

DEED AMENDMENT

**THE UNIVERSITY OF ADELAIDE
SUPERANNUATION SCHEME A 1985**

BETWEEN

**THE UNIVERSITY OF ADELAIDE SUPERANNUATION
SCHEME A 1985 INCORPORATED
SA A11773
("Trustee")**

AND

**THE UNIVERSITY OF ADELAIDE
050389690
("UoA")**

**Adelaide
Melbourne
Sydney**



**Thomson
Playford**

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THIS DEED AMENDMENT is made the

5

day of

June

2006

BETWEEN THE UNIVERSITY OF ADELAIDE SUPERANNUATION SCHEME A 1985 INCORPORATED SA A11773 ("Trustee")

AND THE UNIVERSITY OF ADELAIDE 050389690 of North Terrace, Adelaide in the State of South Australia ("UoA")

RECITALS

A. The University of Adelaide Superannuation Scheme A 1985 ("**Fund**") is governed by a trust deed and rules made the 13th day of May 1987 as amended by various amending deeds, deeds of variation and resolutions made or dated 10 January 1991, 24 June 1992, 18 March 1993, 10 June 1994, 13 February 1996, 12 September 1995, 11 April 1997, 18 September 2001, 10 July 2003 and 27 January 2006 which deed and rules as amended are hereinafter called "**the Deed**".

B. The Trustee is the trustee and UoA is the University for the purposes of the Deed.

C. Clause D.16 of the Deed relevantly provided as follows:

"D.16. ALTERATION TO DEED AND RULES

D.16.1 Mode of Alteration

Such as hereinafter provided the Trustee and the University may at any time and from time to time by a deed under seal amend all or any of the provisions contained in the Deed or in the Rules set out in the Schedules hereto.

D.16.2 Restriction of Power of Alteration

No amendment shall be of any effect which purports to,

- (i) vary the main purpose of the Fund, namely, to provide Benefits for Members and their Dependants; or
- (ii) authorise the making of any payment to an Employer out of the Fund except as already provided for in the Deed or in the Rules

and no amending deed shall be of any effect to the extent to which it would otherwise have the effect of –

- (iii) varying the main purpose of the Fund, namely, to provide benefits for Members and their Dependants; or
- (iv) authorise the making of any payment to an Employer out of the Fund except as already provided for in the Deed or in the Rules.

D.16.3 (a) Alterations which become operative forthwith upon execution of Amending Deed and which do not require subsequent approval from Members.

If either -

- I. the principal purpose of any amendment is to be enable –
- (a) the Fund or the income of the Fund, or the Contributions of Employers or Members or a greater proportion thereof –
 - (i) to be exempted from Taxation or to be allowable deductions for Taxation; or
 - (ii) to be assessable to Taxation at a lower rate;
 - (b) the maximum relief of the Fund, Employers, Members or Beneficiaries to be obtained from probate, stamp, estate, succession and other duties in consequence of the death of a Member or beneficiary or payment of a Benefit or for any other reason; or
 - (c) the Fund to comply with any law of the Commonwealth of Australia or any State or Territory thereof or any other country state or territory in relation to superannuation benefits or funds or employee benefits generally or otherwise

and prior to the execution of the amendment the Trustee obtained written advice to that effect from the Actuary or a solicitor (as appropriate);

.....”

- D. By virtue of trustee licensing and fund registration obligations which take effect as and from the 1st day of July 2006 by virtue of the Superannuation Industry (Supervision) Act 1993 (“SIS”) it has been determined that the Trustee will retire as trustee and that Tidswell Financial Services Ltd ACN 010 810 607 will be appointed as trustee in relation to the Fund.
- E. In anticipation of the change of trustee proposed in accordance with Recital D the Trustee and UoA are desirous of amending the Deed to accommodate the appointment of an independent trustee and to that end the Trustee has obtained written advice from the Fund’s solicitor confirming that the said trustee appointment and the amendments to the Deed hereby effected are for the principal purpose of enabling the Fund to comply with a Commonwealth Law relating to superannuation benefits or funds; namely SIS.
- F. The Trustee and UoA have accordingly determined that the amendments to the Deed hereby effected are authorised by Clause D.16.3(a)(I) and without the need for subsequent approval of the Fund members as otherwise required by Clause D.16.4.

TERMS OF DEED

1. RECITALS

The Trustee and UoA **HEREBY DECLARE** that the recitals to this deed are true and correct in every material particular and shall form part of this deed.

2. AMENDMENTS AUTHORISED

The Trustee and UoA **HEREBY DECLARE** that they have formed the opinion that the amendments to the Deed hereby effected are authorised by Clause D.16 and the Deed generally and do not breach any of the restrictions imposed by Clause D.16.2.

3. AMENDMENT

The Trustee and UoA pursuant to the powers vested in them by Clause D.16 of the Deed generally and pursuant to every other power enabling them in that behalf **DO HEREBY AMEND** the Deed as follows:

- 3.1 By deleting the first paragraph immediately appearing under Clause D.1.1 "Definitions" and replacing it with the following new paragraph:

"D.1.1 Definitions

In this Deed and in the Schedules hereto (which contain the Rules of the Scheme), but not in the Appendix hereto, unless inconsistent with the context or subject matter but subject at all times to Clause D.1.7 –"

- 3.2 The definition of "Secretary/Administrator" contained in Clause D.1.1 is hereby deleted and replaced by the following new definition:

"Secretary/Administrator" means the person for the time being appointed pursuant to Clause D.11.1(a)(i) and in respect of any period during which an Independent Trustee is appointed as the Trustee in relation to the Fund means the relevant duly authorised representative of the Trustee."

- 3.3 The following new definitions are hereby added to Clause D.1.1 of the Deed as follows to be inserted in the said clause in alphabetical order:

"Director" is a reference to a director of an Independent Trustee;

"Independent Trustee" means an independent trustee within the meaning of the Relevant Law;

"Policy Committee" means a Policy Committee formed in accordance with Clause D.7B where the Trustee is an Independent Trustee and where the establishment of a Policy Committee is required under the Relevant Law and/or where the University and the Trustee have agreed under a Trustee Agreement to establish and maintain a Policy Committee;

"Trustee Agreement" means an agreement entered into between the University and an Independent Trustee (appointed as Trustee in relation to the Fund) which agreement governs the terms and conditions on which the Independent Trustee has been appointed in relation to the Fund;"

- 3.4 By the addition of a new Clause D.1.7 as follows:

"D.1.7 Inoperative Definitions

The following definitions contained in Clause D.1.1 shall be inoperative if and for as long as an Independent Trustee is the duly appointed trustee in relation to the Fund –

- (a) "Chairman";
- (b) "Committee of Management";
- (c) "Employer Representative";
- (d) "Independent Representative";
- (e) "Member Representative";
- (f) "Representative".

- 3.5 Clause D.2A.8(a)(i) is hereby deleted and replaced by the following new clause:

"(i) shall be construed as extending to a Representative or Director as the case may be, or any officer of the Trustee or any other person authorised to act on behalf of the Trustee in respect of any liabilities while acting as such; and"

- 3.6 Clause D3.2(c) is hereby deleted and replaced by the following new paragraph (c):

"(c) The incorporation of the Original Trustees as proposed under Clause 3.2(a) shall be deemed for the purposes of this Deed to have constituted "The University of Adelaide Superannuation Scheme A 1985 Incorporated" as the sole Trustee of the Fund which Trustee may subsequently retire or be removed in accordance with the terms of this Deed."

- 3.7 Clause D7.1 is hereby deleted and replaced by the following new Clause D.7.1:

"D.7.1 Appointment of Trustee

The Trustee shall be the University of Adelaide Superannuation Scheme A 1985 Incorporated or such other body corporate (including an Independent Trustee) as may be appointed by the University in writing from time to time. The Trustee shall be appointed for such term (if any) as may be agreed between the University and the Trustee and in the case of an Independent Trustee the terms and conditions of the Trustee's appointment shall be governed by the Trustee Agreement."

- 3.8 By the addition of a new Clause D.7A.12:

"D.7A.12 Clause Inoperative

This Clause D.7A shall be inoperative and of no effect for as long as and during any period during which an Independent Trustee is appointed as Trustee in relation to the trusts of the Fund."

3.9 By the addition of a new Clause D.7B:

"D.7B Policy Committee

If an Independent Trustee is the Trustee then a Policy Committee shall be established and maintained if that is required by the Relevant Law and/or if the establishment of a Policy Committee is agreed under a Trustee Agreement in which case the terms and conditions on which the Policy Committee is established and maintained shall be in accordance with the Relevant Law and the Trustee Agreement."

3.10 Clause D8.2 is hereby deleted and replaced by the following new Clause D8.2:

"D8.2 Sole Trustee

- (a) *Whenever the Fund is vested in and managed by a sole Trustee (being a body corporate other than an Independent Trustee) then:*
- (i) *any power authority or discretion vested in the Trustee by the Deed and the Rules may be exercised by, and any reference to the opinion of the Trustee shall be construed to mean the opinion of, the Committee of Management (or the equivalent thereof) for the time being of such body corporate; and*
 - (ii) *a meeting by the Committee of Management (or the equivalent thereof) of the body corporate shall be deemed to be a meeting of the Trustee for the purposes of the Deed and the Rules; and*
- (b) *Whenever the Fund is vested in and managed by an Independent Trustee as Trustee of the Fund then:*
- (i) *any power authority or discretion vested in the Trustee by the Deed and the Rules may be exercised by, and any reference to the opinion of the Trustee shall be construed to mean the opinion of, the Board of Directors of such Independent Trustee; and*
 - (ii) *a meeting of the Board of Directors of an Independent Trustee shall be deemed to be a meeting of the Trustee for the purposes of the Deed and the Rules."*

3.11 By the addition of a new Clause D.9.1(xv):

- "(xv) In the case an Independent Trustee, to appoint a custodian trustee for the purposes of legal custody of the Fund's assets as may be required by the Relevant Law from time to time which appointment shall be subject to the terms of the Trustee Agreement."*

- 3.12 Clause D.11.1(a)(i) is hereby deleted and replaced by the following new Clause D.11.1(a)(i):

“(i) *Secretary/Administration* **EXCEPT THAT** *where the Secretary/Administrator is the authorised representative of an Independent Trustee, the remuneration, if any, shall be determined in accordance with the Trustee Agreement;*”

- 3.13 Clause D.11.1(b) is hereby deleted and replaced by the following new Clause D.11.1(b):

“(b) **Trustee may not be Appointed Secretary/Administrator, Actuary or Auditor**

No Trustee may hold any of the offices referred to in paragraph (i), (ii) or (iii) of Clause D.11.1(a) except where an Independent Trustee is appointed as the Trustee in relation to the Fund, in which case the authorised representative of the Trustee may be appointed to the office of Secretary/Administrator.”

- 3.14 The first paragraph of Clause D.13.2 is hereby deleted and replaced by the following new paragraph:

“The Trustee shall be entitled and authorised to deduct out of the Fund and retain for its own use and benefit by way of remuneration an amount or amounts which may be agreed between the Trustee and the University from time to time and the Trustee and the University may agree on a basis of calculation of the Trustee’s remuneration rather than an amount. If the Trustee is an Independent Trustee then the terms and conditions of the Trustee’s remuneration shall be determined in accordance with the Trustee Agreement. If there is any disagreement between the Trustee and the University the decision of the University shall be binding upon the Trustee except that if there is a Trustee Agreement then any disagreement shall be resolved in accordance with the terms of that agreement.”

- 3.15 Clause D.14.1 is hereby deleted and replaced by the following new Clause D.14.1:

“D.14.1 **Minutes to be Kept**

The Trustee and any Committee appointed under Clause D.9.2(a) hereof shall cause proper minutes to be kept and any minutes of any meeting of the Trustee and such Committee, if purporting to be signed by the chairperson of that or a succeeding meeting, shall be prima facie evidence of the matters recorded in those minutes. Any resolutions made pursuant to Clause D.7.7(e) hereof shall be recorded in the minute book.”

- 3.16 The portion of the Deed described as “**APPENDIX**” which prescribes the Rules of Association of the Trustee is hereby severed from the Deed and from the date of

this Deed the said Rules of Association shall not be comprised in the Deed but shall be construed as a discrete and independent document which continues to operate as the Rules of Association in relation to the Trustee.

EXECUTED as a Deed

THE COMMON SEAL of THE
UNIVERSITY OF ADELAIDE)
SUPERANNUATION SCHEME A 1985)
INCORPORATED was hereunto affixed in)
accordance with the Rules of the)
Association in the presence of:)



Craig Idwin

Member of the Committee of Management

S M Shuckie

Secretary

The Seal of the University of Adelaide was affixed on Friday 20 June 2006 (date) by authority of two Custodians whose signatures are hereby appended.

[Signature]
Custodian of Seal

[Signature]
Custodian of Seal

[Signature]
Officer who affixed the Seal

