

SELF MANAGED SUPERANNUATION FUND DEED

DARRYL BIRCH SUPER FUND

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THIS TRUST DEED is made by:

DARRYL DENNIS BIRCH of 18 PERON PLACE, SAN REMO. WESTERN AUSTRALIA 6210

AND

MAXINE ALISON DAWSON of 9 PERON PLACE, SAN REMO. WESTERN AUSTRALIA 6210

referred to as the **Trustees**.

BACKGROUND:

- A. The Trustees wish to establish a self managed superannuation fund, as defined in SIS Legislation, to provide superannuation benefits to Members; while the Trustee(s) of the Fund are natural persons, to provide these superannuation benefits primarily by way of old-age pensions; and to act for any other purposes as permitted from time to time by SIS.
- B. The Trustees desire to maintain the Fund as a complying superannuation fund under SIS.
- C. The Trustees desire that the Fund have the capacity to become another type of superannuation fund under SIS.

AGREEMENT OF THE PARTIES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

account-based pension means a pension established for the benefit of a member in accordance with regulation 1.06(9A) of the SIS Regulations;

Accumulation Account means the account established on behalf of each Member pursuant to clause 8.2(a);

Beneficiary means a person presently and absolutely entitled to receive a Benefit at the relevant time by reason of the membership of another person;

Benefit means any amount paid or payable by the Fund to or in respect of a Member or Beneficiary whether as a Lump Sum or Pension or otherwise in accordance with this Deed;

Bill of Exchange means an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed and determinable future time, a sum certain in money to the order of a specified person, or to bearer;

Bill of lading means a receipt issued by a shipping company for goods transported. The bill serves as a record of the contract, setting out terms and conditions;

Cheque means an unconditional order in writing to a bank or other cheque-issuing institution by its customer, requesting the issuer to pay a specific sum to a specified person or business entity;

Child includes ex nuptial child, a legally adopted child, a person recognised by the Trustees as an adopted child and a child of a Member born within 10 months after the death of the Member, and (provided such child is a dependant of the Member under SIS) a step child;

Commissioner of Taxation means the Federal Commissioner of Taxation;

Concessional Contributions has the meaning given in section 292.25 of the ITAA 1997;

Deed means this Deed as amended from time to time;

Dependant in relation to a Member means:

- (a) the Spouse of a Member or the widow or widower of a deceased Member; or
- (b) any Child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; and
- (c) any other person who, in the opinion of the Trustee, was wholly or partially financially dependent on the Member;

Employee means a person in the employment of, or a Director of, an Employer or an associate of the Employer;

Employer means any employer of a Member;

Financial Instrument includes a futures contract, forward contract, interest rates swap contract, currency swap contract, forward exchange rate contract, forward interest rate contract, a right or option in respect of any such contract or any similar financial instrument;

ITAA means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 as applicable and the regulations thereunder;

Lump Sum means the amount of Benefit, other than a Pension, payable to or in respect of a Member;

Member means a person who has been accepted by the Trustees as a Member of the Fund and has not ceased to be a Member pursuant to this Deed and includes a pensioner. The following person is currently a Member: DARRYL DENNIS BIRCH of 18 PERON PLACE, SAN REMO. WESTERN AUSTRALIA 6210;

Minimum Benefits means the minimum benefits which are required to be applied in respect of a member pursuant to Part 5 of the SIS Regulations;

Nominated Dependant means a Dependant nominated by a Member as such (whether binding or not) and includes a reversionary beneficiary of a Pension;

Non-concessional Contributions has the meaning given in section 292.90 of the ITAA 1997;

Pension means an income stream and includes a pension or annuity permitted by the Requirements;

Permanent Incapacity or **Temporary Incapacity** has the same meaning as in SIS or as prescribed by the Regulator provided that where any part of a Benefit payable in that event is insured, the definition contained in the policy of insurance applies and prevails to the extent of any inconsistency in respect of that part of the Benefit;

Preservation Age for a Member means the age determined in accordance with regulation 6.01(2) of the SIS Regulations;

Regulator means the regulator to whom the Trustees must provide reports under SIS or whose determination is relevant in the circumstances, being the Australian Securities and Investment Commission, the Australian Taxation Office or Australian Prudential Regulation Authority as the case may be (including the authorised officers of these bodies, or such other persons or bodies empowered to administer the Requirements);

Promissory note means an unconditional obligation to pay a fixed sum of money on a future date. A borrower obtains its 'credit' by issuing a note or selling it. The purchase price paid by the purchaser of the note provides the funds to the borrower (or issuer of the note) and in return the borrower agrees to pay the fixed sum specified in the note at a future date. There are various means by which promissory notes can be then be dealt with, including the right to receive interest and the selling at a discount from the face value;

Requirements means SIS, ITAA and any other laws or legislation, or the requirements of the Regulator or any other competent authority, which must be satisfied so that:

- (a) the Fund obtains concessional tax treatment;
- (b) the Fund remains a regulated superannuation fund;
- (c) the Employer or Member retains any entitlement to a tax deduction unless they choose not to claim a tax deduction;

- (d) no dealing with the Fund gives rise to a taxable fringe benefit to an Employer unless the Employer chooses to incur a fringe benefits tax liability;
- (e) benefits are concessionally taxed;
- (f) if appropriate, a Pension Benefit is asset test exempt for social security purposes; and
- (g) no penalty is imposed on the Trustees or directors of the Trustee;

Restricted Benefit means a benefit which is to be preserved or to which there is restricted access pursuant to the Requirements;

SGC means the Superannuation Guarantee Charge Act 1992, the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee (Administration) Regulations as the context requires;

SIS means the Superannuation Industry (Supervision) Act 1993 (and includes the SIS Regulations where the context requires);

SIS Regulations means the Superannuation Industry (Supervision) Regulations;

Spouse means:

- (a) a person legally married at any time to a Member; or
- (b) a person not legally married to the Member who, in the opinion of the Trustee, lives or lived with the Member as the de facto spouse or partner of the Member;

Trustee means the Trustees for the time being of the Fund (and where the context permits includes the directors of a corporate Trustee), the current Trustees are DARRYL DENNIS BIRCH, MAXINE ALISON DAWSON.

- 1.2 The singular shall mean and include the plural and vice versa, any gender shall mean and include all other genders and Person means and includes a natural person, firm or corporation.
- 1.3 The provisions of a Schedule constitute part of this Deed.
- 1.4 References to any statutory enactment shall mean and be construed as reference to that enactment as amended modified and re-enacted from time to time.
- 1.5 The index does not form part of and shall not affect the interpretation of this Deed.
- 1.6 Clause headings and highlighting of text shall not affect the interpretation of this Deed. A reference to a clause number, shall be a reference to a clause in this Deed.
- 1.7 The perpetuity period in relation to all dispositions made by this Deed shall be the period of eighty (80) years commencing on the date of this Deed.
- 1.8 Unless a contrary intention applies, any word or expression defined in SIS, the ITAA or the Requirements which is used but not defined herein has the same meaning.
- 1.9 This Deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

2. THE FUND

2.1 Establishment

The Trustees establish a fund to be known as **DARRYL BIRCH SUPER FUND** (the **Fund**) as from the date of execution of this Deed.

2.2 Commencement of the Fund

Unless the Trustees declare otherwise, the Fund starts on the date of this Deed.

2.3 Purpose

The Trustees agree to maintain the Fund for the purpose of providing superannuation and such other benefits (either by way of a lump sum payment or one or more income streams) as may be permitted by SIS from time to time and:

- (a) if the Trustees comprise individuals these benefits must be primarily in the form of old age pensions; and

- (b) if the Trustee is a company, the Fund must have a corporate trustee.

2.4 **Self Managed Fund**

The Trustees may operate the Fund so that it is a self managed fund.

3. **FUND TRUSTEE**

3.1 **General**

The Fund is vested in the Trustees and managed by the Trustees upon the terms and conditions of this Deed.

3.2 **Trustees Covenants**

The Trustees for themselves and their successors agree to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustees and to comply with such of the Requirements which apply to the Fund.

3.3 **Retirement, Removal of the Trustee**

A Trustee holds office until:

- (a) retirement or resignation from office by giving notice in writing to the other Trustees of the Fund or to the Members; or
- (b) disqualification by law from holding office or becomes a disqualified person within the meaning of SIS; or
- (c) the Trustee:
 - (i) dies;
 - (ii) becomes, in the opinion of the other Trustee, mentally or physically incapable of fulfilling the office of Trustee of the Fund;
 - (iii) is removed by the Regulator, or
 - (iv) is precluded from being a Trustee in other circumstances prescribed by SIS.

3.4 **Appointment**

The power of appointing a new Trustee is held by:

- (a) the then Trustee (or if none the Members); and
- (b) if for any reason the Members are unable to appoint a new Trustee then a new Trustee may be appointed by any person who is or may be a Beneficiary and if more than one, then by majority, with such appointment to be evidenced by deed that specifies the date upon which the former trustee will cease to act in that capacity and the new trustee will commence, a requirement for the parties to notify any third parties as may be necessary in order to have assets transferred into the name of the new trustee and such other matters as the Trustees consider necessary.

3.5 **Appointment of directors**

The power of appointing a new director of a corporate Trustee is held by:

- (a) the then directors (or if none, the shareholders) of the corporate Trustee; and
- (b) if no person under paragraph (a) is available then a new director may be appointed by any person who is or may be a Beneficiary and if more than one, then by majority.

3.6 **Vesting of Assets**

Any Trustee on ceasing to be a Trustee must do everything necessary to vest the Fund in the remaining or new Trustee and must deliver all records and other books to the remaining or new Trustee.

3.7 **Minors as a Trustee**

If a Member is under a legal disability because of age and does not have a legal personal representative to become a Trustee, the parent or guardian of the Member may become a Trustee in place of the Member.

4. TRUSTEE'S POWERS OF MANAGEMENT

4.1 Powers

The Trustees may do anything considered necessary or expedient to manage the Fund according to this Deed and to administer the Fund so as to comply with the Requirements, including:

- (a) to open any account or accounts with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
- (b) the Trustees may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustees and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- (c) paying any costs, charges and Taxes relating to the Fund;
- (d) appointing persons to:
 - (i) perform administrative functions;
 - (ii) audit the Fund's accounts; and
 - (iii) prepare tax and any returns for the Regulator, and to pay any expenses incurred for this;
- (e) delegating Trustee functions other than the exercise of discretions;
- (f) conducting and settling legal proceedings;
- (g) entering contracts and executing deeds;
- (h) obtaining and acting on the advice of a barrister, solicitor, adviser, financial adviser, accountant, actuary or superannuation consultant and paying their fees;
- (i) giving receipts and discharges;
- (j) incurring liabilities, giving guarantees or indemnities;
- (k) insuring risks, including without limitation income protection insurance (or salary continuance insurance) for a Member (in accordance with the Requirements (and specifically section 295.460 of ITAA 1997, subparagraph 62(1)(b)(v) of SIS and the payment standards in Part 6 of the SIS Regulations) covering temporary disability benefits to be paid to a Member for a period not exceeding the period of incapacity;
- (l) acting as an underwriter;
- (m) making rules for the efficient administration of the Fund;
- (n) providing for and transferring liability for any taxes;
- (o) irrevocably electing that the Fund becomes a regulated superannuation fund;
- (p) generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

4.2 Regulation of Trustee Proceedings

The Trustees may:

- (a) regulate Trustee meetings as the Trustees see fit;
- (b) act by way of resolution passed by all the Trustee;
- (c) hold meetings by telephone, webcam or other similar means;
- (d) appoint one of them to act as chairman and replace the chairman whenever seen fit.

4.3 **Written Resolutions**

A resolution in writing signed by all the Trustees has the same effect and validity as a resolution of the Trustees passed at a meeting of the Trustees.

4.4 **Minutes**

- (a) The Trustees must keep minutes of their resolutions and proceedings kept for that purpose and otherwise keep such records of their proceedings in such manner as provided for in the Requirements.
- (b) Minutes are evidence of the matters recorded in them if they are signed by all of the Trustees or alternatively confirmed at the next Trustee meeting and signed by the chairman.

4.5 **Trustees may Act on Authorisations**

The Trustees may treat an authorisation or information purported to be given by a Member or Beneficiary as given by the Member or Beneficiary and may rely on it.

4.6 **Trustees Fees**

For any period in which the Fund is a self managed fund, the Trustees must not be paid any fees but may recover costs and disbursements incurred.

4.7 **Trustees Indemnity**

The:

- (a) Trustees are (and in the case of a corporate Trustee, each director is) indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) hereunder or at law, except in the case of:
 - (i) fraud;
 - (ii) wilful or reckless failure to exercise proper care and diligence; or
 - (iii) a civil penalty order pursuant to SIS;
- (b) indemnity under sub-clause (a) is a continuing indemnity and applies to former Trustees (and directors of a corporate Trustee) for any period in which they acted in that capacity.

4.8 **Insurance against Fund losses**

- (a) The Trustees may in their discretion take out insurance against:
 - (i) any liability which arises against:
 - (A) a Trustee or director of a Trustee company; or
 - (B) the Fund; and
 - (ii) any losses or damages which the Fund, a Trustee or director of a Trustees company may suffer or incur, as a result of or arising from any act or omission of the Trustees or any person to whom the Trustees may have delegated their powers duties and discretions or any servant, agent or employer of the Trustees or any contractor (including persons acting in any professional role), administrator, custodian or other person or body engaged by the Trustees for the purposes of the Fund.

4.9 **Trustee's Discretion**

Unless otherwise specifically indicated, the Trustees in the exercise of the powers and discretions conferred by this Deed have an absolute and uncontrolled discretion. The Trustees may, subject to the Requirements, re-exercise a discretion.

4.10 Comply with the Regulator

The Trustees must abide by all lawful directions, orders and authorities of the Regulator in force from time to time.

5. TRUSTEE'S POWERS OF INVESTMENT AND SALE**5.1 Investment strategy**

The Trustees:

- (a) will, in accordance with the Requirements, formulate and give effect to an investment strategy for the Fund that has regard to all the circumstances of the Fund, including:
 - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments;
 - (ii) the composition of the Fund's investments as a whole, including the extent to which they are suitably diverse;
 - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
 - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (b) will not invest in any investment that is forbidden by the Requirements;
- (c) will not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member.
- (d) will formulate one or more investment strategies for the Fund. The Trustees must inform Members and Beneficiaries of the strategies adopted by the Trustees. The Trustees may review and change a strategy at any time. The Trustees must continually monitor the strategies to ensure that they remain appropriate;
- (e) may decide to allow one or more Members or Beneficiaries to choose between investment strategies. If the Trustees do, the Trustees must establish a range of possible investment strategies, and may designate particular assets for those strategies. The Trustees must provide the Members or Beneficiaries with information concerning the strategies and the relevant investment objectives to enable the Member or Beneficiary to choose between them on an informed basis. The Trustees must also provide them with information concerning their rights under this Deed;
- (f) will allow a Member or Beneficiary who has been offered investment choice by the Trustees may choose one or more of the strategies prepared by the Trustees by completing any documents the trustee requires. On having done so, the Member or Beneficiary may direct the trustee to invest any part of the Fund that is held for that person in accordance with those strategies. Any direction must be in accordance with the Requirements;
- (g) may sell, transfer or vary any investment made in accordance with an investment strategy, in the absolute discretion of the Trustees in accordance with this Deed. The Trustees must do so in the interests of the relevant Members or Beneficiaries. The Trustees must continually monitor the investments to ensure that they remain appropriate;
- (h) will, if a Member adopts an investment strategy, do as follows:
 - (i) establish a sub-account of the Member's Accumulation Account in respect of that strategy;
 - (ii) credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the Member's Accumulation Account itself;
 - (iii) allocate earnings attributable to that strategy to the Member's or Beneficiary's Accumulation Account in a way that the trustee thinks equitable;
 - (iv) determine a fund earning rate for that sub-account.

5.2 Power to Invest

- (a) Subject to the Requirements, the Trustees may invest all or part of the money and other assets of the Fund (referred to in this clause as **Asset**) in any manner or form in which they could invest if they were acting personally and as the sole and absolute legal and beneficial owner thereof.
- (b) Without limiting sub-clause (a), the Trustees have power subject always to the Requirements:
 - (i) to vary, substitute, charge or otherwise deal with Assets in any manner; and
 - (ii) to acquire an interest in an Asset jointly with any other person and mix Assets of the Fund with other property (as long as separate records are maintained that enable Assets attributable to the Fund or any investment option to be identified);
 - (iii) to sell any Asset by private sale or public auction, for cash or on terms or in any other way or subject to any other terms that the Trustees consider appropriate;
 - (iv) to allow any Asset to be held in the name of the Trustees or that of any other person acceptable to the Trustees;
 - (v) to exercise any power whatsoever in connection with any Asset;
 - (vi) to make a loan or give financial assistance to any person;
 - (vii) to borrow in any manner consistent with the Requirements and in particular, section 67(4A) of SIS and to secure the repayment of that money in any manner and on any terms and conditions and at the rate of interest it considers appropriate;
 - (viii) to:
 - (A) acquire and use Financial Instruments in any manner whatsoever consistent with the Trustee's investment strategy for the Fund, or for any Investment Option, including for the purposes of risk management and enhancing investment returns or in substitution for physical holdings; and
 - (B) apply Assets to meet expenses associated with any such acquisition or use of Financial Instruments; and
 - (C) to appoint investment managers and custodians, subject to the Requirements.
 - (ix) to raise any money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund.
 - (x) to give indemnities to or on behalf of any person the Trustee thinks fit.

5.3 Investments

Without limiting the generality of clause 5.2(a) and subject to the investment strategy and the Requirements, the Trustees:

- (a) may invest:
 - (i) in purchase, improvement or mortgage of real property in Australia or overseas;
 - (ii) in shares, stocks, options, debentures, bonds, unsecured notes or other securities in Australian resident companies or companies domiciled outside the Commonwealth of Australia, whether or not quoted on a stock exchange;
 - (iii) securities in any company incorporated anywhere, whether carrying on business in Australia or not;
 - (iv) investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia;

- (v) units (including sub-units) in a unit trust established or situated anywhere in the world) by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant;
 - (vi) cash on deposit with any bank or building society or any other company partnership or person with or without security;
 - (vii) futures, options or any other synthetic investment;
 - (viii) in units or sub-units of any unit trust, whether listed on a stock exchange or not, including units in a pooled superannuation trust;
 - (ix) a policy or annuity with an insurer, whether by proposal or purchase;
 - (x) in common funds;
 - (xi) in bills of exchange or any other negotiable instruments; or
 - (xii) in options, hedging contracts, futures contracts and other financial instruments;
 - (xiii) any other investment allowed by SIS that the Trustees deem appropriate.
- (b) may dispose of, vary, transpose, replace or encumber investments or mix investments with investments of other people or trustees as if they were personally entitled to them as beneficial owners;
 - (c) must invest in a manner which is consistent with the investment strategy formulated by the Trustees and the Requirements;
 - (d) may only lend money to Members in accordance with the Requirements.

5.4 **Income**

The Trustees:

- (a) may earn income or profit on Fund investments in any way they choose, including by:
 - (i) leasing, developing, subdividing or granting rights (eg profits a prendre) over property;
 - (ii) granting options, warrants and similar instruments.
- (b) are not obliged to derive income on an Asset and may hold Assets for capital growth.

5.5 **Acceptance of Money**

The Trustees must deposit all money of the Fund as soon as practicable to the credit of an account in the name of the Fund.

5.6 **Assets in Name of the Trustees or Custodian**

The Trustees must hold the Fund's assets in the name of the Trustees or may appoint another person in writing for that purpose as custodian (provided that if the Fund is not a self managed fund the person must satisfy the Requirements to be a custodian of Fund assets).

6. **MEMBERSHIP OF FUND**

6.1 **Invitation by Trustee**

Membership is by written application to, and acceptance by, the Trustees. The Trustees may reject any application for membership in their absolute discretion.

6.2 **Pre-conditions to Acceptance**

Before accepting a person as a Member, the Trustees may require the person to provide any information or document considered relevant or execute such documents as the Trustees determines, including but not limited to:

- (a) an application for membership must be made in writing and may be in the form as set out in this Deed.
- (b) the Member's tax file number;

- (c) the Member signing (as a trustee or a director of a corporate trustee) a declaration in the approved form (being a Trustee Declaration (NAT 71089)), no later than 21 days after becoming a trustee or director to ensure that the Fund remains a self managed fund;
- (d) a signed binding nomination (clause 24.4) or a signed non-binding nomination (clause 24.5); and
- (e) a statement made by the Member that they do not suffer from any disqualification to act as a Trustee.

6.3 Admission of Member

If the Trustees decide to admit a person as a Member, the Member joins:

- (a) on the date determined by the Trustees;
- (b) if the Trustees make no such determination, the same date as the completed application for membership form.

6.4 Type of Membership

There are no different classes, groups or types of membership.

6.5 Conditions of Membership

The Trustees may impose conditions on membership and may impose limits or conditions upon Benefits.

6.6 Cessation of Membership

A person ceases to be a Member when:

- (a) all Benefits which are or may be payable for the Member have been paid whether to the Member, a Beneficiary or to a rollover fund; or
- (b) the Member's entitlement to Benefits is terminated; or
- (c) the Member dies.

7. RECORDS AND AUDIT

7.1 Records

The Trustees must keep records of Members, assets and liabilities, income and expenditure, and all other matters specified in the Requirements and retain them for the period required including the following:

- (a) for a minimum of five years:
 - (i) accurate and accessible accounting records that explain the transactions and financial position of the Fund
 - (ii) an annual operating statement and an annual statement of the Fund's financial position, and
 - (iii) copies of all income tax returns for the Fund.
- (b) for a minimum of 10 years:
 - (i) minutes of Trustee meetings and decisions (where matters affecting the Fund were discussed);
 - (ii) records of all changes of Trustees;
 - (iii) Trustee declarations (whether as a individual trustee, or director of a corporate trustee);
 - (iv) Members' written consent to be appointed as Trustees, and
 - (v) copies of all reports given to Members;
 - (vi) Member contributions statements;

- (vii) copies of all annual returns lodged (for corporate trustees).
- (viii) audit reports.

7.2 Auditor

The Trustees must appoint an auditor for each Financial Year or as otherwise specified in the Requirements to:

- (c) audit the accounts and records of the Fund; and
- (d) report in writing to the Trustee, in the manner and within the time specified.

8. ACCOUNTS AND EARNINGS

8.1 Annual Accounts

The Trustees must, for each Financial Year, prepare an income and expenditure account and a statement of net assets of the Fund.

8.2 Establishment of Accounts

The Trustees must:

- (a) establish such accounts as the Trustees determine necessary for the operation of the Fund including:
 - (i) one or more Accumulation Accounts for each Member;
 - (ii) such accounts as may assist the Trustees to identify the value of assets that may have been acquired or segregated as either current pension assets, non-current pension assets or which are dealt with as a different sub-fund, segment or partition; and
 - (iii) such other accounts as the Trustees consider appropriate from time to time including, one or more contribution, miscellaneous and investment reserve accounts.
- (b) record for each such account, the tax free and taxable elements of the account.

8.3 Credits to Accumulation Account

The Trustees must credit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (a) any amount paid into the Fund in respect of the Member;
- (b) the proceeds of any policy of insurance effected by the Trustees (and owned by the Fund) in respect of the Member;
- (c) positive earnings as are allocated by the Trustee;
- (d) such forfeited amounts allocated to the Member (unless paid directly to the Member).

8.4 Debits to Accumulation Account

The Trustee must debit the appropriate Member's Accumulation Account with all amounts properly referable to that account including:

- (a) any amount paid out of the Fund in respect of the Member;
- (b) the costs of any policy of insurance effected and owned by the Trustees in respect of the Member;
- (c) negative earnings as apportioned by the Trustee;
- (d) any amount forfeited by the Member;
- (e) any costs (including taxes) that relate to that particular Member as may be determined by the Trustee.

8.5 Earning Rate

At the end of each year the Trustees must determine at their discretion the earning rate (which may be negative) for the Fund (**Fund Earning Rate**) taking into account:

- (a) the earnings of the Fund, including all income and realised and unrealised capital gains;
- (b) the realised and unrealised losses and expenses of the Fund, including any tax that is or may be incurred by the Trustees which are not debited to an account;
- (c) any provisions established by the Trustees for taxes and expenses;
- (d) the appropriateness of averaging profits, earnings, losses and expenses over two or more years;
- (e) the Fund's reserve accounts (and the purposes of those reserves); and
- (f) such other matters the Trustees consider appropriate.

8.6 **Interim Earning Rate**

If the Trustees are required to pay a Benefit during the course of a Fund Year, the Trustees must determine a Fund Earning Rate to the date of payment and adjust the appropriate Member's Accumulation Account accordingly.

8.7 **Averaging Income**

If the Trustees in determining a Fund Earning Rate decides to average the losses, profits, expenses and earnings of the Fund over two or more years, the Trustees may establish a reserve account to or against which the Trustees may:

- (a) credit such amount as the Trustees may retain from the Fund's earnings; or
- (b) debit such amount as the Trustees may use to supplement the Fund's earnings.

8.8 **Allocation of Earning Rate**

The Trustees may adjust each account by allocating the earnings due in accordance with the Fund Earning Rate (in proportion to the amount standing to the credit of each account at the beginning of the year an appropriate adjustment being made for amounts (if any) credited or debited to each account since that date).

8.9 **Unallocated earnings**

Any unallocated earnings must be credited to a Reserve Account.

8.10 **Specific Investments**

- (a) The Trustees may invest or hold assets separately in respect of:
 - (i) certain Members;
 - (ii) current pension liabilities (whether for all Members or some Members); or
 - (iii) a Reserve Account.
- (b) The Trustees must record on whose behalf (or for which Account) such specific investments are made.
- (c) The income and profits (less losses and expenses) arising from such specific investments are to be allocated to the appropriate Account.

8.11 **Reserve Account**

- (a) The Trustees may establish one or more Reserve Accounts for the Fund.
- (b) Any amount held in a Reserve Account does not form part of any Accumulation Account.
- (c) A Reserve Account may be used at the Trustee's absolute discretion to:
 - (i) increase Member's Benefits;
 - (ii) stabilise the investment earnings of the Fund;
 - (iii) pay complying or other pensions; or
 - (iv) for such other purpose as the Trustees see fit.
- (d) The Trustees has the discretion to deal with the assets of a Reserve Account in any manner consistent with the Requirements.

- (e) The following amounts may be credited to a Reserve Account:
 - (i) unallocated earnings;
 - (ii) income generated from assets held specifically for the Reserve Account;
 - (iii) contributions the contributor has advised the Trustees are to be credited to the Reserve Account.

9. STANDARDS

9.1 Disclosure

The Trustees must disclose to:

- (a) the Regulator;
- (b) the Members (including prospective and former Members);
- (c) any Employers;
- (d) the Trustee of any other fund to which a rollover payment is made;
- (e) the auditor; and
- (f) such other persons as may be specified in the Requirements,

such information from time to time concerning the Fund, Contributions and Benefit entitlements as the Trustees determine reasonable, and in particular so as to satisfy the disclosure provisions in the Requirements.

10. CONTRIBUTIONS

10.1 Trustee Obligations

The Trustees:

- (a) may accept contributions from:
 - (i) any person (including from a Member's spouse or parent, or an amount payable in respect of a Member under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003);
 - (ii) an Employer which the Trustees have consented to become a participating employer and to make contributions in respect of a Member subject to the Employer completing such documents as the Trustees may require from time to time. For the avoidance of doubt, an Employer becomes a participating employer on the date nominated by the Trustees;

providing the Member for whom the contribution is being made, has given their tax file number to the Trustees.

- (b) subject to clause 10.2, must only accept contributions that comply with the Requirements, and in particular must only accept contributions from Members aged 65 years and older if they meet the requirements of regulation 7.04 of the SIS Regulations;
- (c) may refuse such contributions as the Trustees in their absolute discretion consider appropriate;
- (d) must pay to the Australian Taxation Office the amount specified in a release authority issued by a Member in accordance with either clause 10.2(a)(iii) or 10.2(b)(ii).

10.2 Contributions in excess of prescribed limits

Each Member acknowledges that:

- (a) the contribution limits for concessional contributions (being section 292-25 (2) ITAA 1997) are a taxpayer based limit, not a contributor based limit. Accordingly each Member is required to monitor their concessional contributions to ensure that their individual limit is not exceeded. If a Member's contribution cap is exceeded then contributions (subject to a written

determination being made by the Commissioner of Taxation in accordance with section 292.465(1) of the ITAA 1997):

- (i) in excess of the Member's concessional contributions cap will be subject to excess contributions tax;
 - (ii) included in the Member's non-concessional contributions; and
 - (iii) the Member may, by providing the Trustees with a voluntary release authority have the Trustees pay directly to the Australian Tax Office the amount of excess concessional contributions tax stated in the release authority
- (b) the contribution limits for non-concessional contributions (being section 292-20 (2) ITAA 1997) are a taxpayer based limit depending on the Member's individual circumstances. Accordingly each Member is required to monitor their non-concessional contributions to ensure that their individual limit is not exceeded. If a Member's non-concessional contribution cap is exceeded then contributions (subject to a written determination being made by the Commissioner of Taxation in accordance with section 292.465(1) of the ITAA 1997):
- (i) in excess of the Member's non-concessional contributions cap will be subject to excess contributions tax; and
 - (ii) the Member must withdraw an amount equal to the excess contributions tax, by providing the Trustees with a compulsory release authority and have the Trustees pay directly to the Australian Tax Office the amount of excess concessional contributions tax. If the Member withdraws the amount of the excess contributions tax stated in the compulsory release authority from the fund, the Member will also be required to pay tax on that amount at their marginal tax rate.

10.3 Unallocated Contributions

The Trustees may accept unallocated contributions or contributions subject to conditions or directions.

10.4 Contributors notify

The contributor must:

- (a) identify the Member for whom the contributions are made (unless unallocated);
- (b) the Benefits or Fund expenses which they are to fund or apply; and
- (c) whether there are any conditions attached.

10.5 Contribution in Cash or Assets

Contributions may be paid in cash or by transfer of assets provided that where a contribution is made by the transfer of an asset the Trustees must determine:

- (a) if the asset transferred is appropriate;
- (b) if the party that is transferring the asset is a related party to the Member;
- (c) whether the contribution has been made on behalf of a non-resident Member and the consequence that the contribution may have on the status of whether the Fund is an Australian superannuation fund;
- (d) the market value of the asset for the purposes of the contribution; and
- (e) there will be no breach of the Requirements.

10.6 Reallocation of Contributions

Where an asset is transferred to the Fund by a Member of Members in accordance with clause 10.5 notwithstanding any other provision in this Deed:

- (a) that asset must be held in the Accumulation Account of the relevant contributing Member or Members and the Trustees shall identify the asset, the Member or Members for whom the asset is held and where more than one Member contributed the asset, the proportions in which the asset was contributed by and is held for the Members, in the records of the Fund;

- (b) the earnings and expenses in relation to those assets shall be dealt with in accordance with clause 8.10 as a Specific Investment of the relevant Member or Members;
- (c) for the absence of doubt, such assets shall not be pooled with the other assets or investments of the Fund;
- (d) the Trustees may only reallocate contributions to other Members, or to other accounts within the Fund, with the written consent of the contributor, or the Member for whom the contributions are made.

10.7 Repayment of Contributions

Subject to the Requirements, if the Trustees become aware of the acceptance of any contribution is contrary to the Requirements, then subject to the Requirements, the Trustees are deemed not to have accepted the contribution and to have held it on bare trust for the contributor and must as soon as is practicable in the circumstances:

- (a) repay such contribution (less any amounts paid out for expenses or tax); and
- (b) in so repaying any contributions, is not obliged to pay any earnings or interest thereon.

10.8 Taxes and Costs of Contributions

The Trustees may deduct from any contribution:

- (a) any tax payable;
- (b) any expense of the Fund attributable to the contribution.

11. TRANSFERS TO OTHER FUNDS

11.1 Transfers out

If a Member requests the Trustees to transfer all or part of his entitlement to another superannuation or like entity (**Entity**) the Trustees may pay the amount (or transfer investments of equivalent value) to the Trustee of the Entity (**Rollover**).

11.2 Requirements

The Rollover must comply with the Requirements, including completing the Rollover within any prescribed time periods.

11.3 Transfer of Restricted Benefits

Where the Rollover contains Restricted Benefits the Trustees may assume that the Entity's governing rules will ensure that such amounts are preserved or dealt with in accordance with the Requirements.

11.4 Discharge

Payment of the Rollover is a discharge to the Trustees of all liability in respect of it and the Trustees are not responsible to see to its application.

11.5 Consent

Unless permitted by the Requirements the Trustees must not effect a Rollover without the consent of the Member.

12. TRANSFERS FROM OTHER FUNDS

12.1 Transfers in

The Trustees may accept money or assets transferred from the Trustees of an Entity by way of Rollover.

12.2 Acceptance of Restricted Benefits

Where the Trustees are advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustees must deal with such amount in accordance with the Requirements.

12.3 Amount, Composition of Entitlement

On any transfer in accordance with this clause, the amount of any entitlement for the Member is the amount or the value of the assets transferred as determined by the Trustees and the composition thereof is as determined by the Trustees having regard to the information provided by the Trustees of the Entity.

12.4 Crediting account

If, or to the extent that, the transfer is in respect of a Member, the Member's Accumulation Account shall be credited accordingly. Any remaining amount must be credited to a reserve or other account as the Trustees determine .

13. PAYMENT OF BENEFITS - GENERAL**13.1 Methods of Paying Benefits**

The Trustees may, subject to the Requirements, provide Benefits as:

- (a) a lump sum;
- (b) an account-based pension;
- (c) a complying pension (whether lifetime, life expectancy or otherwise);
- (d) a fixed term pension;
- (e) a non-complying pension;
- (f) by purchasing an annuity or like product;
- (g) other pensions and Benefits as permitted by the Requirements; or
- (h) a combination of the above which may include more than one of each.

13.2 Procedure before Benefits payable

Benefits are not payable until:

- (a) the Member has satisfied a condition of release as specified by the SIS Regulations; and
- (b) the Member (or the Nominated Dependant or other Beneficiary if the Member has died) has given to the Trustees:
 - (i) a written request that the Trustees pay the Benefit to or in respect of the Member identifying the intended recipient;
 - (ii) any evidence and documents the Trustees require as to entitlement to the Benefit; and
 - (iii) has done everything, including executing documents, the Trustees require , and
- (c) the Trustees have :
 - (i) received the request and any evidence and executed documents;
 - (ii) determined that the Benefit is payable; and
 - (iii) notified the person requesting the Benefit of the Trustee's determination.

13.3 Payment of Benefits

The Trustees:

- (a) may act on any proofs or presumptions the Trustees consider satisfactory, even if they are of no legal effect;
- (b) may postpone the payment of any Benefit until the Trustees are satisfied that the requirements of this clause have been adequately met; and
- (c) is not obliged to credit any interest or earnings for the period that the payment is postponed pursuant to this clause.

13.4 Receipt

Any person to whom a Benefit is payable must, if requested, furnish the Trustees with a receipt and release.

13.5 Deduction of Tax from Benefits Payable

The Trustees must deduct any necessary tax from the Benefit.

13.6 Discharge of Trustee

The Trustees are discharged from all liability in respect of a Benefit where it pays the Benefit in good faith to or on behalf of the person the Trustees believe is entitled to it, or in accordance with this Deed.

13.7 Requirements

Benefits must be paid in a manner consistent with the Benefit payment standards in Part 6 of the SIS Regulations.

13.8 Benefits paid by transfer of assets

The Trustees may, at the request of the person entitled to a Benefit, pay a Benefit by a transfer of assets (the market value of the assets being the amount of the Benefit).

13.9 Insured Benefit

An insured Benefit is only payable to the extent the Fund has received money from the insurer. The Trustees may assign the benefit of the insurance policy as a Benefit.

14. PAYMENT TO OTHERS ON BEHALF OF MEMBERS OR BENEFICIARIES**14.1 Member Under Legal Disability**

- (a) If in the reasonable opinion of the Trustees a Member or Beneficiary is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with a Benefit the Trustees may pay or apply the whole or part of any such Benefit in one or more of the following ways:
- (i) for or towards the maintenance, education, advancement or otherwise for the benefit of the person in such form and manner and subject to such terms and conditions as the Trustees think fit; and
 - (ii) without limiting the generality of paragraph (a) by payment to a person who is, or appears to be a trustee, a parent, or guardian of the Member, or to have for the time being the care or custody of the person or to meet the financial expenses of the care or custody of the person.
- (b) The receipt of the person to whom the Benefit is paid is a good discharge to the Trustees and is deemed to be payment to the Member or the Beneficiary. The Trustees are not bound or concerned to see to the application of the Benefit so paid.

15. TRANSITIONAL PROVISIONS**15.1 Limit on Contributions**

The Members must endeavour to only make such Concessional Contributions and Non-concessional Contributions as permitted by the Requirements.

15.2 Costs on excess contributions

The Members acknowledge that any costs (including and in particular tax) payable in respect of Concessional Contributions or Non-concessional Contributions made in excess of the amounts permitted in accordance with the Requirements shall be deducted from the relevant Members contribution or Accumulation Account in accordance with clause 8.4.

15.3 Members undertaking

The Members hereby undertake and agree to provide the Trustees with any information regarding the nature of a contribution, in particular whether it is a Concessional Contribution or Non-concessional Contribution, that the Trustees reasonably require to ensure that the Fund complies with the Requirements and any costs or taxes payable in respect of that contribution can be properly calculated.

16. REALLOCATION AND SPLITTING OF BENEFITS

16.1 Reallocate

The Trustees may, with the consent of the recipient of the Benefit, and if the Requirements permit, reallocate Benefits (including account balances) otherwise payable to (or held for) the recipient to other Members of the Fund, or other persons who are able to receive such reallocation in accordance with the law. It shall be a condition precedent of the reallocation that the recipient of the Benefit completes and provides to the Trustees a Notice of Contribution Split together with such other information and documentation as the Trustees may require in order to adhere to the provisions set out in Division 6.7 of the SIS Regulations.

16.2 Splitting Superannuation interests on Divorce

If a Member's interest in the Fund is subject to Part VIII B of the Family Law Act 1975 (**Part VIII B**):

- (a) the Trustees must take action as lawfully required of it in respect of a Member's interest in the Fund pursuant to Part VIII B, the Family Law (Superannuation Regulations) or by the Requirements; and
- (b) a non-member spouse as defined in Part VIII B is deemed not to be a Member of the Fund solely by virtue of his or her entitlement under Part VIII B except:
 - (i) as specified by the Requirements; or
 - (ii) as necessary to give effect to:
 - (A) the non-member spouse's rights under Part VIII B or the Family Law (Superannuation) Regulations; and
 - (B) payment or transfer of the non-member spouse's entitlement (including on his or her death in which case the Trustees have the same discretions and powers to pay his or her entitlement as if the non-member spouse were a Member);

and except as specified in this clause a non-member spouse has no rights or entitlements under the Fund.

16.3 Separate interest

The Trustees may (but are not obliged to) create a separate interest or account for a non-member spouse.

16.4 Charges

The Trustees may, in their absolute discretion, but subject to the Requirements (and provided the Fund does not lose its status as a self managed fund), charge the Member and the non-member spouse for action taken by the Trustees resulting from the application of Part VIII B.

17. COMMENCEMENT OF PAYMENT OF BENEFITS

17.1 Limit on Benefits

The Trustees must limit a Member's benefits only where required in accordance with the Requirements.

17.2 Payment of Benefits

The Trustees must not pay a Benefit to a Member unless permitted by the Requirements.

17.3 Preservation Age

Subject to the Requirements, the Trustees may pay a Pension to a Member once they have reached their Preservation Age.

18. PENSION BENEFITS

18.1 Terms of Pension

The Trustees and the Member or the Beneficiary, must agree the terms upon which a Pension is payable including:

- (a) the commencement day of the pension;
- (b) the frequency of instalments;
- (c) the amount (whether variable or constant);
- (d) whether it is payable during the life of the Pensioner, for a fixed period, or is an account-based pension;
- (e) whether on the death of the Pensioner the pension has a reversionary component and, if so, to whom; and
- (f) whether the Pension can be commuted.

18.2 Pension variations

The Trustees may, with the agreement of the Pensioner vary the frequency or basis upon which a Pension is payable.

18.3 Account-based Pension

If the Trustees determine to pay an account-based pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(9A) (or any additional or replacement Requirement).

18.4 Fifteen Year/Life Expectancy Pensions

If the Trustees determine to pay a fifteen year/life expectancy pension then the terms upon which the pension is payable are deemed to include, and must be consistent with, the terms specified in SIS Regulation 1.06(7) (or any replacement Requirement).

18.5 Complying Lifetime Pension

If the Trustees determine to pay a complying lifetime pension then the terms upon which the pension is payable are deemed to include, and must be consistent with, the terms specified in SIS Regulation 1.06(2) (or any replacement Requirement).

18.6 Fixed Pension

If the Trustees determine to pay a fixed term pension then the terms upon which the pension is payable are deemed to include, and must be consistent with, the terms specified in SIS Regulation 1.06(6) (or any replacement Requirement).

18.7 Non-commutable Pension

If the Trustees determine to pay a non-commutable pension then the terms upon which the pension is payable must comply with the relevant definition in SIS Regulation 6.01(2) (or any replacement or additional definition or Regulation).

18.8 Other Pension

If the Trustees determine to pay another type of pension (whether based on any provisions specified in the SIS Regulations, or any replacement Requirement or not) then the terms upon which the pension is payable are as determined by the Trustees (and if applicable are deemed to include and be consistent with the part of the relevant Regulation or Requirement as determined by the Trustees).

18.9 Market Linked (or Term Allocated) Pension

If the Trustees determine to pay a market linked pension then the terms upon which the pension is payable must comply with SIS Regulation 1.06(8) (or any replacement Requirement).

18.10 Non-Complying Pension

The Trustees may pay a non-complying pension on such terms as it sees fit.

18.11 Purchase of Pension or Annuity

A Pension may be provided by way of purchase of a Pension or annuity from a life office or like provider.

19. COMMUTATION OF PENSION

19.1 The Trustees may on the request of a Member or Beneficiary commute all or part of a Pension to a Lump Sum if permitted under, and in a manner consistent with, the terms on which the Pension is payable and the Requirements.

- 19.2 If necessary the Trustees (who may obtain the advice of an actuary) must determine the remaining Pension.
-

20. LUMP SUM BENEFITS

20.1 Time for Payment

The Trustees:

- (a) and the Member must agree the date on which the Benefit is payable.
- (b) may defer for a period up to twelve (12) months payment of the Benefit if payment could endanger the financial security of the Fund.

20.2 Instalments

The Trustee may pay a lump sum Benefit in one or more instalments.

21. CONVERSION OF LUMP SUM TO PENSION

21.1 Application

Subject to and only in accordance with the Requirements, on the written application of a Member or Beneficiary the Trustees may pay a Pension in lieu of the whole or any part of a Lump Sum Benefit.

22. RETIREMENT, TERMINATION AND UNRESTRICTED BENEFITS

22.1 Form of Benefit

If a Member:

- (a) satisfies the Requirements to permit the Benefit to be paid and the Member has provided the Trustees with a written request that the Benefit be paid; or
- (b) satisfies the Requirements under which the Benefit must be paid, the Trustees must pay to the Member his Benefit by way of Pension or Lump Sum as requested by the Member, and in a manner that is consistent with the Requirements.

22.2 Amount of Benefit

The Benefit shall, subject this Deed, be equal to or calculated by reference to the Member's Accumulation Account.

22.3 Discretionary Benefit

The Trustees may pay an additional amount of Benefit.

23. BENEFITS FOR PERMANENT/TEMPORARY INCAPACITY OR TERMINAL MEDICAL CONDITION

23.1 Form of Benefit

If a Member has ceased to be gainfully employed as a result of Permanent Incapacity or Temporary Incapacity, the Trustees may pay to or in respect of the Member, his Benefit by way of:

- (a) Pension or Lump Sum as requested by the Member or the Member's Legal Personal Representative in the case of Permanent Incapacity; and
- (b) Pension to replace lost income for the period of incapacity in the case of Temporary Incapacity.

23.2 Amount of Benefit

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to the Member's Accumulation Account (and for Temporary Incapacity be no more than permitted under SIS).

23.3 Additional Benefit

The Trustees may pay an additional amount of Benefit.

23.4 Terminal Medical Condition

- (a) For a terminal medical condition to exist, the Member must satisfy the conditions set out in Regulation 6.01A of the Regulations;
- (b) a Member that has a terminal medical condition meets the condition of release detailed in Item 102A of Schedule 1 of the Regulations;
- (c) The terminal medical condition of release does not have any cashing restrictions and applies to a Member irrespective of their age or work status (meaning that the Member can still be gainfully employed at the time their benefits are withdrawn);
- (d) the Trustees may pay to or in respect of the Member, his Benefit by way of Pension or Lump Sum as requested by the Member (or the Member's Legal Personal Representative whichever may be relevant) pursuant to clauses 13.2 and 18.1.

24. DEATH BENEFITS**24.1 Form of Benefit**

Upon the death of a Member or Pensioner before the whole of his Benefit has been paid to him, the Trustees must pay the Benefit by way of Lump Sum or Pension as determined by the Trustees in consultation with each Beneficiary.

24.2 Amount of Benefit

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to the former Member's Accumulation Account (or Pension as the case may be).

24.3 Discretionary Benefit

The Trustees may pay an additional amount of Benefit.

24.4 Binding Nomination

The Trustees must pay all or part of the Benefit as specified in a binding nomination if it is valid (provided the required information from the Trustees to the Member has been given as per SIS Regulation 6.17A).

24.5 No Binding Nomination

- (a) To the extent to which clause 24.4 does not apply, the Trustees must pay the Benefit amongst one or more of:
 - (i) the Dependants of the former Member or Pensioner;
 - (ii) the Estate of the former Member or Pensioner;
 - (iii) any other person to whom the Benefit can be paid under SIS;
- (b) The Trustees must have regard to, but is not bound by a non-binding nomination of a Nominated Dependant.
- (c) If there is no Dependant and no legal personal representative is appointed within twenty-four (24) months of death the Trustees must pay the Benefit to one or more other persons (having regard to any wishes stated by the Member, the Member's next of kin and all relevant circumstances) as the Trustees determine or be held in trust and maintained in the Fund (where permitted by the Requirements).
- (d) Any amount held in trust and maintained under clause 24.5(c) may be subsequently paid under this clause if a Dependant is found or a Legal Personal Representative appointed.

24.6 Components

The Trustees may allocate the separable components of a Lump Sum amongst the recipients as it sees fit (and must do so as specified in a binding nomination).

25. TERMINATION OF THE FUND

25.1 Trustees Determination

The Trustees may determine to wind up the Fund. The Trustees must determine to wind up the Fund if:

- (a) all of the Members give notice in writing to the Trustees of their desire to terminate the Fund;
or
- (b) the Regulator or the Requirements require the Fund to be wound up.

25.2 Notification

The Trustees must notify in writing the Members, any Employers, and the Regulator, of the proposed winding up.

25.3 Wind-Up

The Trustees must proceed to wind up the Fund as soon as reasonably practicable.

25.4 Application of Assets

On a winding up the Trustees must apply the Fund's assets in the following order of priority:

- (a) meet all expenses and liabilities of the Fund;
- (b) payment (including by rollover) of Benefits;
- (c) increase Benefits as the Trustees may in its absolute discretion determine;
- (d) pay any Forfeited Benefits or amounts in any Reserve Account in accordance with the Trustee's powers;
- (e) pay any remaining amounts amongst such of:
 - (i) the Members;
 - (ii) former Members;
 - (iii) deceased Member's Dependants or Legal Personal Representative; and
 - (iv) contributors to the Fund,in such proportions as the Trustees determine.

25.5 Dissolution

When all Benefits have been paid, and assets transferred or applied in accordance with the provisions of the Deed the Fund is dissolved.

26. ARBITRATION

26.1 Dispute

Unless the Fund is no longer a self managed fund (thus giving the right to appeal to the Superannuation Complaints Tribunal) any question or dispute with respect to the Fund the payment of Benefits or to the construction or meaning of this Deed shall be determined by the Trustees but (if the Trustees so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed by the Trustees pursuant to the provisions of the Commercial Arbitration Act 1985.

26.2 Right of Action

If the Trustees have referred the dispute to an arbitrator, no right of action accrues in respect of any dispute until the question or dispute has been adjudicated upon by the arbitrator.

27. SIS

27.1 Deemed inclusion

Despite any other provision in the Deed:

- (a) the Deed is deemed to include those covenants and requirements of SIS as are necessary to enable SIS and the Requirements to be met and for the Trustees to elect for the Fund to become a regulated fund (and to the extent of any inconsistency those provisions of SIS prevail);
- (b) if SIS no longer requires any such covenant or Requirement to be so included then that covenant or requirement ceases to be included;
- (c) if any such covenant or requirement or its operation is modified then the Trustees are only required to comply with the covenant or requirement as modified;
- (d) the Trustees are not taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such a covenant or requirement if the contravention is waived or accepted by the Regulator as not being sufficient to result in the loss of the Fund's complying status;
- (e) the Trustees have power to operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the Requirements;
- (f) the Trustees have power to elect under SIS for the Fund to become a regulated fund;
- (g) the SIS provisions which do not apply to certain small funds (whether defined in SIS as **self managed funds** or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition;
- (h) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Regulator;
- (i) the Trustees may disclose to the Regulator any event, omission or thing that SIS requires to be disclosed to the Regulator and seek the advice, ruling or direction of the Regulator as considered necessary.

27.2 Non-mandatory Requirements

The Trustees may determine not to comply with any non-mandatory Requirements.

27.3 Trustees not to be in breach of Trust

The Trustees are not contravening the Deed or in breach of trust if in giving effect the Deed it:

- (a) construes or interprets this Deed; or
- (b) does such acts or things; or
- (c) omits to do such acts or things;

which might otherwise contravene this Deed or in breach of trust but which the Trustees consider necessary, desirable or expedient to avoid a contravention of SIS.

27.4 Rectification of contraventions

The Trustees are not taken to contravene this Deed or be in breach of trust if it does anything or omits to do anything in contravention of SIS if:

- (a) the Trustees rectify the contravention within such period as may be allowed by SIS or within such further period as the Regulator allows; or
- (b) the Regulator notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

28. GENERAL TERMS

28.1 Proper Law

- (a) This Deed is governed, construed and takes effect in accordance with the laws in force in Western Australia.
- (b) The Trustee, Members and Beneficiaries and any Employers accept the jurisdiction of the Courts of Western Australia.

28.2 Counterparts

This Deed may be executed in any number of counterparts each of which is an original and all of which constitute one and the same instrument. A facsimile copy of this Agreement constitutes a **counterpart** for the purposes of this clause.

28.3 Complete Agreement

This Deed supersedes all prior agreements, documents, writings, representations, warranties and verbal understandings between the parties relating to the subject matter of this Agreement.

28.4 Amendment

The Trustees may by Deed amend the Deed subject to the following:

- (a) no amendment may reduce a Member's accrued benefits or impose any increase in liability on a Member without the Member's consent;
- (b) any amendment is effective from the date (if any) specified (for that purpose) in such Deed or failing such a date, the date on which the Deed is executed;
- (c) the Trustees must promptly notify each Member of the nature and purpose of any such amendment and of the effect (if any) that the amendment may have on the Member's entitlements.

28.5 Severable

Each provision of this Agreement shall be deemed to be separate and severable from the others of them. If any provisions of this Agreement are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such provision had not been made a part of this Agreement, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

28.6 Waiver

No waiver of any provision of this Agreement nor consent to any departure from any provision, by any of the parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the parties in exercising any rights, powers or privileges pursuant to this Agreement (together referred to as **rights**) shall operate as a waiver of any of those rights; nor shall a single or partial exercise of those rights preclude any other or further exercise of them, or the exercise of any other right, power or privilege.

28.7 Notice etc

- (a) Any notice or other communication to be made or given under this Deed shall be in writing and signed by the party giving it and shall be served either by delivery, by facsimile transmission or by prepaid registered mail to the address of the party as herein specified or at the last known address of such party.
- (b) All notices shall be deemed to be received on the date of delivery or at the expiration of 48 hours after it has been posted.
- (c) Notices sent by facsimile transmission shall be deemed to be delivered on the date of transmission.

**SCHEDULE 1 - EXAMPLE APPLICATION FOR MEMBERSHIP
DARRYL BIRCH SUPER FUND**

CONFIDENTIAL

I _____ (name) apply for admission to membership of the Fund. I state that I am eligible to be admitted as a Member of the Fund and to be appointed as a Trustee or a director of the corporate Trustee if the Fund is a self managed superannuation fund. I agree:

1. To be bound by the Trust Deed governing the Fund as it is or may be varied from time to time (and state I understand the terms and conditions of the Trust Deed, including the benefits payable, my rights and the rights of my Dependants);
2. To the Trustee acting as Trustee of the Fund;
3. If the Fund is a self managed fund to be appointed a Trustee or a director of the corporate Trustee;
4. To give the Trustee my details (including any Tax File Number), or for the Trustee to obtain them from my Employer;
5. To advise the Trustee of any preserved benefits or other relevant information regarding my superannuation contributions and benefits;
6. To give any other information the Trustee may require for the purposes of the Fund.

Dated: _____/_____/2009

Signature: _____

Occupation: _____

Date of birth: _____/_____/_____

NON-BINDING NOMINATION OF DEPENDANT(S)

I nominate the following persons as my Nominated Dependants to receive any Benefits payable on my death, and I acknowledge this is not a binding nomination(eg My Estate or name):

NAME	RELATIONSHIP	% OF TOTAL BENEFIT
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SCHEDULE 2 - EXAMPLE APPLICATION FOR CONTRIBUTION SPLIT DARRYL BIRCH SUPER FUND (THE FUND)

Regulation 6.44 Superannuation Investment (Supervision) Regulations

To: DARRYL DENNIS BIRCH , MAXINE ALISON DAWSON , the Trustees of the Fund

I, _____ [Member Name], of _____ [Member address] give notice that I apply:

1. To transfer an amount of benefits to my spouse, _____ of _____ that is equal to the amount referred in (b) being splittable contributions made by, for or on behalf of my benefit in the last financial year that ended before this Application, namely 200__ - 200__ (**the Financial Year**).
2. The amount of the benefit that I seek to transfer, together with details of the relevant contribution totals are as follows:

Type	Total	Amount to be transferred
Taxed splittable contributions:	\$	\$
Untaxed splittable contributions:	\$	\$

3. The taxed splittable contributions referred to in (2) do not exceed 85% of the amount of taxed splittable contributions made in the Financial Year.
4. The untaxed splittable contributions referred to in (2) do not exceed 100% of the amount of untaxed splittable contributions made in the Financial Year.

My spouse is not 65 or older or is aged between the relevant preservation age and 65 years and has not retired. I have not made an Application for Contribution Split in respect to the Financial Year.

DATE: _____ / _____ / 2009

Signature: _____
[Member Name]

SCHEDULE 3 - EXAMPLE NOTICE UNDER SECTION 290-170 ITAA 1997

To: The Trustees of DARRYL BIRCH SUPER FUND (**the Fund**)

I,

Member Name:
(**the Member**)

of

of Member Address

Give notice that:

- (a) I have contributed the sum of \$_____ to the Fund in the _____ [relevant year] financial year.
- (b) I intend to claim a tax deduction under Section 290-170 of the Income Tax Assessment Act 1997 in relation to \$_____ [amount of contribution] of this contribution.
- (c) The amount covered by this notice has not been included in any previous notice given by me.

DATE: ____/____/2009

Signature: _____

Member Name

ACCEPTANCE (SECTION 290.170(1)(C) ITAA 1997)

We/I, being the Trustees of the Fund acknowledge receipt of this notice from the Member

Dated: ____/____/20__.

Signed by **DARRYL DENNIS BIRCH**

Signed by **MAXINE ALISON DAWSON**

SCHEDULE 4 - EXAMPLE BINDING DEATH BENEFIT NOMINATION

To: The Trustees of DARRYL BIRCH SUPER FUND (**the Fund**)

I, _____ [Member Name], of _____ [Member Address] (date of birth _____ [Member's DOB]) nominate that the total benefits payable on my death are to be paid to the following in the percentages set out below.

I wish to nominate the dependant person(s) and/or my estate in the proportions listed below.

Full name of Dependent: _____

DOB: _____

Address: _____

Percentage benefit: _____ % of the total benefits payable
 _____ (eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

Relationship to you: _____

Full name of Dependent: _____

DOB: _____

Address: _____

Percentage benefit: _____ % of the total benefits payable
 _____ (eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

Relationship to you: _____

Full name of Dependent: _____

DOB: _____

Address: _____

Percentage benefit: _____ % of the total benefits payable
 _____ (eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

Relationship to you: _____

I confirm that:

- (a) I understand that this nomination (unless amended or revoked) is binding on the Fund Trustees until the earlier of it being revoked in writing by me or upon the date three years from the day it was first signed;
- (b) this nomination revokes any previous nomination which I may have made and delivered to the Fund Trustees;
- (c) I have signed this nomination in the presence of the two witnesses who are aged eighteen years or over and each of them have signed below;
- (d) I understand that if I have nominated persons who are not 'dependants' as explained on page one of this Form, this nomination will be void and of no effect and the Fund Trustees will have a discretion as to when the benefit is payable and in what proportion.

Signature: _____

[Name]

Date: _____

___/___/2009

WITNESS ONE DECLARATION

I confirm that:

- (a) I am over the age of 18 and I am not a nominated beneficiary under this binding death nomination notice.
- (b) this binding death nomination notice was signed by [Member Name] in the presence of both witnesses.

Witness 1 Full Name: _____

Witness 1 Signature: _____

Date: _____

___/___/2009

WITNESS TWO DECLARATION

I confirm that:

- (a) I am over the age of 18 and I am not a nominated beneficiary under this binding death nomination notice.
- (b) this binding death nomination notice was signed by [Member Name] in the presence of both witnesses.

Witness 2 Full Name: _____

Witness 2 Signature: _____

Date: _____

___/___/2009

EXECUTED AS A DEED on the 12 day of MARCH 2009

Signed by **DARRYL DENNIS BIRCH**
in the presence of

D Birch

Witness Name:

KYLIE HINCHCLIFFE

Witness Signature:

[Handwritten Signature]

Signed by **MAXINE ALISON DAWSON**
in the presence of:

[Handwritten Signature]

Cornelia MJ Knappers

Witness Name:

Witness Signature:

[Handwritten Signature]

