

# **SELF MANAGED SUPERANNUATION FUND DEED OF VARIATION**

## **SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND**



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**GKM & ASSOCIATES PTY LTD**  
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# PARTICULARS

## SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND

**FUND NAME:** SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND

**DATE OF TRUST DEED:** 10 MARCH 1993

**DATE OF SUBSEQUENT AMENDMENTS (IF ANY) TO THE TRUST DEED:** 31 MARCH 1995

Client No: <u>1051398</u>	<small>Duties Act 2001</small>
Transaction No: <u>000-488-008</u>	
Duty Paid \$ <u>NIL</u>	<input checked="" type="checkbox"/> Exempt
UTI \$ .....	
Date: <u>30/4/08</u>	Signed: 

**VARIATION CLAUSE:** clause 16.1

**EMPLOYER SPONSOR:** SOMERSET FINANCIAL SERVICES PTY LTD ATF THE SOMERS FAMILY TRUST ACN 058 152 337 of 131 SHORE STREET, NORTH CLEVELAND QLD 4163

**TRUSTEE:** SOMERSET FINANCIAL SERVICES PTY LTD ACN 058 152 337 of CNR QUEEN STREET & JOHN STREET, CLEVELAND QLD 4163

**MEMBERS:** IAN FRAZER SOMERS of 131 SHORE STREET, NORTH CLEVELAND QLD 4163, JANICE BERYL SOMERS of 131 SHORE STREET, NORTH CLEVELAND QLD 4163

### BACKGROUND

- A. By the Trust Deed, the Fund was established for the benefit of the Members.
- B. The Members are all the members of the Fund.
- C. Pursuant to the Variation Clause, the Trustee may by deed alter, add to or delete any or all of the provisions of the Trust Deed, subject to certain restrictions not here relevant.
- D. The Members and the Employer hereby consent to the variation of the Trust Deed as contained herein.
- E. The Trustee have set out the nature and effect of the variations made by this Deed for the benefit of the Members in accordance with the Variation Clause and the Members have executed this Deed to acknowledge such notice.

### AGREEMENT OF THE PARTIES:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed unless inconsistent with the context or subject matter the following terms shall have the meanings set out below:

**Employer** means SOMERSET FINANCIAL SERVICES PTY LTD ATF THE SOMERS FAMILY TRUST;

**Effective Date** means the date of this Deed;

**the Fund** means the Superannuation Trust Fund known as SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND established pursuant to the Trust Deed;

**Members** means each of the Members that are detailed in the Particulars;

**Regulator** means the Australian Taxation Office;

**SIS** means the Superannuation Industry (Supervision) Act 1993; and

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994;

**Trust Deed** means the deed dated 10 MARCH 1993 and signed by the Trustees that established the Superannuation Trust Fund called SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND and subsequently amended by deed(s) dated 31 MARCH 1995;

**Trustee or Trustees** means the Trustee for the time being of the Fund appointed in accordance with the provisions of the Trust Deed. Immediately prior to the date of this Deed, the Trustee of the Fund was **SOMERSET FINANCIAL SERVICES PTY LTD** ACN 058 152 337;

**Variation Clause** means clause 16.1 of the Trust Deed.

## 1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) clause headings shall not affect the construction of this Deed and references to clauses and paragraphs are to be construed as references to the same in this Deed;
- (b) a reference to any Act of a Parliament shall include the regulations, rules, orders and by-laws made under such Act and a reference to any Act of a Parliament shall include a reference to any amendment, re-enactment, modification, variation or extension thereof or statutory provision substituted therefor;
- (c) references to any agreement, document or other instrument shall be deemed to include references to the agreement, document or other instrument as varied, supplemented or replaced from time to time as permitted by this Deed;
- (d) every covenant or provision expressed or implied in this Deed by which more persons than one covenant or agree shall bind such persons and every two or more of them jointly and each of them severally, and every covenant or provision expressed or implied in this Deed which applies to more persons than one shall apply to such persons and every two or more of them jointly and each of them severally;
- (e) words and expressions importing the singular number shall include the plural number and vice versa, words and expressions importing natural persons shall include any company, corporation or other body corporate, partnership, joint venture, association, trust, unincorporated association or any government or semi-government authority, agency or instrumentality of whatsoever nature or kind and howsoever named or called and vice versa;
- (f) a reference to any party shall mean and include their personal representatives, successors in title and permitted assigns respectively;
- (g) reference to an amount of money is a reference to the amount in the lawful currency of Australia;
- (h) where a word or phrase is given a definite meaning in this Deed a part of speech or other grammatical form for that word or phrase has a corresponding meaning;
- (i) reference to a time and date concerning the performance of an obligation by a party is a reference to the time and date in Queensland even though the obligation is to be performed elsewhere;
- (j) where the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which that thing is to be done, then that thing will be done on the next succeeding business day.

- (k) this Deed shall be governed by and construed in accordance with the laws in force in Queensland and the parties agree to submit to the jurisdiction of the Courts of Queensland and of all courts competent to hear appeals from those Courts in relation to any legal action, suit or proceeding arising out of or with respect to this Agreement
- (l) this Deed may be executed in any number of counterparts each of which is an original and all of which constitute one and the same instrument. A facsimile copy of this Deed constitutes a **counterpart** for the purposes of this clause.

## 2. VARIATION

- 2.1 Subject to the following clause, the Trustee, the Employer and the Members (which participation is evidenced by the execution of this Deed by those parties) varies the Trust Deed pursuant to the Variation Clause by deleting the entire provisions of the Trust Deed (excepting the Recitals and the provision which establishes the Fund) and replacing those provisions with the provisions contained in Annexure 'A' to this Deed.
- 2.2 If:
  - (a) Part 9 of SIS Regulations (or any rulings or other releases issued by the Regulator thereunder) would prevent the Fund from paying a defined benefit pension within the meaning of Division 9.2B thereof (**defined benefit pension**) by reason of this Deed of Variation; and
  - (b) a defined benefit pension could be provided without this Deed of Variation, THEN
  - (c) the former provisions of the Trust Deed are retained, and continue in full force and effect without amendment, in so far as they provide for the payment of a defined benefit pension;
  - (d) the provisions in Annexure A which would allow the payment of a defined benefit pension are (to the extent necessary to allow defined benefit pensions to be paid under the former Trust Deed) deemed excluded from Annexure A and are inoperative;
  - (e) to the extent of any inconsistency in relation to defined benefit pensions the Trust Deed prevails over Annexure A.
- 2.3 The Trustee and the Employer each acknowledges and declares as follows:
  - (a) the Fund is one and the same Fund and is a continuing fund having commenced as set out in the original Trust Deed;
  - (b) it is not the intent of the Trustee that there will be any change to the assets or the membership of the Fund effected by this Deed of Variation;
  - (c) the Deed of Variation is within the Variation Clause and that the consent of neither the Members nor the Regulator is required;
  - (d) to the extent there may be any inconsistencies between the provisions and the Annexure and the original Trust Deed then the Annexure prevails;
  - (e) the terms of the Annexure are deemed to be incorporated in the Trust Deed as and from the Effective Date of Variation;
  - (f) if there is any adverse affect to the accrued rights of any Member then the Trustee covenants to obtain the Member's consent.
- 2.4 The Trustee confirms and declares that the date of effect of this variation is the Effective Date.

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### **3. GENERAL**

- 3.1 The parties must give notice to such Governmental bodies or other legal entities as may be relevant, of the changes made by this Deed.
- 3.2 Each party to this Deed undertakes that it shall upon request, sign, execute and do all deeds, acts, documents and things as may reasonably be required by any other party to carry out and give full force and legal effect to the terms and intentions of this Deed.
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### **4. ACKNOWLEDGEMENTS**

- 4.1 The parties acknowledge and declare as follows:
- (a) the Fund is one and the same Fund and is a continuing fund having commenced as set out in the Trust Deed;
  - (b) it is not the intent of the parties that there will be any change to either the assets or the membership of the Fund effected by this Deed;
  - (c) the consent of the Regulator is not required for the variation effected by this Deed.

**EXECUTED AS A DEED** on the 3RD day of APRIL 2008

Executed for and on behalf of  
**SOMERSET FINANCIAL SERVICES PTY LTD**  
(ACN 058 152 337)  
by the authority of its Directors and in  
accordance with s127 of the Corporations Act  
2001, by:

Director Signature:



Director/Secretary Signature:



Signed by **IAN FRAZER SOMERS**  
in their capacity as a Member, in the presence  
of:



Witness Name:

BRIAN SAVAGE

Witness Signature:




Signed by **JANICE BERYL SOMERS**  
in their capacity as a Member, in the presence  
of:



Witness Name:

BRIAN SAVAGE

Witness Signature:



Executed for and on behalf of

**SOMERSET FINANCIAL SERVICES PTY LTD**  
**ATF THE SOMERS FAMILY TRUST**

(ACN 058 152 337)

by the authority of its Directors and in  
accordance with s127 of the Corporations Act  
2001, by:

Director Signature:



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Director/Secretary Signature:



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## THIS IS ANNEXURE 'A' REFERRED TO IN CLAUSE 2.1 SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND

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### 1. THE FUND

#### 1.1 Establishment

The Trustee (and if applicable the Sponsoring Employer) hereby confirms the establishment of SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND (the **Fund**) as from the date of execution of the original Deed.

#### 1.2 Purpose

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

- (a) if the Trustee comprises individuals these benefits must be primarily in the form of old age pensions; and
- (b) if the Trustee is a company, the Fund must have a corporate trustee.

#### 1.3 Self Managed Fund

The Trustee may operate the Fund so that it is a self managed fund, and if so the provisions of this Deed not applicable to such funds do not need to be adhered to.

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### 2. COVENANTS TO PERFORM

#### 2.1 General

The Trustee for itself and its successors agrees to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustee.

#### 2.2 The Requirements

The Trustee covenants to comply with the Requirements.

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### 3. DEFINITIONS AND INTERPRETATION

#### 3.1 Definitions

Unless the context otherwise requires:

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

**Accumulation Account** means the account established on behalf of each Member pursuant to clause 9.2(a);

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

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

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

**Commissioner of Taxation** means the Federal Commissioner of Taxation;

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

**Deed** means this Deed as amended from time to time;

**Dependant** in relation to a Member means:

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

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

**Employer** means any employer of a Member;

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

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

**Member** means a person who has been accepted by the Trustee as a Member of the Fund and has not ceased to be a Member pursuant to this Deed and includes a pensioner. The following person is currently a Member: of ;

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

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

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

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

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

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

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

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

- (a) the Fund obtains concessional tax treatment;
- (b) the Fund remains a regulated superannuation fund;
- (c) the Employer or Member retains any entitlement to a tax deduction unless they choose not to claim a tax deduction;
- (d) no dealing with the Fund gives rise to a taxable fringe benefit to an Employer unless the Employer chooses to incur a fringe benefits tax liability;
- (e) benefits are concessionally taxed;
- (f) if appropriate, a Pension Benefit is asset test exempt for social security purposes; and
- (g) no penalty is imposed on the Trustee or directors of the Trustee;

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

**SGC** means the Superannuation Guarantee Charge Act 1992, the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee (Administration)

Regulations as the context requires;

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

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations;

**Spouse** means:

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

**Trustee** means the Trustee for the time being of the Fund (and where the context permits includes the directors of a corporate Trustee), the current Trustee is SOMERSET FINANCIAL SERVICES PTY LTD ACN 058 152 337.

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

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## 4. FUND TRUSTEE

### 4.1 General

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

### 4.2 Trustee Covenants

The Trustee for itself and its successors agrees to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustee and to comply with such of the Requirements which apply to the Fund.

### 4.3 Retirement, Removal of the Trustee

A Trustee holds office until:

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

**4.4 Appointment**

The power of appointing a new Trustee is held by:

- (a) the then Trustee (or if none the Members); and
- (b) if for any reason the Members are unable to appoint a new Trustee then a new Trustee may be appointed by any person who is or may be a Beneficiary and if more than one, then by majority.

**4.5 Appointment of directors**

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

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

**4.6 Vesting of Assets**

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

**4.7 Minors as a Trustee**

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

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**5. TRUSTEE'S POWERS OF MANAGEMENT**
**5.1 Powers**

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

- (a) paying any costs, charges and Taxes relating to the Fund;
- (b) appointing persons to:
  - (i) perform administrative functions;
  - (ii) audit the Fund's accounts; and
  - (iii) prepare tax and any returns for the Regulator, and to pay any expenses incurred for this;
- (c) delegating Trustee functions other than the exercise of discretions;
- (d) conducting and settling legal proceedings;
- (e) entering contracts and executing deeds;
- (f) obtaining and acting on the advice of a barrister, solicitor, adviser, financial adviser, accountant, actuary or superannuation consultant and paying their fees;
- (g) giving receipts and discharges;
- (h) incurring liabilities, giving guarantees or indemnities;
- (i) insuring risks;
- (j) acting as an underwriter;
- (k) making rules for the efficient administration of the Fund;
- (l) providing for and transferring liability for any taxes;
- (m) irrevocably electing that the Fund becomes a regulated superannuation fund.

**5.2 Regulation of Trustee Proceedings**

The Trustee may:

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

**5.3 Written Resolutions**

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

**5.4 Minutes**

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

**5.5 Trustee may Act on Authorisations**

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

**5.6 Trustee Fees**

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

**5.7 Trustee Indemnity**

The:

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

**5.8 Insurance against Fund losses**

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

**5.9 Trustee's Discretion**

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

**5.10 Comply with the Regulator**

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

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**6. TRUSTEE'S POWERS OF INVESTMENT AND SALE**
**6.1 Investment strategy**

The Trustee:

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

- (iii) allocate earnings attributable to that strategy to the Member's or Beneficiary's Accumulation Account in a way that the trustee thinks equitable;
- (iv) determine a fund earning rate for that sub-account.

## 6.2 Power to Invest

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

## 6.3 Investments

Without limiting the generality of clause 6.2(a) and subject to the investment strategy and the Requirements, the Trustee:

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

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

#### 6.4 **Income**

The Trustee:

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

#### 6.5 **Acceptance of Money**

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

#### 6.6 **Assets in Name of the Trustee or Custodian**

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

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## 7. **MEMBERSHIP OF FUND**

### 7.1 **Invitation by Trustee**

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

### 7.2 **Pre-conditions to Acceptance**

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

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

- (c) the Member signing (as a trustee or a director of a corporate trustee) a declaration in the approved form (being a Trustee Declaration (NAT 71089)), no later than 21 days after becoming a trustee or director to ensure that the Fund remains a self managed fund;
- (d) a signed binding nomination (clause 25.4) or a signed non-binding nomination (clause 25.5); and
- (e) a statement made by the Member that they do not suffer from any disqualification to act as a Trustee.

### 7.3 **Admission of Member**

If the Trustee decides to admit a person as a Member, the Member joins:

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

### 7.4 **Type of Membership**

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

### 7.5 **Conditions of Membership**

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

### 7.6 **Cessation of Membership**

A person ceases to be a Member when:

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

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## 8. **RECORDS AND AUDIT**

### 8.1 **Records**

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

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

(vii) copies of all annual returns lodged (for corporate trustees).

(viii) audit reports.

## 8.2 Auditor

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

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

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## 9. ACCOUNTS AND EARNINGS

### 9.1 Annual Accounts

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

### 9.2 Establishment of accounts

The Trustee must:

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

### 9.3 Credits to Accumulation Account

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

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

### 9.4 Debits to Accumulation Account

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

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

### 9.5 Earning Rate

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

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

**9.6 Interim Earning Rate**

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

**9.7 Averaging Income**

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

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

**9.8 Allocation of Earning Rate**

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

**9.9 Unallocated earnings**

Any unallocated earnings must be credited to a Reserve Account.

**9.10 Specific Investments**

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

**9.11 Reserve Account**

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

- (d) The Trustee has the discretion to deal with the assets of a Reserve Account in any manner consistent with the Requirements.
- (e) The following amounts may be credited to a Reserve Account:
  - (i) unallocated earnings;
  - (ii) income generated from assets held specifically for the Reserve Account;
  - (iii) contributions the contributor has advised the Trustee are to be credited to the Reserve Account.

## **10. STANDARDS**

### **10.1 Disclosure**

The Trustee must disclose to:

- (a) the Regulator;
  - (b) the Members (including prospective and former Members);
  - (c) any Employers;
  - (d) the Trustee of any other fund to which a rollover payment is made;
  - (e) the auditor; and
  - (f) such other persons as may be specified in the Requirements,
- such information from time to time concerning the Fund, Contributions and Benefit entitlements as the Trustee determines reasonable, and in particular so as to satisfy the disclosure provisions in the Requirements.

## **11. CONTRIBUTIONS**

### **11.1 Trustee Obligations**

The Trustee:

- (a) may accept contributions from any person (including from a Member's spouse or parent, or an amount payable in respect of a Member under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003) providing the Member for whom the contribution is being made, has given their tax file number to the Trustee;
- (b) subject to clause 11.2, must only accept contributions that comply with the Requirements, and in particular must only accept contributions from Members aged 65 years and older if they meet the requirements of regulation 7.04 of the SIS Regulations;
- (c) may refuse such contributions as the Trustee in its absolute discretion considers appropriate;
- (d) must pay to the Australian Taxation Office the amount specified in a release authority issued by a Member in accordance with either clause 11.2(a)(iii) or 11.2(b)(ii).

### **11.2 Contributions in excess of prescribed limits**

Each Member acknowledges that:

- (a) the contribution limits for concessional contributions (being section 292-25 (2) ITAA 1997) are a taxpayer based limit, not a contributor based limit. Accordingly each Member is required to monitor their concessional contributions to ensure that their individual limit is not exceeded. If a Member's contribution cap is exceeded then contributions (subject to a written determination being made by the Commissioner of Taxation in accordance with section 292.465(1) of the ITAA 1997):
  - (i) in excess of the Member's concessional contributions cap will be subject to excess contributions tax;

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

### 11.3 **Unallocated Contributions**

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

### 11.4 **Contributors notify**

The contributor must:

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

### 11.5 **Contribution in Cash or Assets**

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

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

### 11.6 **Reallocation of Contributions**

Where an asset is transferred to the Fund by a Member or Members in accordance with clause 11.5 notwithstanding any other provision in this Deed:

- (a) that asset must be held in the Accumulation Account of the relevant contributing Member or Members and the Trustees shall identify the asset, the Member or Members for whom the asset is held and where more than one Member contributed the asset, the proportions in which the asset was contributed by and is held for the Members, in the records of the Fund;
- (b) the earnings and expenses in relation to those assets shall be dealt with in accordance with clause 9.10 as a Specific Investment of the relevant Member or Members;

- (c) for the absence of doubt, such assets shall not be pooled with the other assets or investments of the Fund;
- (d) the Trustee may only reallocate contributions to other Members, or to other accounts within the Fund, with the written consent of the contributor, or the Member for whom the contributions are made.

#### 11.7 **Repayment of Contributions**

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

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

#### 11.8 **Taxes and Costs of Contributions**

The Trustee may deduct from any contribution:

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

### 12. **TRANSFERS TO OTHER FUNDS**

#### 12.1 **Transfers out**

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

#### 12.2 **Requirements**

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

#### 12.3 **Transfer of Restricted Benefits**

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

#### 12.4 **Discharge**

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

#### 12.5 **Consent**

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

### 13. **TRANSFERS FROM OTHER FUNDS**

#### 13.1 **Transfers in**

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

#### 13.2 **Acceptance of Restricted Benefits**

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

#### 13.3 **Amount, Composition of Entitlement**

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

**13.4 Crediting account**

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

**14. PAYMENT OF BENEFITS - GENERAL****14.1 Methods of Paying Benefits**

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

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

**14.2 Procedure before Benefits payable**

Benefits are not payable until:

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

**14.3 Payment of Benefits**

The Trustee:

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

**14.4 Receipt**

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

**14.5 Deduction of Tax from Benefits Payable**

The Trustee must deduct any necessary tax from the Benefit.

**14.6 Discharge of Trustee**

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

**14.7 Requirements**

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

**14.8 Benefits paid by transfer of assets**

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

**14.9 Insured Benefit**

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

**15. PAYMENT TO OTHERS ON BEHALF OF MEMBERS OR BENEFICIARIES****15.1 Member Under Legal Disability**

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

**16. TRANSITIONAL PROVISIONS****16.1 Limit on Contributions**

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

**16.2 Costs on excess contributions**

The Members acknowledge that any costs (including and in particular tax) payable in respect of Concessional Contributions or Non-concessional Contributions made in excess of the amounts permitted in accordance with the Requirements shall be deducted from the relevant Members contribution or Accumulation Account in accordance with clause 9.4.

**16.3 Members undertaking**

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

## **17. REALLOCATION AND SPLITTING OF BENEFITS**

### **17.1 Reallocate**

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

### **17.2 Splitting Superannuation interests on Divorce**

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

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

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

### **17.3 Separate interest**

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

### **17.4 Charges**

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

## **18. COMMENCEMENT OF PAYMENT OF BENEFITS**

### **18.1 Limit on Benefits**

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

### **18.2 Payment of Benefits**

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

### **18.3 Preservation Age**

The Trustee may pay a Pension to a Member once they have reached their Preservation Age subject to the Requirements.

## **19. PENSION BENEFITS**

### **19.1 Terms of Pension**

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

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

### **19.2 Pension variations**

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

### **19.3 Account-based Pension**

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

### **19.4 Fifteen Year/Life Expectancy Pensions**

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

### **19.5 Complying Lifetime Pension**

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

### **19.6 Fixed Pension**

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

### **19.7 Non-commutable Pension**

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

### **19.8 Other Pension**

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

### **19.9 Market Linked (or Term Allocated) Pension**

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

### **19.10 Non-Complying Pension**

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

### **19.11 Purchase of Pension or Annuity**

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

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## **20. COMMUTATION OF PENSION**

- 20.1 The Trustee may on the request of a Member or Beneficiary commute all or part of a Pension to a Lump Sum if permitted under, and in a manner consistent with, the terms on which the Pension is payable and the Requirements.
- 20.2 If necessary the Trustee (who may obtain the advice of an actuary) must determine the remaining Pension.
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## **21. LUMP SUM BENEFITS**

### **21.1 Time for Payment**

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

### **21.2 Instalments**

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

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## **22. CONVERSION OF LUMP SUM TO PENSION**

### **22.1 Application**

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

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## **23. RETIREMENT, TERMINATION AND UNRESTRICTED BENEFITS**

### **23.1 Form of Benefit**

If a Member:

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

### **23.2 Amount of Benefit**

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

### **23.3 Discretionary Benefit**

The Trustee may pay an additional amount of Benefit.

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## **24. BENEFITS FOR PERMANENT INCAPACITY OR TEMPORARY INCAPACITY**

### **24.1 Form of Benefit**

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

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

**24.2 Amount of Benefit**

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

**24.3 Additional Benefit**

The Trustee may pay an additional amount of Benefit.

**25. DEATH BENEFITS****25.1 Form of Benefit**

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

**25.2 Amount of Benefit**

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

**25.3 Discretionary Benefit**

The Trustee may pay an additional amount of Benefit.

**25.4 Binding Nomination**

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

**25.5 No Binding Nomination**

- (a) To the extent to which clause 25.4 does not apply, the Trustee must pay the Benefit amongst one or more of:
  - (i) the Dependants of the former Member or Pensioner;
  - (ii) the Estate of the former Member or Pensioner;
  - (iii) any other person to whom the Benefit can be paid under SIS;
- (b) The Trustee must have regard to, but is not bound by a non-binding nomination of a Nominated Dependant.
- (c) If there is no Dependant and no legal personal representative is appointed within twenty-four (24) months of death the Trustee must pay the Benefit to one or more other persons (having regard to any wishes stated by the Member, the Member's next of kin and all relevant circumstances) as the Trustee determines or be held in trust and maintained in the Fund (where permitted by the Requirements).
- (d) Any amount held in trust and maintained under clause 25.5(c) may be subsequently paid under this clause if a Dependant is found or a Legal Personal Representative appointed.

**25.6 Components**

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

**26. TERMINATION OF THE FUND****26.1 Trustee Determination**

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

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

**26.2 Notification**

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

**26.3 Wind-Up**

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

**26.4 Application of Assets**

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

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

**26.5 Dissolution**

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

**27. ARBITRATION****27.1 Dispute**

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

**27.2 Right of Action**

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

**28. SIS****28.1 Deemed inclusion**

Despite any other provision in the Deed:

- (a) the Deed is deemed to include those covenants and requirements of SIS as are necessary to enable SIS and the Requirements to be met and for the Trustee to elect for the Fund to become a regulated fund (and to the extent of any inconsistency those provisions of SIS prevail);
- (b) if SIS no longer requires any such covenant or Requirement to be so included then that covenant or requirement ceases to be included;
- (c) if any such covenant or requirement or its operation is modified then the Trustee is only required to comply with the covenant or requirement as modified;
- (d) the Trustee is not taken to be in contravention of this Deed or in breach of trust if the Trustee do or omit to do anything which is in contravention of such a covenant or requirement if the contravention is waived or accepted by the Regulator as not being

sufficient to result in the loss of the Fund's complying status;

- (e) the Trustee has power to operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the Requirements;
- (f) the Trustee has power to elect under SIS for the Fund to become a regulated fund;
- (g) the SIS provisions which do not apply to certain small funds (whether defined in SIS as **self managed funds** or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition;
- (h) the Trustee may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Regulator;
- (i) the Trustee may disclose to the Regulator any event, omission or thing that SIS requires to be disclosed to the Regulator and seek the advice, ruling or direction of the Regulator as considered necessary.

## 28.2 **Non-mandatory Requirements**

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

## 28.3 **Trustee not to be in breach of Trust**

The Trustee is not contravening the Deed or in breach of trust if in giving effect the Deed it:

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

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

## 28.4 **Rectification of contraventions**

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

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

# 29. **GENERAL TERMS**

## 29.1 **Proper Law**

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

## 29.2 **Counterparts**

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

## 29.3 **Complete Agreement**

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

## 29.4 **Amendment**

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

- (a) no amendment may reduce a Member's accrued benefits or impose any increase in liability on a Member without the Member's consent;

- (b) any amendment is effective from the date (if any) specified (for that purpose) in such Deed or failing such a date, the date on which the Deed is executed;
- (c) the Trustee must promptly notify each Member of the nature and purpose of any such amendment and of the effect (if any) that the amendment may have on the Member's entitlements.

**29.5 Severable**

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

**29.6 Waiver**

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

**29.7 Notice etc**

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

## SCHEDULE 1 - EXAMPLE APPLICATION FOR MEMBERSHIP SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND

### CONFIDENTIAL

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

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

Dated: \_\_\_\_\_/\_\_\_\_\_/2008

Signature: \_\_\_\_\_

Occupation: \_\_\_\_\_

Date of birth: \_\_\_\_/\_\_\_\_/\_\_\_\_

### NON-BINDING NOMINATION OF DEPENDANT(S)

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

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

**SCHEDULE 2 - EXAMPLE APPLICATION FOR CONTRIBUTION SPLIT**  
**SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND**  
 (the Fund)

**Regulation 6.44 Superannuation Investment (Supervision) Regulations**

To: SOMERSET FINANCIAL SERVICES PTY LTD ACN 058 152 337 , the Trustee of the Fund

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

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

<b>Type</b>	<b>Total</b>	<b>Amount to be transferred</b>
Taxed splittable contributions:	\$	\$
Untaxed splittable contributions:	\$	\$

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

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

**DATE:** \_\_\_\_\_/\_\_\_\_\_/2008

**Signature:** \_\_\_\_\_  
 [Member Name]

**SCHEDULE 3 - EXAMPLE NOTICE UNDER SECTION 82AAT(1A) ITAA 1936 /  
SECTION 290-170 ITAA 1997**

To: The Trustees of SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND (**the Fund**)

I,

Member Name

Of:

Member Address

Give notice that:

- (a) I have contributed the sum of \$\_\_\_\_\_ to the Fund in the \_\_\_\_\_[relevant year] financial year.
- (b) I intend to claim a tax deduction under Section 82AAT of the Income Tax Assessment Act 1936 / Section 290-170 of the Income Tax Assessment Act 1997 (delete whichever is not applicable) in relation to \$\_\_\_\_\_ [amount of contribution] of this contribution.
- (c) The amount covered by this notice has not been included in any previous notice given by me.

**DATE:** \_\_\_\_/\_\_\_\_/2008

**Signature:** \_\_\_\_\_

Member Name

I, \_\_\_\_\_[Trustee Name] being the Trustees of the Fund acknowledge receipt of this notice from \_\_\_\_\_[name of member] on the \_\_\_\_/\_\_\_\_/2008.

**DATE:** \_\_\_\_/\_\_\_\_/2008

**Signature:** \_\_\_\_\_

Member Name

## SCHEDULE 4 - EXAMPLE BINDING DEATH BENEFIT NOMINATION

To: The Trustees of SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND (the **Fund**)

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

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

**Full name of Dependent:** \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Percentage benefit: \_\_\_\_\_ % of the total benefits payable

Relationship to you: \_\_\_\_\_

(eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

**Full name of Dependent:** \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Percentage benefit: \_\_\_\_\_ % of the total benefits payable

Relationship to you: \_\_\_\_\_

(eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

**Full name of Dependent:** \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Percentage benefit: \_\_\_\_\_ % of the total benefits payable

Relationship to you: \_\_\_\_\_

(eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

I confirm that:

- (a) I understand that this nomination (unless amended or revoked) is binding on the Fund Trustees until the earlier of it being revoked in writing by me or upon the date three years from the day it was first signed;
- (b) this nomination revokes any previous nomination which I may have made and delivered to the Fund Trustees;

- (c) I have signed this nomination in the presence of the two witnesses who are aged eighteen years or over and each of them have signed below;
- (d) I understand that if I have nominated persons who are not 'dependants' as explained on page one of this Form, this nomination will be void and of no effect and the Fund Trustees will have a discretion as to when the benefit is payable and in what proportion.

Signature: \_\_\_\_\_

[Name]

Date: \_\_\_\_\_

\_\_\_\_/\_\_\_\_/2008

#### **WITNESS ONE DECLARATION**

I confirm that:

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

Witness 1 Full Name: \_\_\_\_\_

Witness 1 Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_/\_\_\_\_/2008

#### **WITNESS TWO DECLARATION**

I confirm that:

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

Witness 2 Full Name: \_\_\_\_\_

Witness 2 Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_/\_\_\_\_/2008

**NOTICE OF COMPLIANCE**  
**SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND**

To: the Participating Employer:

This statement is to confirm that for the year of income of the Fund to date:

- (a) the Fund has been conducted as a complying superannuation fund within the meaning of Section 42(1) of the Superannuation Industry (Supervision) Act 1993 and Regulations, and that the Trustee(s) intend that the Fund continue to be maintained as a complying superannuation fund; and
- (b) the Fund is not subject to a direction under Section 63 of the Superannuation Industry (Supervision) Act 1993.

Date:

3 / 7 / 2008

**SOMERSET FINANCIAL SERVICES**  
**PTY LTD**



Order #8671  
SOMERSET FINANCIAL SERVICES SUPERANNUATION FUND  
(Superannuation - Variation updating the whole SMSF Deed)

This document has been prepared by:

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