

RMB Super Fund

**Prepared for NTAA Corporate by
Doccentre Pty Ltd**

Deed of Establishment

RMB Super Fund

Date Date of Establishment

Parties The corporation named and described in the Schedule and appointed under this deed as Trustee (**Trustee**)

Recitals

- A The Trustee wishes to establish and maintain the the RMB Super Fund (**Fund**) as a Self Managed Superannuation Fund solely for the purpose of providing superannuation benefits for its Members and for their Dependants in the event of the death of a Member and for any other purposes permitted by the superannuation law.
- B The Trustee will act as trustee of the Fund and has consented to act as the Fund's trustee in accordance with the provisions of this deed, including the powers granted by this deed.
- C The Trustee has agreed to conduct the Fund so as to ensure that the Fund at all times attracts any income tax concessions that may apply to superannuation funds.

It is Declared:

1 Establishment

By this deed (which includes the schedule annexed hereto (Schedule) and the Rules), the Trustee establishes the Fund that commences on the Date of Establishment set out in the Schedule.

2 Rules

The Fund shall be maintained, managed and administered pursuant to the rules set out in the attached Annexure A to this deed, being '*Annexure A - SMSF Rules (Version 22.01)*' (**Rules**), which forms part of this deed.

3 Fund Name

The Fund name shall be the name set out in the Schedule.

4 Jurisdiction

This deed is governed by the laws in force in the State or Territory specified in the Schedule.

5 Counterparts

This deed may be executed in any number of counterparts, each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document. A party that has executed a counterpart of this deed may exchange that counterpart with another party by posting or emailing it as an attachment to the other party or the other party's legal representative.

6 Consent to Electronic Signatures

The parties consent to execution of this deed by electronic signature, and deem the electronic execution (including witness execution by electronic signatures) to be valid, subject to any State, Territory or Commonwealth electronic transactions and/or property law statutory provisions restricting such execution by electronic signature.

Important note: State-based legislation may prohibit the Trustee and Members from contracting out of execution standards requiring deeds to be witnessed in person and wet signed (as opposed to executed by electronic signature). Execution of deeds by wet signature is in general strongly recommended at this time and execution in States or Territories which prohibit execution of deeds other than by wet signature or which provide practical or legal impediments to satisfying witnessing requirements by electronic signature and virtual witnessing should not be conducted by electronic transaction, in particular if the parties are located across different States and/or Territories.

7 Defective Execution

Should a party's execution of the deed be defective and/or by electronic signature in a State or Territory in which electronic signature is not allowed in the circumstances, then the party and witness (whether the same or a different witness) may re-sign the deed to correct the defect. Notwithstanding any such remediation of the execution, the effective date of the deed shall be the date upon which the last of the parties executed the deed, excluding any later remedial execution under the terms of this clause.

EXECUTED as a deed.

EXECUTED by **R Biancon Investments Pty Ltd (ACN 668 225 796)** as Trustee in accordance with the *Corporations Act 2001* by being signed by the following officers:



Signature of Sole Director/Secretary

ROBERT BIANCON

Name of Sole Director/Secretary *(please print)*

ANNEXURE A - SMSF RULES
(Version 22.01)

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1 DEFINITIONS

1.1 Defined Terms

The following words or expressions shall have the following meanings in the Deed (and if a word or phrase is defined, its other grammatical forms have a corresponding meaning):

“**ACCOUNT**” means an account established and/or maintained by the Trustee under the Deed for administering the Fund on behalf of Members.

“**ACCOUNT-BASED PENSION**” means a Pension that complies with rule 20.9 or as otherwise defined by SIS and the Relevant law from time to time.

“**ACQUIRABLE ASSET**” has the meaning given to it in the SIS Act.

“**ACCUMULATION ACCOUNT**” means an Account established for a Member in accordance with rule 7 and operated in accordance with rule 7.

“**ACTUARY**” means an actuary of the Fund appointed in accordance with rule 16.12.

“**ADMINISTRATOR**” means an administrator of the Fund appointed in accordance with rule 16.10.

“**ANNUITY**” means an annuity within the meaning of section 10 of the SIS Act and regulation 1.05 of the SIS Regulations.

“**APPROVED BENEFIT ARRANGEMENT**” means any fund or arrangement which is authorised to receive superannuation contributions or amounts in compliance with the Law, and includes another Complying Superannuation Fund and a Complying Approved Deposit Fund and also includes a payment to the Commissioner of Taxation as a Trustee Voluntary Payment.

“**AUDITOR**” and “**APPROVED SMSF AUDITOR**” means an auditor of the Fund appointed in accordance with rule 16.13.

“**BENEFICIARY**” means a person presently and absolutely entitled or who has a contingent right to receive a Benefit under the Deed, including a Member, a Dependant, a Pensioner or any other person who is entitled under the Relevant Law to be paid a Benefit to or in respect of a Member.

“**BENEFIT**” means an amount payable out of the Fund in respect of a Member (including a Death Benefit) subject to the Trustee being satisfied of the Beneficiary's entitlement to the amount or to receive the payment under the Relevant Law and the Deed.

“**BENEFIT ENTITLEMENT**” means an amount held in the Fund which may become payable to a Beneficiary but to which the person has not yet become absolutely and indefeasibly entitled, including a contingent right to payment of an amount.

“**BINDING DEATH BENEFIT NOMINATION**” means a written nomination Provided by a Member to the Trustee in accordance with rule 22.1.

“**BUSINESS DAY**” means a day on which banks are open for business in the capital city of the Governing State other than a Saturday or Sunday.

“**CGT CAP AMOUNT**” has the same meaning as defined in the Taxation Legislation.

“**COMMISSIONER**” means the Commissioner of Taxation or any duly appointed delegate of the Commissioner of Taxation.

“**CONCESSIONAL CONTRIBUTIONS**” and “**NON-CONCESSIONAL CONTRIBUTIONS**” have the same meaning as those terms are defined in the Taxation Legislation.

“CONTRIBUTION” means a payment made or asset transferred to the Fund (prior to the deduction of any Tax payable in respect of the payment or transfer) and accepted by the Trustee as a contribution to the Fund by a Member, Employer or other entity permitted to contribute to the Fund in accordance with the Relevant Law and the provisions of the Deed.

“CONTRIBUTIONS CAP” means any cap within the meaning of the Taxation Legislation which limits the amount that can be contributed into superannuation for a Member in a Financial Year without penalty, including a Member’s Concessional Contributions cap, Non-Concessional Contributions cap or CGT Cap Amount.

“CORPORATIONS ACT” means the *Corporations Act 2001* (Cth).

“CRYSTALLISED SEGMENT” has the same meaning as that term is defined in the Taxation Legislation.

“CROWDFUNDING” means the practice of funding individual projects or ventures by a number of individuals or entities including using internet platforms, known as ‘Crowdfunding Sites’ as the intermediary.

“DEED” means the deed or resolution adopting these Rules and includes these Rules and the accompanying Schedule, the establishing trust deed for the Fund as amended from time to time, any Pension Agreements and all other authorised alterations, additions, amendments, modifications or variations to them.

“DELIVERY” or **“DELIVERED”** includes any reasonable means of providing communication by parties on a matter, and includes, but is not limited to the provision of email (including attachments) direction, hand delivery, delivery to an address of a party, and dispatch as authorised under Division 3 of the *Electronic Transactions Act 1999* (Cth) (**ETA**).

“DEPENDANT” in relation to a Member, Beneficiary or former Member (in this definition referred to as the primary person) means, subject to the Relevant Law:

- (a) the Spouse of the primary person;
- (b) a Child of the primary person;
- (c) any person with whom the primary person has or had an interdependency relationship within the meaning given to it in the Relevant Law at the relevant time;
- (d) any other person who, in the opinion of the Trustee, was substantially dependent on the primary person at the relevant time; and
- (e) any other person who qualifies as a dependant of the primary person for the purposes of the Relevant Law.

“DIRECTOR” means, in the case where the Trustee is a body corporate, a person who is a director of the Trustee within the meaning of Section 9 of the Corporations Act, and **“DIRECTORS”** means all such persons whether individually or collectively.

“EARNING RATE” means the positive or negative earning rate the Trustee determines under rule 9.3 or rule 14.7.

“EARNINGS” means the net income and capital gains derived from the Fund assets (whether realised or unrealised) following the deduction of any expenses, capital losses and Tax, as determined by the Trustee.

“ELECTRONIC COMMUNICATION” means the communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy and includes email, text or short message service (**SMS**) and other forms of instantaneous correspondence.

“EQUALISATION ACCOUNT” means an equalisation account established under rule 4.9 and operated in accordance with rule 10.

“ESTABLISHMENT DATE” means the date the Fund was first established, whether under the Deed or under a prior deed, and whether that date is described in the Schedule of this Deed or otherwise.

“EXCESS TRANSFER BALANCE” means the amount by which a Member’s Transfer Balance Account exceeds their Personal Transfer Balance Cap, **“EXCESS TRANSFER BALANCE**

EARNINGS” means the notional earnings deemed to have been made on the Excess Transfer Balance, **“EXCESS TRANSFER BALANCE TAX”** means the tax paid or payable on the Excess Transfer Balance Earnings and **“EXCESS TRANSFER BALANCE DETERMINATION”** means a direction from the Commissioner of Taxation to remove a specified amount from the Retirement Phase of the Member.

“EMPLOYMENT” in relation to a Member means employment or self-employment for gain or reward in any business, trade, profession, vocation, calling, occupation or employment to the extent required by the Relevant Law.

“ETA” means *Electronic Transactions Act 1999* (Cth), and such of the following as may be applicable for the purposes: *Electronic Transactions Act 2000* (NSW), *Electronic Transactions (Victoria) Act 2000* (Vic), *Electronic Transactions (Queensland) Act 2001* (Qld), *Electronic Transactions Act 2000* (SA), *Electronic Transactions Act 2011* (WA), *Electronic Transactions Act 2000* (Tas), *Electronic Transactions Act 2001* (ACT) and *Electronic Transactions (Northern Territory) Act* (NT).

“FINANCIAL ASSISTANCE” means financial assistance granted to the Fund under any arrangement administered by a Statutory Authority.

“FINANCIAL YEAR” or **“FUND YEAR”** means the 12 month period ending on 30 June or another date determined by the Trustee.

“FORFEITURE ACCOUNT” means a forfeiture account established under rule 23.1.

“FUND” means the superannuation fund governed by these rules, the name of which is specified in the Deed or as applicable its Schedule.

“GAINFUL EMPLOYMENT” has the meaning given under the SIS Regulations in relation to being “gainfully employed” and includes gainful employment on either a full-time basis or part-time basis.

“GOVERNING STATE” means the State or Territory under rule 3.8(a).

“GOVERNMENT CONTRIBUTION” means a payment made to the Fund by the Commonwealth Government pursuant to any arrangement under which the Commonwealth Government makes a superannuation contribution for or in respect of a Member including a super co-contribution and a low income super contribution.

“INCOME ACCOUNT” means the income account for the Fund established under rule 4.8 and operated in accordance with rule 9.

“INCOME STREAM” includes a Pension or an Annuity within the meaning of the SIS Act, an income stream recognised under the Taxation Legislation, and any other Benefit payable in the form of a periodic payment which is permitted under the Relevant Law.

“INDIVIDUAL TRUSTEE” means a natural person acting as a Trustee of the Fund.

“INVESTMENT STRATEGY” means, unless the context otherwise requires, a current investment strategy for the Fund as determined by the Trustee in accordance with rule 3.4.

“LAW” means any provision of any legislation or law of the Commonwealth of Australia including any statute, regulation, proclamation, ordinance, or by-law which applies to superannuation or taxation in relation to superannuation (including the *Family Law Act 1975 (Cth)* and *Family Law (Superannuation) Regulations 2001 (Cth)*), or any declaration, determination, ruling or requirement applicable to the Trustee or the Fund made by any Statutory Authority, including all laws after the date of the Deed and any laws that apply retrospectively.

“LEVY” means a levy payable by the Fund under the Law.

“MARKET LINKED PENSION” means a Pension that complies with rule 20.11.

“MEMBER” means a person currently admitted by the Trustee as a member of the Fund and who has not ceased to be a member under the Deed or under the Relevant Law.

“MEMBER ACCOUNT” means an Account held on behalf of a Member.

“NON-BINDING DEATH BENEFIT NOMINATION” means a Member’s instructions, directions or wishes in relation to the payment of a Death Benefit, which the Trustee shall have regard to and may consider but is not bound to follow.

“NON-MEMBER SPOUSE” in relation to a Member’s superannuation interest that is subject to a Payment Split has the same meaning given to that term in the SIS Regulations.

“ORIGINAL ASSET” in the context of an Acquirable Asset has the meaning given to it in SIS Act.

“PAYMENT FLAG” has the same meaning as in the *Family Law Act 1975 (Cth)*.

“PAYMENT SPLIT” has the same meaning as in the *Family Law Act 1975 (Cth)*.

“PENSION” means a pension of one of the types specified in rule 20.7.

“PENSION ACCOUNT” means an account established for a Pensioner in accordance with rules 4.8 and 8 and operated in accordance with rule 8.

“PENSION AGREEMENT” has the meaning given in rule 20.1(b).

“PENSIONER” means a Member who is entitled to receive or has applied to receive Benefits payable to the Member as a Pension and includes a Reversionary Beneficiary in receipt of or presently entitled to a Pension.

“POLICY” means a policy of assurance including a policy on the life of a Member or former Member for endowment, term, disablement, accident, income protection or sickness insurance, or any insurance product permitted by Law, effected or acquired either as an individual policy or as a group policy, a policy covering any two or more of the foregoing risks and a policy which provides that Benefits are payable to the Trustee on the death or disablement of an insured person, and a policy

under which the proceeds will be payable to the Trustee on the occurrence of an insured event in respect of a Member.

“PRESCRIBED EVENT” means a condition of release under the SIS Regulations or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to, or in respect of, a Member without contravening the Relevant Law including:

- (a) the Member attains Preservation Age;
- (b) the Member attains age 65;
- (c) the Member Retires from Gainful Employment;
- (d) the Member’s Gainful Employment with an Employer is terminated, in circumstances where the Employer had, or any of the Employer’s associates had, at any time, contributed to the Fund;
- (e) the Member suffers Permanent Incapacity;
- (f) the Member suffers Temporary Incapacity;
- (g) the Member has a Terminal Medical Condition;
- (h) the Member, being a former temporary resident to whom SIS regulations 6.20A or 6.20B applies, requests in writing the release of his or her Benefits;
- (i) the Member, being a former resident of Australia, has moved permanently to New Zealand, and nominated a provider of a KiwiSaver Scheme for the purposes of the SIS Regulations;
- (j) the Member suffers severe financial hardship as defined in the SIS Regulations;
- (k) the Trustee determines that some or all of the Member’s Benefit may be released on Compassionate Grounds;
- (l) the Commissioner of Taxation, or another person, provides the Trustee with a valid Release Authority in accordance with the *Taxation Administration Act 1953* (Cth), the *Income Tax (Transitional Provisions) Act 1997* (Cth), or the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth); or
- (m) any other condition of release permitted by the SIS Regulations.

“PRESERVED PAYMENT” means a payment made to the Fund by an Employer, or by or on behalf of a Member, or by transfer from an Approved Benefit Arrangement which is required to be preserved as provided for in these Rules in order for the Fund to be a Complying Superannuation Fund and Preserved Payment Benefit means a Benefit arising from a Preserved Payment.

“PROVIDE” and **“PROVIDED”** in respect of Binding Death Benefit Nominations, Non-Binding Death Benefit Nominations, Reversionary Pension Nominations or other documents provided by the Member to the Trustee (or as the case may be, a director of the Trustee) means provided by the Member personally, or by another person or persons on behalf of the Member. Binding and Non-Binding Death Benefit Nominations may be provided to the Trustee either during the lifetime of the Member or following the death of the Member, provided such documents were signed and dated during the lifetime of the Member in accordance with the provisions of rule 22. Where a Binding Death Benefit Nomination is Provided to the Trustee after the death of the Member, the date of the Binding Death Benefit Nomination having been Provided to the Trustee, only for the purposes of rule 22.8(b) to

determine if a prior Binding Death Benefit Nomination has been revoked by a subsequent Binding Death Benefit Nomination, shall be deemed to be the date of signing of that Binding Death Benefit Nomination.

“QUALIFIED ADVISER” means a legal practitioner, investment manager, custodian, accountant, auditor, actuary, real estate agent, medical practitioner or other professional person who the Trustee considers is capable of providing a service in connection with the Fund or the Deed.

“RELEVANT LAW” means:

- (a) SIS, Corporations Act 2001, Corporations Regulations 2001, Relevant Family Law, Financial Sector (Collection of Data) Act 2001, Superannuation (Resolution of Complaints) Act 1993, Bankruptcy Act 1966, Social Security Act 1991, Veterans' Entitlements Act 1986, Tax Act and any other present or future legislation which the Trustee must comply with in order for the Fund to:
 - (i) qualify for concessional Taxation treatment as a Complying Superannuation Fund;
 - (ii) avoid any penalty, detriment or disadvantage which is or may become payable or imposed in connection with the Fund or anything done or to be done under these Rules; or
 - (iii) meet any other requirements of the Statutory Authority; and
- (b) in relation to the collection, holding, use and disclosure of personal information as defined in the Privacy Act 1988, the National Privacy Principles and any other provisions of that Act, and includes any actual or proposed requirements, rulings, announcements or obligations which the Trustee believes will have effect, including retrospectively.

“RELEVANT FAMILY LAW” means the Family Law Act 1975, regulations made under that Act and any other provisions of the Relevant Law which govern superannuation and family law.

“RELEASE AUTHORITY” means an authority or instruction given to the Trustee under the Tax Legislation.

“REPLACEMENT ASSET” in the context of an Acquirable Asset has the meaning given to it in section 67B of, or elsewhere in, the SIS Act.

“RESERVE ACCOUNT” means a reserve account established in accordance with rule 11.

“RETIRES” or **“RETIREMENT”** or similar terms have the same meaning as defined in regulation 6.01 the SIS Regulations.

“RETIREMENT AGE” means the age of 65 years or any other relevant age that is prescribed by the Relevant Law and accepted by the Trustee.

“RETIREMENT PHASE” in respect of a Member means the portion of a Member's Benefit Entitlement from which one or more Pensions are payable to a Pensioner who has satisfied a Condition of Release with a Nil Cashing Restriction and, if necessary, has elected for the Pension to be operated under the Retirement Phase.

“REVERSIONARY BENEFICIARY” means a person nominated under a Reversionary Pension Nomination.

“REVERSIONARY PENSION” means a Pension that is paid or payable after the death of a Member to an eligible Beneficiary who has been validly nominated as the transferee of the Pension by a Member pursuant to a Reversionary Pension Nomination.

“REVERSIONARY PENSION NOMINATION” means written notice Provided by a Pensioner to the Trustee nominating one or more Reversionary Beneficiaries to receive a nominated Pension following the death of the Pensioner.

“RULES” means these rules labelled as Annexure A and includes a Pension Agreement.

“SELF MANAGED SUPERANNUATION FUND” means a superannuation fund that satisfies all the requirements prescribed under SIS to be a self managed superannuation fund.

“SG ACT” means the *Superannuation Guarantee Charge Act 1992* (Cth), together with the *Superannuation Guarantee (Administration) Act 1992* (Cth), and any applicable regulations to those Acts.

“SHORTFALL COMPONENT” has the same meaning as in the SG Act.

“SIS” means the SIS Act, the SIS Regulations and any other regulations or statutory instruments made under the SIS Act.

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

“SIS REGULATIONS” means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

“SIGNED” or **“SIGNATURE”** means the giving of a person’s intention in respect to information communicated by any reasonable means, including a mark, wet mark or by electronic communication (including digital signature) as described in section 10 of the ETA.

“STATUTORY AUTHORITY” means, as the context requires, any statutory, government or regulatory authority that is responsible for administering the Law as it applies to the Fund, including the Commissioner of Taxation, the Australian Prudential Regulation Authority, and the Australian Securities and Investments Commission.

“SCHEDULE” means the latest schedule accompanying the Deed.

“SUPERANNUATION AGREEMENT” has the same meaning as in the *Family Law Act 1975* (Cth).

“TAX” means any tax (including, but not limited to, income tax, goods and services tax, payroll tax and land tax), surcharge, levy, impost, duty or other amount that is assessed, assessable, paid or payable by the Trustee on behalf of the Fund or a Member, a former Member or a Beneficiary in respect of any Benefit, or any person in respect of any Contribution.

“TAXATION LEGISLATION” means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax (Transitional Provisions) Act 1997* (Cth) and any regulations issued under those Acts and any other applicable Law governing Tax in Australia from time to time.

“TAXABLE COMPONENT”, **“TAXED ELEMENT”** and **“UNTAXED ELEMENT”** have the same meaning as those terms are defined in the Taxation Legislation.

“TERMINATION DATE” means the date on which the Fund will be wound up as determined pursuant to rule 27.

“TRANSITION TO RETIREMENT INCOME STREAM” means a pension payable under rule 20.10 to a Member who has attained their Preservation Age and a Retirement Phase Transition to Retirement Income Stream means a Transition to Retirement Income Stream operated under the Retirement Phase provisions or as otherwise defined by SIS from time to time.

“TRUSTEE” means the trustee or trustees of the Fund under the Deed and any person who subsequently assumes the role of trustee of the Fund under the Deed.

“TRUSTEE VOLUNTARY PAYMENT” means a payment by the Trustee to the Commissioner of Taxation in respect of the benefits held on behalf of a Member in accordance with section 22 of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth).

“VESTED BENEFITS”, in respect to Benefits requested but unpaid at the death of a Member means an amount of funds or investments held as trustee by the Trustee for the Member under a separate trust.

“WRITTEN” or **“WRITING”** includes a delivery of information by any reasonable means, and expressly includes a writing as defined under section 9 of the ETA, which expression is adopted as authority for the Member, Trustee, advisers and parties dealing with the Fund to conduct matters by any reasonable means, including but not limited to electronic transactions and the storage of such records by any means available for electronic communications.

1.2 Terms defined in the SIS Act

In addition to the above defined terms, each of the following terms has the same meaning given by, or defined in, the SIS Act:

“APPROVED DEPOSIT FUND”;

“APPROVED SMSF AUDITOR”;

“ADI” or **“AUTHORISED DEPOSIT-TAKING INSTITUTION”**

“CHILD”;

“COMPLYING APPROVED DEPOSIT FUND”;

“COMPLYING SUPERANUATION FUND”;

“CONSTITUTIONAL CORPORATION”;

“ELIGIBLE ROLLOVER FUND”

“DEATH BENEFIT”

“EMPLOYEE”;

“EMPLOYER”;

“INTERDEPENDENCY RELATIONSHIP”;

“LEGAL PERSONAL REPRESENTATIVE”;

“PERMANENT INCAPACITY”;

“RELATIVE”; and

“SPOUSE”;

1.3 Terms defined in the SIS Regulations

In addition to the above defined terms, each of the following terms has the same meaning as given by, or defined in, the SIS Regulations:

“ALLOT”;
“COMPASSIONATE GROUNDS”;
“FULL-TIME”;
“MAXIMUM SPLITTABLE AMOUNT”;
“PRESERVATION AGE”;
“PRESERVED BENEFITS”;
“RESTRICTED NON-PRESERVED BENEFITS”
“SPLITTABLE CONTRIBUTION”;
“TEMPORARY INCAPACITY”;
“TERMINAL MEDICAL CONDITION”;
“UNRESTRICTED NON-PRESERVED BENEFITS”; and
“UNTAXED SPLITTABLE CONTRIBUTION”.

2 INTERPRETATION

2.1 Interpretation of the Deed

In the Deed, where the context permits:

- (a) the singular shall include the plural and vice versa;
- (b) any gender shall include all other genders including the neuter gender;
- (c) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity recognised under the laws of the Governing State or elsewhere;
- (d) a reference to a rule, clause, subclause or subparagraph is a reference to a rule, clause, subclause or a subparagraph of the Deed;
- (e) headings in the Deed shall not be taken into account in the construction of the Deed;
- (f) a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;
- (g) any reference to any receipt, profit or gain includes any actual, notional, deemed or constructive receipt, profit or gain or benefit of whatever description whatsoever;
- (h) any reference to a power or discretion includes an authority or right;
- (i) subject to the Law, a power, authority, discretion, right, privilege, or obligation conferred or imposed on the Trustee may be exercised, made or undertaken:
 - (i) absolutely;
 - (ii) revocably or irrevocably;
 - (iii) contingently by imposing conditions precedent, subsequent or otherwise; or
 - (iv) concurrently or jointly with another Trustee or by the Trustee jointly in its capacity as trustee of another trust or otherwise;
- (j) the meaning of general words is not limited by any specific examples introduced by ‘includes’, ‘including’, ‘for example’, ‘such as’ or similar expressions;

- (k) a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time; and
- (l) a reference to any party or other person includes that person's successors, permitted assigns and legal personal representatives.

2.2 **Trustee's and Fund's compliance with the Law**

At all times, the Deed shall be subject to the Law and shall be deemed to incorporate all relevant prohibitions, requirements of, and standards and covenants prescribed by the Law with which the Trustee or the Fund (or both) must comply.

2.3 **Inconsistency between the Deed and the Law**

Despite anything to the contrary in the Deed, if there is any inconsistency or conflict between a provision of the Deed and a relevant provision of the Law, the Law will prevail over the Deed to the extent of that inconsistency or conflict.

2.4 **Severability**

If any provision or part of the Deed is unenforceable, illegal or void, then that provision or part is severed and the rest of the deed remains in force and the validity, legality and enforceability of the remaining provisions will not be affected.

3 **THE FUND**

3.1 **Purpose of the Fund**

The Trustee must maintain the Fund solely for the purpose of providing superannuation benefits for Members in the event of their retirement from Employment, for the Dependents of Members in the event of the death of a Member and for other purposes permitted under the Relevant Law, provided that at any time that the Trustee of the Fund is not a Constitutional Corporation, unless otherwise permitted under the Law, the sole or primary purpose of the Fund must be the provision of old age pensions within the meaning of the Relevant Law.

3.2 **Trustee holds Fund on Trust**

At all times, the Fund shall be vested in the Trustee, and the Trustee will hold the Fund upon trust for the Beneficiaries subject to the trusts, powers, authorities and discretions contained in the Deed.

3.3 **Trustee's compliance with the Law**

In relation to the Trustee's exercise of its powers, discretions and obligations under the Deed, the Trustee:

- (a) may do anything that it is permitted to do or not restricted from doing under the Law;
- (b) must do everything that it is required to do to comply with the Law or with any lawful direction by a Statutory Authority in relation to the Fund;
- (c) must observe any trusts, obligations, conditions and covenants, that are, or are deemed to be, incorporated into the Deed by operation of the Law; and
- (d) must refrain from doing anything that would result in a breach of the Law by the Trustee or the Fund.

3.4 Investment Strategy

The Trustee must formulate, maintain, regularly review and give effect to one or more investment strategies (which may be reviewed or changed at any time at the discretion of the Trustee) that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:

- (a) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liabilities;
- (e) whether the Trustee should hold a contract of insurance that provides insurance cover for one or more Members of the Fund;
- (f) the prudential management of Reserve Accounts (if any);
- (g) the identification and prudential management of derivative risk and formulation of a derivative risk statement where such investments are held,

provided that such investment strategies shall always comply with the Deed and the Relevant Law.

3.5 Composition of the Fund

The assets of the Fund shall consist of all cash, monies, investments and other property real or personal held by or on behalf of the Trustee under the Deed including:

- (a) Contributions made to the Fund under the Deed;
- (b) any other monies or assets (including rollovers) paid or transferred to the Trustee under the Deed;
- (c) income arising from investments of the Fund;
- (d) any accretions to or profits arising from investments of the Fund;
- (e) any other distribution, dividend or gift paid to and accepted by the Trustee as an accretion to the Fund;
- (f) the proceeds (including bonuses) of any Policy received by the Fund; and
- (g) any other money, property or investment which is or becomes held by or on account of the Trustee for the Fund on the trusts of the Deed.

3.6 Maintenance of the Fund as a Self Managed Superannuation Fund

The Trustee must manage the Fund and must exercise its powers and discretions so as to ensure that at all times, subject to rule 3.7, the Fund is a Self Managed Superannuation Fund.

3.7 Ceasing to be a Self Managed Superannuation Fund

In the circumstances where:

- (a) the Trustee considers that it is not possible or not reasonably practicable for the Fund to continue to be a Self Managed Superannuation Fund; or
- (b) all of the Members so request in writing,

the Trustee and the Members must take all such actions as are required for the Fund to commence to meet the requirements under the Relevant Law to be another type of regulated superannuation fund, including amending these Rules, notifying the Statutory Authority and applying for such approvals as are required in the circumstances under the Relevant Law, and appointing a replacement trustee which meets the requirements under the Relevant Law applicable to the trustee of the relevant type of regulated superannuation fund.

3.8 Proper Law

- (a) These Rules are governed, must be construed and take effect in accordance with the laws of the State or Territory of the Commonwealth of Australia specified in the Deed, or if not specified in the Deed then the State or Territory of the address of the Individual Trustees or the State or Territory of the address of the registered address of the corporate Trustee. The Trustee, Members and Beneficiaries must accept the jurisdiction of the courts of that State or Territory.
- (b) The provisions of section 35B of the Trustee Act 1936 of South Australia do not apply to these Rules.
- (c) The provisions of part 2 of the Trusts Act 1973 of Queensland do not apply to these Rules to the extent permitted by the exceptions available, including the full discharge of any Trustee ceasing through retirement or otherwise, when the cessation will result in only a single Trustee remaining.

3.9 Fund Subject to Relevant Law

- (a) The provisions in these Rules are to be read subject to the Relevant Law.
- (b) These Rules must be read and construed on the basis that the Relevant Law is deemed to be incorporated into these Rules to the extent that it imposes covenants or obligations on the Trustee in order for the Fund to operate as a Self Managed Superannuation Fund (unless the Trustee and the Members have determined that the Fund should cease to be a Self Managed Superannuation Fund and to commence to be another type of Regulated Superannuation Fund as contemplated by rule 3.7), to qualify for concessional Taxation treatment and to satisfy any other requirements of the Statutory Authority and these Rules must be further read and construed on the basis that:
 - (i) where there is any inconsistency between a provision of these Rules and the Relevant Law, the latter prevails to the extent of the inconsistency; and
 - (ii) in the event of any doubt arising as to the effect of the Relevant Law or if there is an inconsistency between the Relevant Law and a provision of these Rules, the decision of the Trustee is final.
- (c) These Rules must not be read or construed and no such provision of the Relevant Law may be so incorporated if to do so would constitute a breach of the power granted by rule 26 to add to, amend, alter, modify, rescind or vary the provisions of these Rules.

3.10 Superannuation Guarantee Legislation

The Trustee must administer the Fund in order to facilitate the acceptance of Contributions in accordance with the SG Act and must provide all certificates, reports and other information required under the SG Act.

4 MEMBERSHIP

4.1 Admission of Members

- (a) Subject to the Relevant Law, the Trustee shall have the sole discretion to admit any person to become a member of the Fund.
- (b) Subject to rule 4.2, a person may apply to become a Member by making an application in a form determined by the Trustee from time to time.
- (c) Where a person's application for membership is accepted by the Trustee, the Trustee has the discretion to determine the commencement date and any terms and conditions applicable to the person's membership.
- (d) The Trustee may determine to admit to Membership, and retain as a Member, a person in respect of whom the Trustee holds no balance in either, or both, an Accumulation Account or a Pension Account in respect of that Member.

4.2 Trustee may admit a Member without an application

Subject to the Relevant Law:

- (a) where an application for membership is not provided by an individual in accordance with rule 4.1 but a Contribution is made by or on behalf of the individual to the Fund, or any Benefit for the individual is held by the Trustee in the Fund and that individual is a former Member or is not a current Member, the Trustee may in its absolute discretion choose to accept or acknowledge that Contribution or Benefit and treat the Contribution or Benefit as an application for membership, such that the individual may be treated as a Member on the date the Contribution or Benefit is accepted or acknowledged by the Trustee;
- (b) the Trustee may admit a person as a Member notwithstanding that the person may not have lodged an application with the Trustee in accordance with rule 4.1; and
- (c) an individual admitted as a Member in accordance with this rule must provide to the Trustee any information requested by the Trustee and, if they do not do so to the Trustee's satisfaction, the trustee may:
 - (i) suspend the acceptance of any Contributions in respect of the Member;
 - (ii) withhold any benefits in respect of that Member or Beneficiary; and
 - (iii) impose any other conditions the Trustee determines provided that such conditions adhere to the Relevant Law.

4.3 Information to be provided to the Trustee

- (a) On request by the Trustee, any person applying for membership in the Fund and any Member or Beneficiary must supply the Trustee with any information that the Trustee deems necessary for any purpose under the Deed including, without limitation, any

medical examinations by a doctor acceptable to the Trustee or investigations in relation to the Fund. If the applicant fails to comply with the request, the Trustee may refuse to accept further Contributions in respect of that Member, and will not be obliged to pursue insurance cover on behalf of the Member if a decision to obtain insurance on behalf of the Member was made, until such time as the request has been complied with by the Member.

- (b) If full disclosure of information has not been provided by a person where required by the Trustee under rule 4.3(a) or if any information provided is incorrect or misleading, the Trustee shall have the discretion to alter any relevant Benefits to reflect correct amounts had full and accurate disclosure of information been made.

4.4 **Classes of Members**

- (a) The Trustee has the power to create any class or classes of membership and classify Members into different classes of membership with the conditions of eligibility, rights, investments, assets, entitlements and Benefits pertaining to each class as the Trustee may determine from time to time (subject to any requirements to preserve the Benefits of the Members under the Deed or the Relevant Law).
- (b) The Trustee must advise a Member of any class of membership to which that Member belongs and of the rights pertaining to that class and of any subsequent change to that class or rights.
- (c) If the Trustee does not create different classes of membership, then all Members will be classified as being in the same class of membership.

4.5 **Anticipated Change of Member Status**

A Member must inform the Trustee as soon as practicable of any event which has or may have the effect that:

- (a) the Member is in the process of becoming employed or becomes an Employee of any other Member of the Fund where the Member is not a Relative of the other Member; or
- (b) the Member is aware of the potential for being disqualified or becomes disqualified from holding the office as an Individual Trustee, or as a Director of a Constitutional Corporation that holds the position of Trustee of the Fund; or
- (c) the Member has separated or in the process of separating from their Spouse and the separation may be detrimental to the operation of the Fund, and

The Member agrees that where their continual membership of the Fund has the potential to negatively affect the continual compliance of the Fund, or impact the acquisition of, holding or realising of assets held on behalf of Fund members, that at the request of the Trustee the Member will initiate a transfer request in writing, nominating either a Complying Superannuation Fund or an Approved Benefit Arrangement for where the Member's interest is to be transferred to.

4.6 **Trustee may impose conditions on Members**

To the extent permitted under the Relevant Law, the Trustee has the discretion to impose, remove or vary any conditions on the rights and obligations of a Member.

4.7 **Deed shall be binding on Members**

Any individual admitted as a Member is deemed to have consented to, and becomes bound by, the Deed as it relates to the rights and obligations of the Member, including, without limitation, rule 4.5.

4.8 **Member Accounts**

The Trustee has the power to establish and operate Accounts for each and all of the Members as the Trustee sees fit, subject to the Relevant Law. The Trustee must establish an Accumulation Account and, if required, one or more Pension Accounts, in respect of each Member or Beneficiary.

4.9 **Other Accounts**

For the purpose of administering the membership of the Fund, the Trustee:

- (a) is required to establish an Income Account; and
- (b) may, at its discretion, establish:
 - (i) an Equalisation Account;
 - (ii) one or more Reserve Accounts; and
 - (iii) any other Accounts the Trustee deems necessary for the operation of the Fund or which are required by the Relevant Law.

4.10 **Member meetings**

Any Director of a Constitutional Corporation which is the Trustee, or any Individual Trustee, whichever applies (in this rule 4.10 referred to as the **Convener**), may convene and, if requested by a Member or required by Law must convene, a meeting of Members soon as practicable after receiving a request for a meeting from a Member, or legal notification that a meeting must be held. Any such meeting called may be held electronically or via any other means determined by the Trustee or a Director.

For the avoidance of doubt, in this rule 4.10 and in rules 4.11 and 4.12, a reference to a Member or Members will include the Legal Personal Representative of a Member.

A notice of meeting must be provided to all Members by the Convener, in writing to the last known address of each Member or by Electronic Communication to the respective contact addresses held in the Fund records, specifying:

- (a) the place, date and time of the meeting;
- (b) the general nature of the business to be transacted at the meeting; and
- (c) such other information as the Convener deems to be necessary for the conduct of the meeting.

4.11 **Proceedings at Meeting of Members**

At any meeting of Members:

- (a) the quorum for the meeting shall be at least 75% of the Members of the Fund;
- (b) the Convener will either chair the meeting or nominate a Member in attendance to chair the meeting;
- (c) if, within fifteen (15) minutes from the time appointed for the meeting a quorum is not present, the meeting must be cancelled and postponed to the same day in the next week at the same time and place;

- (d) the Convener will provide notice of the postponed meeting to all Members by the same means as required under rule 4.10;
- (e) if, at the postponed meeting, a quorum is not present within fifteen (15) minutes from the time appointed for the meeting, those Members in attendance will represent a quorum and may proceed with the meeting;
- (f) any business resolved at the postponed meeting will be as effective as if passed at a meeting at which all Members were present; and
- (g) the resolution or minutes shall be signed by any one or more of the Trustees and/or the chair, to reflect the passing of the resolution(s), and may include execution by electronic signatures of the party(ies) and/or the chair.

4.12 **Voting at a Meeting of Members**

- (a) Each Member shall, in the first instance, have one vote with the matter to be resolved being decided by at least one vote of a verbal response or a show of hands or, where applicable, by Electronic Communication.
- (b) If any Member requires the matter to be resolved by a more formal voting process, then the decision in the first instance will be voided and each Member shall have such number of votes as is equal to the value in dollars of the total balances of each of the Accounts maintained in respect of the Member (referred to in this rule 4.12 as a **Formal Vote**).
- (c) If there is a dispute as to the value of the balances referred to in rule 4.12(b), then the value shall be the value on the date as at which the balances of Member Accounts were last determined by the Trustee and notified to Members.
- (d) If more than one Legal Personal Representative of a Member attends the meeting, then those Legal Personal Representatives shall have such number of votes, collectively, as the Member being represented by them would have had under rules 4.12(a) and (b), had that Member attended the meeting.
- (e) In the event of a Formal Vote proceeding, the minutes of the meeting shall indicate the number of votes available to be cast by each Member and whether they voted for or against the matter to be resolved, or abstained from voting.

4.13 **Written Resolutions of Members**

- (a) If all of the Members have signed a written resolution, which may take the form of a single document or a number of documents in substantially similar form, such resolution shall be deemed as if the resolution had been passed at a duly conducted meeting of the Members upon being signed by the last of the Members to sign, which may be signed and effective as signed separately by way of counterparts provided those counterparts are in substantially the same form. A reference to a written resolution includes an electronic instrument effected by execution by electronic signatures of the relevant parties.
- (b) The calling Trustee or Member may offer a written resolution (including but not limited to a resolution communicated by electronic means, and executable by an electronic signature of the Member(s)) for execution by the Members, which may be in addition, or in the

alternative, to holding the proposed Members' Meeting. The written resolution shall be determined on its terms, in accordance with the decision-making terms of this rule 4.13.

4.14 **Exercise of Trustee's Rights and Conduct of Proceedings**

Subject to the Relevant Law, all powers, rights, decisions, discretions, appointments and other authorisations of whatsoever nature or kind granted to or conferred on the Trustee by, under or for the purposes of these Rules may be fully and effectively exercised, made, done or performed by or on behalf of the Trustee:

- (a) where the Trustee is a company, then by the Directors acting in accordance with its constitution or by any person or persons having the authorisation of such Directors to so act on their behalf; or
- (b) where the Trustee comprises Individual Trustees, then:
 - (i) at a meeting of such persons where decisions are to be made as provided in rule 4.15 or as otherwise required by the Relevant Law;
 - (ii) the quorum for a meeting of the Individual Trustees shall be at least 75% of the Individual Trustees then holding office; and
 - (iii) the Individual Trustees may meet in person or by using any technology that gives each Individual Trustee a reasonable opportunity to participate in the meeting.

4.15 **Voting**

- (a) Subject to rules 4.15(b) and 4.15(c), where the Trustee comprises Individual Trustees, then each Individual Trustee shall have one vote each but where any Individual Trustee so requires, the matter will be resolved by a formal vote whereby each Individual Trustee shall have such number of votes as is equal to the value in dollars of the total balances of each of the Accounts maintained in respect of the Individual Trustee in their capacity as a Member.
- (b) If more than one Legal Personal Representative has been appointed under rule 25.8 in place of a Member, then those Legal Personal Representatives shall have such number of votes, collectively, as the Member being represented by them would have had under rule 4.15(a), had they been an Individual Trustee.
- (c) If there is a dispute between the Individual Trustees as to the value of the balances referred to in rule 4.15(a), then the value shall be the value on the date as at which the balances of Member Accounts were last determined by the Trustee and notified to Members.

4.16 **Family Law**

- (a) Subject to the following provisions of this rule 4.16, notwithstanding any other provision of these Rules, the Trustee is empowered to undertake and complete any actions in relation to the Fund or the Benefits or Benefit Entitlement of any Member or Beneficiary required in accordance with the Relevant Family Law.
- (b) The Trustee may at any time and from time to time elect under this rule 4.16(b) for the purposes of the Relevant Family Law that these Rules will not have operation to permit the

Trustee to establish a new interest in the Fund from the interest of a Member or Beneficiary on the request by the Spouse of the Member or Beneficiary under the Relevant Family Law.

- (c) The Trustee may at any time and from time to time determine to revoke an election made under rule 4.16(b).

4.17 **Written Resolutions of Individual Trustees**

- (a) Where the Trustee comprises Individual Trustees, if all of the Individual Trustees have signed a written resolution, which may take the form of a single document or a number of documents in substantially similar form, such resolution shall be deemed as if the resolution had been passed at a duly conducted meeting of the Trustees upon being signed by the last of the Trustees to sign, which may be signed and effective as signed separately by way of counterparts provided those counterparts are in substantially the same form. A reference to a written resolution includes an electronic instrument effected by execution by electronic signatures of the relevant parties.
- (b) The calling Trustee may offer a written resolution (including but not limited to a resolution communicated by electronic means, and executable by an electronic signature of the Trustee(s)) for execution by the Trustees, which may be in addition, or in the alternative, to holding the proposed Trustee Meeting. The written resolution shall be determined on its terms, in accordance with the decision-making terms of this rule 4.17.

5 **DISCLOSURE TO MEMBERS**

5.1 **Disclosure Documents**

The Trustee shall comply with any requirements of the Corporations Act to provide all new Members with a disclosure document containing the terms and conditions of their membership and information relating to the Fund.

5.2 **Annual reporting obligations**

The Trustee must comply with any reporting and disclosure requirements relating to the accounts, records and documents of the Fund that are required by the Law.

5.3 **Member meetings**

Where a meeting of the Members is to be held for the purposes of the Law or the Deed, each Member shall be notified by the Trustee under rule 4.10 of the manner, time and location of the meeting and, for the avoidance of doubt, such meetings may be held electronically and the Members may agree to a meeting being convened by shorter notice than is required by the Law or by these Rules or the Members may waive in writing the requirement for them to be so notified to the extent allowed under the Law.

5.4 **Inspection of documents**

- (a) Upon request by a Member or Beneficiary, the Deed and any other documents must be made available for inspection by the Trustee if it is required by the Law.

- (b) The Trustee may satisfy its obligations under rule 5.4(a) by providing a copy of the Deed (or making other documents available for inspection) at its place of business (or the place of business of an Individual Trustee) during normal business hours on a Business Day.

5.5 Former Members

After a person ceases to be a Member, the Trustee shall comply with the requirements of the Law to disclose or report any information relating to the Benefits of the former Member (including to that former Member or their Legal Personal Representative).

5.6 Limits on disclosure

Unless required by the Law, the Trustee is not obliged to provide any Member, former Member, Legal Personal Representative(s) or Dependant with any information relating to the operation or conduct of the Fund in addition to that under this rule 5 where it considers that such disclosure of information would not be in the interests of the Fund (or of the Members and Beneficiaries as a whole).

6 CESSATION OF MEMBERSHIP

6.1 When cessation of membership occurs

A Member shall cease to be a Member upon the first occurrence of any of the following events:

- (a) it is necessary for the Member to cease its membership in the Fund to avoid a breach of the Relevant Law by the Fund;
- (b) the Trustee determines that all of the Member's Benefits have been paid out of the Fund, whether by way of rollover, transfer or payment;
- (c) in the case of a Member who has died, the Trustee determines that the Member's Benefits have been paid, or ceased to be payable, to relevant Dependents or a Legal Personal Representative;
- (d) in respect of a Member for whom the Trustee holds no balance in the Fund, when the Trustee determines; or
- (e) the Trustee determines, on reasonable grounds, that the membership of the Member should cease.

6.2 Additional events of cessation

Subject to the Relevant Law and the Trustee's discretion to determine otherwise, each of the following events shall cause a Member to cease his or her membership in the Fund:

- (a) the Trustee determines to cease the Member's membership in accordance with the Deed;
- (b) the Trustee requires that membership cease to comply with the Law, including the *Family Law Act 1975* (Cth) or any agreement made in accordance with that Act; or
- (c) the Trustee completes a request for a transfer or rollover of the entirety of the Member's Benefits in accordance with the Deed.

6.3 Member's rights not affected

A Member's cessation of membership will not affect or exclude:

- (a) any Member rights or obligations which accrued prior to the date of cessation; or

- (b) any rights or obligations as a former Member which accrue on and from the date of cessation.

7 ACCUMULATION ACCOUNTS

7.1 Credits to Accumulation Accounts

The Trustee may (or must) credit all amounts that are permitted (or required) by the Deed and the Relevant Law to be credited to a Member's Accumulation Account, including:

- (a) Contributions made by or on behalf of the Member (including Contributions split from the Member's Spouse);
- (b) such Contributions resulting from a Contribution split from a Spouse of a Member in favour of the Member as are received by the Fund at any time from another Complying Superannuation Fund;
- (c) amounts paid by way of transfer or rollover to the Fund from an Approved Benefit Arrangement in respect of a Member;
- (d) any other amounts received, transferred in or Allotted from another Account in respect of the Member;
- (e) any positive Earnings determined by the Trustee pursuant to rule 9.3;
- (f) any Shortfall Component paid in respect of the Member;
- (g) any Government Contribution received in respect of a Member;
- (h) the proceeds of any Annuity or Policy held by the Trustee in relation to a Member, whether or not the costs of any such Annuity or Policy were debited from the Member's Accumulation Account; and
- (i) any other amounts that the Trustee may (or must) credit to a Member's Accumulation Account from time to time as permitted (or required) by the Relevant Law.

7.2 Debits to Accumulation Accounts

The Trustee may (or must) debit all amounts that are permitted (or required) by the Deed and the Relevant Law to be debited to the Accumulation Account, including:

- (a) the proportion of costs or expenses of the Fund attributable to the Member, including without limitation any Tax or Levy;
- (b) a payment of Benefits made to or in respect of a Member that is not the payment of a Pension;
- (c) amounts paid or transferred out of the Fund to an Approved Benefit Arrangement in respect of a Member or Beneficiary whether by way of a transfer or rollover payment or otherwise;
- (d) any other amounts paid, transferred out or Allotted to another Account in respect of the Member (including Contributions split with another Member under rule 12.8);
- (e) any negative Earnings determined by the Trustee pursuant to rule 9.3;
- (f) the amount of any Contributions which are the subject of a contribution splitting application from a Member under rule 12.8 and which are paid by the Trustee to another Complying

Superannuation Fund or to the account of the Member's Spouse within the Fund in accordance with such application;

- (g) the cost of any Policies held by the Trustee in relation to a Member;
- (h) an amount referred to in a Release Authority given by a Member or the Commissioner of Taxation to the Trustee, and which is paid by the Trustee to the Member or to the Commissioner of Taxation in accordance with such Release Authority; and
- (i) any other amounts as the Trustee may (or must) debit from a Member's Accumulation Account from time to time as permitted (or required) by the Law, including recovery of any costs incurred as a result of actions taken by the Member.

8 PENSION ACCOUNTS

8.1 Credits to Pension Accounts

The Trustee may (or must) credit to a Pension Account all amounts that are permitted (or required) by the Deed and the Relevant Law to be credited to a Member's Pension Account, including:

- (a) any amounts that the Trustee thinks is necessary to commence the Member's Pension, including without limitation the value of any assets directly attributable to the Pension;
- (b) any positive Earnings determined by the Trustee pursuant to rule 9.3;
- (c) the proceeds of any Annuity or Policy held by the Trustee in relation to a Member, whether or not the costs of such Annuity or Policy were debited from the Member's Pension Account; and
- (d) any other amounts that the Trustee may (or must) credit to a Member's Pension Account from time to time as permitted (or required) by the Relevant Law.

8.2 Debits to Pension Accounts

The Trustee may (or must) debit all amounts that are permitted (or required) by the Deed and the Relevant Law to be debited to a Member's Pension Account, including:

- (a) the proportion of costs or expenses of the Fund attributable to the Member, including without limitation any Tax or Levy;
- (b) a payment of Benefits made to or on behalf of Members or Beneficiaries in accordance with the Deed;
- (c) amounts paid or transferred out of the Fund to an Approved Benefit Arrangements in respect of a Member or Beneficiary whether by way of a transfer or rollover payment or otherwise;
- (d) any amount transferred to the Accumulation Account of a Beneficiary;
- (e) any negative Earnings determined by the Trustee pursuant to rule 9.3;
- (f) any Tax or Levy applicable in relation to the Member;
- (g) the cost of any Policies held by the Trustee in relation to a Member;
- (h) an amount referred to in a Release Authority given by a Member or the Commissioner of Taxation to the Trustee, and which is paid by the Trustee to the Member or to the Commissioner of Taxation in accordance with such Release Authority; and

- (i) any other amounts as the Trustee may (or must) debit from a Member's Pension Account from time to time as permitted (or required) by the Law, including recovery of any costs incurred as a result of actions taken by the Member.

8.3 Contributions and rollovers cannot be added to Pension Account

After a Member's Pension Account has been established, Contributions cannot be credited to that Account, nor any amounts by way of transfer or rollover from an Approved Benefit Arrangement.

8.4 Required Initial Credits to Pension Account

The following amounts must be credited to a Pension Account of a Pensioner prior to commencement of the Pension:

- (a) any amount transferred under rules 20.1 or 20.4;
- (b) any amount paid into the Fund in respect of a Pensioner as a transfer or a Roll-Over Superannuation Benefit which the Trustee considers it appropriate to credit;
- (c) the proceeds of any Policy or Annuity effected or maintained by the Trustee in respect of a Pensioner and paid to the Trustee which the Trustee considers it appropriate to credit;
- (d) such earnings of the Fund ascertained in accordance with rule 14.7(e) and rule 9 as the Trustee may determine to be equitable;
- (e) any credit arising out of any adjustments made in accordance with rule 9.4;
- (f) any Shortfall Component paid in respect of the Pensioner;
- (g) any amount of Financial Assistance which the Trustee considers it appropriate to credit;
- (h) such other Contributions made in respect of the Pensioner which are permitted by these Rules and the Relevant Law;
- (i) any amounts transferred to the Pension Account from a Reserve Account; and
- (j) such other amounts as the Trustee determines from time to time.

9 INCOME ACCOUNT

9.1 Credits to Income Account

The Trustee may (or must) credit the Income Account with all amounts that are permitted (or required) by the Deed and the Relevant Law, including:

- (a) any positive Earnings determined by the Trustee pursuant to rule 9.3;
- (b) adjustment credits made in accordance with rule 9.4;
- (c) any surplus resulting from a valuation under rule 16.3;
- (d) the proceeds of any Policies which the Trustee has determined not to credit to a Member's or Beneficiary's Accumulation Account or Pension Account (or any other Account); and
- (e) any other amounts as the Trustee may (or must) credit to the Income Account from time to time as permitted (or required) by the Relevant Law.

9.2 Debits to Income Account

The Trustee may (or must) debit the Income Account with all amounts that are permitted (or required) by the Deed and the Relevant Law including:

- (a) any negative Earnings determined by the Trustee pursuant to rule 9.3;

- (b) the proportion of any other costs or expenses of the Fund that have not been debited from a Member's or Beneficiary's Accumulation Account or Pension Account;
- (c) adjustment debits made in accordance with rule 9.4;
- (d) any loss on the disposal of an investment of the Fund;
- (e) any deficiency resulting from a valuation under rule 16.3;
- (f) any Tax or Levy which has not been attributed to a Member's or Beneficiary's Accumulation Account or Pension Account;
- (g) the costs of any Policy which the Trustee has determined not to debit from a Member's or Beneficiary's Accumulation Account or Pension Account; and
- (h) any other amounts as the Trustee may (or must) debit from the Income Account from time to time as permitted (or required) by the Relevant Law.

9.3 Distributions from Income Account

At the end of each Fund Year and any other time as required by the Law or the circumstances of the Fund within the discretion of the Trustee, the Trustee will determine the Earning Rate and the Earnings for the relevant period, making appropriate adjustments for any amounts credited or debited to the Accounts since the beginning of the Fund Year (or any previous determination if there has already been a determination during the current Fund Year) and any amounts applied in accordance with rule 13.5(b). After taking into account any reasonable provisions or reserves for future contingencies, the Earning Rate (whether positive or negative) shall be used by the Trustee to determine, at its discretion, the proportion of the Earnings to be allocated from the Income Account to other Accounts (or otherwise credited or debited amongst them).

9.4 Adjustments to Pension and Income Accounts

Subject to and in accordance with the Relevant Law, in determining the amount standing to the credit of an Accumulation Account or Pension Account at the time a Benefit is calculated or becomes payable, the Trustee has the discretion to make any necessary adjustments (up to the date of payment) to a Member's Account to account for the Earning Rate at any relevant payment date, that it considers equitable. The Income Account must be debited or credited accordingly.

10 EQUALISATION ACCOUNT

10.1 Purpose of Equalisation Account

An Equalisation Account may be used for the following purposes where required or permitted by the Deed and the Relevant Law:

- (a) to smooth the investment earnings of the Fund in accordance with the Fund's Investment Strategy, including to increase or decrease the Earning Rate;
- (b) to pay any expenses of, or Tax payable by, the Fund;
- (c) to give effect to any reserving strategy established by the Trustee; and
- (d) to do anything else the Trustee thinks appropriate from time to time as permitted by the Deed and the Relevant Law.

10.2 Credits to Equalisation Account

The Trustee may (or must) credit the Equalisation Account with all amounts that are permitted (or required) by the Deed and the Relevant Law, including:

- (a) any amount remaining in the Income Account after Earnings are determined and distributed by the Trustee under rule 9.3;
- (b) any income earned by the Fund on the moneys held in the Equalisation Account;
- (c) any amounts transferred from the Forfeiture Account under rule 23; and
- (d) any other amounts as the Trustee thinks appropriate to credit from time to time as permitted by the Relevant Law.

10.3 Debits to Equalisation Account

The Trustee may (or must) debit all amounts that are permitted (or required) by the Deed and the Relevant Law to be debited to the Equalisation Account, including any amount required to be credited to the Income Account in accordance with rule 9.1, so as to enable the Trustee to allocate Earnings from the Income Account.

11 RESERVE ACCOUNTS

11.1 Establishment of Reserve Accounts

Subject to the Relevant Law, Reserve Accounts may be established by the Trustee from time to time for any purpose the Trustee believes is necessary or desirable or permitted by the Relevant Law.

11.2 Use of Reserve Accounts

Subject to the Relevant Law, the Trustee may from time to time:

- (a) credit or debit amounts from a Reserve Account as the Trustee sees fit;
- (b) alter the purpose for which it established a Reserve Account;
- (c) restrict the use of moneys held within a Reserve Account;
- (d) close a Reserve Account;
- (e) combine two or more Reserve Accounts;
- (f) invest moneys held within a Reserve Account; or
- (g) otherwise deal with any matter relating to one or more Reserve Accounts as the Trustee sees fit.

11.3 Credit of Reserve Accounts

Subject to the Relevant Law, a Reserve Account may be credited with the following:

- (a) an amount transferred from the Income Account under rule 9;
- (b) Contributions held by the Trustee pending allocation to the Accumulation Accounts of Members in accordance with rule 12.9;
- (c) some or all of the proceeds of any Policy;
- (d) such portion as the Trustee considers appropriate of an amount paid into the Fund as a transfer or Roll-Over Superannuation Benefit;
- (e) an amount transferred from the Forfeiture Account under rule 23.4(i); and
- (f) such other amounts as the Trustee considers appropriate.

11.4 Purposes of Reserve Accounts

A Reserve Account may, at the discretion of the Trustee, and subject to the Relevant Law, be used for the following purposes:

- (a) to generally give effect to any reserving strategy established by the Trustee to stabilise the investment earnings of the Fund;
- (b) to maintain a solvency or other reserve as the Trustee determines to be necessary or appropriate in connection with the payment of a Pension from the Fund;
- (c) to hold Contributions pending allocation to the Accumulation Accounts of Members in accordance with rule 12.9;
- (d) to provide for such contingencies as the Trustee may determine;
- (e) to augment the Fund Earning Rate;
- (f) to meet any Taxation payments payable by the Fund;
- (g) to pay any expenses or charges payable by the Fund;
- (h) to pay a Benefit, or augment a Benefit to be paid, to a Member in the event of the Member suffering Permanent Incapacity, Temporary Incapacity or a Terminal Medical Condition or to be paid to one or more of the Dependants or the Legal Personal Representative of a deceased Member;
- (i) to pay to or for the benefit of any Member, Beneficiary or former Member including augmentation of an Accumulation Account or Pension Account or on any other basis that does not breach the Relevant Law; and
- (j) for any other purpose determined by the Trustee which does not breach the Relevant Law and which is not inconsistent with trust law.

11.5 Money Held in Reserve Accounts

Money held in a Reserve Account does not form part of any Accumulation Account or Pension Account. Any income earned by the Fund on the money held in a Reserve Account must be credited to that Reserve Account.

12 CONTRIBUTIONS

12.1 Permitted Contributions

A Member, Employer or any other entity may make Contributions to the Fund, provided that the Trustee does not disallow the Contribution and it is permitted under the Relevant Law.

12.2 Acceptance of Contributions

Subject to the provisions within this rule 12, the Trustee may accept amounts by way of Contributions that are made or deemed to be made under the Relevant Law to the Fund.

12.3 No obligation to Contribute

Subject to the Relevant Law and any relevant agreement to the contrary, a Member of the Fund shall not cease to be a Member merely because there have been no Contributions made in respect of that Member in any given Fund Year and, except where required by Law, there is no requirement that any Contributions be made to the Fund in respect of a Member in any Fund Year.

12.4 Form of Contributions

A Contribution may be made either in cash or by the transfer of assets in accordance with the Relevant Law, subject to the Trustee's absolute discretion to accept or reject any Contribution and the following requirements:

- (a) any assets transferred must be authorised investments pursuant to the Deed and the Investment Strategy of the Fund;
- (b) acceptance of an asset as a Contribution must not be prohibited under the Relevant Law; and
- (c) unless the Trustee otherwise determines, the value of any assets transferred as a Contribution must be based on the current market value of those assets (as reduced by the value of any consideration given by the Trustee for the transfer of the asset, where appropriate) in accordance with any requirements of the Taxation Legislation and SIS.

12.5 Tax on Contributions and Shortfall Components

Subject to the Relevant Law, any Tax payable in respect of a Contribution or Shortfall Component may be deducted from the Contribution or Shortfall Component by the Trustee (or other relevant body whether or not it is a Statutory Authority) before it is credited to the Member's Accumulation Account and the Trustee shall record the Contribution accordingly.

12.6 Contributions not accepted

The Trustee must not accept a Contribution or Shortfall Component:

- (a) that is not permitted by the Relevant Law or the Deed;
- (b) if acceptance would prevent the Fund from qualifying as a Complying Superannuation Fund; or
- (c) where the Trustee is lawfully directed by a Statutory Authority to not accept the Contribution or Shortfall Component.

12.7 Refund of Excess Contributions

If the Trustee accepts a Contribution or Shortfall Component in breach of the Deed or the Relevant Law, the amount of the Contribution or Shortfall Component shall be refunded (and the Member's Account debited accordingly) within any time specified by the Relevant Law after the deduction of any or all of the following amounts:

- (a) any amounts which an insurer may have charged in respect of any additional cover provided on the basis of those Contributions or Shortfall Components;
- (b) any Tax payable or amounts owed by the Member to a Statutory Authority;
- (c) any administration charges reasonably incurred; and
- (d) any other amount the Trustee considers appropriate as permitted by the Relevant Law, and

the Trustee must pay any amount stated in a Release Authority, signed by the Member named in the Release Authority, for the repayment of excess Contributions to the Commissioner of Taxation or to any other person or entity as directed in the Release Authority, including any additional amounts such as penalties or other levies as included in the Release Authority.

12.8 Splitting Contributions

- (a) A Member may, in a Financial Year, make an application in a form acceptable to the Trustee to rollover, transfer or Allot an amount of their superannuation benefits, for the benefit of the Member's Spouse, that is equal to an amount of the Splittable Contributions made to the Fund by, for, or on behalf of the Member in:
- (i) the last Financial Year that ended before the application; or
 - (ii) the Financial Year in which the application is made, where the Member's entire Benefit is to be rolled over, transferred or cashed in that year,
- provided that the split is made in a manner and form that is permitted under the Law, and does not relate to any superannuation benefits that are subject to a Payment Split or a Payment Flag.
- (b) An application made under rule 12.8(a) must specify the amount the Member seeks to split for the benefit of their Spouse from the Member's Taxed Splittable Contributions, Untaxed Splittable Contributions or both.
- (c) Subject to the Law, an application made under rule 12.8(a) will be invalid if any of the following apply:
- (i) in the Financial Year in which that application is made, the Trustee is already considering, or has given effect to, another application that Member has made in respect of that Financial Year;
 - (ii) the application is in respect of an amount that exceeds the Maximum Splittable Amount; or
 - (iii) the Spouse of the Member is either:
 - (A) aged 65 years or more; or
 - (B) between their relevant Preservation Age and 65 years of age and has Retired for the purposes of the condition of release specified in item 101 of Schedule 1 to the SIS Regulations,
 unless the application includes a statement by the Member's Spouse to the effect that, at the time of application, the Spouse (a) is aged less than the relevant preservation age; or (b) is both aged between their relevant Preservation Age and 65 years and does not satisfy the condition of release specified in item 101 of Schedule 1 to the SIS Regulations.
- (d) The Trustee has the discretion to accept a valid application made under this rule 12.8 provided:
- (i) the application complies with the provisions of this rule 12.8 and the Law;
 - (ii) the Trustee has no reason to believe that any statement made by a Member's Spouse in accordance with rule 12.8(c) is untrue; and
 - (iii) the amount to which the application relates is not more than the Maximum Splittable Amount for the relevant Financial Year.

- (e) If an application made under rule 12.8(a) is accepted by the Trustee, the Trustee must rollover, transfer or Allot the relevant amount for the benefit of the relevant Spouse as soon as practicable, and in any case within 30 days after receiving the application, but only if the following requirements are also met:
- (i) if the application requests a split of Untaxed Splittable Contributions, the amount specified in the application must be no more than the Crystallised Segment that would form part of the superannuation interest that would be payable if the Member withdrew their entire benefits at the time of the Trustee giving effect to the application; and
 - (ii) if the application requests a split of Taxed Splittable Contributions, the amount specified in the application must be no more than the element taxed in the fund of the Taxable Component that would form part of the superannuation benefit that would be payable if the Member withdrew their entire benefits at the time of the Trustee giving effect to the application.
- (f) Before any amounts are Allotted for the benefit of the Spouse, the Trustee must ensure that the Fund continues to satisfy the requirements of a Self Managed Superannuation Fund under the Law, including ensuring that the Spouse is a Member of the Fund before an amount is Allotted to them in accordance with this rule 12.8.

12.9 **Must Allocate Contributions**

The Trustee must allocate Contributions to Members within 28 days of the end of the month in which the Contribution is received or such longer period as is reasonable in the circumstances.

13 **INVESTMENT POWERS OF TRUSTEE**

13.1 **General Investment Powers**

Without limiting rule 14.1 the Trustee has power at its discretion to invest the whole or any part of the Fund's assets in any investment and in any manner (whether in Australia or elsewhere and whether involving liability or not) which the Trustee considers to be a suitable investment for the Fund, subject to the Investment Strategy, the Deed and the Relevant Law.

13.2 **Specific Investment Powers**

Without limiting the operation of rule 13.1, the Trustee may invest the assets of the Fund in any one or more of the following, subject to any requirements or restrictions under the Relevant Law:

- (a) **Securities:** securities including shares or stocks, of whatsoever class or with whatsoever terms, conditions or liabilities attached, of any company incorporated anywhere in the world whether carrying on business in Australia or not;
- (b) **Government securities:** securities of any country, state or territory, or any statutory or municipal body, for any period;
- (c) **Units:** units (including sub-units and partly-paid units) in a unit trust (whether fixed or non-fixed), managed investment scheme or such other scheme that is in the nature of a unit

- trust situated anywhere in the world and with any terms and conditions or liabilities attached;
- (d) **Managed Funds:** managed funds, exchange traded funds, managed investment schemes or like securities or schemes available anywhere in the world;
 - (e) **Property:** property (whether real or personal) or any interest (including but not limited to purchase, acquisition, lease or license) and including a fractional interest, in property wherever situated, whether or not such property or interest in property is subject to any mortgage, charge or other encumbrance or is acquired or purchased for profit or is producing income as at the date it is acquired or purchased;
 - (f) **Construction and improvements:** in the construction, development, improvement or extension of buildings or structures or improvements on land wherever situated and the granting of leases or licences over that property;
 - (g) **Business, partnership or joint venture:** acquiring, establishing, or carrying on any business whatsoever, whether alone or in partnership or a joint venture with other parties, including related parties;
 - (h) **Debentures and other financial instruments:** any financial instruments including but not limited to debentures, secured or unsecured notes and other loan instruments of any company incorporated anywhere, and expressed in any currency;
 - (i) **Options and warrants:** options, warrants and rights to acquire shares or stock, of whatsoever class or with whatsoever terms, conditions or liabilities attached, of any company incorporated anywhere in the world, or options and rights to acquire such interests or rights in companies that do not hold any share capital;
 - (j) **Interests or rights:** interests or rights, whether fully or partly paid and whether or not involving liabilities, in companies that do not hold any share capital incorporated anywhere in the world;
 - (k) **Negotiable Instruments:** any bill of exchange, promissory note or other negotiable instrument;
 - (l) **On loan:** deposit or loan, whether secured or not, to any person, wherever situated, on any terms, at any rate of interest or for any duration that the Trustee determines, notwithstanding that a Trustee or a Director may have a direct or indirect interest, or may benefit directly or indirectly from, the deposit or loan;
 - (m) **On deposit:** on deposit with any bank or other authorised deposit-taking institution registered in any part of the world, in any type of account including the purchase of foreign exchange or currency, whether secured or unsecured and at such rate of interest and on such other terms as the Trustee may determine;
 - (n) **Derivatives:** in purchasing, acquiring, holding, entering or selling options or contracts of any kind or participating or dealing in any derivative transaction undertaken in financial markets whether or not they are quoted or traded on a recognised stock exchange, including without limitation futures contracts, contract for differences or rights, commodities

contracts including forwards, hedging contracts, swapping or swaps, synthetic investments and contracts relating to Australian or foreign exchange or currencies and/or other like arrangement irrespective of whether such dealing is related to another asset of the Fund;

- (o) **Cryptocurrency:** in purchasing, acquiring, holding, using or otherwise participating or dealing with or trading any digital currency or digital asset, blockchain protocol, blockchain asset or non-fungible tokens (NFT's) or other cryptocurrency whether of a speculative nature or not, including through any other investment mechanism described under this rule 13.2 (such as derivatives or options) which itself invests in or deals in any such digital currency or digital asset;
- (p) **Crowdfunding:** the investment, either directly or through Crowdfunding or similar options in any businesses, projects or ventures which the Trustee determines to be suitable investments for the Fund, provided that such determinations must be arrived at after considering the purpose of the Fund as contemplated by rule 3.1;
- (q) **Insurance:** any Policy or Annuity with any insurer and any other choses in action or interest for life arising in any manner;
- (r) **Intellectual Property:** intellectual property rights including but not limited to patents, patent rights, copyrights, trademarks and designs;
- (s) **Collectables and Personal Use Assets:** any collectables and personal use assets as those terms are defined in (or having the same meaning as given by) the SIS Act or SIS Regulations and/or including, but not limited to, artwork, jewellery, precious stones, sculpture, coins, wine or spirits, motor vehicles and any other chattel of a collectable nature; and
- (t) **Precious Metals:** precious metals including but not limited to bullion; and
- (u) **Other investments:** in any other investment (including but not limited to commodities and non-tangible assets) authorised by Law for the investment of trust moneys or which the Trustee otherwise considers appropriate.

13.3 Dealing with investments as beneficial owner

Any power under rule 13.1 and rule 13.2 may be exercised by the Trustee as if it were the absolute owner of and beneficially entitled to the Fund's assets, and the Trustee shall have full power to hold, vary, replace or otherwise deal with any investments as fully and effectively as a person absolutely and beneficially entitled to dealing with their own property.

13.4 Specific investments

Subject to rule 3.3 and rule 13.2, separate investments may be made from time to time by the Trustee for the benefit of specific individual Members or Beneficiaries of the Fund, and such investments may be made in the discretion of the Trustee without the consent of the relevant Members or Beneficiaries.

13.5 Records of specific investments

Where the Trustee makes separate investments pursuant to rule 13.4, the Trustee must (unless otherwise required by the Relevant Law):

- (a) record the Member or Beneficiaries on whose behalf the specific investments are made for the purposes of determining allocations to the Member Account; and
- (b) for the Member or Beneficiary:
 - (i) credit their Member Account with any income and profit; and
 - (ii) debit their Member Account with any costs, charges or Tax, in proportions applicable to any specific investment made under rule 13.4.

13.6 Investments held in names determined by Trustee

The Trustee has the discretion to determine the name in which an investment shall be held on behalf of the Fund, which may include the name of a custodian or nominee (whether an individual or a corporation) selected by the Trustee.

13.7 Trustee to disclose any interests

- (a) The Trustee may make or vary any of the investments authorised under the Deed even if the Trustee may directly or indirectly have a personal interest in or may personally benefit from the investment.
- (b) Where the Trustee or a Director has an interest in any investment of the Fund, details of such interest must be disclosed by the Trustee or Director in any manner that is required under the Relevant Law.

13.8 Limited Recourse Borrowing Arrangements

Notwithstanding any other provision of the Deed, the Trustee may borrow money, or maintain a borrowing of money, under an arrangement under which:

- (a) the money is or has been applied for the acquisition of a single Acquirable Asset, including:
 - (i) expenses incurred in connection with the borrowing or acquisition, or in maintaining or repairing the Acquirable Asset, but not expenses incurred in improving it; and
 - (ii) money applied to refinance a borrowing, including any accrued interest on it, in relation to the single Acquirable Asset, and no other Acquirable Asset; and
- (b) the Acquirable Asset, whether it be the Original Asset or a Replacement Asset, is held on trust so that the Trustee acquires a beneficial interest in it; and
- (c) the Trustee has a right to acquire legal ownership of the Acquirable Asset, whether it be the Original Asset or a Replacement Asset, by making one or more payments after acquiring the beneficial interest; and
- (d) the rights of the lender of any other person against the Trustee for, or in connection with, or as a result of, whether directly or indirectly, default on:
 - (i) the borrowing; or
 - (ii) the sum of the borrowing and charges related to it;
 are limited to rights relating to the Acquirable Asset, whether it be the Original Asset or a Replacement Asset,

or which otherwise meets such requirements as must be met in order for the borrowing to be permitted under the Relevant Law.

14 GENERAL POWERS OF TRUSTEE

14.1 General Powers

Subject to the Law, the Trustee has complete management and control of the Fund and may, without limitation:

- (a) exercise all of the powers, discretions and rights of a natural person beneficially owning the Fund in order to administer, manage, maintain and invest the Fund and perform its duties in respect of all proceedings, investments and matters concerning the Fund; and
- (b) do all things it considers necessary, desirable or expedient for the proper application, administration, maintenance and preservation of the Fund.

This rule 14 operates without prejudice to any powers vested in the Trustee by the Deed or by the Law.

14.2 Specific Management Powers

Without limiting rule 14.1, and subject to the Law and the Deed, the Trustee may exercise the following powers in its absolute discretion:

- (a) **Borrow and Raise Money, Give Indemnity and Security:** to the extent that it is not limited by or contrary to the Law:
 - (i) to provide, or undertake to provide, to any person, company, or other entity an indemnity or guarantee in respect of any claims, matters or things which relate to the Fund or any Members, former Members or Beneficiaries;
 - (ii) to borrow any amounts on terms and conditions determined by or agreeable to the Trustee from any person, company, trust, or other entity; and
 - (iii) to secure any obligation assumed or undertaken by the Trustee in connection with the Fund by giving a charge or mortgage or any other form of encumbrance over all or part of the Fund;
- (b) **Bank Accounts:** to open and maintain for the Fund any bank accounts or accounts with any bank or other authorised deposit-taking institution registered in any part of the world (including a non-bank financial institutions) and to make any rules, including signing and endorsement requirements, as deemed appropriate by the Trustee for operating such bank accounts;
- (c) **Receipts and Discharges:** to provide receipts, releases and other discharges in respect of any money or other asset that is received by, or which becomes payable to, the Fund;
- (d) **Negotiable Instruments:** to the extent that it is not limited by or contrary to the Law, to draw down any bill of exchange, promissory note or other negotiable instrument on terms and conditions determined by or agreeable to the Trustee;
- (e) **Pay Rates and Taxes:** to pay out of the Fund all rates, Taxes, costs, charges, insurance premiums, expenses and outgoings of whatever nature, including the reimbursement of expenses incurred on behalf of the Fund by a Trustee or Director, payable in connection with the management and administration of the Fund;
- (f) **Carry on Business:** to carry on a business;

- (g) **Undertakings and Contracts:** to give any undertakings and enter into any agreements or incur any obligations relating to the Fund as the Trustee thinks fit;
- (h) **Maintain Property:** to repair, paint, alter, rebuild, improve and generally maintain any property whether real or personal and whether freehold or leasehold for the time being comprising part of the Fund;
- (i) **Sell Property:** to sell or otherwise dispose of any property comprising part of the Fund at such price and upon such terms and conditions as the Trustee deems appropriate;
- (j) **Lease Property:** to lease or sub-lease any property (whether real or personal) comprising part of the Fund for such period, at such rent and subject to such terms and conditions as the Trustee determines appropriate including, but not limited to, entering into finance leases, operational leases, hire purchase agreements or licences, and to accept surrenders of or otherwise determine or bring to an end such leases, sub-leases or licences;
- (k) **Insurance:** to insure and or re-insure with any insurer, mortgage insurance company or re-insurance company:
 - (i) any risk, contingency or liability of the Fund; or
 - (ii) any liability of the Trustee or its Directors and officers or any associated liability of the Fund so as to provide indemnification to such persons;
- (l) **Accept Contributions:** to accept any Contributions and any Shortfall Components provided that it is permitted by, and done in accordance with, the Law;
- (m) **Payment of Benefits:** to pay Benefits to a Member or a Dependant in accordance with the Law, including Benefits relating to any person's mental or physical ill health or incapacity and, in such case, the Trustee shall be entitled to pay the person or their Dependents such Benefits but shall not be responsible for seeing to the application of any payments under the Deed;
- (n) **Purchase Annuity:** to purchase any Annuity in the name of the Trustee or a Member, former Member or Beneficiary for the purpose of providing a Pension in respect of the relevant Member or Beneficiary;
- (o) **Determine Dependents:** to determine the persons that are the Dependents of a Member for the purposes of the Deed;
- (p) **Professional Fees:** to the extent that it is not contrary to the Law, to pay and advance out of the Fund the professional or other fees (if any) in respect of the provision of its services as Trustee of the Fund;
- (q) **Seek Advice:** to take and act on the advice of any Qualified Adviser (whether or not that advice was obtained by the Trustee) in relation to any matter concerning the Fund, without being liable to any Member or his or her Dependents in respect of any act done in accordance with that advice;

- (r) **Signatories:** to determine the persons who shall have, in respect of the Fund or any part of the Fund, the authority to give and sign receipts, endorsements, contracts, releases, acceptances and any other documents, subject to the requirements of the Law;
- (s) **Legal disputes:**
 - (i) to commence, carry on and defend legal proceedings relating to the Fund or to the rights or obligations of the Trustee or a Member or Beneficiary or former Member or Beneficiary;
 - (ii) to refer any claims or demands relating to the Fund to arbitration; and
 - (iii) to settle, compromise or submit to arbitration or to a court of law, any dispute, claim or controversy whatsoever arising out of or relating to the Deed or the interpretation of the Deed, the Fund or the rights or obligations of the Trustee or a Member or Beneficiary and to act on the result or determination of the arbitrator or court, or a Statutory Authority where applicable;
- (t) **Releases:** to provide a full or partial release to any person or entity in connection with any matters relating to the Fund;
- (u) **Acts in relation to Fund assets:** any act required or permitted in relation to, or in connection with, an asset in which the Fund has an interest and/or is permitted to have an interest (including but not limited to any asset referred to or included in rule 13); and
- (v) **Any other acts:** to do anything the Trustee considers necessary or desirable in connection with performing its obligations under the Deed.

14.3 Powers additional to powers conferred under the Law

Subject to rule 2.3, the Trustee's powers, authorities and discretions under the Deed are in addition to, and not in substitution for, the powers, authorities and discretions vested in or exercisable by the Trustee under the Law.

14.4 Trustee's discretion to exercise power

Subject to the Law or any contrary provisions under the Deed:

- (a) the Trustee has an absolute, unfettered and uncontrolled discretion in its exercise, non-exercise or partial exercise of a power or discretion;
- (b) the Trustee is not bound to give to any person any reason for or explanation of its exercise, non-exercise or partial exercise of a power or discretion; and
- (c) a discretion given to the Trustee must not be exercised by any other person without the consent of the Trustee, unless permitted by the Law.

14.5 Exercise of powers by Trustee

- (a) Subject to the Law, any Trustee or Director or officer of the Trustee may exercise or concur in exercising or refrain from exercising any power, right, decision, discretion, appointment or other authorisation under the Deed or the Law (referred to as "**Powers**" in this rule 14.5) notwithstanding that the Trustee, or its Directors or shareholders, have or may have a direct or indirect interest or may benefit either directly or indirectly in the exercise or result of exercising or refraining from exercising any such Powers (whether as a Member or a

Beneficiary or as a trustee of any other settlement or in its, his or her personal capacity or as a Director or shareholder of any other company or otherwise) and notwithstanding that any Trustee for the time being is a sole Trustee.

- (b) In the event that the Trustee is a body corporate, any Powers may be exercised by the Trustee by way of a resolution of the Directors in accordance with the Trustee's constitution or by any persons delegated with authority to act on behalf of the Directors.
- (c) In the event that the Trustee consists of Individual Trustees:
 - (i) any Powers may be exercised by the Trustee by way of a unanimous resolution or by all the Trustees signing a written resolution (whether electronically or otherwise, and whether contained in one or more identical documents) containing a statement to the effect that they are in favour of the resolution;
 - (ii) if the Trustees cannot reach agreement as to any matter affecting the Fund or as to the exercise of, or any other decision relating to, any of the Trustee's powers and discretions under the Deed then a meeting of the Trustees shall be called for the Trustees to meet either in person or by phone or electronically at a mutually agreeable time and place where they shall all vote on the matter under consideration and if the votes for the matter under consideration are not unanimous then the Trustee shall give effect to the wishes of the majority, whether for or against the question, as if the votes resulted in a unanimous decision by all of the Trustees, if permitted by the Law; and
 - (iii) if the Trustees cannot all meet at the same time and place in accordance with rule 14.5(c)(ii) above then the matter under consideration shall be put in writing in a question or proposal form (the '**Proposal**') and sent by post, facsimile or by e-mail to each of the Trustees whereupon they shall each vote on the matter by replying to the question within 7 days of the proposal being sent and if they do not reply then by their non-reply they shall be taken to have assented to the matter under consideration.
- (d) For the avoidance of doubt, meetings may be held, decisions may be made, and resolutions may be signed by any means permitted by the Law including, without limitation, including electronically.
- (e) If the Powers cannot be exercised or any other decision cannot be made or reached due to a deadlock between the Individual Trustees, the deadlock may be resolved by allocating votes to each of the Individual Trustees based upon the dollar value each of them hold as Benefits in the Fund as a Member as most recently calculated and available at the time of the purported exercise of Powers, and the decision of the Individual Trustees with the greatest overall proportional dollar value of Benefits in relation to the value of the entire Fund shall resolve the deadlock and result in their decision of whether to exercise the relevant Power.

14.6 Delegations of power

Subject to the Law:

- (a) the Trustee may delegate any power, authority, discretion or obligation conferred on the Trustee under the Deed to any person, or any individual Trustee or Trustees where applicable (referred to as a '**Delegate**' in this rule 14.6) and the delegation shall be made on such terms and conditions as the Trustee determines;
- (b) the Trustee may vary, limit or revoke any delegation to, and may exercise any power in conjunction with, the Delegate; and
- (c) the Delegate may only exercise a power, authority, discretion or perform an obligation, and only has powers for that purpose, that the Trustee expressly delegates to the Delegate.

14.7 Member Investment Choice

- (a) Without limiting in any way the obligations and powers vested in the Trustee under the preceding provisions of this rule 14, the Trustee may:
 - (i) establish any number of investment strategies;
 - (ii) nominate the assets which will be subject to each particular investment strategy;
- (b) Where a Member is provided with an opportunity to have an amount in an Accumulation or Pension Account invested under a particular investment strategy or strategies, the Trustee must provide to the Member such information as is required in respect of the investment strategy or strategies by the Relevant Law.
- (c) Where a Member is provided with an opportunity to have an amount in an Accumulation or Pension Account invested pursuant to a particular investment strategy or strategies and either fails or is unwilling to nominate a particular investment strategy, the Trustee must invest the amount in the Member's account in such manner as, in its absolute discretion, it may consider appropriate.
- (d) Where the Trustee establishes more than one investment strategy under rule 14.7(a), it must:
 - (i) establish a sub-account within the Income Account established under rule 9 in respect of each strategy; and
 - (ii) debit and credit to each sub-account any amounts including costs, charges and any Taxation attributable to the relevant strategies as the Trustee determines.
- (e) Where the Trustee establishes a sub-account under rule 14.7(d), it must:
 - (i) determine a Fund Earning Rate in respect of each sub-account;
 - (ii) allocate an amount determined by the application of the Fund Earning Rate in respect of each sub-account to each sub-account within a Member's or Beneficiary's Accumulation or Pension Accounts in accordance with the investment strategy applicable to the Member or Beneficiary in proportion to the amount standing to the credit of the relevant sub-account within the Member's or Beneficiary's Account at the beginning of the Fund Year in respect of which the allocation is being made; and

- (iii) make an appropriate adjustment for amounts (if any) credited or debited to the sub-account during that Fund Year.

15 LIABILITY AND INDEMNITY

15.1 Limitation by the Law

The liability and indemnity provisions under this rule 15 do not apply to the Trustee, a Director or officer to the extent that such exemption from liability or provision of indemnity under this rule 15 is limited by or inoperative under the Law.

15.2 Limitation of Liability

To the extent allowed by the Law, the Trustee and its Directors or officers (where relevant) shall not be liable for any claim, liability, cost, loss, damage or expense incurred by or arising out of any act, omission or mistake in connection with the exercise of its powers, duties or discretions conferred by the Deed or with the proper performance of its duties under the Deed, except in the case where:

- (a) the Trustee fails to act honestly; or
- (b) the Trustee intentionally or recklessly fails to exercise the degree of care and diligence that is reasonably required of a trustee acting in the Trustee's position; or
- (c) a civil penalty order is awarded against the Trustee, Director or officer in accordance with the Law.

15.3 Trustee's Indemnity

- (a) Subject to rule 15.3(b) and the Law:
 - (i) the Trustee is entitled to be indemnified out of the Fund for all liabilities that it incurs in connection with the exercise of the trusts, powers, authorities, duties and discretions conferred on the Trustee under the Deed or in the proper performance of its duties under the Deed;
 - (ii) if a Director or officer incurs a liability in respect of conduct or circumstances for which the Trustee is or would be entitled to be indemnified out of the Fund, the Director is entitled to be indemnified out of the Fund in respect of that liability; and
 - (iii) the Trustee may exercise a lien on, and use an asset of, the Fund to satisfy the indemnity provided to the Trustee and the Directors or officers under this rule 15.3(a)(iii).
- (b) The indemnity in rule 15.3(a) shall not apply in the event that the Trustee, or its Director or officer, fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or a Director or officer is reasonably required to exercise in its position, or where a civil penalty order has been awarded against the Trustee, Director or officer in accordance with the Law or where at the provision of such an indemnity would be limited by or inoperative under the Relevant Law.
- (c) The indemnity in rule 15.3(a) extends to any payments made in good faith to any person whom the Trustee bona fide believes to be entitled thereto although it may be subsequently found that the person was not in fact so entitled.

- (d) The indemnity in rule 15.3(a) extends to circumstances where the Trustee acts on the opinion or advice of or statement of barristers or solicitors who are instructed by the Trustee or any bankers, accountants, brokers, investment advisers or other persons believed by the Trustee in good faith and on reasonable grounds to be expert in relation to the matters on which they are consulted.
- (e) The indemnity in rule 15.3(a) extends to circumstances where there has been a failure of any person or corporation to carry out any agreement made with the Trustee and to any act or omission on the part of such person or corporation.
- (f) The indemnity in rule 15.3(a) extends to circumstances where an agent or servant employed in good faith by the Trustee becomes insolvent or commits an act of bankruptcy or any fraudulent or negligent act.

16 ADMINISTRATION OF THE FUND

16.1 Keeping records and accounts

The Trustee must arrange for:

- (a) the keeping of accounts of all money received into and disbursed from the Fund and of all dealings in connection with such money;
- (b) the collection and prompt payment into an authorised account of the Fund or the otherwise appropriate dealing with all money due to the Fund;
- (c) the keeping and safe-custody of all records, books, accounts, minutes, reports and other documentation as may be required by the Relevant Law or otherwise in proper order, and the retention of such records, books, accounts, minutes, reports and documents for such period as is required by the Relevant Law;
- (d) the preparation of Financial Statements and such other or additional accounts and statements in respect of each Fund Year as are required by the Relevant Law; and
- (e) the preparation and lodgement of an annual return to the Statutory Authority and of such other certificates, statements, forms, documents and information in such manner and within the time required by the Relevant Law.

16.2 Dealing with monies received

The Trustee must ensure that all money owing to or received by the Fund is collected promptly and credited to:

- (a) an account kept with a bank, building society, or other financial institution on behalf of the Fund; or
- (a) a trust account of a lawyer, accountant, investment manager, administration manager, real estate agent or other entity appointed in accordance with the Deed.

16.3 Valuation of the Fund

The Trustee must obtain a valuation of all of the assets of the Fund at the end of each Fund Year or when the Trustee considers it appropriate to do so, or as otherwise required by the Law. The Trustee shall accurately record the market value of each asset in the Accounts of the Fund, and transfer to the

Income Account any surplus or deficiency, excluding any specific investments under rule 13.4, resulting from the asset valuation.

16.4 **Financial statements and annual returns**

The Trustee must:

- (a) prepare financial statements, operating statements or any other account, statement or document in respect of the Fund that the Law requires and, to the extent the Financial Statements are not required to comply with the Australian Accounting Standards (in this rule 16.4 referred to as the **AAS**), the Trustee may determine that the Financial Statements will be prepared as special purpose financial statements and not in accordance with the AAS; and
- (b) prepare and lodge annual returns of the Fund in accordance with the Law.

16.5 **Audit**

The Trustee must:

- (a) arrange for the Fund to be audited annually at or after the end of each Fund Year or as required by the Relevant Law by an Auditor;
- (b) obtain from the Auditor such certificates, statements, forms and other documents at such time and in such form as required by the Relevant Law; and
- (c) the Trustee must otherwise use its best efforts to ensure that the audit complies with the requirements of the Relevant Law.

16.6 **Books and Records**

If required by the Law, the Trustee must ensure that any books or information relating to the Fund are available for inspection and copying, and that access to the premises where those records are kept is reasonably made available for these purposes, in accordance with the Law.

16.7 **Disclosure requirements**

The Trustee must provide any information, statement or documentation required by Relevant Law to a Statutory Authority, the Actuary, the Auditor, Members and any other persons prescribed by the Relevant Law.

16.8 **Duty of Confidentiality**

The Trustee must keep confidential all information disclosed to it in the course of managing and administering the Fund or in carrying out its duties pursuant to the Deed.

16.9 **Directions of a Statutory Authority**

The Trustee shall comply with a Statutory Authority's lawful direction or requirement which applies to the Fund including, but not limited to, directions or requirements in respect of:

- (a) any Contributions accepted into the Fund;
- (b) any unclaimed money for the purposes of the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth);
- (c) any assets disposed of by the Fund;
- (d) any investigator or investigation relating to the Fund; and
- (e) any other obligation, direction or requirement under the Law.

16.10 Appointment of administrator

Subject to the Relevant Law, the Trustee may appoint a suitably qualified Administrator who shall have the power to carry out duties relating to the administration of the Fund.

16.11 Appointment of investment manager

Subject to the Relevant Law, the Trustee may appoint one or more investment managers who shall have the powers, discretions and authorities determined by the Trustee from time to time to deal with the assets of the Fund, which may include without limitation the purchase, sale, valuation, management and general investment of the whole or part of the Fund.

16.12 Appointment of actuary

Subject to the Relevant Law, the Trustee may appoint an Actuary (or Actuaries) of the Fund who:

- (a) is a Fellow of the Institute of Actuaries of Australia (or 'Actuaries Institute'); or
- (b) are one or more members of a firm or company of Actuaries which has at least one member or director (as the case requires) who is a Fellow of the Institute of Actuaries of Australia (or 'Actuaries Institute').

16.13 Appointment of auditor

Subject to the Relevant Law, the Trustee may (or must if required by the Relevant Law) appoint an Auditor who is both independent and an Approved SMSF Auditor.

16.14 Appointment of custodian

Subject to the Relevant Law, the Trustee may appoint a person to act as custodian or nominee, who:

- (a) may hold the legal title to any or all of the assets of the Fund on behalf of the Trustee from time to time with the powers, discretions and authorities determined by the Trustee; and
- (b) may have custody of the documents relating to the assets of the Fund, including the title and deeds and any other associated documents;

provided that person is not prohibited from so acting under the Relevant Law.

16.15 Appointment of other service providers

Subject to the Relevant Law, the Trustee may appoint any other consultants, professionals, officers or attorneys as the Trustee considers appropriate for the proper management and administration of the Fund, and may execute a power of attorney for this purpose.

16.16 Removing a service provider

Any person or entity appointed to a position under this rule 16 may at any time be removed by the Trustee at its discretion, and such person or entity must be removed by the Trustee if required by Law or a Statutory Authority, and the Trustee may also replace any person or entity if required or considered appropriate.

17 INSURANCE**17.1 Trustee's power to effect and acquire Policies**

- (a) The Trustee has the sole discretion to arrange one or more Policies with one or more insurers to secure the Benefit of a Member or Members, whether by means of one or more

individual or group Policies or combinations of both or partly in one way and partly in another.

- (b) The Trustee may otherwise acquire one or more Policies in respect of a Member provided such acquisition is not prohibited under the Relevant Law.

17.2 **Requests by a Member**

If the Trustee receives a request from a Member that a specific Policy be arranged for their benefit, the Trustee must give effect to the Member's request unless:

- (a) the Trustee determines that such Policy is not in the best interests of the Member or their Dependants or that it is not consistent with the Investment Strategy of the Fund; or
- (b) the Member has since withdrawn or changed his or her original request.

17.3 **Paying insurance premiums**

- (a) The Trustee must pay all premiums to insurers in respect of any Policies or Annuities acquired or maintained in accordance with the Deed.
- (b) If the Trustee considers it appropriate and it is permitted by the Relevant Law, any premiums for a Policy may be debited to the Accumulation Account or Pension Account of an insured Member who has a Policy effected in his or her name by the Trustee, or to a Reserve or other Account if permitted by the Relevant Law, or directly to the Accumulation Account or a Pension Account of another Member, including for the purposes of holding cross insurance, directly to a Reserve Account or alternatively in such proportions among Members as the Trustee considers to be equitable if permitted by the Relevant Law.

17.4 **Inconsistent conditions of a Policy**

Subject to the Relevant Law, if an insurer will only insure a Member or Beneficiary on conditions that are inconsistent with the conditions of a Benefit payable to that Member or Beneficiary, the Trustee may impose the conditions under the Policy on the Benefit despite the conditions imposed under the Deed.

17.5 **Trustee's liability**

The Trustee shall not be liable to any Member or former Member, their Legal Personal Representative or Dependant if the Trustee decides not to effect a Policy for the benefit of those persons, except in the case where the Policy is required by the Relevant Law and the Trustee fails to effect such a Policy.

17.6 **Medical examinations**

- (a) Subject to the Relevant Law, where an insurer requires a Member, or a person applying to become a Member, to be medically examined, submit evidence of health or proof of age, or take any reasonable steps for the purpose of effecting, increasing or varying any Policy or Annuity, the Member or person must take such steps or submit such proof to the satisfaction of the insurer as is reasonably necessary.
- (b) If any Member or person refuses or fails to comply with the insurer's request under rule 17.6(a), or does anything which may cause money to not become payable under the

relevant Policy or Annuity, the Trustee may reduce the Benefit of that Member or person accordingly as deemed appropriate by the Trustee.

17.7 **Former Members**

If the Trustee has effected or acquired one or more Policies in respect of a Member who has subsequently become a former Member, the Trustee may continue to maintain such Policy or Policies for as long as it considers the maintenance of such Policy or Policies to be of benefit to the current Members or their Dependants and provided that doing so complies with the Relevant Law.

17.8 **Self-Insurance**

Unless permitted under the Relevant Law, the Trustee must not commence or maintain a self-insurance reserve.

17.9 **Endowment or Whole of Life Policy**

Where all or any of the Member's Contributions have been applied towards an endowment or whole of life Policy, then the Member's Benefit Entitlement means, in relation to those Contributions and any net earnings which would but for this rule 17.9 be applicable to them, the surrender value of such endowment or whole of life Policy.

17.10 **Limitations on Policy**

Where a Policy is being effected by the Trustee in respect of a Member and an Insurer refuses to insure a Member or seeks to impose any limitations or special conditions in respect of a Member then notwithstanding the Benefits which may be payable under this Deed in respect of the Member, the Trustee may impose such limitations or special conditions in respect of the Benefits otherwise payable in the event of the death or the disablement of the Member as it may determine.

18 **TRANSFERS TO AND FROM THE FUND**

18.1 **Transfers from Approved Benefit Arrangements**

Subject to rule 18.2, the Trustee may do anything it deems necessary to allow for the transfer of the whole or any part of the relevant person's assets from an Approved Benefit Arrangement, or the interest of any person who is a participant or former participant in that Approved Benefit Arrangement, to the Fund with the intent of preserving the rights, entitlements and interests of the relevant person at the time of the transfer or roll-over and for the relevant person to be admitted as a Member of the Fund if necessary.

18.2 **Transfer arrangements are subject to the Deed**

Where assets are to be transferred to the Fund from an Approved Benefit Arrangement in accordance with rule 18.1:

- (a) the Trustee must initially hold any superannuation interest of a person transferred to the Fund in an Accumulation Account for that person;
- (b) and reflect such equivalent rights, entitlements and interests in that person's accumulation account or pension account as existed in the other Approved Benefit Arrangement and are required pursuant to the terms on which the transfer or roll-over was effected; and

- (c) if the Trustee so determines, a person whose interest in another Approved Benefit Arrangement is transferred to the Fund becomes a Member (if they are not already a Member) and is subject to the rights and obligations of a Member under the Deed, effective from the date the interest is transferred to the Fund.

18.3 Preservation of Benefits

Where assets are to be transferred from an Approved Benefit Arrangement and the subsequent payment of Benefits from those assets or the amounts transferred is required by Law to be deferred until the occurrence of a Prescribed Event (or the Member must satisfy other conditions in order to access those Benefits), then the Member is only entitled to receive the Benefits attributable to those assets at the date on which that Member would have been entitled under the Relevant Law to receive those Benefits from the Approved Benefit Arrangement.

18.4 Payments of Non-Preserved Benefits

If an interest which is transferred to the Fund from an Approved Benefit Arrangement is not a Preserved Benefit then, subject to the Relevant Law and any other conditions relating to the payment of that interest, that interest may be paid by the Trustee to the Beneficiary of that interest at the request of the Beneficiary.

18.5 Rollovers and Transfers to or from the Fund

Where a Member is a member of or is eligible to join any Approved Benefit Arrangement and requests:

- (a) the transfer of the whole or part of his or her Benefit Entitlement; or
- (b) the roll-over of the whole or part of his or her Benefit,

then the Trustee must transfer the whole or any part of the amount in the Fund representing the relevant Benefit Entitlement or Benefit to the trustee of the Approved Benefit Arrangement or, where the Approved Benefit Arrangement is the Fund, to another account maintained in the Fund for the Member, provided that a transfer or roll-over may only be made under this rule 18.5 where the Trustee is satisfied that the transfer or roll-over is permitted by, and is made in accordance with, the Relevant Law.

- (c) The amount of a Member's Benefit Entitlement to be transferred under this rule 18.5 must not, subject to rule 18.5(d), exceed the amount standing to the credit of the relevant Member's account.
- (d) The Trustee may, prior to payment of a Benefit, determine to pay some part of the Reserve Account under rule 11.4(i) to the Member's Accumulation Account for purposes of the payment of a Benefit.

18.6 Transfers to Approved Benefit Arrangements

The Trustee may transfer the following to an Approved Benefit Arrangement subject to the requirements of the Relevant Law:

- (a) at the request of a Member, a portion of the assets of the Fund in payment of all or part of the Member's Benefit, provided that the value of the asset or assets does not exceed the value of the accrued Benefit to which the Member is entitled;

- (b) the amount relating to a Member's application under rule 12.8 which the Trustee has accepted;
- (c) the amount of a Benefit to which a Member has become entitled in circumstances where the Trustee has not been provided with instructions from the Member within a reasonable period as to how or whether the Benefit is to be paid or transferred to an Approved Benefit Arrangement;
- (d) all or part of the Member's Benefit as a result of a determination by the Trustee in accordance with rule 4.5; and
- (e) any other asset or amounts in the Fund as determined by the Trustee including, but not limited to, amounts in Reserves or any unallocated amounts.

18.7 Compliance with the Relevant Law

No Benefit may be transferred or rolled over to an Approved Benefit Arrangement if the Trustee or the Fund would breach a relevant requirement under the Relevant Law.

18.8 Preservation of Benefits transferred to Approved Benefit Arrangements

The Trustee may only transfer or rollover Preserved Benefits of a Member or former Member to an Approved Benefit Arrangement where the trustee is satisfied that the transfer is permitted and is made in accordance with the Relevant Law.

18.9 Adjustment of Benefits upon Transfer

The Trustee may make any adjustments to the Benefit of the other Members of the Fund as the Trustee considers appropriate in the circumstances of any transfer or rollover but subject always to the Relevant Law.

18.10 Power of attorney

Each Member irrevocably appoints the Trustee as the attorney for the Member for the purpose of securing the Member's participation in the Approved Benefit Arrangement to which the transfer of any Benefit or amount is made and the Trustee may act unilaterally in the name of the Member for that purpose, subject to the Relevant Law.

18.11 Successor Fund Transfers

Subject to rule 18.12, the Trustee may transfer the whole or part of a Member's Benefit Entitlement to an Approved Benefit Arrangement without the request or consent of the Member where the Approved Benefit Arrangement is a successor fund within the meaning of the Relevant Law. The Trustee may transfer the Member's Benefit Entitlement to such an Approved Benefit Arrangement whether or not the Member is at the time of the transfer a participant in that Approved Benefit Arrangement.

18.12 Eligible Roll-Over Funds

In accordance with the Relevant Law the Trustee may, without the request or consent of a Member, and, where required by the Relevant Law, the Trustee must:

- (a) transfer a Member's Benefit Entitlement or roll-over a Member's Benefit to an Eligible Roll-Over Fund; and
- (b) provide any information to the trustee of the Eligible Roll-Over Fund at such time and in such manner as required by the Relevant Law.

18.13 **Effect, Method and Timing of Transfer or Roll-Over**

- (a) The Member must effect and execute any documentation required by the Relevant Law or otherwise notified to the Member by the Trustee as being necessary or desirable to enable the Trustee to complete the transfer or rollover of a Roll-Over Superannuation Benefit to the Approved Benefit Arrangement or to another account within the Fund in accordance with the Relevant Law.
- (b) Upon receipt of a Member's request for a transfer or roll-over under rule 18.1, the Trustee must transfer or roll-over the relevant amount as soon as practicable and in any case within such period as is required by the Relevant Law.
- (c) If, after making the request for a transfer or roll-over under rule 18.1, the Member dies before the transfer or roll-over has been completed, the Trustee must complete the transfer or roll-over as requested provided that the nominated Approved Benefit Arrangement confirms it is able to accept the Roll-Over Superannuation Benefit.
- (d) If the Trustee is unable to complete the transfer or roll-over of the Roll-Over Superannuation Benefit to the nominated Approved Benefit Arrangement, the Trustee must hold the relevant amount together with any other amounts forming the Member's Benefit Entitlement in accordance with rule 22.
- (e) The receipt of a transfer or roll-over of a Roll-Over Superannuation Benefit by the proper officer of the Approved Benefit Arrangement will constitute a complete discharge of the Trustee of all liabilities in respect of the transferred or rolled-over amount and the Trustee has no responsibility to see to the application of the transferred or rolled-over amount.
- (f) On the transfer or roll-over of a Roll-Over Superannuation Benefit in respect of a Member under this rule 18 to an Approved Benefit Arrangement other than the Fund, all the rights and interest of that Member under these Rules (and all the rights and interest of any person otherwise entitled to claim in respect of the Member or on the occurrence of any event or circumstances affecting the Member) in respect of the amount transferred or rolled-over are entirely extinguished.

19 **PAYMENT OF BENEFITS**

19.1 **Payments subject to the Relevant Law**

Despite any provision in the Deed, the Trustee must not make any payments under the Deed if such payment would cause the Fund to breach the Relevant Law.

19.2 **Requests for payment**

Except as otherwise determined by the Trustee, a Beneficiary may provide a written request for payment of a Benefit subject to rule 19.1 (prior to the commencement of any payment of the Benefit to the Beneficiary) which states the amount and form of payment of the Benefit subject to the requirements of the Relevant Law.

19.3 **Payment of Benefits**

Unless otherwise required or prohibited under the Relevant Law, the Trustee may at the written request of a Beneficiary pursuant to rule 19.2 or in any other circumstances acceptable to the Trustee determine to pay a Benefit to the Beneficiary in the form of one or more lump sums, Income Streams, a combination of those, or any other form of payment permitted by Law if a Prescribed Event has been satisfied in respect of the relevant Member and provided the Trustee complies with any cashing restrictions that apply to that Benefit under the Relevant Law.

19.4 **Non-payment of Benefits**

The Trustee shall have the discretion to refuse a request made by a Beneficiary in accordance with rule 19.2 unless otherwise prescribed by Law, however the Trustee must not pay out to a Member or Beneficiary any Preserved Benefits that the Trustee is not permitted to pay out under the Relevant Law.

19.5 **Benefits to be Retained in the Fund**

In the event that a Member or Beneficiary becomes entitled to be paid a Benefit then, unless otherwise required by Law, the Trustee has the discretion to retain all or part of the Benefit in the Fund until one of the following occurs:

- (a) the Member or Beneficiary dies, in which case it must be paid in accordance with rule 22;
- (b) the amount is required to be paid under the Relevant Law; or
- (c) the Trustee elects in its absolute discretion, but always in accordance with the Relevant Law, to pay the Benefit to the Member or Beneficiary.

19.6 **Compulsory payments**

The Trustee is required to cash or commence payment of a Member's Benefits as soon as practicable after any of the following events occur:

- (a) the Member dies, in which case payment shall be made in accordance with rule 22;
- (b) the entitlement has vested in accordance with the Relevant Law; or
- (c) the Benefit is required to be paid under the Deed or otherwise to comply with the Relevant Law.

19.7 **Tax on Benefit**

The Trustee or, with the agreement of the Trustee, any other appropriate organisation, may deduct any Tax that is payable, and/or the Trustee is required to withhold (or such Taxation as the Trustee considers is required to be deducted), in relation to a Benefit before that Benefit is paid to any Member or Beneficiary.

19.8 **Transfer of assets as payments of a Benefit**

If a Member or Beneficiary is entitled to be paid a Benefit then, instead of paying or transferring cash, to the extent permitted under the Relevant Law, the Trustee has the discretion to transfer assets of the Fund in-specie of equivalent value to that Member or Beneficiary.

19.9 **Transfer of Insurance Policy**

If a Benefit that is payable to a Member or a Beneficiary includes any interest in a Policy on the life of the Member or Beneficiary:

- (a) the Policy may be transferred, at the Trustee's discretion, to the Member or Beneficiary;
- (b) the Trustee may debit the value of the Policy to the relevant Accumulation Account or Pension Account; and
- (c) the Trustee will not be liable for any further payment of premiums in relation to the Policy.

19.10 **Overpayment of Benefits**

If an overpayment of any Benefit is made to or in respect of a Member, the Trustee may, subject to the Relevant Law, recover any such overpaid amounts or take any other measures to rectify the overpayment as the Trustee sees fit including reducing the Member's future payments or existing Benefits.

19.11 **Other adjustments when membership ceases**

If a Member ceases to be a Member of the Fund, the Trustee may pay in relation to that Member, in addition to amounts otherwise payable under the Deed, an amount from the Equalisation Account which the Trustee considers appropriate, or may make any other adjustments to the payment as are necessary in the opinion of the Trustee, provided that the Member's Benefit shall not be reduced below the amount required to be vested in the Member under the Relevant Law.

19.12 **Requested Benefits**

Where a Member or Beneficiary who has become entitled to receive a Benefit has requested payment of the whole or part of his or her Benefit Entitlement as a Superannuation Lump Sum and, after the Trustee has accepted the request but before payment has been made by the Trustee, the Member dies, the Trustee may, subject to the Relevant Law, in its absolute discretion pay that Benefit either:

- (a) as being Vested Benefits held in trust for the Member prior to the death of that Member; or
- (b) in accordance with the provisions of rule 22, and

the receipt by the Legal Personal Representative of the deceased Member of Vested Benefits paid under this rule 19.12 is a complete discharge of the Trustee in respect of any amount payable to that person and the Trustee is not bound to see to the application thereof.

20 **PENSIONS AND INCOME STREAMS**

20.1 **Payments of a Pension**

Subject to rule 22.14(a) and rule 20.8, but otherwise notwithstanding any other provision of the Deed, at such time as a Member or Beneficiary is entitled to have their Benefit paid in the form of a Pension under the Deed and pursuant to the Relevant Law, the Trustee may at the request of the Member or Beneficiary and on such terms as the Trustee and Member or Beneficiary may agree but otherwise on such terms as the Trustee determines if the Member or Beneficiary is under a legal disability, then the following rules shall apply:

- (a) the Trustee may pay the Member any form of Pension permitted by the Relevant Law, and may pay more than one Pension;
- (b) any Pension must be paid by the Trustee in accordance with the Fund's governing rules (which include the Deed and, if necessary, any prior deed if the Pension was commenced prior to the adoption of these Rules), trustee resolutions and any 'Pension Agreement'

between the Trustee and the Member ('**Pension Agreement**') (or where applicable a pension notification made by the Trustee) with respect to the commencement or operation of that Pension;

- (c) the quantum of any Pension payment shall be within the sole discretion of the Trustee, subject to the Relevant Law; and
- (d) all relevant provisions prescribed by the Relevant Law with which the Fund or the Trustee must comply in respect of a Pension shall apply to the Pension including any condition, standard or requirement of the Relevant Law which is required to be satisfied in order for the Pension to qualify as a pension (or as a particular type of pension) under the Relevant Law.

20.2 **Discharge of Trustee's liability under a Pension**

Where Member is entitled to receive an instalment of Pension and the Member's Pension Account has an outstanding credit that is less than the instalment payable, the liability of the Trustee in respect of the Pension payment shall be discharged upon the Trustee paying the remaining balance in the Member's Pension Account to the Member.

20.3 **Annuities**

Where a Benefit is payable as a Pension to a Member or Beneficiary, then notwithstanding any other provision of this rule 20, an Annuity or Annuities may be purchased by the Trustee in its name which represents the capital value of the Benefit, and payments from the Annuity can then be made directly to the Member or the whole Annuity may be assigned to the Member upon request by the Member but subject to the Relevant Law to provide to the Member or Beneficiary the right to one or more income streams payable from the Annuity provider of one or more of the kinds referred to in rule 20.7:

- (a) in lieu of the whole or a portion of any lump sum Benefit which is otherwise payable to the Member or Beneficiary; or
- (b) in respect of any amounts credited to the Pension Account of a Member under rule 8.4, provided that the payment, purchase or acquisition of the Pension, Pensions, Annuity or Annuities will not cause the Retirement Phase interests of the Member or Beneficiary to exceed their Personal Transfer Balance Cap.

20.4 **Reversionary Beneficiaries**

- (a) A Pensioner may, at any time whether before or after the commencement of a Pension, nominate a Reversionary Beneficiary to continue receiving that Pension following the death of the Pensioner.
- (b) Notwithstanding any other provision of these Rules but subject to rule 21(e) and the Relevant Law, where a Member has nominated a Reversionary Beneficiary, then following the Member's death, the Trustee must act in accordance with the Reversionary Pension Nomination and the Pension will automatically continue to be paid to the nominated Reversionary Beneficiary following the death of the Member provided the payment is permitted by the Relevant Law.

- (c) For the avoidance of doubt, and as also provided under rule 22.7, in respect to a Pension to which a Reversionary Pension Nomination applies at the time of a relevant Pensioner's death, the Reversionary Pension Nomination shall override a Binding Death Benefit Nomination and any Non-Binding Death Benefit Nomination which would otherwise apply to that Pension.

20.5 **Inconsistencies**

If there is any inconsistency between any provision or requirement of a Pension Agreement and:

- (a) any other provision or requirement of the Deed, then subject to the Relevant Law the provision or requirement contained in the Pension Agreement shall prevail; or
- (b) any relevant provision or requirement under the Relevant Law, then the provision or requirement under the Relevant Law shall prevail,

to the extent of that inconsistency.

20.6 **Variation to a Pension**

The Trustee may vary a Pension from time to time provided that the variation complies with:

- (a) any relevant requirement under the Relevant Law;
- (b) any Pension Agreement applicable to the Pension; and
- (c) any ongoing actuarial advice required to be obtained or maintained in respect of the Pension.

20.7 **Choice of Pension**

For the purposes of rule 20.1 the Member or Beneficiary may request the Trustee to pay and the Trustee may pay a Pension or Pensions in any of the following ways:

- (a) one or more Account-Based Pensions in accordance with the relevant conditions set out in rule 20.9;
- (b) one or more Transition to Retirement Income Streams in accordance with the relevant conditions set out in rule 20.10;
- (c) one or more Market Linked Pensions in accordance with the relevant conditions set out in rule 20.11; or
- (d) if the Relevant Law permits, the Trustee may, at the request of a Member or Beneficiary, pay from the Fund or purchase for the benefit of the Member or Beneficiary any type of Pension other than those types of Pensions referred to elsewhere in these Rules, which type of Pension is acceptable to the Statutory Authority and is permitted under the Relevant Law, on such terms required under the Relevant Law, or on such terms as are permitted under the Relevant Law and as the Trustee and Member or Beneficiary may agree.

20.8 **Reversionary Pension Nomination**

- (a) For the purposes of rule 20.1, the Member or Beneficiary Pensioner, or their Legal Personal Representative, may Provide to the Trustee a Reversionary Pension Nomination in respect of one or more Pensions, nominating the Reversionary Beneficiary or

Beneficiaries to whom each Pension will continue to be paid following the death of the Pensioner.

- (b) For the avoidance of doubt, the Reversionary Pension Nomination in respect of one or more Pensions may contain the nomination of a proportion, or part of a Pension or Pensions, rather than be limited to the total, of such Pensions, and any proportion not so nominated will on the death of the Member be applied in accordance with rule 22 as if the Member had not Provided a Reversionary Pension Nomination in respect of that or those Pensions or parts thereof.
- (c) A Reversionary Pension Nomination, will bind the Trustee to act in accordance with the directions contained in the Reversionary Pension Nomination provided that the person or persons nominated are one or more of the Dependants of the Pensioner at the death of the Pensioner and/or are eligible to be paid a Benefit in the form of a Pension under the Relevant Law.
- (d) A Reversionary Pension Nomination may be Provided to the Trustee prior to commencement of the Pension or, where applicable, during the course of the Pension but in any case must be Provided prior to the death of the Pensioner.
- (e) Subject to the provisions of this rule 20.8, a Reversionary Pension Nomination may be withdrawn, amended or replaced by the Pensioner or their Legal Personal Representative in writing at any time during the course of the Pension but prior to the death of the Pensioner and, if not withdrawn, amended or replaced the Reversionary Pension Nomination will continue in force for the duration of the Pension or Pensions to which it applies.

20.9 Account-Based Pension

(a) Payment Conditions

Where an Account-Based Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (i) the Account-Based Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (ii) the Account-Based Pension must be paid at least annually, unless otherwise permitted under the Relevant Law;
- (iii) the amount of the Account-Based Pension paid in any year will be such amount as may be nominated by the Pensioner and notified to the Trustee, either verbally or in writing, or by Electronic Communication, from time to time, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum and minimum limits by the Trustee, or specified by the Relevant Law for the payment of an Account-Based Pension;
- (iv) if the Trustee does not receive a nomination from the Pensioner as to the amount of the Account-Based Pension to be paid in a particular year then the Trustee may pay such amount as it determines, provided that the amount must not be greater than or

- lesser than the amounts calculated as the maximum and minimum limits specified by the Trustee, or specified by the Relevant Law for the payment of an Account-Based Pension;
- (v) the Account-Based Pension cannot be transferred to any person other than a Reversionary Beneficiary on the death of the Pensioner, or on the death of a Reversionary Beneficiary, or on such other terms as are permitted by the Relevant Law;
 - (vi) the capital value of the Account-Based Pension and the income from it cannot be used as security for a borrowing; and
 - (vii) where the Relevant Law identifies matters that are immaterial for determining whether an Account-Based Pension meets the standards set by the Relevant Law, the Trustee will also treat such matters as immaterial.
- (b) **Death**
- (i) If a Pensioner dies while in receipt of an Account-Based Pension under these Rules, the Trustee must commence to pay the Account-Based Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
 - (ii) In the event of the death of a Pensioner in respect of an Account-Based Pension while there is an amount standing to the credit of the Pensioner's Pension Account, and where:
 - (A) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee; or
 - (B) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,
 - (iii) the balance of such Pension Account must be dealt with in accordance with rule 22.
- (c) **Commutation**
- (i) The Trustee:
 - (A) may on its own initiative or on receipt of a written application from a Pensioner commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Account-Based Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and
 - (B) must commute the whole or any part of an Account-Based Pension that is payable from the Fund to the Pensioner in compliance with an Excess

Transfer Balance Determination or otherwise where the Relevant Law so requires.

- (ii) The Trustee must:
 - (A) where the entire Pension is being commuted at the request of a Pensioner, ensure that the minimum amount in respect of the Pension required under the Relevant Law, has been paid or will be paid on or by the date of commutation; or
 - (B) where the commutation is a partial commutation, ensure that the minimum amount in respect of the Pension required under the Relevant Law, has been paid or will be paid by the end of the relevant Fund Year; and
 - (C) pay the proceeds of the commutation in respect of the Account-Based Pension being commuted to the relevant Pensioner or, where the commutation has been effected on the death of the Pensioner, in accordance with rule 22; or
 - (D) at the request of the Pensioner or otherwise in compliance with an Excess Transfer Balance Determination retain the proceeds of that commutation in the Fund and apply them to the credit of an Accumulation Account on behalf of the Pensioner.

20.10 Transition to Retirement Income Stream

(a) Request to pay

Upon a Member attaining their Preservation Age, the Trustee may, at the request of a Member, pay from the Fund a Transition to Retirement Income Stream:

- (i) in the Accumulation Phase; or
- (ii) if the Member has satisfied a Condition of Release with a Nil Cashing Restriction, in the Retirement Phase,

on the conditions set out in rules 20.10(b) and 20.10(c) and otherwise, subject to the Relevant Law, on such terms as the Trustee and Member may agree.

(b) Compliance with Relevant Law

The Trustee may only pay a Transition to Retirement Income Stream to a Member in either the Accumulation Phase or the Retirement Phase in accordance with the Relevant Law.

(c) Method of Payment and Security

Where a Transition to Retirement Income Stream is payable from the Fund, the conditions set out in rule 20.9(a) will apply and the following additional conditions will apply in relation to its payment when in the Accumulation Phase:

- (i) the total payments (including under a Payment Split) made in respect of the Transition to Retirement Income Stream in a Financial Year shall not exceed any maximum payment amount specified for these purposes in SIS;

- (ii) where the Transition to Retirement Income Stream is commuted in accordance with these Rules and the Relevant Law, the resulting Superannuation Lump Sum must not be cashed unless:
 - (A) the purpose of the commutation is a purpose which is acceptable under the Relevant Law; or
 - (B) before the commutation, the Pensioner has satisfied a Condition of Release with a Nil Cashing Restriction; and
 - (C) where the entire Transition to Retirement Income Stream is being commuted, the minimum amount in respect of the Pension required under the Relevant Law has been paid or will be paid on or by the date of commutation; or
 - (D) where the commutation is a partial commutation the minimum amount in respect of the Pension required under the Relevant Law has been paid or will be paid by the end of the relevant Fund Year.

(d) **Condition of Release**

Where a Pensioner in receipt of payments under a Transition to Retirement Income Stream in the Accumulation Phase:

- (i) reaches age 65, the Transition to Retirement Income Stream will become a Retirement Phase Transition to Retirement Income Stream at that time; or
- (ii) has satisfied a Condition of Release with a Nil Cashing Restriction, other than reaching age 65, and the Member notifies the Trustee of that fact, from which time the Transition to Retirement Income Stream will become a Retirement Phase Transition to Retirement Income Stream,

the additional conditions set out in rule 20.10(c) will cease to apply.

(e) **Death**

- (i) If a Pensioner dies while in receipt of a Transition to Retirement Income Stream under these Rules, the Trustee must continue to pay the Transition to Retirement Income Stream in the Retirement Phase to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.
- (ii) In the event of the death of a Pensioner in respect of a Transition to Retirement Income Stream while there is an amount standing to the credit of the Pensioner's Pension Account, and where:
 - (A) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee; or
 - (B) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who

is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,

the balance of such Pension Account must be dealt with in accordance with rule 22.

20.11 **Market Linked Pension**

(a) **Method of Payment and Security**

Where a Market Linked Pension is payable from the Fund, the following conditions will apply in relation to its payment:

- (i) the Market Linked Pension must be paid from the amount standing to the credit of the Pensioner's Pension Account;
- (ii) the Market Linked Pension must be paid at least annually to the Pensioner throughout a period permitted by the Relevant Law;
- (iii) the amount of the Market Linked Pension in any year must be determined in accordance with the Relevant Law for the payment of a Market Linked Pension;
- (iv) the Pensioner may nominate to the Trustee, either verbally or in writing, or by Electronic Communication, from time to time the amount of the Market Linked Pension to be paid in any year provided such amount falls within the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of a Market Linked Pension;
- (v) if the Trustee does not receive a nomination from the Pensioner as to the amount of the Market Linked Pension to be paid in a particular year then the Trustee may pay such amount as it determines, provided that the amount must not be greater than or lesser than the amounts calculated as the maximum (if any) and minimum (if any) limits specified by the Relevant Law for the payment of a Market Linked Pension;
- (vi) the Market Linked Pension does not and will not have a residual capital value;
- (vii) if the Market Linked Pension reverts, it will not have a reversionary component greater than 100% of the Benefit payable before the reversion;
- (viii) the Market Linked Pension cannot be transferred to any person other than on the death of the Pensioner to one of his or her Dependants or to the Legal Personal Representative of the Pensioner; and
- (ix) the capital value of the Market Linked Pension and the income from it cannot be used as security for a borrowing.

(b) **Death**

- (i) If a Pensioner dies while in receipt of a Market Linked Pension under these Rules, the Trustee must commence to pay the Market Linked Pension to any Reversionary Beneficiary of the Pensioner who is a Dependant of the Pensioner at the time of death of the Pensioner, and who is a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law. Payments to the Reversionary Beneficiary are to be calculated in accordance with the Relevant Law.

- (ii) In the event of the death of a Pensioner in receipt of a Market Linked Pension while there is an amount standing to the credit of the Pensioner's Pension Account, and where:
 - (A) no Reversionary Beneficiary has been nominated by the Pensioner or determined by the Trustee, or
 - (B) the Reversionary Beneficiary nominated by the Pensioner is not a Dependant of the Pensioner at the time of death of the Pensioner, or is not a person who is eligible to be paid a Benefit in the form of a Pension under the Relevant Law,
 the balance of such Pension Account must be dealt with in accordance with rule 22.

(c) **Commutation**

- (i) The Trustee:
 - (A) may on its own initiative or on receipt of a written application from the Pensioner commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law permits the commutation of that Market Linked Pension, on and subject to such terms and conditions as apply to the commutation under the Relevant Law; and
 - (B) must commute the whole or any part of a Market Linked Pension that is payable from the Fund to the Pensioner where the Relevant Law so requires.
- (ii) The Trustee must pay the proceeds of the commutation in respect of the Market Linked Pension being commuted in a manner permitted under the Relevant Law.
- (iii) Following the commutation of a part of a Market Linked Pension, the Trustee may, in its absolute discretion, reduce the total amount of the instalments of any Market Linked Pension payable to the Pensioner. Any reduction is to be of such an amount as the Trustee considers appropriate.

21 **COMMUTATION OF PENSIONS**

- (a) On the written application of a Member, Dependant or Beneficiary, the Trustee may commute the whole or any part of a Pension payable from the Fund to the Member, Dependant or Beneficiary, as the case may be, provided that the commutation would not cause the Trustee or the Fund to breach the Relevant Law.
- (b) Notwithstanding any other provisions of the Deed but subject to rule 21(e) and the Relevant Law, the commutation of the whole or part of a Pension payable from the Fund in accordance with rule 21(a) shall have the effect of discharging the Trustee's liability to a Member, Dependant or Beneficiary in respect of the amount of the Pension that has been commuted.
- (c) Subject to the Relevant Law, the Trustee may apply the amount of the commuted Pension by either:

- (i) retaining the amount in the Fund as a credit to an Accumulation Account for the Member, Dependant or Beneficiary; or
 - (ii) paying the amount as a Benefit in the form of a lump sum or other form of Pension in accordance with the Deed.
- (d) If part of a Pension is commuted, the Trustee may, subject to the Relevant Law, reduce the total amount of the instalments in respect of the balance of the Pension payable to the Member, Dependant or Beneficiary by an amount that the Trustee considers appropriate.
- (e) If rule 20.4(b) applies, the Trustee may only commute a Pension under this rule 21 if required by Law or to comply with any applicable cap imposed on Pensions by the Relevant Law (including a transfer balance cap for the purposes of the Taxation Legislation), or as otherwise directed by a Statutory Authority or by the Pensioner.

22 DEATH BENEFITS

22.1 Binding Death Benefit Nominations

- (a) A Member may Provide to the Trustee a Binding Death Benefit Nomination nominating a person or persons that are Dependants, Legal Personal Representatives of the Member, the trustee of one or more Superannuation Proceeds Trusts or such other eligible person(s) under the Relevant Law, to receive any Benefits payable upon the death of the Member in such proportions, manner and form specified (if any) in the Binding Death Benefit Nomination or Nominations.
- (b) A Binding Death Benefit Nomination may be revoked in accordance with rule 22.8.
- (c) A Binding Death Benefit Nomination will not lapse by reason only of the passage of time.
- (d) A Binding Death Benefit Nomination will be valid and binding on the Trustee if it:
- (i) is in writing;
 - (ii) states that it is a Binding Death Benefit Nomination (or otherwise makes it clear that it is a direction to the Trustee regarding the payment of the Member's Benefits after their death that is to be binding on the Trustee);
 - (iii) is signed, and dated, by the Member in the physical presence of two witnesses, being persons:
 - (A) each of whom has turned 18 years and is not under a legal disability; and
 - (B) neither of whom is a person mentioned in the Binding Death Benefit Nomination and neither of whom are Dependants nominated in the Binding Death Benefit Nomination, nor Legal Personal Representatives of the Member;
 - (iv) contains a declaration signed and dated by the two witnesses stating that the Binding Death Benefit Nomination was signed by the Member in their presence;
 - (v) be received on behalf of the Trustee:
 - (A) where the Trustee is comprised of Individual Trustees, by at least one Individual Trustee; or

- (B) where the Trustee is a Constitutional Corporation, by at least one Director of the Trustee or at the registered address of the Trustee,

including by the relevant Member acting as either an Individual Trustee or Director of the Trustee; and

- (vi) be Provided to the Trustee:

- (A) during the lifetime of the Member; or

- (B) as soon as practicable following the death of the Member,

provided that, if the Trustee has commenced to pay Benefits arising on the death of the Member before presentation of the Binding Death Benefit Nomination to the Trustee, such payment or payments, so long as they are made in accordance with these rules, will not be required to be reclaimed by the Trustee and will be treated as if that payment or those payments were excluded from the Binding Death Benefit Nomination.

- (e) For the avoidance of doubt, a Binding Death Benefit Nomination:

- (i) does not need to meet the requirements of regulation 6.17A of the SIS Regulations to be binding on the Trustee;

- (ii) will not apply to Benefits to which rule 21(c)(ii) relates (any portion of a Commuted Pension which has been paid as a lump sum);

- (iii) will not apply to a Reversionary Pension and/or Benefits to which rule 20.4(b) relates;

- (iv) may be provided to the Trustee(s) during the member's lifetime or as soon as practicable after the Members' death;

- (v) if the Trustee has commenced to pay Benefits arising on the death of the Member before presentation of the Binding Death Benefit Nomination to the Trustee, such payment or payments, so long as they are made in accordance with these rules, will not be required to be reclaimed by the Trustee and will be treated as if that payment or those payments were excluded from the Binding Death Benefit Nomination; and

- (vi) subject to the Relevant Law and the Proper Law, a Binding Death Benefit Nomination may be signed by the Legal Personal Representative of a Member on behalf of that Member provided that, if the completion of the Binding Death Benefit Nomination by the Legal Personal Representative would be a Conflict Transaction, the document or documents under which the Legal Personal Representative has been appointed to act in that capacity contains authorisation to the Legal Personal Representative to act despite the transaction being a Conflict Transaction.

- (f) If a Binding Death Benefit Nomination states that some or all of the Benefits are to be paid to the Member's estate (or the trustee of their estate), this shall be taken to be a binding direction that the Benefits must be paid to their Legal Personal Representative.

- (g) Subject to rule 22.8, a subsequent Binding Death Benefit Nomination made by a Member replaces any previous Binding Death Benefit Nomination or Non-Binding Death Benefit Nomination made by that Member.
- (h) The manner or form specified in the Binding Death Benefit Nomination may, without limitation, include requirements that a portion of the Benefits be paid as one or more lump sums, including by transfer of nominated assets in-specie to one or more specified Beneficiaries where the asset is held specifically on the Member's behalf (or where the Deed or circumstances otherwise permit), or as one or more Pensions, including requirements as to the terms and conditions of such Pensions.
- (i) A Binding Death Benefit Nomination may contain directions concerning the payment of Benefits in the event that a nominated Dependant is not living at the death of the Member, is living but is not a Dependant of the Member on the death of the Member or, for some other reason, is unable to receive their nominated entitlement.

22.2 Payment of Death Benefits where there is a Binding Death Benefit Nomination

Subject to rules 21, 22.7 and 20.4, if a valid Binding Death Benefit Nomination has been made by a Member in accordance with rule 22.1, the Trustee must pay any Benefit following the death of the Member to any person or persons named, and in the manner and the proportions specified (if any), in that nomination.

22.3 Invalid or Ineffective Binding Nomination

- (a) A Binding Death Benefit Nomination will not fail in its entirety by virtue of the fact that a portion of the instructions contained in the Binding Death Benefit Nomination cannot be reasonably followed by the Trustee.
- (b) Any portion of a Binding Death Benefit Nomination which cannot be reasonably followed by the Trustee shall be distributed by the Trustee in accordance with this Deed as if no Binding Death Benefit Nomination existed in respect of that portion of the Benefits of the deceased Member.

22.4 Form of Non-Binding Death Benefit Nominations

A Member may provide the Trustee with a Non-Binding Death Benefit Nomination that is in writing and in a form approved by the Trustee or in such other form as prescribed or approved, or otherwise accepted, by the Trustee which names one or more Dependents or Legal Personal Representatives as the desired recipients of any Benefits payable in respect of that Member following the death of that Member and may also nominate the proportions and manner of such payment. A Non-Binding Death Benefit Nomination will not lapse by reason only of the passage of time.

22.5 Payment method for Non-Binding Nominations

Subject to rules 22.2 and 20.4(b) and the Relevant Law, where no binding death benefit instrument binds the Trustee (including where a Non-Binding Death Benefit Nomination has been Provided by a Member to the Trustee in accordance with rule 22.4), the Trustee shall pay, in such proportions as the Trustee determines in its absolute discretion, any Benefit following the death of the Member to:

- (a) any person or persons named in the most recent Non-Binding Death Benefit Nomination of the Member;
- (b) any other Dependants or the Legal Personal Representative of that Member; or
- (c) if no person under rules 22.5(a) and 22.5(b) can be located, any other person or entity that the Trustee is permitted to pay the Benefit to under the Relevant Law,

and such payment can be made in any manner or on any terms determined by the Trustee in its absolute discretion including by way of, but not limited to, one or more Annuities, Income Streams, lump sums or any combination of such methods of payment.

22.6 No Binding Nomination or Reversionary Pension Nomination

Subject to rules 22.2 and 20.4(b) and the Relevant Law, in the event that a Member dies and there is either the absence of any valid Binding Death Benefit Nominations or Reversionary Pension Nominations, or such nomination or nominations exist but they do not deal with the full amount of the Member's Benefit, then any portion of such Benefit that is not dealt with by an existing and valid Binding Death Benefit Nomination or Reversionary Pension Nomination shall be paid by the Trustee in accordance with rule 22.5.

22.7 Reversionary Pension and Death Benefit Nominations

A Binding Death Benefit Nomination and any Non-Binding Death Benefit Nomination will not apply to Benefits which are being paid to a Member at the time of death of the Member in the form of a Reversionary Pension, to the extent that the Trustee is required under the Deed to pay such Pension to a Reversionary Beneficiary of the Member who is, at the time of death of the Member, a person who is eligible to be paid a Benefit in the form of a Reversionary Pension under the Relevant Law.

22.8 Revocation or Amendment of Binding Death Benefit Nominations

- (a) A Member may by notice in writing Provided to the Trustee at any time revoke a Binding Death Benefit Nomination, which revocation must be signed and witnessed in the same manner as described in rule 22.1(d)(iii).
- (b) Subject to rule 22.8(c), a Member may at any time Provide to the Trustee a subsequent Binding Death Benefit Nomination, and the receipt of such subsequent nomination shall, unless the subsequent Binding Death Benefit Nomination contains instructions to the contrary, revoke any prior Binding Death Benefit Nomination Provided to the Trustee by that Member.
- (c) Where a Member Provides to the Trustee a Non-Binding Death Benefit Nomination in relation to the same Benefits of the Member that are covered under a Binding Death Benefit Nomination which was Provided to the Trustee by that Member on an earlier date ("**Prior BDBN**"), then the Non-Binding Death Benefit Nomination will be overridden by the Prior BDBN and that Non-Binding Death Benefit Nomination will have no effect unless the Prior BDBN is revoked.

22.9 **Benefit Payments**

On the death of a Member the Trustee must pay the full amount standing to the credit of the Member's Accumulation Account as at the date on which payment is made in accordance with the provisions of this rule 22.

22.10 **Interim Benefit Payment**

Where a Dependant or Legal Personal Representative of a Member is to receive any Benefit from the Fund, the Trustee may pay the Benefit, subject to the Relevant Law, in the form of one or more interim lump sums and a final lump sum.

22.11 **Settlement of Superannuation Proceeds Trust**

On the death of a Member the Trustee must, if required by a Binding Death Benefit Nomination Provided by the Member to the Trustee or, if the Member had not Provided a Binding Death Benefit Nomination to the Trustee, at the discretion of the Trustee to pay Benefits in respect of some or all of the Dependants of a deceased Member by way of settlement on the trustee or trustees of one or more Superannuation Proceeds Trusts, either in existence or to be established by the Trustee for the purposes of receiving and holding those Benefits.

22.12 **Discharge of Trustee**

The receipt by a Dependant, the Legal Personal Representative, Relative or other person, including the trustee of a Superannuation Proceeds Trust, of a Benefit paid under this rule 22 is a complete discharge of the Trustee in respect of any amount paid to that person and the Trustee is not bound to see to the application thereof.

22.13 **Disclaimer of Benefit**

A Dependant or any other person nominated by a deceased Member to receive a Benefit under this rule 22 may disclaim that Benefit. In that event, the Trustee will pay or apply the disclaimed Benefit to or for the benefit of one or more of the Member's Dependants and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee, in its discretion, and taking into account the provisions of any Binding Death Benefit Nomination or Non-Binding Death Benefit Nomination Provided by the deceased Member to the Trustee, shall determine.

22.14 **Payments to Dependants, Legal Personal Representatives or Other Persons**

On the death of a Member the Trustee must:

- (a) if required by a Reversionary Pension Nomination in respect of one or more Pensions payable to the Member, Provided by the Member to the Trustee at or about the commencement of the Pension or Pensions or during the course of the Pension or Pensions, to the extent nominated by the Member, or a Binding Death Benefit Nomination Provided by the Member to the Trustee, pay or apply the Benefit in accordance with that Reversionary Pension Nomination or Binding Death Benefit Nomination subject to rule 20.4(c) and rule 22.7; and
- (b) if the Member had not Provided a Reversionary Pension Nomination or a Binding Death Benefit Nomination to the Trustee, or to the extent that a Reversionary Pension Nomination is limited in the amount of Pension to be applied for the benefit of a

- Reversionary Beneficiary, or to the extent that a Reversionary Pension Nomination or a Binding Death Benefit Nomination Provided by the Member to the Trustee is not in effect or cannot be given effect under the Relevant Law, pay or apply the remaining Benefit to or for the benefit of one or more of the Member's Dependants and Legal Personal Representative in such proportions, form, manner and at such times as the Trustee, in its discretion, and taking into account the provisions of any Non- Binding Death Benefit Nomination Provided by the Member to the Trustee, determines from time to time; and
- (c) if, when ascertaining the Member's Dependants, the potential Dependants include one or more Spouses, the Trustee may apply the tests set down in section 4AA of the Relevant Family Law, in its absolute discretion, to determine whether the deceased Member had been living with any of those potential Spouses as a couple on a genuine domestic basis; and
- (d) if there are no Dependants and there is no Legal Personal Representative:
- (i) pay or apply the Benefit for the benefit of such Relatives of the Member or other persons as the Trustee determines, in such proportions, form, manner and at such times as the Trustee determines; or
 - (ii) if there are no such Relatives or other persons, deal with the Benefit as though it were a forfeited benefit in accordance with rule 23, or as otherwise required under the Relevant Law.

23 FORFEITURE OF BENEFITS

23.1 Forfeiture Account

The Trustee may establish and maintain a Forfeiture Account of the Fund into which the Trustee may transfer any amounts forfeited in accordance with the Deed or the *Bankruptcy Act 1966* (Cth), provided this is in accordance with the Relevant Law. Any money held in the Forfeiture Account shall not form part of any other Account and any income derived from this money shall be credited to the Forfeiture Account.

23.2 Events of Forfeiture

Subject to the Relevant Law, Benefits payable out of the Fund must be forfeited in the event of any of the following:

- (a) the person's interest in a Benefit Entitlement becomes payable to or vested in another person or Statutory Authority;
- (b) without the prior approval of the Trustee, the person assigns or charges, or attempts to assign or charge, all or any part of a Benefit Entitlement except in accordance with the Relevant Law;
- (c) the person becomes insolvent or commits an act of bankruptcy under the *Bankruptcy Act 1966* (Cth);
- (d) the Trustee determines that the person is incapable of managing their affairs; or
- (e) the Trustee determines that the person is guilty of fraud or dishonesty.

23.3 **Lost Members**

Subject to the Relevant Law, if a Trustee after making reasonable enquiries is unable to locate the whereabouts of a Member or any other person entitled to the Member's Benefit, then any Benefit standing to the credit of the Member may be treated as unclaimed and transferred to the Forfeiture Account.

23.4 **Payment of forfeited Benefits**

Subject to the Relevant Law, any Benefits forfeited pursuant to this rule 23 shall be applied by the Trustee in any one or more of the following ways as the Trustee determines in its discretion:

- (a) to or for the benefit of the relevant person or its Dependants in any proportions determined by the Trustee;
- (b) to the trustee of the relevant Member's estate;
- (c) to the Equalisation Account (if any);
- (d) to any other Member or Dependant where permitted by the Relevant Law; and
- (e) to any other person or entity approved in writing by the Statutory Authority;
- (f) to or for the benefit of the Member who forfeited the amount (as the case requires) or to the Dependants of the Member to assist in the event of financial hardship, sickness, accident or other misfortune causing hardship;
- (g) to or for the benefit of other Members or their Dependants who have rights to receive Benefits from the Fund;
- (h) for the provision to other Members or their Dependants of additional Benefits on a basis that does not breach the Relevant Law and is reasonable having regard to all the circumstances;
- (i) for crediting to a Reserve Account to be applied in accordance with rule 11;
- (j) for any other purpose approved in writing by the Statutory Authority,

provided that the Trustee may only apply amounts which have been forfeited in such circumstances, in such manner and at such times as are in accordance with the Relevant Law and which occur during the Member's lifetime. For the purposes of this rule 23.4, Member includes a former Member.

24 **FAMILY LAW**

24.1 **Payment Splits**

If the Trustee receives a Superannuation Agreement or is served with a court order for a Payment Split in relation to a Member's Benefit or Benefit Entitlement then, subject to the Law:

- (a) the Trustee may:
 - (i) vary the relevant Member's Benefit or their entitlement in accordance with such agreement or order to the extent permitted by Law; and
 - (ii) make a payment to, or transfer in relation to, a Non-Member Spouse in accordance with rule 24.3; and
- (b) the Trustee must provide the Member and the Non-Member Spouse with all notices and information required under the Law.

24.2 Admission of Non-Member Spouse as a Member

- (a) Where the Trustee receives a request from a Non-Member Spouse in a form approved by the Trustee, or it is otherwise determined by the Trustee in accordance with the Law, the Trustee has the discretion to admit a Non-Member Spouse in respect of a Payment Split as a Member, but the Trustee shall not admit the Non-Member Spouse as a Member if the Trustee determines that to do so would be detrimental to the Fund or the Existing Members of the Fund.
- (b) In the event that:
 - (i) the Trustee admits a Non-Member Spouse as a Member under this rule 24.2; or
 - (ii) the Spouse is already a Member of the Fund,
 the Benefit Entitlement of the Member in respect of the Payment Split shall be reduced by the amount required by Law or as determined by the Trustee, subject to the Law, and applied to the Member Account of the Spouse.
- (c) Subject to the Law, the Trustee has the discretion to refuse to admit a Non-Member Spouse as a Member of the Fund.

24.3 Payments or transfers for a Non-Member Spouse

If the Trustee does not admit the Non-Member Spouse as a Member, the entitlements relating to the Payment Split shall be treated as follows:

- (a) at the written request of the Non-Member Spouse, the Non-Member Spouse's entitlement will either be:
 - (i) transferred or rolled over to an Approved Benefit Arrangement; or
 - (ii) paid to the Non-Member Spouse if permitted under the Law; and
- (b) the Member's Benefit Entitlement in respect of the Payment Split will be reduced by the amount required by Law or determined by the Trustee pursuant to the Law.

The receipt by a Non-Member Spouse or an Approved Benefit Arrangement of the entitlement of a Non-Member Spouse pursuant to this rule 24.3 will sufficiently discharge the Trustee of its liability in respect that Non-Member Spouse and the Member in respect of that Non-Member Spouse for the relevant amount paid, transferred or rolled over.

24.4 Family Law fees

In relation to any action taken by the Trustee which is permitted or required by payment splitting arrangements under the Law, the Trustee may:

- (a) charge reasonable fees for any such action and recoup such fees from a Member's Benefit Entitlement or the entitlements of the Non-Member Spouse in accordance with the Law; and
- (b) deduct from any amount of entitlement of the Non-Member Spouse to be paid, transferred or rolled over in accordance with rule 24.3, the amount of any Tax that is calculated by the Trustee to be payable in respect of the entitlement,

and the powers under this rule 24.4 shall be in addition to any other powers of the Trustee under the Deed.

25 APPOINTMENT AND RETIREMENT OF TRUSTEE

25.1 Trustee Eligibility

- (a) At any time the Fund is a Self Managed Superannuation Fund, subject to rule 25.1(b) and rule 25.2, a person shall not be eligible to be a Trustee of the Fund, or a Director of a Trustee that is a body corporate, unless:
- (i) the person is not a disqualified person within the meaning of the SIS Act; and
 - (ii) if the Fund has only one member and the Trustee of the Fund is a body corporate:
 - (A) the Member is the sole director of the body corporate; or
 - (B) the Member is one of only two Directors of the body corporate, and the Member and the other Director are Relatives; or
 - (C) the Member is one of only two Directors of the body corporate, and the Member is not an Employee of the other Director; or
 - (iii) if the Fund has only one member and the Trustees of the Fund are individuals, the Member is one of only two Individual Trustees and:
 - (A) the other Trustee is a Relative of the Member; or
 - (B) the Member is not an Employee of the other Individual Trustee; or
 - (iv) if the Fund has more than one member and the Trustee is a body corporate, each Director of the body corporate is a Member; or
 - (v) if the Fund has more than one member and the Trustee is not a body corporate, each Individual Trustee is a Member of the Fund.
- (b) A person shall also be eligible to be a Trustee of the Fund, or a Director of a Trustee that is a body corporate, while it is a Self Managed Superannuation Fund if otherwise permitted by the Relevant Law, including, without limitation, if the alternative provisions outlined in section 17A(3) of the SIS Act allow persons other than those specified in sections 17A(1) and 17A(2) of the SIS Act to become a Trustee of the Fund, or a Director of a Trustee that is a body corporate, or if section 17A(4) allows the Fund to remain a Self Managed Superannuation Fund for a period of time.
- (c) At any time the Fund is a Self Managed Superannuation Fund, no Member of the Fund shall be employed by another Member of the Fund unless the Members concerned are Relatives.
- (d) A Fund with less than seven Members (or a higher number of Members if permitted under the Relevant Law) that is not a Self Managed Superannuation Fund must have a Trustee that is either:
- (i) approved by the Australian Prudential Regulation Authority (or any other relevant body or person responsible for the administration of superannuation funds other than Self Managed Superannuation Funds); or
 - (ii) a RSE Licensee within the meaning of section 10 of the SIS Act.

25.2 Appointment of Trustee

- (a) A person or persons may be appointed by a majority of Members, by way of deed or other written instrument, to act as Trustee of the Fund subject to the nominated person or persons providing their written consent to the appointment and any other requirements under the Relevant Law and the Members must take such steps as are necessary to appoint or remove the persons or body to or from the office of Trustee to ensure such compliance is maintained, provided that any obligation imposed on a deceased Member or a Member who is under a legal disability by this rule 25.2 shall be performed by the Legal Personal Representative of the relevant Member or, if there is no Legal Personal Representative or the Legal Personal Representative is unable or unwilling to act, then by the remaining Members.
- (b) Subject to the Relevant Law, in addition to a Member and a Constitutional Corporation, the following persons may be appointed to act as a Trustee of the Fund:
- (i) the Legal Personal Representative of:
 - (A) a deceased Member, from the date of the Member's death until the commencement of the payment of the Member's death Benefit; or
 - (B) a Member, during the time that person holds an enduring power of attorney in respect of the Member or whilst the Member has lost legal capacity;
 - (ii) the Legal Personal Representative or parent or guardian of a Member who is under a legal disability because of age; or
 - (iii) any other person if:
 - (A) they are permitted under the Relevant Law to be a trustee; and
 - (B) except in circumstances where rule 25.1(d) applies, the Fund would continue to comply with the requirements to be a Self Managed Superannuation Fund under the Relevant Law.
- (c) The Legal Personal Representative of a Member who has died or who has lost legal capacity, or a person who has been appointed as the Member's attorney under an enduring power of attorney, or a parent or guardian of a Member that is under the age of 18 years, may act and sign on behalf of that Member and exercise the Member's decision making power including in the appointment or removal of a Trustee and in consenting (if required or where applicable) to the variation of this Deed under rule 26.
- (d) In the event that:
- (i) there are no remaining Members in the Fund; and
 - (ii) no person has been conferred with the power to appoint a Trustee on behalf of the last Member of the Fund under this rule 25.2;
- then a Trustee may be appointed by the Legal Personal Representative of the last surviving Member that had a Legal Personal Representative or, if no such person can be located, by the last surviving Trustee (if any).

- (e) The appointment or removal of a Trustee must be in writing and must be advised to any other Trustee as soon as practicable.
- (f) Where a new Trustee or an additional Trustee is appointed pursuant to the power of appointment contained in this rule 25, the Fund at that time vests in the person or body, or jointly in the person or body with the other Trustee or Trustees without the necessity for any declaration, transfer, conveyance, registration or other assurance for such appointment to be effective.
- (g) Where a Trustee is removed or resigns the other Trustees must take such steps to remove that person or body from any registration which may have been made in the course of acting as Trustee.
- (h) In the event that there are no Members remaining in the Fund, the Legal Personal Representative of the last surviving Member may determine who will act as Trustee for the Fund.

25.3 Trustee may not charge fees or receive remuneration but may be reimbursed

Unless permitted by the Relevant Law, a Trustee must not charge any fees or receive any remuneration from the Fund or from any person for acting as trustee under the Deed or for performing any duties or services in relation to the Fund, although a Trustee may be reimbursed from the Fund for all Taxes, levies, charges, expenses, fees and other amounts incurred as Trustee under the Deed.

25.4 Resignation or removal of the Trustee

A Trustee shall no longer act as Trustee of the Fund from the time any of the following occur:

- (a) the Trustee resigns as Trustee of the Fund by notice in writing to each of the Members;
- (b) subject to the Relevant Law, a majority of the Members remove the Trustee by notifying the Trustee in writing that they are removed from office;
- (c) where the Trustee is an individual, the Trustee dies or otherwise loses his or her legal capacity, and a person will be taken for these purposes to have ceased to have legal capacity if they have become incapacitated in accordance with rule 25.7(a);
- (d) where the Trustee is a body corporate, the Trustee is placed into receivership or liquidation or an administrator is appointed over its affairs or is otherwise wound up or deregistered; or
- (e) by virtue of the Relevant Law, the Trustee is disqualified, removed or suspended from holding office as a trustee.

25.5 Trust Fund vested in new or remaining Trustees

When a person ceases to be a Trustee or becomes a Trustee, that person and the remaining Trustees must do everything necessary to vest the Fund in the new or remaining Trustee or Trustees and promptly attend to any other incidental administrative duties including, but not limited to, delivering all records and books of the Fund to the new or remaining Trustee or Trustees.

25.6 Trustee Declarations and Diligence

- (a) Each person who is an Individual Trustee or who is a Director of a Constitutional Corporation which is the Trustee must take all such actions, make all such declarations

and execute all such documents as are required under the Relevant Law to be done, made or executed by a person who holds or who commences to hold such office.

- (b) Each person who is a Director of a Constitutional Corporation which is the Trustee must exercise a reasonable degree of care and diligence for the purposes of ensuring that the Constitutional Corporation complies with the covenants and operating standards imposed by the Relevant Law.

25.7 **Trustee Ceasing Office**

- (a) An Individual Trustee will cease to hold the office of Trustee if the person dies or becomes Disqualified or ceases to have legal capacity, and a person will be taken for these purposes to have ceased to have legal capacity if they have become incapacitated such that:
- (i) the person is found by two medical practitioners (expressed in writing) to be under a disability such that in the opinion of each medical practitioner the person is incapable of managing the person's financial affairs; or
 - (ii) a Court or Tribunal of competent jurisdiction decides that the individual is suffering from incapacity to the extent the person is incapable of managing the person's financial affairs; or
 - (iii) a Court or Tribunal of competent jurisdiction has appointed an administrator or guardian to manage the person's financial affairs.
- (b) If an Individual Trustee who ceases to hold the office of Trustee by virtue of having ceased to have legal capacity is a Member of the Self Managed Superannuation Fund, then from the time the person is taken to have ceased to have legal capacity (in this rule referred to as the **Incapacity Date**):
- (i) the Legal Personal Representative of that Member must be appointed as Trustee in accordance with rule 25.8 or, if no Legal Personal Representative exists or a Legal Personal Representative exists but does not give their consent to appointment or is for any reason unable to act as Trustee; then
 - (ii) the Trustee may appoint an additional individual as Trustee for the purpose of:
 - (A) paying the Benefits to or for the benefit of the incapacitated Member, if permitted under the Relevant Law; or
 - (B) transferring the Benefits of the incapacitated Member to an Eligible Rollover Fund, if permitted under the Relevant Law; or
 - (C) appointing a replacement trustee in accordance with the powers contained in rule 3.7.
- (c) If the person or persons appointed as Trustee in place of an incapacitated Member in accordance with rule 25.7(b)(ii) are not or do not become the Legal Personal Representative of the Member within such time after the Incapacity Date to ensure that the Fund will otherwise comply with the trustee and membership requirements of the Relevant Law, their appointment under the Deed shall cease on the date on which their continued

appointment would otherwise cause the Fund to cease to comply with such requirements unless their continued appointment is determined in writing by the Statutory Authority not to cause the Fund to breach the trustee and membership requirements of the Relevant Law.

- (d) If a Member has ceased to hold the office of Trustee as a result of incapacity in accordance with rule 25.7(a)(i), (ii) or (iii) regains capacity such that:
- (i) the Member is found by two medical practitioners (expressed in writing) to have become capable of managing the person's financial affairs; or
 - (ii) a Court or Tribunal of competent jurisdiction decides that the Member is capable of managing the person's financial affairs; or
 - (iii) the relevant Court or Tribunal removes or terminates the appointment of an administrator or guardian appointed to manage the person's financial affairs, and no administrator or guardian is appointed in their place,
- then the Member must be reappointed as an Individual Trustee unless the Member does not give their consent or directs in writing that their Legal Personal Representative is to remain, or be appointed, as the case may be, as an Individual Trustee instead of the Member.

25.8 Other Persons as Trustees or Directors

Subject to rule 25.7, the Members may, and must if such action is required in order to prevent the Trustee from ceasing to meet the requirements under the Relevant Law which relate to the nature and composition of the trustees of Self Managed Superannuation Funds, unless the Fund is to cease to be a Self Managed Superannuation Fund under rule 3.7, take such steps as are necessary to appoint or remove as an Individual Trustee or facilitate the appointment or removal as a Director of a Constitutional Corporation which is the Trustee, the following persons:

- (a) one or more Legal Personal Representatives of a deceased Member in place of the deceased Member, during the period:
 - (i) beginning when the deceased Member died; and
 - (ii) ending when death Benefits commence to be payable in respect of the deceased Member; or
- (b) one or more Legal Personal Representatives of a Member in place of the Member, during any period when:
 - (i) the Member is under a legal disability; or
 - (ii) the Legal Personal Representative has an enduring power of attorney in respect of the Member; or
- (c) one or more Legal Personal Representatives or the parent or guardian of a Member who is under a legal disability because of age in place of the Member; or
- (d) an acting trustee of the Fund appointed under the Superannuation Industry (Supervision) Act 1993.

Any other person may also be a Trustee, or a Director of a Constitutional Corporation which is the Trustee, if the Relevant Law permits, for the Fund to remain a Self Managed Superannuation Fund.

25.9 Trustee/Member Rules

Subject to the Relevant Law, if at any time the trusteeship of the Fund does not meet the requirements of either rules 25.1(a)(ii), (iii), (iv) or (v) or 25.8, the Trustee and the Members must:

- (a) restructure the Membership of the Fund; or
- (b) complete such arrangements as are necessary under rule 25.2; and
- (c) ensure that the trusteeship of the Fund meets those requirements no later than 6 months after the trusteeship ceased to meet those requirements.

26 VARIATION

26.1 Power to amend

Subject to rule 26.3 and the Relevant Law, any provision of the Deed or part thereof (including this rule, any provision of the Rules and any schedule of the Deed) may be amended, added to, altered or deleted by the Trustee at any time by deed executed by the Trustee or by resolution by the Trustee or by instrument in writing of the Trustee (the 'Amendment').

26.2 Date of amendment

An Amendment may be effective prospectively from the date on which the Amendment is made or retrospectively from an earlier or later date specified for that purpose in the resolution or instrument effecting the Amendment.

26.3 Limits on power to amend

The Trustee does not have power to make an Amendment so as to do any of the following:

- (a) reduce or adversely affect the rights of a Member to accrued Benefits that arise before the Amendment is effected unless:
 - (i) the Amendment is necessary to enable the Fund to comply with the Relevant Law; or
 - (ii) the written consent of each Member whose rights are affected by the Amendment has been provided to the Trustee;
- (b) change the terms of any Pension existing before the Amendment is effected unless:
 - (i) the Amendment is necessary to enable the Fund to comply with the Relevant Law; or
 - (ii) the written consent of each Pensioner whose Pension is affected by the Amendment has been provided to the Trustee;
- (c) change the terms of any nomination regarding the death benefits of a Member which is binding on the Trustee before the Amendment is effected unless:
 - (i) the Amendment is necessary to enable the Fund to comply with the Relevant Law; or
 - (ii) the trustee has given prior Notice of the Amendment and its effect to each Member who has made such a nomination, and the written consent of each Member who has made such a nomination has been provided to the Trustee;
- (d) cause the trusts in the Deed to fail due to the application of the rule against perpetuities; or

- (e) allow a person other than a Constitutional Corporation to be eligible to be appointed as a Trustee, unless the Amendment also ensures that the sole or primary purpose of the Fund will be the provision of old age pensions at any time the Trustee is not a Constitutional Corporation,

and if any Amendment is made which does not comply with paragraphs (a) to (e) of this rule 26.3, the Amendment is invalid to the extent it does not so comply, but is otherwise valid and effectual to amend the governing rules of the Fund.

26.4 Notice of Amendment

If required under the Relevant Law, each Member must be provided with a written statement outlining the nature and purpose of any Amendment under rule 26.1 and its effect on the Member's entitlements and such notice shall be provided by the Trustee to the Member as soon as practicable after the deed has been amended.

26.5 Electronic Transactions Authority

- (a) The Trustee and Members ratify the execution of the Deed or a written instrument vary the Deed under this rule 26 by electronic signature, and adopt expressly the terms of the ETA, notwithstanding any contrary legal precedent or term of any State based legislation dealing with electronic transactions.

Warning: State-based legislation may prohibit the Trustee and Members from contracting out of execution standards requiring deeds to be wet signed (as opposed to executed by electronic signature). Whilst execution of deeds by wet signature is strongly recommended, execution in States which prohibit execution of deeds by wet signature should not be conducted by electronic transaction.

- (b) The Trustee and Members confirm that these Rules shall be deemed as settled on the date shown as the effective date of the Deed, notwithstanding any validation called upon by a non-party to the Deed (for example, a bank or Statutory Authority).
- (c) The Trustee and Members consent to the exchange of any and all information and documents (including, but not limited to, minutes, resolutions, nominations, variation of these Rules and/or such other instruments produced or producible in respect to the operation, administration and conduct of the Fund) in respect to the Fund by electronic means, and the execution of any and all documents (including deeds) by electronic signature of the relevant parties (subject to limitations imposed by State-based legislation), excepting where expressly provided otherwise in the terms of these Rules.
- (d) Except where parties are not at liberty to contract or consent to a matter being conducted in accordance with the ETA, or any applicable State electronic transactions legislation, the Trustee, Members, advisers and other parties may rely on the terms of the ETA and any applicable State electronic transactions legislation in the conduct of communications by the relevant parties in respect to the administration and conduct of the Fund.

27 WINDING UP THE FUND

27.1 Termination events

If any of the following events occur, the trusts declared under the Deed shall cease and terminate and the Trustee shall wind up the Fund effective as at the Termination Date:

- (a) the Trustee resolves to terminate the Fund on the basis that there are no longer any Members or Beneficiaries with an interest remaining in the Fund;
 - (b) the Members unanimously resolve to terminate the Fund;
 - (c) it is necessary to terminate the Fund in order to comply with the Relevant Law or the direction of a Statutory Authority; or
 - (d) it is not reasonable to continue operating the Fund as determined by the Trustee,
- and the Trustee must provide each Member with written notice of the winding up of the Fund.

27.2 Winding up the Fund

On and from the Termination Date:

- (a) no further Contributions may be accepted by the Fund except that any arrears of Contributions due prior to the Termination Date may be accepted by the Trustee;
- (b) the Trustee must pay out of the Fund any expenses and liabilities incurred by the Trustee or on behalf of the Fund;
- (c) the Trustee must distribute the balance of the Fund in accordance with rule 27.3 until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (d) the Trustee must continue to administer the Fund in accordance with the deed; and
- (e) the Trustee must take all other necessary steps, including lodging a final return to the Statutory Authority, to wind up the Fund in accordance with the Relevant Law.

27.3 Priority of Payment of Benefits

Subject to the Relevant Law, after meeting the expenses and liabilities of the Fund pursuant to rule 27.2(b), the Trustee shall make allowances from the Fund for the payment of the following in the order of priority listed below:

- (a) all Benefits which became payable to Members or Dependants pursuant to the Relevant Law or before the Termination Date;
- (b) where a Prescribed Event has been satisfied in respect of the relevant Member, the Benefits in the Member's existing Accumulation Account and Pension Account, if any;
- (c) where a Prescribed Event has not been satisfied in respect of the relevant Member, the value of the Member's existing Accumulation Account; and
- (d) payment of any portion of the Fund assets then remaining as the Trustee considers equitable after taking into account payments determined under rules 27.3(b) and 27.3(c) provided that such payments are not in breach of the Relevant Law,

and, subject to rule 27.5 and the Relevant Law, any amount or assets remaining in the Fund after the abovementioned provisions have been made (including the satisfaction of all Taxes, levies, liabilities, costs and expenses) must be realised and the proceeds distributed at the Trustee's absolute

discretion, to such Beneficiaries or former Beneficiaries, or their Legal Personal Representative, as the Trustee deems to be fair and equitable.

27.4 **Payment Methods**

Subject to rules 27.5 and 19.12 and the Relevant Law, the Trustee may make any payments to a Member or Dependant in accordance with this rule 27.4 in the form of cash, in-specie transfers of assets, by way of transfer to an Approved Benefit Arrangement, assignment of Policies or by any other method determined by the Trustee.

27.5 **Deferred Payment of Benefits**

If Benefits payable to a Member or Dependant in accordance with this rule 27.5 are otherwise required under Law to be deferred until the attainment of a particular age or the occurrence of a Prescribed Event, then the Trustee must defer payment of any part of the Benefit until such event occurs, and shall be entitled to make any arrangement it deems appropriate with respect to the deferred Benefit which is permitted under the Relevant Law including, but not limited to, transferring the Benefit to an Approved Benefit Arrangement.

28 **DISPUTE RESOLUTION**

- (a) The Trustee may, and if the Law requires it must, establish procedures and protocols to deal with enquiries and complaints from Beneficiaries in the manner and within the time limits prescribed under the Law, and the Trustee may debit the costs incurred in relation to any such disputes to the Account or Accounts the Trustee determines as it sees fit.
- (b) if any dispute arises as to the interpretation of any of the provisions of the Deed or as to the rights or obligations of a Member or any other person, then (except to the extent otherwise expressly provided in the deed and subject to the Law) the decision of the Trustee is final and binding.

29 **MISCELLANEOUS**

29.1 **Currency**

Unless otherwise specified, all references to currency in the Deed shall be read as references to Australian currency and all payments to be made under the Deed will be made in Australian currency.

29.2 **Notices**

- (a) Unless otherwise unanimously agreed by the Members, any notice, demand or other communication ("**Notice**") to be given or required to be made pursuant to the Deed to any or all Members is to be in writing and is to be given by post, facsimile, email or hand to a Member at the Member's address specified in the Schedule or at such other address or facsimile number or email address as is notified in writing by a Member to the other Members and/or the Trustee.
- (b) A Notice is deemed to be given or served:
 - (i) where sent by prepaid post, on the second Business Day following the day on which it was posted;

- (ii) where transmitted by facsimile or email during normal business hours on a Business Day, on that day, or, in any other case of transmission by facsimile or email, on the Business Day following the day of transmission;
- (iii) where delivered by hand during normal business hours on a Business Day, on that day, or in any other case of hand delivery, on the Business Day following the day of delivery.

29.3 **Governing law**

This deed shall be construed and take effect according to the law of the Governing State, and the Trustee, Members and Beneficiaries submit to the exclusive jurisdiction of the courts of the Governing State regarding any proceedings in connection with the Deed.

29.4 **Continuation of Trust**

The parties confirm that nothing in the Deed is intended to or does:

- (a) resettle (or redeclare) the Fund or any of the trusts under the Trust Deed; or
- (b) cause the transfer, vesting or accruing of any property comprising the assets of the Fund in any person.

Schedule

1 **Name of Fund**

RMB Super Fund

2 **Trustee**

R Biancon Investments Pty Ltd
ACN 668 225 796

3 **Date of Establishment**

24 May 2023

4 **Proper Law Governing Fund**

The Law of the State of Victoria