected as if the Holder concerned had made a request to redeem all of the Relevant Units on the date of the Trustee's notice to the Holder. Except where the Trustee fails to act honestly or where it intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee was required to exercise, the Trustee is not liable for any loss, liability, damage, costs or expenses which may be suffered by any Holder as a consequence of any redemption of Units pursuant to this clause

15. **POWERS:** Subject to this Deed, the Trustee has within and outside Australia all the powers in relation to each Trust, its Trust Property and Trust Liabilities that it is legally possible for a natural person or corporation to have, including (but not limited to) to invest in real or personal property of any nature, and to borrow and incur liabilities and obligations of any kind, and as if it were the absolute and beneficial owner of all Trust Property. The Trustee will manage each Trust, its Trust Property and Trust Liabilities until none remain. The Trustee may, as it sees fit, in connection with the performance of its duties, engage (whether or not related to or associated with the Trustee) any investment managers, administrators, custodians, advisers, agents, brokers, contractors, underwriters or other persons. In addition, the Trustee may exercise any powers conferred by Superannuation Law including (without limitation) to offer Holders investment choice, and to implement Holders' directions in that regard, on terms which comply with Superannuation Law.
16. **DELEGATION:** The Trustee, by power of attorney or otherwise, may authorise one or more persons (whether or not related to or associated with the Trustee) to do anything that the Trustee may do, including, but not limited to, holding Trust Property and executing documents on its behalf. Without limitation, the Trustee (or a delegate of the Trustee holding Trust Property) may engage the services of an operator of any securities title, transfer or holding system.
17. **DISCRETION:** The Trustee may determine the manner, mode and time of exercise of its powers in its absolute discretion.
18. **INDEMNITY:** The Trustee is not required to do anything for which it does not have a full right of indemnity out of Trust Property. Any indemnity to which the Trustee is entitled under this Deed is in addition to any indemnity allowed by law. Except where the Trustee or a director of the Trustee fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or director was required to exercise, the Trustee and each of its directors will be indemnified out of the Trust Property against all liabilities and losses (excluding any liability for a monetary penalty under a civil penalty order imposed under Superannuation Law) incurred in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in the Trustee and will have a lien over and may use the Trust Property for the purposes of the indemnity.
19. **NOTICES:** Any notice, material or cheque may be sent to a Holder by prepaid post to the address of the Holder (or of the first named of joint Holders) shown in the Register and will be deemed received on the next business day after posting.
20. **REGISTER:** The Trustee will establish and keep a unit register ('Register'). The Trustee may establish and keep branch registers anywhere in Australia. The Trustee need not enter notice of any trust on the Register. The Trustee will not be bound to take notice of any trust or equity affecting any Unit.
21. **CERTIFICATES:** No certificates will be issued for Units. The Trustee at any time may send any Holder details of Units held by, and Unit transactions of, the Holder.
22. **TRANSFERS:** Holders may transfer Units in such manner as the Trustee approves from time to time, but only if the Trustee is satisfied that the person to whom the Units are transferred is an Eligible Investor. The Trustee may decline to recognize or register a

transfer unless the transfer instrument is stamped. A transfer of Units takes effect only on registration in the Register.

23. **DEATH AND INSOLVENCY:** The Trustee will only recognise surviving joint Holders and the person legally entitled to Units consequent on the death, bankruptcy or liquidation of a Holder, respectively, as having rights or title to the Units in those circumstances.
24. **TERMINATION:** On termination of a Trust, the Trustee will realise all Trust Property, pay or discharge all Trust Liabilities and expenses of termination and distribute the net proceeds among Holders pro rata to the number of Units held. The Trustee may postpone realisation and will not be responsible for any resulting loss unless caused by the Trustee's failure to act honestly or its intentional or reckless failure to exercise the degree of care and diligence that the Trustee was required to exercise.
25. **INDEPENDENT RIGHTS:** The Trustee and any related company or associate of the Trustee may, subject always to acting in good faith to Holders:
- (a) hold Units (if an Eligible Investor);
 - (b) represent or act for individual Holders;
 - (c) deal in any capacity with the Trustee or with any related company or associate of the Trustee or with a Trust; or
 - (d) act in any capacity in relation to any other trusts,

without in any such case being liable to account to any Trust, to the Trustee or to any Holder.

26. **TRUSTEE'S LIABILITY:** Except if the Trustee or a director of the Trustee fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or the director was required to exercise, neither the Trustee nor the directors of the Trustee will be liable to any Holder in respect of a Trust:

- (1) for loss caused by:
 - (a) the acts or omissions of the Trustee or its directors in reliance on:
 - (i) the Register;
 - (ii) the authenticity of any document;
 - (iii) an opinion, advice or information of any barrister, solicitor, accountant, valuer or other expert instructed by the Trustee; or
 - (iv) information from any banker or the Trust auditor;

provided the relevant party has no reason to believe the relevant material not to be authentic or the expert not to have had the relevant expertise;

- (b) any act, omission, neglect or default of any agent of the Trustee or any other person in general;

- (c) any act or omission required by law, the Relevant Requirements or any court of competent jurisdiction;
- (d) any particular price or reserve not having been realised;
- (e) any unnecessary payment having been made to any fiscal authority; or
- (f) any act or omission of a delegate of the Trustee holding Trust Property or an operator of any securities title, transfer or holding system;

(2) to any greater extent than the Trust Property of the Trust actually vested in the Trustee in accordance with this Deed.

27. **FEES:** The Trustee will receive a fee, based on the total value of all Trust Property ('Gross Trust Value'), of:

- (a) 0.2% per annum of Gross Trust Value up to \$25 million;
- (b) 0.15% per annum of Gross Trust Value in excess of \$25 million and up to \$50 million;
- (c) 0.1% per annum of Gross Trust Value in excess of \$50 million and up to \$100 million;
- (d) 0.065% per annum of Gross Trust Value in excess of \$100 million,

calculated and payable on the last day of each month out of Trust income, but if Trust income is insufficient then out of Trust capital, subject to a minimum annual fee of \$25,000. Fees will also be paid to Providence Funds Management Pty Ltd ACN 007 329 580 for the provision of investment management services.

28. **OUTGOINGS:** All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee in connection with the following matters or of the following nature in relation to a Trust are payable or reimbursable out of Trust Property (to be apportioned in a manner determined by the Trustee if referable to more than one Trust):

- (a) the establishment of the Trust and all investment management and administrative matters;
- (b) preparation, approval, stamping, execution and printing of this Deed and any deed amending this Deed;
- (c) retirement and appointment of the Trustee;
- (d) the institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this Deed or the Trust (but the Trustee is not entitled to be reimbursed for outgoings in connection with proceedings in which it is found by a court to be liable for its own neglect, default, breach of trust or breach of duty);

- (e) any meeting of Holders and implementing any resolution of the meeting;
- (f) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (g) all income, capital gains, debits, land and other taxes, stamp, documentary, financial institutions, registration and other duties, excise, council and water rates and any other levies, imposts, deductions and charges, related interest and penalties ("Taxes") in connection with the Trust other than on the Trustee's personal account in relation to its fees;
- (h) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Trust Property;
- (i) fees payable to any person (not associated with the Trustee) authorised or appointed by the Trustee to maintain any Trust accounting and investments records or to hold Trust Property including any custodian and the operator of any securities title, transfer or holding system;
- (j) fees payable to the Commissioner or any other regulatory authority;
- (k) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (l) an offer or invitation in respect of Units including preparation, lodgement, registration, distribution and promotion of Trust prospectuses and information memoranda;
- (m) preparing, printing and posting accounts, cheques and documents, or making payments, to Holders;
- (n) fees payable to any ratings organisation;
- (o) amounts payable to advisers, agents, brokers, contractors, underwriters or other persons engaged by the Trustee under this Deed and including legal costs on a full indemnity basis;
- (p) the Trust auditor's fees;
- (q) preparation and lodgment of Trust taxation or other returns;
- (r) entering a Trust in any survey;
- (s) termination of the Trust;
- (t) performance of the Trustee's duties, exercise of the Trustee's rights or powers, compliance with any Relevant Requirement or administration of a Trust.

29. **RECOVERIES:** Each Holder is liable for all Taxes and costs in relation to that Holder's application for and Application Money in respect of Units and any act requested by that

Holder The Trustee may withhold payment of any amount payable or to be applied in respect of a Holder (and may deduct or require to be deducted from such amount) until the liability whether or not paid, payable or anticipated to become payable by the Trustee on its own account or out of a Trust is discharged, or may meet that liability and recover the amount from any money or property held for the Holder.

30. **INCOME COLLECTION:** The Trustee will collect all Trust income.
31. **ACCUMULATION OF INCOME:** Subject to this clause, the income of a Trust will be accumulated to, and will form part of, that Trust. The Trustee may determine at any time and from time to time to distribute an amount forming part of a Trust's Fund to each Holder registered as at the day that amount is transferred to a distribution account pro rata to the number of Units on issue at that time. Any amount transferred to a distribution account is not to be taken into account when determining the Issue Price. If a question arises as to whether any income of a Trust constitutes income or capital accretions or profits or whether any capital accretion or profit is a realised capital gain, that question will be determined by the Trustee who may have regard to general commercial practice and the opinion of professional advisers and every such determination expressed in writing will be final and conclusive.
32. **PAYMENTS:** Any money payable by the Trustee to any Holder may be paid by cheque posted to the Holder, deposited into an account with an Australian bank or financial institution nominated in writing by the Holder to the Trustee or applied as directed in writing by the Holder to the Trustee.
33. **ACCOUNTS:** Accounts for each Trust will be prepared in accordance with the Superannuation Law, generally accepted accounting principles and approved accounting standards.
34. **AUDITOR:** The Trustee will appoint and may at any time replace as Trust auditor an auditor who is an approved auditor for the purposes of Superannuation Law.
35. **MEETINGS:** The Trustee may (and, on the written requisition of the Holders of 20% or more of Units, will) by at least 10 business days notice to the Holders, convene a meeting of Holders ('Meeting'). Accidental omission to give notice to, or non-receipt of notice by, a Holder does not invalidate a Meeting nor any resolution passed at a Meeting. At a Meeting, each Holder is entitled to vote personally or by proxy. A proxy given by facsimile may be accepted if the Trustee has no reason to believe that it is not genuine. A Holder's proxy is invalid only if it is more than 12 months old or the Trustee receives written notice of revocation from, or of the death or insanity of, the Holder.
36. **CONDUCT OF MEETINGS:** Meetings to consider the removal of the Trustee ('Removal Meetings') must be conducted in accordance with the requirements of Superannuation Law. Other Meetings, and Removal Meetings insofar as there are no applicable requirements of Superannuation Law, must be conducted in accordance with this clause. The Trustee may nominate the chairman (who need not be a Holder) of any Meeting. The quorum for a Meeting is 5 persons present holding or representing by proxy between them not less than 10% of Units in issue in the Trust. If a quorum is not present within 15 minutes after the Meeting is due to start, then if convened by the Trustee on a Holders' requisition, the Meeting is dissolved and, in any other case, the Meeting stands adjourned to such place and time as the Trustee determines. At an adjourned Meeting, Holders and persons holding proxies present when the adjourned Meeting is due to start.

will constitute a quorum. Every question arising at a Meeting will be decided by a show of hands unless a poll is demanded (before or on the declaration of the result) by the chairman or by 5 or more persons holding between them or representing by proxy not less than 10% of the Units in issue in the Trust. Each Holder is entitled to 1 vote on a show of hands and 1 vote per Unit on a poll. The joint Holder firstnamed in the Register may exercise the voting rights of jointly held Units. A resolution is passed if a simple majority of votes cast are in favour. The chairman's declaration of the result of voting is conclusive. The chairman is responsible for the conduct of the Meeting and may adjourn any Meeting to a time and place as the chairman sees fit. A resolution passed or direction given at a duly convened Meeting binds all Holders.

37. **POSTAL BALLOT:** The Trustee, in accordance with whatever arrangements it deems appropriate may, at any time, conduct a **Postal Ballot** of Holders. The provisions of this Deed in respect of Meetings will apply to any Postal Ballot so far as applicable. A resolution passed on a Postal Ballot shall be as effective as a resolution passed at a Meeting
38. **TRUSTEE'S RETIREMENT:** The Trustee may at any time retire as trustee of a Trust. Whenever a Trustee retires, the Trustee will by deed appoint another constitutional corporation (as defined in Superannuation Law) as Trustee. If no replacement Trustee is appointed within 90 days after a Trustee's retirement, the Trust will be terminated
39. **TRUSTEE'S INDEMNITY:** A retiring Trustee and its directors will be granted a complete release from this Deed as it affects a Trust and be indemnified out of Trust Property against any claims arising out of the Trustee's conduct as Trustee of the Trust or the directors' conduct in that regard, except claims in respect of the Trustee or its directors failing to act honestly, or intentionally or recklessly failing to exercise the degree of care and diligence the Trustee or its directors were required to exercise, and without limiting the liability of the retiring Trustee and its directors to the Holders
40. **STATUTORY REQUIREMENTS:** If at any time the Trustee is subject to any statutory or official requirement in relation to a Trust unacceptable to it, the Trustee may retire as trustee forthwith or terminate the Trust.
41. **LIABILITY OF HOLDERS:** Subject to this Deed, the liability of each Holder is limited to the amount subscribed, or agreed to be subscribed, by it for Units. Recourse of the Trustee and Trust creditors is limited to Trust Property. Any relationship of agency between the Trustee and any Holder is expressly excluded
42. **AMENDMENTS TO DEED:** The Trustee may, by supplemental deed, amend this Deed.
43. **MEANINGS AND GOVERNING LAW:** Unless a contrary intention appears, words and phrases used in this Deed have the same meanings as in Superannuation Law. The singular includes the plural and vice versa. 'Deed' means this deed, as amended from time to time. 'Superannuation Law' means, as the context requires, any one or more of the *Superannuation Industry (Supervision) Act 1993*, the *Income Tax Assessment Act 1936*, the *Superannuation Entities (Taxation) Act 1987* and any regulations made pursuant to any of those Acts, as modified in their application to a Trust by any subsisting declaration, modification or exemption granted by the Commissioner and, where the Trustee thinks it appropriate, any announcement of a proposed change to any of those Acts or regulations (whether or not the change is to have retrospective effect). Legislation is referred to as

amended or replaced from time to time. 'Commissioner' means the Insurance and Superannuation Commissioner. This Deed is governed by the laws in force in Victoria

EXECUTED as a deed.

~~THE COMMON SEAL of TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749 is affixed in accordance with its articles of association in the presence of~~



~~THE COMMON SEAL of TRUST COMPANY OF AUSTRALIA LIMITED ACN 004 027 749 was~~
affixed by authority of the Directors:

Noel C. Spinks

Gordon Moffatt

Secretary **MANAGER**

Director

Noel Christopher Spinks
Name of secretary (print)

Gordon Moffatt
Name of director (print)

MANAGER