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SELF MANAGED SUPERANNUATION FUND DEED

D & J MITRIS SUPER FUND

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PARTICULARS

D & J MITRIS SUPER FUND

FUND NAME: D & J MITRIS SUPER FUND

TRUSTEE: JIJU PTY LTD ACN 640 087 118 of C/- A V ADAMSON & CO 150 HENLEY BEACH ROAD, TORRENSVILLE, SA 5031

MEMBERS: DIMITRIOS MITRIS of 25 CLINTON AVENUE, MYRTLE BANK, SA 5064
JUDITH MITRIS of 25 CLINTON AVENUE, MYRTLE BANK, SA 5064

BACKGROUND:

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

AGREEMENT OF THE PARTIES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires:

Account means one or more of:

- (a) Accumulation Account;
- (b) Bank Account;
- (c) Pension Account;
- (d) Reserve Account;
- (e) any other account established by the Trustee pursuant to this Deed;

Account Based Pension means a pension established for the benefit of a Member in accordance with regulation 1.06(9A) of the SIS Regulations or an annuity established for the benefit of a Member in accordance with regulation 1.05(11A) of the SIS Regulations;

Accumulation Account means an account established on behalf of each Member pursuant to clause 7.1(a) into which are deposited Contributions;

Bank Account means an account opened in the name of the Trustee as trustee for the Fund at a financial institution. The Trustee may have any one or more of a money management account, a cheque account, a loan account or such other account or accounts as may be required from time to time;

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

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

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

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

Binding Death Benefits Nomination means a direction given to the Trustee by a Member in accordance with this Deed in such form and manner as the Trustee may from time to time specify which is a binding direction for the purposes of the Requirements as to payment of the Member's Death Benefit in the event of the Member's death;

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

Child includes ex nuptial child, a legally adopted child, a person recognised by the 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 and include:

- (a) employer contributions (including contributions made under a salary sacrifice arrangement);
- (b) personal contributions claimed as a tax deduction.

For the 2019-2020 financial year the Concessional Contributions Cap is \$25,000;

Condition of Release means a condition of release as specified in Schedule 1 of the SIS Regulations namely where a Member:

- (a) dies;
- (b) reaches age 65;
- (c) reaches their relevant Preservation Age and takes a transition to retirement income stream;
- (d) reaches their relevant Preservation Age and retires from gainful employment;
- (e) becomes totally and permanently disabled ;
- (f) becomes totally and temporarily disabled;
- (g) suffers a terminal medical condition as defined in regulation 6.01A;
- (h) is taken to be in severe financial hardship as defined in regulation 6.01(5);
- (i) has satisfied a condition of release on a compassionate ground in accordance with regulation 6.19A;
- (j) meets any other condition of release that the Requirements permit;

Contributions means money paid or property transferred to the Trustee for the benefit of a Member (whether Concessional Contributions or Non-Concessional Contributions) including:

- (a) Contributions made by the Member;
- (b) re-contributions pursuant to the First Home Super Saver Scheme;
- (c) Contributions made in respect of the Member by an Employer;
- (d) Any amount transferred by another Member pursuant to a contributions-split, to a Member in accordance with the Requirements;
- (e) Any amount transferred by another Member as a contribution made on behalf of the contributing Member's eligible Spouse;
- (f) Any Government co-contribution benefits made under the Superannuation (Government Co-contribution for Low Income Earners) Act 2003;
- (g) Any other contribution allowed pursuant to the Requirements or this Deed;

Covered Call Option means a strategy pursuant to which a call option (owned by the Fund) is sold against shares that the Fund already owns. This strategy is also known as the 'Buy-Write' strategy. An example of this type of option is as follows. The Fund owns 100 IBM shares. To create the Covered Call Option, a broker would facilitate by arranging:

- (a) a sale to Mr Smith of a call option (at \$3 per share) with a 1 August 2014 expiration date and a strike price of \$105;
- (b) the Fund would receive \$3 per share for selling the option (so \$300 in total for the 100 shares)(known as the 'premium');
- (c) the Fund receives a \$300 premium today in exchange for the possibility that it will have to sell IBM stock to Mr Smith for \$105 between now and the August expiration date. By buying the Fund's call option for \$300, Mr Smith has the right (but not the obligation) to buy 100 shares of IBM from the Fund at \$105.

Deed means this Deed as amended from time to time;

Dependant in relation to a Member means:

- (a) a surviving Spouse or de facto spouse;
- (b) a child of the deceased Member who is under 18 years of age;
- (c) a child of the deceased Member aged between 18 years and 25 years of age, who was financially dependent on the deceased;

- (d) a child of the deceased Member aged 18 years of age or over, who has a permanent disability (as contemplated by the *Disability Services Act 1986 (Cth)*);
- (e) any person who relied on the deceased Member for financial maintenance at the time of their death;
- (f) any person who, in the opinion of the Trustee, the Member has an interdependency relationship with, as referred to in sections 10(1) and 10A of SIS; or
- (g) any other person that may be a Dependant pursuant to SIS.

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

Employer means an employer of a Member who contributes to the Fund on behalf of the Member. Where used in reference to a particular Member, it means the Employer by whom the Member is employed at the relevant time;

Excess Concessional Contributions has the meaning given by section 291-20 of the Income Tax Assessment Act 1997;

Excess Contributions Tax means any tax imposed by reason of the Superannuation (Excess Concessional Contributions Tax) Act 2007 or the Superannuation (Excess Non- Concessional Contributions Tax) Act 2006;

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

First Home Super Saver (or FHSS) Scheme means the scheme set out in:

- (a) Division 313 of the ITAA 1997; and
- (b) Division 138 in Schedule 1 to the Taxation Administration Act 1953;

and such other provisions as they relate to those Divisions;

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

LPR means a Member's legal personal representative being the executor of the will or administrator of the estate of a deceased Member, the trustee of the estate of a Member under a legal disability or a person who holds an enduring power of attorney granted by a Member;

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

Market Value in relation to an asset, means the amount that a willing buyer of the asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made:

- (a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;
- (b) that the sale occurred after proper marketing of the asset;
- (c) that the buyer and the seller acted knowledgeably and prudentially in relation to the sale.

or such other meaning as may be set out in s10(1) of SIS;

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 Members are set out in the Particulars;

Nominated Dependant means the person or people nominated by a Member as such in either a Binding Death Benefits Nomination or a non binding death benefits nomination;

Nominated Reversionary Beneficiary (or Nominated Reversionary Beneficiaries as the case may be) means the person or people nominated by a Member in their relevant Pension documentation to receive the Member's Pension upon the happening of a Reversionary Event;

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

Non-Concessional Contributions Cap has the meaning given by section 292-85 of the ITAA 1997. If a Member's total superannuation balance is greater than or equal to the general transfer balance cap (\$1.6 million) at the end of the previous financial year, the Member **NOT** able to make non-concessional contributions in the subsequent year. If a Member is under 65 years old, the Member may be able to make non-concessional contributions of up to three times the annual non-concessional contributions cap in a single year. For 2019-2020 financial year the Concessional Contributions cap is \$100,000;

Pension means an income stream and includes a pension or annuity permitted by the Requirements from time to time including:

- (a) an Account Based Pension (as defined in SIS Regulation 1.03(1));
- (b) any Pension permitted by this Deed the terms and conditions of which comply with SIS Regulation 1.06(1);
- (c) a lifetime complying pension [SIS Regulation 1.06(2)];
- (d) an allocated pension (as referred to in SIS Regulation 1.06(4));

- (e) a fixed term complying pension (as referred to in SIS Regulation 1.06(7));
- (f) a market linked pension (as referred to in SIS Regulation 1.06(8));
- (g) a simpler super pension (as referred to in SIS Regulation 1.06(9A));
- (h) a non-commutable allocated pension (as referred to in SIS Regulations 6.01AA and 6.01(2));
- (i) a transition to retirement income stream (as referred to in SIS Regulation 6.01(2));
- (j) a non-commutable pension (as referred to in SIS Regulation 6.01(2));
- (k) a non-commutable income stream (as referred to in SIS Regulation 6.01(2)) being Item 109 of Schedule 1 of the SIS Regulations concerning temporary incapacity);
- (l) a non-commutable life pension (as referred to in Item 108 of Schedule 1 of the SIS Regulations concerning termination of gainful employment);
- (m) any other Pension allowable pursuant to the Requirements; and
- (n) a defined benefit pension (as defined in Division 9.2B of the SIS Regulations) PROVIDING that pension adheres to the provisions of that Division and in particular, regulation 9.04I; and
- (o) an asset-test exempt income stream within the meaning of that term under sections 9, 9A, 9B and 9BA of the Social Security Act 1991;

Pension Account means an account to be established as soon as a Member has provided written notice to the Trustee that the Member is to be paid a Pension;

Pension Payment Application means an application by a Member to the Trustee to commence a Pension in a form acceptable to the Trustee;

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;

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

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 (and SIS Regulations), 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 concessional tax;
- (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;

Reserve Account means an account established by the Trustee in accordance with clause 7.6;

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

Reversionary Event means an event including but not limited to death, divorce, incapacity or such other reversionary event as the Requirements may permit;

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 (whether of the same sex or a different sex) 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;

Transfer Balance Account means the transfer balance account established pursuant to Subdivision 294B of ITAA 1997 which is credited if the Member has a superannuation income stream in the retirement phase;

Transfer Balance Cap means the amount specified in s294.35 ITAA 1997 being the total amount a Member can transfer into the retirement phase of superannuation (where earnings are exempt from taxation);

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 JIJU PTY LTD ACN 640 087 118.

Trustee Declaration means a declaration in the approved form (being a Trustee Declaration (NAT 71089)) that is to be signed by either each individual trustee or each director of a corporate trustee, no later than 21 days after that person becomes a trustee or director.

- 1.2 It is expressly stipulated that those restraints (if any) placed upon the ability for a sole Trustee to act as the Trustee of a trust by the Trustee Act 1936 (South Australia) , shall not apply to the Trust including but not limited to Section 14(2)(c), Section 33 of the Trustee Act 1936 (South Australia) and all other corresponding provisions of comparable legislation, and it shall be permissible for one trustee only to act as Trustee of the Fund irrespective of the number of Trustees appointed whether or not originally appointed at the time of creation of the Fund constituted by this Deed. For the absence of doubt, subject always to the Requirements it shall at all times be permissible for a single person or corporation to occupy the office of Trustee of the Fund.
- 1.3 Throughout this Deed there are notes and comments in square brackets that appear like this - [Ref: detail]. These comments essentially draw the readers attention to changes that will take place as from 1st July 2017 as well as sections in SIS, regulations within the SIS Regulations, ATO Taxpayer Alerts, ATO Interpretative Decisions, ATO Rulings and Determinations and other comments that you may wish to read to obtain a greater understanding of the subject matter dealt with by that section of this Deed. Many of these may be accessed via the ATO website www.ato.gov.au. **These references have been included for information purposes only, are neither legal or financial advice and do not affect the interpretation of this document.**
- 1.4 The singular shall mean and include the plural and vice versa, any gender shall mean and include all other genders and Person means and includes a natural person, firm or corporation.
- 1.5 The provisions of a Schedule constitute part of this Deed.
- 1.6 References to any statutory enactment shall mean and be construed as reference to that enactment as amended modified substituted and re-enacted from time to time.
- 1.7 The index does not form part of and shall not affect the interpretation of this Deed.
- 1.8 Clause headings and highlighting of text shall not affect the interpretation of this Deed. A reference to a clause number shall be a reference to a clause in this Deed.
- 1.9 The perpetuity period in relation to all dispositions made by this Deed shall be the period of 80 years commencing on the date of this Deed.
- 1.10 Unless a contrary intention applies, any word or expression defined in SIS, the ITAA or the Requirements which is used but not defined in this Deed, has the same meaning.
- 1.11 This Deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

2. FUND TRUSTEE

2.1 General

The Trustee of the Fund is JIJU PTY LTD ACN 640 087 118. The Fund is vested in the Trustee and managed by the Trustee upon the terms and conditions of this Deed.

2.2 Who may be a Trustee

Any entity (whether individuals or a company) that complies with s17D SIS may be a Trustee of the Fund including:

- (a) natural persons or a company.
- (b) if the Trustees are individuals, each individual Trustee is a Member;
- (c) if the Trustee is a body corporate, each director is a Member.

Notwithstanding the above, if there is only 1 person who is a Member then:

- (a) if the Trustee is a company:
 - (i) the Member is the sole director of the company; or
 - (ii) the Member is one of only 2 directors of the company, and the Member and the other director are relatives; or

- (iii) the Member is one of only 2 directors of the company, and the Member is not an employee of the other director; and
- (b) if the Trustees are individuals:
 - (i) the Member is one of only 2 trustees, of whom one is the Member and the other is a relative of the Member; or
 - (ii) the Member is one of only 2 trustees, and the Member is not an employee of the other trustee;
- (c) The Fund will not fail to satisfy the conditions specified in s17D SIS when:
 - (i) a Member has died and their LPR is a Trustee or a director of a company that is the Trustee, in place of the Member, during the period:
 - (A) beginning when the Member died; and
 - (B) ending when death benefits commence to be payable in respect of the Member; or
 - (ii) a Members LPR is a Trustee a director of a company that is the Trustee, in place of the Member, during any period when:
 - (A) the Member is under a legal disability; or
 - (B) the LPR has an enduring power of attorney in respect of the Member; or
 - (C) if a Member is under a legal disability because of age and does not have a LPR:
 - (1) the parent or guardian of the Member is a Trustee in place of the Member; or
 - (2) if the Trustee is a company, the parent or guardian of the Member is a director of the company in place of the Member; or
 - (iii) an appointment is made pursuant to s134 SIS of an acting Trustee.

2.3 Who may not be a Trustee

- (a) A person cannot be a Trustee if that person is a disqualified person under SIS.
- (b) A company cannot be a Trustee if that company is a disqualified person under SIS:
 - (i) the company knows, or has reasonable grounds to suspect, that a director is a disqualified person under SIS and the disqualification has not been waived or revoked;
 - (ii) an administrator or provisional liquidator has been appointed;
 - (iii) a receiver, or a receiver and manager has been appointed over the property beneficially owned by the company; and
 - (iv) the company has begun to be wound up.

2.4 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.

2.5 Appointment

The power of appointing a new Trustee is held by:

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

2.6 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.

2.7 Vesting of Assets

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

2.8 Trustee Covenants

[Considerations: Treasury Laws Amendment (2018 Superannuation 6 Measures No. 1) Act 2018 seeks to change the non-arm's length income (NALI) provisions from 1st July 2018. The NALI provisions are an anti-avoidance provision that is contained in s295-550 of ITAA 1997. They are designed to prevent SMSFs from entering into non-arm's length transactions which result in the SMSF artificially inflating its for the purposes of this income being taxed at the concessional rates that apply to SMSFs.

The Explanatory Memorandum states (para 3.7) the concept of non-arm's length takes its ordinary meaning. In broad terms, the concept is interpreted as relating to transactions in which individuals or entities are not dealing with each other on a commercial, unrelated party basis.

On page 36 a clear example is provided:

The SMSF financed the purchase of the property under limited recourse borrowing arrangements from a related party on terms consistent with section 67A of the SIS Act. The limited recourse borrowing arrangements were entered into on terms that include no interest, no repayments until the end of the 25 year term and borrowing of the full purchase price of the commercial real property (i.e. 100 per cent gearing)...

The SMSF has not incurred expenses that it might have been expected to incur in an arms length dealing in deriving the rental income. As such, the income that it derived from the non-arm's length scheme is non-arm's length income. The rental income of \$78,000 (less deductions attributable to the income) therefore forms part of the SMSFs non-arm's length component and is taxed at the highest marginal rate. However, there will be no deduction for interest, which under the scheme was nil.

Non-arm's length interest on borrowings to acquire an asset will result in any eventual capital gain on disposal of the rental property being treated as non-arm's length income.

If the trustee is not acting as a trustee but is instead providing services that are procured as a third-party, the non-arm's length income rules are intended to apply. Provided that the amount charged for any such services is not less than that which would be expected to be charged between parties dealing at arms length, the dealings will not be subject to the non-arm's length income rules. In such cases, the trustee of an SMSF may also be prevented from charging any more than the arms length price because of the regulatory requirements in the SIS Act (see section 17B of the SIS Act, which permits a trustee to charge up to an arms length amount for duties or services performed other than in the capacity as trustee). (para 3.37)

The Trustee for itself and its successors agrees:

- (a) to perform and observe the covenants, trusts, and conditions of this Deed binding on the Trustee;
- (b) to comply with such of the Requirements which apply to the Fund;
- (c) to hold the Fund and the income of the Trust Fund upon trust for the Members in accordance with the terms and conditions contained in this Deed;
- (d) not to charge or be paid for their duties or services as a Trustee of the Fund or a director of a corporate Trustee of the Fund.

3. TRUSTEE'S POWERS OF MANAGEMENT

3.1 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, but not limited to:

- (a) open any Bank Account and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
- (b) the Trustee may in writing delegate the exercise of all or any of the powers or discretionary authorities (when permitted by the Requirements) hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- (c) paying any costs, charges and Taxes relating to the Fund;
- (d) appointing persons to:
 - (i) perform administrative functions;

- (ii) audit the Fund's accounts; and
- (iii) prepare tax and any returns for the Regulator, and to pay any expenses incurred for this;
- (e) to appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee on such terms as the Trustee thinks fit;
- (f) conducting and settling legal proceedings;
- (g) entering contracts and executing deeds;
- (h) obtaining and acting on the advice of a barrister, solicitor, adviser, financial adviser, accountant, actuary or superannuation consultant and paying their fees;
- (i) giving receipts and discharges;
- (j) incurring liabilities, giving guarantees or indemnities;
- (k) to borrow moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purposes of acquiring an asset (other than an asset that the Trustee is prohibited by applicable law from acquiring) upon such terms with or without security or interest as the Trustee deems fit and to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise over the asset. The rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever;
- (l) insuring risks, including without limitation income protection insurance (or salary continuance insurance) for a Member (in accordance with the Requirements (and specifically section 295.460 of ITAA 1997, subparagraph 62(1)(b)(v) of SIS and the payment standards in Part 6 of the SIS Regulations) covering temporary disability benefits to be paid to a Member for a period not exceeding the period of incapacity;
- (m) acting as an underwriter;
- (n) making rules for the efficient administration of the Fund;
- (o) providing for and transferring liability for any taxes;
- (p) irrevocably electing that the Fund becomes a regulated superannuation fund;
- (q) generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee has or may have a direct or personal interest (irrespective of how and why that interest may have arisen) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee;
- (r) provided it is permitted by the Requirements, to allow a Member to withdraw Non-Concessional Contributions in excess of the Non-Concessional Contributions Cap and any associated earnings.

3.2 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.

3.3 Written Resolutions

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

3.4 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.

3.5 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.

3.6 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.

3.7 Trustee Indemnity

The:

- (a) Trustee is (and in the case of a corporate Trustee, each director is) indemnified out of the Fund to the maximum extent permitted by the Requirements 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.

3.8 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.

3.9 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.

3.10 Comply with the Regulator

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

4. TRUSTEE'S POWERS OF INVESTMENT AND SALE

4.1 Investment strategy

[Considerations: as from 1st July 2017 Trustee may need to consider the type of investments to be acquired and held, the age of the Member(s), their account balances and intended action at retirement as well as whether the Fund. Consider any property assets, whether they are encumbered (using s67A SIS (limited recourse borrowing arrangements), their current and potential future value, and income. Which method does the Fund use in determining its exempt current pension income (ECPI) - segregated or proportionate (unsegregated).

Note: from 1 July 2017 limited recourse borrowing arrangements (LRBA) will be included in a member's total superannuation balance and transfer balance cap. Exposure Draft legislation (Treasury Laws Amendment (2017 Measures No. 2) Bill 2017: Limited Recourse Borrowing Arrangements) has been released to ensure that the outstanding balance of a LRBA will now be included in a member's annual total superannuation balance and the repayment of the principal and interest of a LRBA from a member's accumulation account will be a credit in the members transfer balance account.

Note: in the 2018/19 federal budget, the government announced restrictions which remove tax deductions for vacant land from 1 July 2019 for individuals, trusts which are not widely held and to SMSFs. However, the restrictions do not apply to companies, managed investment trusts, public unit trusts or superannuation funds other than SMSFs.]

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 not permitted 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 or which may otherwise be in breach of the Requirements.
- (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 the Members or Beneficiaries with information concerning their rights under this Deed;
- (f) will allow a Member or Beneficiary who has been offered an investment choice by the Trustee to select 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 (see clause 4.2).
- (i) will in accordance with SIS Regulation 4.07D(2) (namely the insured event must be consistent with a condition of release specified in item 102, 102A, 103 or 109 of Schedule 1) and Regulation 4.09(2)(e), consider and if warranted take out a contract of insurance that provides insurance cover for one or more Members of the Fund on such terms and conditions as the Trustees may from time to time determine.
- (j) will regularly review the Fund's Investment Strategy. Although the Regulations do not prescribe what 'regular' means, the Trustee's agree to undertake an annual review of the Fund's Investment Strategy at which time they will consider whether each Member has appropriate risk insurance coverage, including life, total and permanent disability (TPD) and income protection insurance.

4.2 Earning Rate

[Regulation 4.09(2)(a) and 5.03 SIS Regulations]

At the end of each year the Trustee must determine the Fund earning rate (which may be positive or negative) for the Fund (**Fund Earning Rate**) in a way that is fair and reasonable as between:

- (a) all the Members; and
- (b) the various kinds of Benefits of each Member,

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.

The Trustee may determine the Fund Earning Rate at such other times as they may decide.

4.3 Interim Earning Rate

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

4.4 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 in accordance with clause 7.6.

4.5 Allocation of Earning Rate

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

4.6 Unallocated earnings

Any unallocated earnings must be credited to a Reserve Account.

4.7 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 Member and Account) such specific investments are made.
- (c) The income, profits, losses and expenses arising from such specific investments are to be allocated to the appropriate Account.

4.8 Power to Invest

- (a) Subject to the Requirements and all current investment strategies, the Trustee may invest all or part of the money and other assets of the Fund which are not required for the payment of Benefits or other amounts under this Deed (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. Trustee investments may include, but are not limited to the following:
 - (i) the purchase, improvement or mortgage of real property in Australia or overseas;
 - (ii) 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) investments in units or sub-units of any unit trust, whether listed on a stock exchange or not, including units in a pooled superannuation trust;

Note: s71(1)(j)(ii) SIS in-house assets, Division 13.3A of the Regulations, exemption contained in reg 13.22C of the Regulations, circumstances when an asset ceases to be exempt reg 13.22D.

- (ix) a policy or annuity with an insurer, whether by proposal or purchase;
- (x) investments in common funds;
- (xi) investments in one or more Covered Call Options;
- (xii) investments in bills of exchange or any other negotiable instruments;
- (xiii) investments in options, hedging contracts, futures contracts and other financial instruments;

- (xiv) investments in options, hedging contracts, futures contracts and other financial instruments;
- (xv) cryptocurrencies such as Bitcoin, Litecoin, Zcash, Ripple and Monero;

Note: the ATO is concerned about SMSFs investing into virtual currency because of the volatility of the investment and issues with maintaining ownership of the investment. The ATO have established a taskforce to identify and track cryptocurrency transactions.

In 2014 the ATO issued 2 taxation determinations (TD 2014/25 and TD 2014/26) clarifying that bitcoin and cryptocurrencies like bitcoin are not money but are CGT assets. The ATO flags various issues with a cryptocurrency investment on its web page entitled SMSF investing in cryptocurrencies.

- (xvi) any other investment permitted by the Requirements and which the Trustee deems appropriate including but not limited to investment in collectables and personal use assets. Regulation 13.18AA (1) specifies the assets that are taken to be collectables and personal use assets.
- (b) The Trustee must not invest in any investment that is forbidden by the Requirements whether by way of a loan or other financial assistance to a Member or a relative of a Member.

4.9 Associated Powers

Subject always to the Requirements, the Trustee may deal with any investment or Asset including purchase, encumber, sell, transfer, replace or vary such Asset or investment and do any of the following:

- (a) take such steps as may be necessary to ensure the Fund's ownership of the assets, is recognised;
- (b) open an Bank Account with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
- (c) acquire or 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;
- (d) mix investments with investments of other people (as long as separate records are maintained that enable Assets attributable to the Fund or any investment option to be identified) or otherwise dealing with Assets in any manner;
- (e) delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose; and
- (f) exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.
- (g) acquire an interest in an Asset jointly with any other person;
- (h) 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;
- (i) allow any Asset to be held in the name of the Trustee or that of any other person acceptable to the Trustee;
- (j) make loans or give financial assistance to any person;
- (k) borrow in any manner consistent with the Requirements and in particular, sections 67A and 67B 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;
- (l) appoint investment managers and custodians;
- (m) raise money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund;
- (n) exercise any other power that a legal owner of the Asset may exercise.

- (o) give indemnities to or on behalf of any person the Trustee thinks fit.

4.10 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).

In accordance with the Requirements (SIS s52(2)(d), Regulation 4.09A) the Trustee(s) will keep money and other assets of the Fund separate from any money or assets held by the employer sponsor (if any) or its associate, as well as from any money or assets held by the Trustee(s) personally.

5. MEMBERSHIP OF FUND

5.1 Initial Members

The Members of the Fund:

- (a) are DIMITRIOS MITRIS, JUDITH MITRIS.
- (b) must provide their tax file number to the Trustee;
- (c) may sign an Application Form in the form set out in Schedule 1 and a Trustee Declaration;
- (d) may sign either a Binding Death Benefits Nomination (whether lapsing or non-lapsing) or a non-binding death benefits nomination;

5.2 Additional Members

For the financial year 2019-2020 the maximum number of Members is 4. The proposed change to 6 has not eventuated.

The Trustee may appoint further Members to the Fund and:

- (a) Membership is by written application to, and acceptance by, the Trustee. The Trustee may reject any application for membership in its absolute discretion.
- (b) Before accepting a person as an additional Member (**Applicant**), the Trustee may require the person to provide such information or documents considered relevant or execute such documents as the Trustee determine, including but not limited to:
 - (i) an Application Form signed by the applicant;
 - (ii) the applicant's tax file number;
 - (iii) the applicant signing a Trustee Declaration;
 - (iv) where the applicant (or subsequently the Member) wishes to sign a Binding Death Benefits Nomination or non-binding death benefits nomination, that form; and
 - (v) a statement made by the applicant that they do not suffer from any disqualification to act as a Trustee.
- (c) For the avoidance of doubt, the applicant will not become an additional Member, and the Trustee must not accept the applicant as an additional Member:
 - (i) if the total number of Members will be more than permitted by the Requirements;
 - (ii) if the applicant is disqualified from being either a director of the corporate trustee or an individual trustee;
 - (iii) if the applicant is in an employment relationship with another Member (except another Member who is a relative);
 - (iv) before the applicant has been given a Product Disclosure Statement.
- (d) If the Trustee decides to admit the applicant as a Member, the applicant:
 - (i) becomes a Member on the date determined by the Trustee;
 - (ii) if the Trustee makes no such determination, the date that the applicant completed the Application Form.

5.3 Minors as Members

For the purposes of this clause, a minor is a person who is under 18 years of age.

A minor may be a Member, provided the Requirements have been complied with. In relation to a Member who is a minor:

- (a) the minor's parent or guardian must sign the Application Form;

- (b) decisions in relation to the minor's membership must be made by the minor's parent or guardian until the minor turns 18 or such other age as the Requirements permit a minor to make decisions concerning the Fund.

5.4 Member's Attorney

Subject always to the Requirements, the Trustee will permit a person being the donee of a valid enduring power of attorney granted by a Member (**the Attorney**) to perform and exercise all of the rights, powers, duties and obligations of the Member in respect to the Fund. Everything done by the Attorney will be as valid as if done by the Member appointing the Attorney.

5.5 Conditions of Membership

The Trustee may impose conditions on membership and may impose limits or conditions upon Benefits and may remove or vary such conditions at any time.

5.6 Cessation of Membership

A person ceases to be a Member as soon as the first of the following happens:

- (a) the Member dies;
- (b) the Member ceases to be a director of the corporate trustee;
- (c) 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
- (d) the Member's entitlement to Benefits is terminated.

If a person ceases to be a Member and the Fund has a corporate trustee, the Member ceases to be a director and hereby appoints each other Member who is a director of the trustee to lodge with the Australian Securities Investments Commission the relevant Form 484.

5.7 Growth or pension Members

A Member may progress through two phases:

- (a) **accumulation phase** - when the Member is building up funds (both Contributions and income) in their Accumulation Account to pay retirement benefits;
- (b) **pension phase** - when the Member is being paid a Pension.

Once a Member has elected to take a Pension and an income stream commences, any assets or investments that support the Pension are to be treated as a separate superannuation interest. The Member cannot make further Contributions or rollover amounts to that particular account. The Member may roll back their Pension to their Accumulation Account and make Contributions to that account or commence a new Accumulation Account, if they do not have one.

6. RECORDS AND AUDIT

6.1 Records

[Consideration: with substantial changes being made to the superannuation system on 1st July 2017, it is now more important than ever for timely record keeping. Penalties apply to amounts in excess of a Member's Transfer Balance Cap and a new system of debits and credits applies to a Members Transfer Balance Account. Trustees must have accurate and up to date information to reduce the risk of breaching the new rules.]

The Trustee must:

- (a) prepare, maintain and where relevant lodge 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:

Administrative records	Financial and tax records
Minutes of Trustee meetings and decisions (where Fund matters were discussed)	Accounting records to explain the transactions and financial position of the Fund
Records of change in fund details (such as Trustees)	Annual operating statement (balance sheet) [s35B(1) SIS]
Trustee declarations	Statement of financial position (profit and loss) [s35B(1) SIS]
Written consents to act as Trustee	Records needed to prepare the Fund's annual returns and accounts
Records needed to complete the Fund's annual audit	Annual returns
Audit reports	Records that explain the Fund's assessable income and deductible expenses

Trust deed	Documents showing ownership of Fund assets
Investment strategy	Bank Account statements
Registration documents (ABN, TFN and GST notifications)	Records to show contributions, rollovers and payments to Members
Notice of Fund compliance (received after lodgment of first year's return)	Record of each Member's Accumulation and Pension Account
Death benefit nominations	PAYG payment summaries
Letter of engagement and Management letter (concerning the appointment of an approved auditor)	

- (b) The Requirements provide that the Trustee keep certain records for a minimum period including:
- (i) for a minimum of 5 years:
 - (A) accurate and accessible accounting records that explain the transactions and financial position of the Fund
 - (B) an annual operating statement and an annual statement of the Fund's financial position, and
 - (C) copies of all income tax returns for the Fund.
 - (ii) for a minimum of 10 years:
 - (A) minutes of Trustee meetings and decisions (where matters affecting the Fund were discussed);
 - (B) records of all changes of Trustees;
 - (C) Trustee declarations (whether as a individual trustee, or director of a corporate trustee);
 - (D) Members' written consent to be appointed as Trustees, and
 - (E) copies of all reports given to Members;
 - (F) Member contributions statements;
 - (G) copies of all annual returns lodged (for corporate trustees).
 - (H) audit reports.
- (c) if a Member is in receipt of a Pension, then the Trustee must monitor the value of capital transferred in and out of the retirement phase to determine whether a Member has breached their Transfer Balance Cap. The mechanism for doing this is the Transfer Balance Account. Characteristics of the Transfer Balance Account include:
- (i) a credit to the TBA arises when value is transferred into retirement phase (eg on starting a retirement phase pension such as an account based pension);
 - (ii) a credit increases the balance of the Member's TBA and therefor uses up their Transfer Balance Cap;
 - (iii) a debit to the TBA arises when value is transferred out of retirement phase (eg by commuting a retirement phase pension);
 - (iv) a debit decreases the balance of the Member's TBA and therefor gives the Member the ability to transfer additional value into retirement phase up to the Transfer Balance Cap;
 - (v) debits arise in a TBA from:
 - (A) a commutation of a superannuation income stream in the retirement phase;
 - (B) structured settlement contributions;
 - (C) an event that results in your superannuation interest being reduced (fraud or dishonesty; bankruptcy);
 - (D) a payment split (divorce or relationship breakdown);
 - (E) a superannuation income stream failing to comply with the pension or annuity standards under which it is provided;
 - (F) a superannuation income stream provider failing to comply with a commutation authority in respect of a particular superannuation income stream;
 - (G) a notice being issued under section 136-70 in Schedule 1 to the Tax Administration Act 1953 (TAA) in relation to a non-commutable excess transfer balance;
 - (H) other circumstances as provided for by the Regulations.;
 (see s294-80 ITAA 1997)

- (vi) special rules apply concerning repayments made under a limited recourse borrowing arrangement (**LRBA**).

[Note: see also section 294.55 of the ITAA 1997. Law Companion Ruling LCR 2016/9 Superannuation reform: transfer balance cap provides further information on LRBAs, apportioning the LRBA credit for multiple Members, TBA and the TBC].

A credit will arise in a Member's TBA in relation to a payment made by the Trustee under a limited recourse borrowing arrangement (LRBA) that was entered into on or after 1 July 2017 where the payment results in an increase in the value of the Member's superannuation interest that supports their superannuation income stream. An increase in the value of the Member's superannuation interest supporting the superannuation income stream (in the retirement phase) will occur where a payment in respect of the LRBA is made fully, or partially, from assets that are supporting superannuation interests that are not in the retirement phase.

- (vii) the Fund Trustees is required to report certain 'events' affecting a Member's TBA. The relevant ATO form is **Super transfer balance account report (NAT 74923)** (generally referred to as **TBAR**).

6.2 Auditor

As from 1st July 2019 provided the Fund has a history of good record-keeping and compliance, the Trustee may move to a three-yearly audit cycle. Prior to that date the Fund was required to be audited annually. The Trustee must comply with the audit requirements specified in the Requirements to:

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

6.3 Preparation and lodgement of documents

The Trustee must prepare and lodge certain documents required by the Requirements including, but not limited to the following:

- (a) an income and expenditure account (the Balance Sheet);
- (b) an operating statement (the Profit and Loss);
- (c) an income tax return for the Fund;
- (d) Member Contribution statements;
- (e) Trustee Declarations;
- (f) Change of details for superannuation entities (Regulation 11.07A);

In accordance with the Requirements (Reg 8.02B, SIS Regulations), the Trustee(s) will ensure that Fund assets are valued at Market Value when the Fund's financial statements are prepared.

TBAR - Transfer Balance Account Reporting

As from 1 July 2018, the Trustee will be required to report events to the ATO which impact on a Members Transfer Balance Account including the following common transactions as they occur:

- (a) the commencement (starting) of a new SMSF pension;
- (b) any full or partial commutations (stopping) of a SMSF pensions (i.e. converting all or part of a pension into a lump sum and withdrawing it from the SMSF);
- (c) structured settlement contributions (payouts relating to personal injury);
- (d) principal repayments on a limited-recourse borrowing arrangement;

Note: the Transfer Balance Account only applies to Members who are drawing a pension from their fund. Where all Members of the Fund only have accumulation accounts the Trustee, at this stage, do not have additional reporting requirements.

6.4 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.

7. ACCOUNTS

7.1 Establishment of Accounts

The Trustee must:

- (a) Establish such accounts as the Trustee determines necessary for the operation of the Fund including:
 - (i) an Accumulation Account for each Member;
 - (ii) a Pension Account for each Member as and when required;
 - (iii) a Reserve Account;
 - (iv) such other accounts as permitted by the Requirements and which the Trustee considers appropriate from time to time.
- (b) Record for each Accumulation and Pension Account where relevant, the tax free and taxable elements of the account.
- (c) Deposit all money of the Fund as soon as practicable into the Bank Account. After receiving a contribution the Trustee must allocate the contribution to a Member's Accumulation Account or Pension Account within 28 days after the end of the month the contribution was received or if it is not reasonably practicable to allocate the contribution to the Member within the 28 day period, within such longer period as is reasonable in the circumstances.

7.2 Credits to Accumulation Account

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

- (a) contributions;
- (b) re-contributions pursuant to the First Home Super Saver Scheme;
- (c) contributions pursuant to the Downsizer Contribution (see clause 8.1);
- (d) any amount paid to the Trustee as a result of a successful application made pursuant to Part 23 of SIS and which the Trustee thinks fit to credit to the Member's account;
- (e) any amount rolled over from another superannuation account in respect of the Member;
- (f) the proceeds of any policy of insurance effected by the Trustee (and owned by the Fund) in respect of the Member;
- (g) any allocation by the Trustee from the Reserve Account;
- (h) any allocation of earnings by the Trustee;
- (i) any other amount that the Requirements do not expressly exclude.

7.3 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 Member's Accumulation Account including but not limited to tax payable in respect to that Member, a contribution split to another Member, an amount rolled over to another superannuation fund as a result of a request by a Member, the payment of a benefit (but not including a payment from a Pension Account);
- (b) the costs of any policy of insurance effected and owned by the Trustee in respect of the Member;
- (c) such proportion of any negative earnings as may be allocated by the Trustee;
- (d) any amount forfeited by the Member;
- (e) such proportion of the costs of the Fund as are allocated by the Trustee;
- (f) any costs, losses, expenses that relate to that particular Member (either directly, or indirectly by virtue of their choice of investments) as may be determined by the Trustee; or
- (g) any other amount the Trustee think appropriate to debit.

7.4 Contribution splitting

(Note: as from 1st July 2017 the income threshold for claiming a tax offset for spouse contributions has increased to \$37,000 for a maximum tax offset with a partial offset up to \$40,000. To be entitled to the maximum rebate of \$540, a \$3,000 spouse contribution must be made. As from 1 July 2020 your spouse (receiving the contribution) must be under 74 years of age or if the receiving spouse is aged 67 they must meet the work test to be eligible for the tax offset.

The ATO states - to be entitled to the spouse contributions tax offset:

- *You must make a contribution to your spouse's super. This is a contribution made using after-tax dollars, which you haven't claimed as a tax deduction;*
- *You must be married or in a de facto relationship (this includes same-sex couples);*
- *You must both be Australian residents;*
- *The receiving spouse has to be under the age of 65, or if they're between 65 and 69 they must meet work test requirements, meaning they were gainfully employed during the financial year for at least 40 hours over a period of no more than 30 consecutive days;*
- *The receiving spouse's income must be \$37,000 or less for you to qualify for the full tax offset and less than \$40,000 for you to receive a partial tax offset.!*

The following clauses apply to a contribution split:

- (a) Unless a contrary intention appears, words and phrases used in this clause 7.4 have the same meanings as in the SIS Regulations. In addition **Benefit Arrangement** means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions.
- (b) Notwithstanding any other provision of this Deed, but subject to the Requirements, where the Trustee receives from a Member a Contribution Splitting Application (being ATO form Superannuation contributions splitting application (NAT 15237-03.2006)) which is not invalid under the Requirements, the Trustee may in its absolute discretion determine to split the splittable contributions received for the Member during the financial year applicable to the Contribution Splitting Application.
- (c) Where the Trustee under clause 7.4(b) determines to split the Member's splittable contributions, notwithstanding any other provision of this Deed but subject to the Requirements, the Trustee may:
 - (i) either:
 - (A) if a receiving Spouse is not a Member, create a new interest in the Fund for the receiving Spouse and credit the amount set out in the Contribution Splitting Application to that interest, in which case the Trustee may determine the terms and conditions that will apply to the new interest;
 - (B) if the receiving Spouse already has an interest in the Fund, credit the amount set out in the Contribution Splitting Application to the receiving Spouse's Accumulation Account; or
 - (C) transfer or roll over the amount set out in the Contribution Splitting Application to a Benefit Arrangement for the receiving Spouse; and
 - (ii) adjust the Accumulation Account of the applicant Member in such manner as it considers appropriate to reflect the splitting of the Member's splittable contributions pursuant to clause 7.4(h)(i).
- (d) The Trustee may from time to time specify conditions and restrictions relating to Contribution Splitting Applications (**Contribution Splitting Rules**) which, in addition to the Requirements, must be complied with by the Member and receiving Spouse in order for a Contribution Splitting Application to be valid. The Contribution Splitting Rules may also set out rules regulating the splitting of contributions.
- (e) The Trustee may vary or revoke the Contribution Splitting Rules from time to time in its absolute discretion.
- (f) The Trustee may charge reasonable fees in respect of anything done by the Trustee in relation to the splitting of contributions under this clause 7.4.
- (g) 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.
- (h) **Splitting Superannuation interests on Divorce**
 If a Member's interest in the Fund is subject to Part VIII B of the Family Law Act 1975 (**Part VIII B**):
 - (i) the Trustee must take action as lawfully required of it in respect of a Member's interest in the Fund pursuant to Part VIII B, the Family Law (Superannuation Regulations) or by the Requirements; and
 - (ii) a non-member Spouse as defined in Part VIII B is deemed not to be a Member solely by virtue of his or her entitlement under Part VIII B except:

- (A) as specified by the Requirements; or
 - (B) as necessary to give effect to:
 - (1) the non-member Spouse's rights under Part VIII B or the Family Law (Superannuation) Regulations; and
 - (2) 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.

(i) **Separate interest**

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

7.5 Pension Account

After the Trustee has received a Pension Payment Application from a Member, the Trustee must:

- (a) confirm that the Member has met a Condition of Release;
- (b) advise the Member in writing that the requested Pension will be paid and at what times;
- (c) provide the Member with a Product Disclosure Statement;
- (d) document what assets/investments will fund that Pension and those assets/investments will become the Pension Account. If required pursuant to the Requirements, the Trustee must obtain an actuarial certificate to confirm what assets/investments will fund that Pension.

7.6 Reserve Account

- (a) The Trustee may establish one or more Reserve Accounts that the Trustee believes necessary or desirable, or that is required or permitted by the Regulations.
- (b) Any amount held in a Reserve Account does not form part of any Accumulation or Pension 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.

The Trustee covenants that it will formulate and to give effect to a strategy for the prudential management of the Reserve Account, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.

8. CONTRIBUTIONS

8.1 Trustee Obligations

The Trustee:

- (a) may accept:
 - (i) Contributions in accordance with the Requirements;
 - (ii) Contributions made in accordance with what is known as the Downsizer Contribution (see note above);
 - (iii) First Home Super Saver Scheme contributions;
 - (iv) mandated employer contributions provided an Employer has consented to become a participating employer and agreed to make contributions in respect of a Member subject to the Employer completing such documents as the Trustee may require from time to time, including but not limited to an Employer Participation Agreement (see Schedule 3);

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

No work test for contributions in first year of retirement

New retirees aged between 65 and 74 will now be able to make voluntary contributions into their super account without needing to satisfy the work test. To qualify the Member must have had less than \$300,000 in their super account at the end of the previous financial year.

Note: the relaxation of the work test rules only applies once and the Member cannot make contributions in subsequent financial years without meeting the work test. Under the new rules, after age 65 work test-free contributions are only permitted in the year immediately after the one in which the Member last met the work test.

Note: Downsizer Contribution (ITAA 1997 section 292-102) - from 1 July 2018, if a Member is 65 years old or older and meets the eligibility requirements, they may be able to choose to make a downsizer contribution into the Fund of up to \$300,000 from the proceeds of selling their home.

The downsizer contribution will not count towards either the Member's concessional or non-concessional superannuation contribution caps and can still be made even if the Member has a total super balance greater than \$1.6 million.

First Home Super Saver Scheme to be eligible to participate in the FHSS Scheme the Member must:

1. have never held any freehold interest in land in Australia (including any long-term leasehold interest of 50 plus years). This is either in their individual capacity or through a controlled foreign company title interest;
2. be 18 years or older; and
3. have not previously received any payment under the FHSS Scheme.

The Member can now begin making eligible contributions to the Fund. Broadly, an eligible contribution is:

1. a concessional or non-concessional contribution that is not a mandated employer contribution. Thus, contributions that are made to cover an employers minimum superannuation guarantee requirement are excluded from the FHSS Scheme;
2. eligible insofar as it does not result in the member exceeding their concessional and non-concessional contributions caps; and
3. eligible insofar as it does not exceed the \$15,000 FHSS contribution limit in any financial year (FY), commencing from 1 July 2017.
4. The maximum amount of contributions that may be eligible to be released under the FHSS Scheme is \$30,000. When an eligible contribution is made, the relevant super fund is required to allocate the contribution accordingly and inform the ATO.

Once the member has accumulated a certain amount in their FHSS allocations, they can request a FHSS Scheme determination from the ATO. The ATO will then provide the member with an estimate of the members FHSS Scheme maximum release amount, which includes:

1. concessional and non-concessional FHSS contributions;
2. associated earnings as calculated by the ATO shortfall interest charge rate X [FHSS contributions + sum of earlier daily proxy amounts]; and
3. less PAYG withholding tax.

After considering the amount in the FHSS determination, the Member can then request a release authority from the ATO who will generate a release authority and provide confirmation to both the Member and the Fund. Once the Fund receives the release authority, it releases the relevant amount to the ATO. The ATO receives the amount from the Fund, deducts the PAYG withholding tax and then makes the net payment to the Member. The Member must include the FHSS amount received in their income tax return for that financial year.

- (b) must not accept:
- (i) a Contribution that is not permitted by the Requirements;
 - (ii) a Contribution that would result in the Fund becoming a non complying superannuation fund;
 - (iii) any Contribution that the Regulator directs the Trustee not to accept;
 - (iv) a Contribution that would otherwise have been made by an employer which is the subject of an **employer shortfall exemption certificate** issued by the ATO to a Member (and the relevant employer(s)) and which the Member has given written notice to the Trustee;
- (c) The Trustee is required to comply with the Requirements concerning:

- (i) any contribution or shortfall component the Trustee has accepted in breach of clause 8.1(b) and must refund the amount within any time specified by, and only as permitted by, superannuation law. The Trustee may deduct from the amount to be refunded:
 - (A) any amount which an insurer may have charged in respect of any extra cover provided on the basis of the contribution or shortfall charge;
 - (B) reasonable administration charges; and
 - (C) any other amount the Trustee considers appropriate, acting reasonably.
- (ii) any Excess Contributions Tax imposed on a Member and provided it is permitted by the Act, the withdrawal by a Member of Non-Concessional Contributions in excess of the Non-Concessional Contributions Cap and any associated earnings.

[Note: from 1 July 2017, the general concessional contributions cap will be \$25,000 for all individuals regardless of age.

From 1 July 2018, members will be able to make 'carry-forward' concessional super contributions if they have a total superannuation balance of less than \$500,000. They will be able to access their unused concessional contributions cap on a rolling basis for five years. Amounts carried forward that have not been used after five years will expire. If the Member is aged 65 or over, the normal work test rules apply.

From 1 July 2017, the annual non-concessional contributions cap will be \$100,000 (not \$180,000). Members with a total superannuation balance (TSB) of:

- less than \$1.4 million on 30 June 2017, can take advantage of the maximum bring-forward cap of \$300,000, and their bring-forward period is 3 years;*
- \$1.4 million or more, but less than \$1.5 million, then their maximum bring-forward cap is \$200,000 and their bring-forward period is 2 years;*
- \$1.5 million or more but less than \$1.6 million, then they can only take advantage of the annual non-concessional contributions cap of \$100,000 and they have no bring-forward cap.]*

8.2 Unallocated Contributions

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

8.3 Contributors notify

The contributor must:

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

8.4 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.

8.5 Reallocation of Contributions

Where an asset is transferred to the Fund by a Member or Members in accordance with clause 8.4 notwithstanding any other provision in this Deed:

- (a) that asset must be held in the relevant Member's Accumulation Account 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 4.7 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 Contribution was made.

8.6 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.

8.7 Employer Contributions

The following clauses relate to an Employer that is to make Contributions for the benefit of a Member:

- (a) an Employer may apply to participate in the Fund by completing an application form prescribed by the Trustee from time to time (see Schedule 4);
- (b) if Trustee accept an Employer's participation application the Employer's participation will commence from:
 - (i) the date on which the Trustee accepts the application; or
 - (ii) another date agreed between the Trustee and Employer.
- (c) Each Employer is deemed to have approved of, and becomes bound by, this Deed;
- (d) An Employer's participation in the Fund terminates if:
 - (i) the Employer gives written notice to the Trustee that it wishes to terminate its participation;
 - (ii) there are no Members relating to that Employer;
 - (iii) or the Employer is dissolved as a legal entity (or the Trustee becomes aware that it is about to be dissolved) and the Trustee considers that participation should be terminated; or
 - (iv) the Trustee otherwise decides that the Employer's participation should terminate.

In this event the Trustee will decide the date on which the termination will take effect (**Termination Date**).

- (e) If an Employer's participation terminates, then unless the Trustee otherwise agrees, the following provisions will apply:
 - (i) No further contributions may be accepted from that Employer and any arrears due to the Termination Date must be paid;
 - (ii) Any benefits payable on or before the Termination Date will be paid;
 - (iii) The balance of the Member's Accumulation Account may be retained in the Fund or transferred to another complying superannuation fund; and
 - (iv) Any portion of the Reserve Account attributable to the terminating Employer will be dealt with in accordance with arrangements nominated by the Employer, but subject to the Requirements.
- (f) Nothing in this Deed limits an Employer's rights to dismiss an employee who is a Member, or may be used to increase liability for damages in any proceedings relating to an employee's (who is a Member) dismissal.
- (g) Subject to the Requirements, the Trustee may pay money from the Fund to an Employer.
- (h) Nothing in this Deed is to be taken as imposing any fiduciary obligations on an Employer in connection with the exercise of any powers relating to the Fund.

9. TRANSFERS TO OTHER FUNDS

9.1 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**).

9.2 Requirements

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

9.3 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.;

9.4 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.

DIVISION 9.2B
9.5 Consent

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

10. TRANSFERS FROM OTHER FUNDS

10.1 Transfers in

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

10.2 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.

10.3 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.

10.4 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.

11. PAYMENT OF BENEFITS - GENERAL

11.1 Payment of preserved benefits

The Trustee must only pay to a Member their preserved benefits in accordance with the Requirements. As at the date of this Deed, the Trustee may pay a preserved benefit to a Member upon the satisfaction of a Condition of Release.

11.2 Payment of non-preserved benefits

Subject to the Requirements and to providing the Trustee with a written direction in a form acceptable to the Trustee, a Member may withdraw any part of the non-preserved amount of the Member's Accumulation Account.

11.3 Compulsory cashing of benefits

A Member's benefit entitlement will vest according to the Requirements. The Trustee must cash a Member's benefit entitlement as soon as practicable after a Member dies.

11.4 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 transition to retirement pension;
- (d) a defined benefits pension subject always to that Pension and the Trustee adhering to Division 9.2B of the SIS Regulations and in particular, regulation 9.04I;
- (e) any other pension as permitted by the Requirements; or
- (f) a combination of the above.

11.5 Procedure before Benefits payable

Benefits are not payable until:

- (a) the Member has satisfied a Condition of Release; and
- (b) the Member (or the Nominated Dependant or other Beneficiary if the Member has died) has given to the Trustee:
 - (i) a Pension Payment Application being 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) everything, including such executed documents, the Trustee requires, and

[Consideration: as from 1 July 2017, a cap of \$1.6 million (referred to as the Transfer Balance Cap) will be imposed on the amount of superannuation that can be transferred into pension phase, and effectively force Members to remove superannuation benefits from the pension phase if their Transfer Balance Account balance exceeds this amount.]

- (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.
- (d) if the the Trustee is making a decision about the payment of death benefits for a deceased Member, a resolution concerning the payment of that benefit cannot be passed:
 - (i) in the case of a corporate Trustee, unless a director who is the LPR of the deceased Member has approved or consented to the resolution; or
 - (ii) in the case of individual Trustees, unless the LPR of the deceased Member has approved or consented to the resolution.

11.6 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.

11.7 Receipt

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

11.8 Deduction of Tax from Benefits Payable

The Trustee must deduct any necessary tax from the Benefit.

11.9 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.

11.10 Requirements

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

11.11 Benefits paid by transfer of assets

The Trustee may, at the request of the person entitled to a Benefit, pay a Benefit by the transfer of one or more assets, subject always to:

- (a) the Market Value of the asset or assets to be transferred to the Member being determined in accordance with paragraph 16 of Australian Taxation Office Superannuation Circular 2003/1 or such other manner as is permitted by the Requirements; and
- (b) the amount of the Benefit being the Market Value of the asset or assets calculated in accordance with the previous sub-clause.

11.12 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.

12. PAYMENT TO OTHERS ON BEHALF OF MEMBERS OR BENEFICIARIES

12.1 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.

13. PENSION BENEFITS

13.1 Limit on Benefits

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

Considerations: from 1 July 2017, a Member has a Transfer Balance Cap of \$1.6 million, being the value of assets that a Member may take into pension phase. Transfer Balance Accounts in excess of the \$1.6m will attract excess transfer balance tax. Possible ways to deal with this situation must be discussed with your accountant or financial planner, but may include:

- transfer the excess above \$1.6 m into an accumulation account within your existing super fund, or another super fund, OR;
- withdraw the excess above \$1.6 million out of the super system.

The Transfer Balance Cap applies equally to Account Based Pensions and also defined pensions, but it is determined in a different way. Pension payments over \$100,000 per annum paid to members of unfunded [untaxed] defined benefit schemes and constitutionally protected funds providing defined pensions, will continue to be taxed at full marginal rates, however the 10 per cent tax offset will be capped at \$10,000 from 1 July 2017.

For members of funded [taxed] defined benefit schemes, 50% of pension amounts over \$100,000 per annum will be taxed at the individual's marginal tax rate.]

13.2 Payment of Benefits

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

13.3 Forms of Pension

Without limiting anything in this Deed, the Trustee and a Member or the Beneficiary may agree that the whole or any part of any amount payable to a Member under this Deed will be paid in one or more of the following forms of pension if that is permitted by the Requirements:

- (a) an Account Based Pension;
- (b) a Transition to Retirement Pension;
- (c) a defined benefits pension subject always to Division 9.2B of the SIS Regulations and in particular, regulation 9.04f; and
- (d) any other form of pension that the Trustee chooses to make available at any time and which is permitted by the Requirements.

For the avoidance of doubt, if this Deed is silent on the terms and conditions upon which the Trustee may pay that Pension, then the procedure to be followed will be that outlined in SIS and the SIS Regulations.

13.4 Provisions of the Requirements

The clauses in this Deed concerning Pensions are designed to reflect certain provisions of the Requirements relating to Pensions. To the extent that those provisions of the Requirements may be varied or supplemented, the Trustee may offer Pensions on terms that are consistent with the varied or supplemented provisions. Subject to the Requirements, where a change of the type referred to previously occurs, or if the Trustee otherwise considers it appropriate to do so, the Trustee may change the terms on which a current Pension is paid, without being required to amend the terms of this Deed.

13.5 Account based pensions

The following terms, in addition to any other terms that may be set out in the Requirements, apply to an Account Based Pension:

- (a) Capital supporting the pension (which is limited to a Members Transfer Balance Cap of \$1.6m) cannot be added to by way of contribution or rollover after the pension has commenced;
- (b) The Pension must be paid annually, but pension payments may be made more frequently as the Trustee determines;
- (c) The total pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the SIS Regulations;
- (d) The Pension will cease when the Account Balance is nil;
- (e) The Pension is transferable to a Nominated Reversionary Beneficiary only on the death of the Member or the then current Nominated Reversionary Beneficiary, as the case may be;

- (f) Notwithstanding any other provision of this Trust Deed, a Member may provide in their Pension Payment Agreement for their Pension (being their superannuation income stream) on their death to be:
- (i) transferred to a Dependant of that Member (the **Nominated Reversionary Beneficiary**) and will be paid to the Nominated Reversionary Beneficiary in the form of a superannuation income stream (**Reversionary Pension**). The Reversionary Pension will automatically transfer to the Nominated Reversionary Beneficiary on the death of the Member. Alternatively a Member may nominate a class of person in the relevant Pension Payment Agreement (for example, spouse) to whom the Reversionary Pension will become payable on their death;
 - (ii) paid as a Lump Sum to the Deceased Member's estate;
 - (iii) paid as a Lump Sum to a person that is not a Dependant.

How the Trustee are to deal with the Pension following the death of a Member may be addressed by the Member in the relevant Pension Payment Application or their Binding Death Benefits Nomination.

[Considerations: as from 1st July 2017 a Member's Transfer Balance Cap and Transfer Balance Account are limited to \$1.6m. Consideration must be given to those Nominated Reversionary Beneficiaries that have Transfer Balance Accounts of or approaching \$1.6m since the transfer of a pension from a spouse or partner may result in the surviving Member exceeding the Transfer Balance Cap.

However, s294-25 ITAA 1997 and paragraphs 32-38 of ATO Law Companion Guideline 2016/D9 make it clear that if the deceased Member dies after 30 June 2017, and the pension is an automatically reversionary pension, the credit to the Member's Transfer Balance Account occurs 12 months after the day that the pension first becomes payable (eg from deceased Member's death). If the Trustee has any discretion about which beneficiary becomes entitled to the superannuation income stream, the interest is not a reversionary interest, and the beneficiary is not a reversionary beneficiary therefor the 12 month delay does not apply.]

- (g) The capital value of the Pension and the income from it **cannot be used as a security** for a borrowing.
- (h) The Pension cannot be commuted, in whole or in part, except in accordance with the Requirements [ref Regulation 1.06(2)(e)] and:
 - (i) for a commutation in part, the account balance of the Pension immediately after the commutation, is at least equal to the minimum amount calculated in accordance with Schedule 7 of the SIS Regulations, as reduced by the amount of pension payments that have already been made to the Member or Nominated Reversionary Beneficiary in the financial year in which the commutation occurs; or
 - (ii) the pension has paid, in the financial year in which the commutation takes place, at least the minimum amount required by the Requirements.
- (i) Subject to the terms and conditions upon which a Pension has been established, the Member may at a later time amend or revoke the terms and conditions of the Pension during the life of the Member. Any amendment or revocation must be in writing and be signed and dated by the Member. Unless required by the Requirements, any such amendment or revocation to those terms and conditions of the Pension can occur without commuting or stopping the Pension.

13.6 Transition to retirement pensions

[Note: as from 1st July 2017 transition to retirement income stream (TRIS) assets will no longer be exempt from tax. Earnings in an account-based pension supporting a TTR strategy will be subject to the same 15% tax applicable to a superannuation accumulation fund.

A TRIS pension is difficult to commute (or cash out), except in some very limited circumstances.]

The following terms, in addition to any other terms that may be set out in the Requirements, apply to a TRIS pension:

- (a) Capital supporting the pension cannot be added to by way of contribution or rollover after the Pension has commenced;
- (b) The TRIS pension must be paid annually, but Pension payments may be made more frequently as the Trustee determines;
- (c) The total Pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the SIS Regulations;
- (d) The total Pension payments in a year may not be greater than the maximum limits calculated in accordance with the SIS Regulations;
- (e) The Pension will cease when the Account Balance is nil;

- (f) The Pension on the death of the Member or the then current Nominated Reversionary Beneficiary may be:
- (i) transferred to a Dependant of the Deceased Member or Nominated Reversionary Beneficiary;
 - (ii) paid as a Lump Sum to the Deceased Member's or Nominated Reversionary Beneficiary's estate;
 - (iii) paid as a Lump Sum to a person that is not a Dependant;

How the Trustee are to deal with the transition to retirement pension following the death of a Member may be addressed by the Member in the relevant Pension Payment Application or their Binding Death Benefits Nomination.

- (g) Where a reversionary pension is payable, subject to compliance with these pension standards and subject always to the Requirements, the amount, terms and conditions of the reversionary pension may be agreed between the Nominated Reversionary Beneficiary and the Trustee;
- (h) The capital value of the Pension and the income from it cannot be used as a security for a borrowing.
- (i) The Pension may be commuted, in whole or in part, in accordance with the Requirements. If the Pension is commuted, the resulting Lump Sum amount cannot be cashed unless:
- (i) the purpose of the commutation is:
 - (A) to cash unrestricted non-preserved benefits;
 - (B) to pay a superannuation contributions surcharge; or
 - (C) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
 - (ii) before commutation, the primary beneficiary or reversionary beneficiary, as the case may be, has satisfied a Condition of Release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'nil'.

13.7 Particular Pension arrangements

Subject to the Requirements the Trustee may require the Member or the Nominated Reversionary Beneficiary or other Beneficiary to provide the Trustee with information and other particulars relating to the Pension by way of a Pension Payment Application, before it is payable including:

- (a) the commencement day of the Pension;
- (b) the frequency of instalments;
- (c) the amount (whether variable or constant);
- (d) whether on the death of the Member the Pension has a reversionary component and, if so, to whom it is to be paid; and
- (e) whether the Pension can be commuted.

13.8 Pension variations

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

14. COMMUTATION OF PENSION

14.1 The Trustee may:

- (a) on the request of a Member commute (roll back) all or part of a Pension to the Member's Accumulation Account provided that the commutation is not in breach of the terms on which the Pension is payable or the Requirements;
- (b) on the request of a Beneficiary commute all or part of a Pension in any manner permitted by the terms on which the Pension is payable or the Requirements.

[Note: the introduction of the Transfer Balance Cap as from 1st July 2017 will require certain self managed superannuation funds to commute a portion of the assets supporting their pension. Practical Compliance Guideline PCG 2017/5 applies to a member of a SMSF who requests an amount or amounts to be commuted from their superannuation income stream(s) to avoid exceeding the \$1.6 million transfer balance cap. The Guideline does not apply in respect of commutation requests made on or after 1 July 2017.]

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

15. LUMP SUM BENEFITS

15.1 Time for Payment

The Trustee:

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

15.2 Instalments

The Trustee may pay a Lump Sum in one or more instalments.

16. CONVERSION OF LUMP SUM TO PENSION

16.1 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.

17. RETIREMENT, TERMINATION AND UNRESTRICTED BENEFITS

17.1 Form of Benefit

If a Member:

- (a) satisfies the Requirements to permit a Benefit to be paid and the Member has provided the Trustee with a written request 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.

17.2 Amount of Benefit

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

17.3 Discretionary Benefit

The Trustee may pay an additional amount of Benefit.

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

18.1 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 LPR in the case of Permanent Incapacity; and
- (b) Pension to replace lost income for the period of incapacity in the case of Temporary Incapacity.

18.2 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).

18.3 Additional Benefit

The Trustee may pay an additional amount of Benefit.

18.4 Terminal Medical Condition

- (a) For a terminal medical condition to exist, the Member must satisfy the conditions set out in Regulation 6.01A of the SIS Regulations;
- (b) a Member that has a terminal medical condition meets the Condition of Release detailed in Item 102A of Schedule 1 of the SIS Regulations;
- (c) The terminal medical Condition of Release does not have any cashing restrictions and applies to a Member irrespective of their age or work status (meaning that the Member can still be gainfully employed at the time their benefits are withdrawn);
- (d) the Trustee may pay to or in respect of the Member, his Benefit by way of Pension or Lump Sum as requested by the Member (or the Member's LPR whichever may be relevant) pursuant to clauses 13.2 and 17.1.

19. DEATH BENEFITS

19.1 Form of Benefit

[Note: a Binding Death Benefits Nomination made by a Member does not have to be renewed every 3 years contrary to comments made by many professionals. For confirmation of this see SMSFD 2008/3, s59 SIS and Regulation 6.17A do not apply to self managed superannuation funds]

Upon the death of a Member or Pensioner before the whole of their Benefit has been paid to them, the Trustee must pay the Benefit by way of Lump Sum or Pension as determined by the Trustee subject to the following:

- (a) where the Deceased Member has nominated in their Pension documentation one or more Nominated Reversionary Beneficiaries then:
- (i) upon the happening of a Reversionary Event, any amount standing to the credit of the Deceased Member's Pension account is to be considered a Benefit of the Nominated Reversionary Beneficiary or Beneficiaries and not of the Deceased Member;
 - (ii) subject to the terms and conditions contained in the Pension documentation, the Pension may be transferred to another Nominated Reversionary Beneficiary upon the death or the happening of a Reversionary Event to the then current Nominated Reversionary Beneficiary;
 - (iii) where the Requirements do not allow a Nominated Reversionary Beneficiary to continue on the Pension, the Nominated Reversionary Beneficiary's share of the Pension is to be commuted to a lump sum in accordance with the Requirements;

[Note: consideration must be given to the Nominated Reversionary Beneficiary/Beneficiaries Transfer Balance Account and Transfer Balance Cap as soon as a Member dies. Remember only automatically reversionary pensions obtain a 12 month grace period before a credit arises to the Nominated Reversionary Beneficiary's Transfer Balance Account.

Law Companion Guideline LCG 2017/3 Superannuation reform: Superannuation death benefits and the transfer balance cap was issued on 8th May 2017. This LGG confirms that if you have a superannuation interest when you die, your death creates a compulsory cashing requirement for the superannuation provider. This requires the superannuation provider to cash your superannuation interests to your beneficiaries or to your legal personal representative as soon as practicable (Reg 6.21 SISR). Note that as from 01/07/2017, for dependant beneficiaries, superannuation death benefits can be cashed:

- as a superannuation lump sum that is paid out of the superannuation system;
- as death benefit income streams that are retained in the superannuation system (from 1 July 2017 such superannuation income streams must also be in the retirement phase), or
- a combination of the two.]

- (b) a Member may sign a Binding Death Benefits Nomination in a form acceptable to the Trustee and which contains the information required by SIS Regulation 6.17A. The relevant Member may sign a Binding Death Benefits Nomination that has no time limit (referred to as non-lapsing) or be limited to a specific period of time after which it will lapse.
- (c) subject to clause 19.1(d) where a Member dies (**Deceased Member**) and leaves a valid Binding Death Benefits Nomination, the Trustee must pay all or part of the Benefit as specified in that nomination. If the Deceased Member has nominated a Nominated Reversionary Beneficiary, any amount standing to the credit of the Deceased Member's Pension account (**Pension Balance**) is to be considered a Benefit of the Nominated Reversionary Beneficiary or Beneficiaries and not of the Deceased Member. Accordingly the Binding Death Benefits Nomination will have no relevance to the Pension Balance;
- (d) if proceedings, for dissolution of a Member's marriage to a spouse (or partner), under the Family Law Act 1975 or some similar foreign legislation have commenced, then any Binding Death Benefits Nomination which states that the Benefit is to be paid to that spouse (or partner) will be deemed to be revoked;
- (e) where a Deceased Member does not leave a valid Binding Death Benefits Nomination, the Trustee must pay the Benefit:
- (i) amongst one or more of:
 - (A) the Dependants of the Deceased Member;
 - (B) the Estate of the Deceased Member;
 - (C) any other person to whom the Benefit can be paid pursuant to the Requirements;
 - (ii) in the manner and in such proportions between them, and if more than one, as the Trustee determines;
 - (iii) The Trustee must have regard to, but is not bound by a non-binding nomination of the Deceased Member;
 - (iv) If there is no Dependant and no LPR is appointed within 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);

- (v) Any amount held in trust and maintained under clause 19.1(c)(iii) may be subsequently paid under this clause if a Dependant is found or a LPR appointed;

19.2 Deduction

[Note: from 1 July 2017, the Government will remove the anti-detriment provision which allows superannuation funds to claim a tax deduction for a portion of the death benefits paid to eligible dependants. A payment may still be made until 30 June 2019 provided the member died no later than 30 June 2017]

The Trustee may claim a deduction under section 295-485 of the ITAA 1997 (sometimes referred to as an 'anti-detriment deduction') if they are to pay a lump sum death benefit, providing the Fund has complied with the conditions specified in that section.

19.3 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 and in the case of a Reversionary Pensioner who survives the former Member, they will receive the former Member's pension. If the former Member has nominated a Reversionary Pensioner, then no other death benefit will be paid from the Fund with respect to that pension.

19.4 Discretionary Benefit

The Trustee may pay an additional amount of Benefit.

19.5 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 Death Benefits Nomination).

20. TERMINATION OF THE FUND

20.1 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.

20.2 Notification

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

20.3 Wind-Up

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

20.4 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 Dependants or LPR; and
 - (iv) contributors to the Fund, in such proportions as the Trustee determines.

20.5 Dissolution

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

21. ARBITRATION

21.1 Dispute

NOTICE OF COMPLIANCE

D & J MITRIS SUPER FUND

To: the Participating Employer:

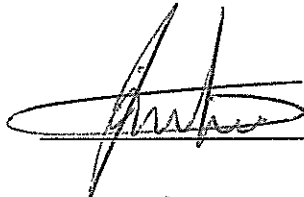
This statement is to confirm that for the year of income of the Fund to date:

- (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.

Dated: 5 / 4 /2020

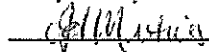
Executed for and on behalf of
JIJU PTY LTD
(ACN 640 087 118)
by the authority of its Directors and in accordance
with s127 of the Corporations Act 2001, by:

Director Signature:



A handwritten signature in black ink, appearing to be 'Arthur', written over a horizontal line.

Director/Secretary Signature:



A handwritten signature in black ink, appearing to be 'D. Mitris', written over a horizontal line.

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.

21.2 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.

22. SIS

22.1 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.

22.2 Non-mandatory Requirements

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

22.3 Trustee must not 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.

22.4 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.

22.5 Conflict with the Requirements

If any provision of this Deed conflicts with the Requirements, to the extent of the inconsistency, the provisions of the Requirements will prevail.

23. GENERAL TERMS

23.1 Proper Law

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

23.2 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 or scanned copy of this Deed constitutes a **counterpart** for the purposes of this clause.

23.3 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 Deed.

23.4 Amendment

The Trustee may by deed amend this 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.

23.5 Severable

Each provision of this Deed shall be deemed to be separate and severable from the others of them. If any provisions of this Deed 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 Deed which shall remain in full force and effect as if such provision had not been made a part of this Deed, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

23.6 Waiver

No waiver of any provision of this Deed 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 Deed (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.

23.7 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 2 - EXAMPLE BINDING DEATH BENEFIT NOMINATION

To: The Trustees of D & J MITRIS SUPER FUND (the Fund)

MYRTLEBANK

I, Dimitrios Mitris [Member Name], of 25 CLINTON AVE [Member Address] (date of birth 21/09/1960 [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:

Stephanie Moloney

DOB:

4/3/87

Address:

25 CLINTON AVE MYRTLEBANK

Percentage benefit:

33.33 1/3 % of the total benefits payable

Relationship to you:

CHILD (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:

NICHOLAS MITRIS

DOB:

17/3/90

Address:

99 CAUFIELD AVE CLARENCE GDS

Percentage benefit:

33.33 1/3 % of the total benefits payable

Relationship to you:

CHILD (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:

KARIN MITRIS

DOB:

3/12/91

Address:

25 CLINTON AVE MYRTLEBANK

Percentage benefit:

33.33 1/3 % of the total benefits payable

Relationship to you:

CHILD (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 is binding on the Fund Trustees until it is revoked in writing by me;
- (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.

SCHEDULE 1 - EXAMPLE APPLICATION FOR MEMBERSHIP

D & J MITRIS SUPER FUND

CONFIDENTIAL

Dimitrios Mitris

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

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

Dated: 5/4/2020
Signature: [Signature]
Occupation: Company Director
Date of birth: 21/09/1960
Tax File Number: _____

NON-BINDING NOMINATION OF DEPENDANT(S)

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

NAME	RELATIONSHIP	% OF TOTAL BENEFIT
<u>Stephane Moloney</u>	<u>CHILD</u>	<u>1/3 33.3%</u>
<u>Nicholas Mitris</u>	<u>CHILD</u>	<u>1/3 33.3%</u>
<u>Karin Mitris</u>	<u>CHILD</u>	<u>1/3 33.3%</u>
_____	_____	_____