

Self Managed Superannuation Fund

TRUST DEED

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Registered No:

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RECITALS

- A. The Trustee has decided to establish and indefinitely continuing a regulated self-managed superannuation fund (the “Fund”).
- B. The Trustee has agreed to act as the first trustee of the Fund.

OPERATIVE PROVISIONS

1. The Trustee Declares that the primary purpose of the Fund is to ensure that the benefits to which the Members are entitled shall be applied in payment to them of old-age pensions in accordance with the Rules and the Statutory requirements but that the benefits may be commuted to a lump sum pursuant to the Rules.
2. The Fund shall come into operation on the date of this deed (“commencement date”).
3. The “**Rules**” means the rules and schedules attached hereto as amended from time to time, and they shall have effect as if set out in the body of this deed.
4. The assets of the fund shall be vested in the Trustee upon trust to apply the same in the manner set forth in the Rules.
5. The Fund shall be managed and administered in all respects according to the Rules.
6. The power of appointing and removing Trustees shall be as provided in the Rules.
7. The provisions of this deed may be amended in the manner set out in the Rules.
8. This deed and the Rules shall be governed by and construed in accordance with the laws of

THE RULES

1. INTERPRETATION

- 1.1 In this deed and in these Rules unless the context indicates otherwise the following words and expressions have the following meanings:

“**Accumulated contributions**” shall mean in respect of a Member his actuarial interest in the fund determined as follows:

- (a) each 30 June the Trustee shall determine, upon a basis determined after taking such advice as it considers necessary

(including advice from the actuary appointed to the Fund, if any), in respect of each person who was at any time a Member during the previous 12 months, the accumulated contributions in respect of such Member. Regard shall be had in making such determination to the contributions made by or in respect of the Member, earnings or losses, relating to such contributions, any contributions tax liability relating to such contributions, and the insurance premiums paid in respect of that Member;

- (b) the accumulated contributions in respect of each Member at a date other than 30 June shall be the accumulated contributions at the previous 30 June, less insurance premiums paid by the Trustee in respect of the Member since the previous 30 June, plus or minus such additional amount (referable to the earnings or losses as the case may be relating to such accumulated contributions during the period since the previous 30 June) as the Trustee thinks appropriate in the circumstances PROVIDED ALWAYS that at any particular date the Accumulated contributions in respect of a Member shall include any amount received by the Trustee under any policy or policies of insurance, assurance or endowment effected in respect of the Member; and
- (c) benefits payable in respect of a Member shall be debited to that Member's Accumulated contributions, but pending the exhaustion of such Accumulated contributions they shall continue to attract their proportion of the net income of the Fund and shall suffer their proportion of any losses.

“Act” means The Superannuation Industry (Supervision) Act 1993.

“Allocated Pension Account” means an account to which a Member's eligible termination payment is rolled over and from which pension payments are made under these Rules.

“Approved Deposit Fund” means a fund established for the purpose of qualifying as such under the Income Tax Assessment Act 1936 and which satisfies all Statutory Requirements.

“Binding Death Benefit Nomination” means the process followed pursuant to the Act whereby a Member gives a notice to the Trustee requiring the Member's benefit to be paid on his or her death to Dependants or the legal personal representative.

“Complying Superannuation Fund” means a superannuation fund which satisfies all Statutory Requirements for the purposes of the Income Tax Assessment Act 1936 – and thereby receives a concessional taxation treatment.

“Contributions Splitting” means Members are allowed to split certain superannuation contributions with their **Spouse** and have them transferred into their spouse's account.

“Dependants” means the Spouse and children (including posthumous children) of a Member who are at the relevant time dependent in whole or in part upon the Member for their financial maintenance and support.

“Eligible Person” means: a person who is eligible to be accepted by the Trustee as a Member of the fund in accordance with the Act.

“Employer” means a person or company by whom a Member is employed whether on a full-time or part-time basis, and in relation to any particular Member the Employer by whom that Member is for the time being employed. Reference to the Employer in any Rule requiring the exercise of any discretion, any agreement, determination or approval of any matter, or a decision, opinion, appointment or declaration by it, shall in the case of an Employer being a company mean the Principals of such Employer or any person appointed by the Principals of such Employer to act on their behalf. The Trustee may also be an Employer hereunder if it employs any Eligible Person who applies to be a Member and is admitted to membership of the Fund.

“Financial year” means a period of 12 calendar months ending on the last day of June, or any part of such a period that may occur at the commencement or termination of the Fund.

“Fund Earning Rate” means that rate or rates determined by the Trustee in its absolute discretion that may apply to any Member’s account to determine the Member’s benefits.

“Government Co-Contribution” means a Government co-contribution payable under the Superannuation (Government Co-Contribution For Low Income Earners) Act 2003.

“Independent Trustee” means a Trustee of the fund who:

- (i) is not a member of the fund; and
- (ii) is neither an Employer-sponsor of the fund nor an associate of such an Employer-sponsor; and
- (iii) is neither an employee of an Employer-sponsor of the fund nor an employee of an associate of such an Employer-sponsor; and
- (iv) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and
- (v) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer-sponsors of the fund.

“Individual Trustee” in relation to a fund, scheme or trust, means an individual who is a Trustee of the fund, scheme or trust.

“Interdependency relationship” has the meaning set out in section 10A of the Act.

“Independent Director” means the independent director as defined in the Act as follows in relation to a corporate Trustee of a fund, means a director of the corporate Trustee who:

- (i) is not a member of the fund; and
- (ii) is neither an Employer-sponsor of the fund nor an associate of such an Employer-sponsor; and
- (iii) is neither an employee of an Employer-sponsor of the fund nor an employee of an associate of such an Employer-sponsor; and

- (iv) is not, in any capacity, a representative of a trade union, or other organisation, representing the interests of one or more members of the fund; and
- (v) is not, in any capacity, a representative of an organisation representing the interests of one or more Employer-sponsors of the fund.

“Mandated Employer Contributions” means contributions by or on behalf of an Employer, comprising contributions which reduce the Employer’s potential liability for the superannuation guarantee charge imposed by Section 5 of the Superannuation Guarantee Charge Act 1992, or payments of shortfall components and contributions towards satisfaction of the Employer’s obligations under an award made on or after 1 July 1986 by an industrial authority as defined in the Statutory Requirements.

“Member” means:

- (i). an Eligible person who has met all of the requirements of this Fund and has been admitted to membership of the Fund as provided in Rule 7; and
- (ii). former Members who continue to have rights or contingent rights to benefits under this Fund; and
- (iii). any Member as defined in the Act.

“Non-Commutable Income Stream” means an income that cannot be converted into a lump sum payment, except in accordance with the Act.

“Preservation age” means a person’s preservation age depending on the birth date of the person as set out in the table below:

Date of birth	Preservation age
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

“Principals” means the directors for the time being of the relevant Employer.

“Retire” means cease to be engaged in the business, trade, profession, vocation, calling, occupation or employment in which the Member is for the time being engaged. A Member who ceases to devote at least 10 hours per week to a business, trade, profession, vocation, calling, occupation or employment shall be deemed to have retired from that business, trade, profession, vocation, calling, occupation or employment.

“Self Managed Superannuation Fund (SMSF)” is a fund with less than 5 members. The Australian Taxation Office regulates superannuation funds that meet the definition of a SMSF.

“Spouse” means the legal Spouse of a Member, or any person with whom the Member has an **Interdependency relationship**, and any previous Spouse or any person with whom the Member has an **Interdependency relationship** who is dependent upon the Member.

“Statutory Requirements” means the requirements imposed under any law or by any Statutory Authority, which must be satisfied by a superannuation fund or any Approved Deposit Fund, as the case may be, in order to qualify for income tax concessions.

“Statutory Authority” means, as the case may require, any one or more of the Insurance and Superannuation Commissioner, the Commissioner of Taxation, or any other governmental authority responsible for administering the Statutory Requirements.

“Total and Permanent Disablement” has the same meaning which it has under any policy of insurance which the Trustee has obtained for the purpose of providing a benefit on a Member’s Total and Permanent Disablement. In the absence of any such policy, or any relevant definition in such a policy, or if the Trustee otherwise determines, a Member shall be deemed to suffer Total and Permanent Disablement if that person has, in the opinion of the Trustee (after have regard to such medical evidence as the Trustee considers appropriate) become incapacitated through illness, accident or injury to such extent as to render that person unlikely ever to be able to resume that person’s usual occupation or any occupation of a similar nature.

“Temporary Incapacity” means an incapacity to work that has required a member to temporarily ceased work due to physical or mental ill health which does not constitute "permanent incapacity" and for which the member has no remaining sick leave benefits.

“Transition to Retirement” means **Members** can access their superannuation benefits, once they reach their **Preservation Age**, in the form of a **Non-Commutable income stream**.

“Trustee” for Non Corporate Trustees means each member acting jointly and where required or permitted by the Act includes a relative or any Independent Trustee, and for a Corporate Trustee means the incorporated body whose board of directors is composed of the Directors who are Members, and where required or permitted by the Act includes a relative or any Independent Director.

1.2 Unless the context indicates otherwise:

- (a) words importing the singular shall include the plural and vice versa;
- (b) words importing one gender shall include each other gender;
- (c) references to a person shall be construed as references to an individual, firm, body corporate, association, government or governmental authority; and
- (d) references to statutes (including any section thereof) shall include all statutes amending, consolidating or replacing them.

1.3.1 Headings inserted in any Rule are for convenience only and shall not affect the interpretation of the Rules.

- 1.3.2 Any reference to a Member's age as it relates to an entitlement or a restriction upon payment should be read as amended by legislation from time to time.
- 1.3.3 The above definitions are at all times subject to the definitions set out in the Act and any conflict between the definitions set out in this deed and those in the Act will be resolved by adopting the definitions within the Act.
- 1.4 Any amendment to the Act or any other enactment of the Australian Government which effects any provision of this deed will be incorporated into the deed and the effected provision amended accordingly.

2. ASSETS AND INVESTMENTS

- 2.1 The assets of the Fund shall be held by the **Trustee** upon trust to be applied in accordance with the provisions of these Rules.
- 2.2 The expenses of the operation of the Fund shall be paid out of the Fund.
- 2.3 Subject to the **Statutory Requirements** all moneys received by the **Trustee** but not required to meet current payments may, in the absolute discretion of the **Trustee**, either be and remain on deposit in the name of the **Trustee**, or be reinvested directly or indirectly, in any manner in which the **Trustee**, if it were personally entitled to such assets, could invest. Without restricting the generality of the foregoing such may be invested:
- (a) on deposit with any bank, company or financial institution;
 - (b) in the purchase or acquisition of or at interest upon the security of such real or personal property of whatsoever nature and wheresoever situate and whether or not subject to encumbrances or involving liabilities of any kind as the **Trustee** shall think fit;
 - (c) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-governmental body or public authority;
 - (d) in units of any common fund, property trust or unit trust; or
 - (e) in any policies of life insurance, assurance or endowment, including policies providing a sum or sums on the death, or disablement of a Member, with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person absolutely and beneficially entitled dealing with his own property may do so **PROVIDED THAT** the **Trustee** shall not invest in:
 - (1) loans to Members; or

- (2) loans to or investments in Employers or associates of Employers which do not comply with **Statutory Requirements**.
- 2.4 Any investments may be held in such names including the name of a nominee (whether an individual or a corporation) as the **Trustee** shall from time to time determine.
- 2.5 The **Trustee** may borrow money if:
 - (a) the purpose is to enable the **Trustee** to make a payment to a beneficiary which the **Trustee** is required to make and which, apart from the borrowing, the **Trustee** would not be able to make;
 - (b) the period of the borrowing does not exceed 90 days; and
 - (c) the total amount borrowed by the **Trustee** does not exceed 10% of the value of the assets of the Fund.
- 2.6 The **Trustee** shall also be entitled to borrow money if:
 - (a) the purpose is to enable the **Trustee** to pay for bonds, debentures, stock, bills of exchange or other securities, shares in a company, units in unit trusts, futures contracts, forward contracts, interest rate swap contracts, currency swap contracts, forward exchange rate contracts, forward interest rate contracts, a right or option in respect of such a security, share, unit, contract or policy, any similar financial instrument, and foreign currency;
 - (b) at the time when the investment decision was made it was likely that the borrowing would not be needed;
 - (c) the borrowing is not taken under a written determination from the approved regulator under the **Act**, to be exempt from this paragraph;
 - (d) the period of the borrowing does not exceed 7 days; and
 - (e) the total amount borrowed by the **Trustee** does not exceed 10% of the value of the assets of Fund.

3. ADMINISTRATION

- 3.1 Every Member shall have the right to inspect a copy of these Rules at the address of the **Trustee** during usual business hours.
- 3.2 Every Member and every person claiming a benefit shall, from time to time, give to the **Trustee** such information and produce to it such documents, as the **Trustee** considers are required for the purpose of putting these Rules into effect, and for arranging insurances for the purposes of the Fund.

4. APPOINTMENT, REMOVAL AND NUMBER OF TRUSTEES

4.1 So long as the Fund is a **SMSF** fund and subject to the requirements of the **Act**:

- (a) the Members may at any time by a notice in writing signed by at least 75% of them and given to the **Trustee** remove any one or more of the **Trustees** and appoint another **Trustee** of the Fund; or
- (b) unless the **Trustee** is a Corporate **Trustee**, or unless there are at least 2 Members, there shall be at least 2 **Trustees**.

5. COVENANTS BY TRUSTEE

In the exercise of its powers and the discharge of its duties and responsibilities as **Trustee** of the Fund, the **Trustee** shall perform and observe the following covenants:

- (a) to Act honestly in all matters concerning the Fund;
- (b) in relation to all matters affecting the Fund to exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom that person felt morally bound to provide;
- (c) to ensure that the **Trustee's** duties and powers are performed and exercised in the best interests of the Members;
- (d) to keep the money and other assets of the Fund separate from any money and assets that are held by the **Trustee** personally or that are money or assets of a standard **Employer**-sponsor or an associate of a standard **Employer**-sponsor of the Fund;
- (e) not to enter into any contract or do anything else, which would prevent or hinder the **Trustee** from properly performing or exercising its functions and powers;
- (f) to formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund, including but not limited to:
 - (i) the risk involved in making, holding and realising and the likely return from Fund's investments, having regard to its objectives and its expected cash flow requirements;
 - (ii) the composition of the Fund's investments as a whole, including the extent to which they are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements; and

- (iv) the ability of the Fund to discharge its existing prospective liabilities.
- (g) to formulate and give effect to a strategy for the prudential management of any reserves of the Fund consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) to allow a Member access to any prescribed information or any prescribed documents; and
- (i) to **Act** in accordance with any valid Nominated Death Benefit provided by the member.

The covenant referred to in Rule 5(e) shall not prevent the **Trustee** from engaging or authorising persons to do acts or things on its behalf. An investment strategy shall be taken to be in accordance with Rule 5(f), even if it provides for a specified beneficiary or specified class of beneficiaries to give directions to the **Trustee** where:

- (a) the directions relate to the strategy to be followed by the **Trustee** in relation to the investment of particular asset or assets of the Fund; and
- (b) the directions are given in circumstances covered by the relevant law.

If, at any time, the relevant law prescribes covenants additional to those set out in Rule 5, those additional covenants shall be deemed to be included in these Rules.

6. TRUSTEES GENERALLY

- 6.1 Upon a change of **Trustee**, the retiring **Trustee** or **Trustees** shall execute all transfers, deeds or other documents necessary to transfer investments or moneys into the name or of the new **Trustee** or **Trustees**.
- 6.2 Without prejudice to the powers vested in the **Trustee** by the deed and the Rules or otherwise, the **Trustee** shall have the following powers:
 - (a) to purchase or otherwise acquire, and to sell or otherwise dispose of property, rights or privileges, which the **Trustee** is authorised, to acquire or dispose of on such terms and conditions as it shall think fit;
 - (b) to appoint at its discretion remove or suspend any actuary, auditor, investment managers, administration managers, secretaries, clerks, agents and other servants or appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments. The **Trustee** may require security in such instances and to such amount as it may

think fit, and any person so employed or engaged shall be deemed for the purpose of the Rules to be employed or engaged by the **Trustee**;

- (c) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;
- (d) to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection therewith;
- (g) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (h) to pay benefits out of the Fund to persons entitled;
- (i) to decide, as and when the need shall arise, who are **Dependants** for the purposes of these Rules;
- (j) in case of the mental or physical ill-health, or incapacity of a person entitled to benefits, to pay or apply such benefits or any part thereof at its discretion to, or for the benefit of, such person and the **Dependants** of such person, or any of them as the case may be, without being responsible for seeing to the application of payments under this paragraph, or payments made in the exercise of any other power vested in the **Trustee** by the deed and the Rules; and
- (k) to take and **Act** upon the opinion of any legal practitioner whether in relation to the interpretation of the deed, the Rules or any other document or statute or as to the administration of the trusts hereof, without being liable to any Members or their **Dependants** in respect of any **Act** done by it in accordance with such opinion.

6.3 The **Trustee** shall not be liable for any **Act** or default done or omitted in good faith in the administration of the Fund or for any loss or damage incurred by the Fund and shall be fully indemnified by the Fund for any **Act** done or omitted in good faith in administering the Fund, unless:

- (a) the **Trustee** fails to **Act** honestly; or

- (b) intentionally or recklessly fails to exercise the degree of care and diligence that the **Trustee** is required by law to exercise; or
- (c) the liability is for a monetary penalty under a civil penalty order made pursuant to the **Statutory Requirements**.

The **Trustee** shall not in any circumstances be entitled to indemnity, reimbursement or recompense from the Members or any of them or any other person entitled to benefits from the Fund and the Members shall not be liable for the debts of the Fund.

6.4 For the purposes of the deed and the Rules, the **Trustee** shall be entitled to regard an exercise of a discretion, or the giving of any instruction or other authorisation made orally, or written and signed by, or purported to be signed by, a principal for the time being of any **Employer** as a valid exercise of discretion, instruction or other authorisation of the **Employer**.

6.5 Where there is more than one **Trustee**, the **Trustees**:

- (a) may meet together for the dispatch of business;
- (b) may adjourn and otherwise regulate their meetings as they think fit;
- (c) may determine the quorum necessary for the transaction of business provided it is no less than 2/3rds of the **Trustees**;
- (d) shall appoint a chairman for the time being or from time to time or of each meeting; and
- (e) may **Act** on any resolution approved by 2/3rds of the **Trustees**.

Where the **Trustees** cannot agree upon a chairman for the time being, or from time to time, or of a particular meeting, the chairman shall be the **Trustee** chosen by the **Trustees** present for the meeting. A determination by 2/3rds of the **Trustees** shall for all purposes be deemed a determination of the **Trustees**.

6.6 Where there is more than one **Trustee**, a resolution in writing, signed by all the **Trustees** for the time being, shall be as valid and effectual as if it had been duly passed at a meeting of the **Trustees** duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more **Trustees**.

6.7 If the **Trustee** is a company, then such a company may exercise or concur in exercising any discretion or power conferred on the **Trustee** by the deed or by these Rules by a resolution of its directors or governing body in accordance with the company's memorandum and rules of association or constituent document. Such a company may delegate the right and power to exercise, or concur in exercising any such discretion or power, to one or more members of its board of directors or governing body, appointed as aforesaid from time to time by the said directors or governing body for the purpose.

6.8 Any **Individual Trustee** (where the **Trustee** is a company, any director or other officer of the **Trustee**) may exercise or concur in

exercising all powers, authorities and discretions conferred on the **Trustee** by the deed or by these Rules, or by law given to the **Trustee** notwithstanding that it, or he respectively, may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion. Any **Trustee** or director or officer as aforesaid may abstain from acting except as a merely formal party in any manner in which he may be so personally interested.

- 6.9 Subject to the **Statutory Requirements**, the **Trustee** in the exercise of the powers, authorities and discretions vested in it by this deed and these Rules shall have an absolute and uncontrolled discretion. The **Trustee** may exercise or enforce all or any of those powers, authorities and discretions at any time, and from time to time, or may refrain from exercising all or any of them from time to time, or at all.
- 6.10 Where there is more than one **Trustee**, the **Trustees** may, from time to time, delegate to any one or more of their number the right and power on behalf of the **Trustees** to sign, draw, accept, make, endorse, issue, discount or otherwise execute, (as the case may be) all or any cheques, promissory notes, drafts, bills or exchange, bills of lading and other negotiable or transferable instruments all or any receipts for money paid to the **Trustees**, and all or any other documents connected with the due administration of the Fund, or with this deed or these Rules. The **Trustees** may similarly delegate such rights and powers to any secretary of the Fund or to any administrator or investment manager appointed by them.
- 6.11 The **Trustee** may cause:
- (a) minutes of any proceedings of meetings of the **Trustee**, as the case may be, to be entered in books kept for that purpose; and
 - (b) those minutes to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting.
- 6.12 Any minutes entered in accordance with Rule 6.11(a) in books kept for that purpose that purport to be signed as provided in Rule 6.11(b) shall be evidence of the proceedings and, until the contrary is proved, the meeting shall be deemed to have been duly held and convened.

7. **ADMISSION OF EMPLOYEES OF EMPLOYERS**

- 7.1 the **Trustee** may admit to the Fund any Eligible person employed by an **Employer** if that person and the **Employer** have been approved by the **Trustee** and have agreed in writing to be bound by these Rules.
- 7.2 On such admission the **Trustee** may make such arrangements as it shall think fit with the **Employer** regarding the terms on which its employee is to be admitted to membership of the Fund.

8. RECORDS, DISCLOSURE OF INFORMATION AND AUDIT

- 8.1 The **Trustee** shall keep or cause to be kept a complete record of all persons who become Members of the Fund and of the income and expenditure of the Fund and all other matters essential for the working of the Fund.
- 8.2 The **Trustee** shall appoint an auditor to the Fund, or a firm of such persons, who shall comply with all **Statutory Requirements** and may remove any such auditor.
- 8.3 The **Trustee** shall each **Financial Year** cause to be prepared an income and expenditure account and balance sheet of the Fund which shall, if the **Trustee** thinks fit, or if necessary to comply with **Statutory Requirements**, and within any time limits specified by **Statutory Requirements**, be audited by the auditor. The auditor shall have access to all papers accounts and documents connected with the Fund and shall report in writing to the **Trustee** the result of such audit, if any and where relevant, within the time limits specified by **Statutory Requirements**.
- 8.4 The **Trustee** shall disclose to Members such information, at the time and in the manner, prescribed in Statutory Requirements to be so disclosed to Members.
- 8.5 The **Trustee** shall comply with the Statutory Requirements concerning records of the Fund and their retention.

9. ELIGIBILITY AND MEMBERSHIP

- 9.1 Any Eligible Person may make application in writing to the **Trustee** in a form prescribed by the **Trustee**, from time to time, to join the Fund. Until the **Trustee** determines to the contrary such form of application shall be in the form appended to these Rules. Every such application shall include full details of the Eligible person's membership of any **Approved Deposit Fund** and **Complying Superannuation Fund**, and shall also include an undertaking by the Eligible person to notify the **Trustee** immediately if he becomes a member of any other **Complying Superannuation Fund** or **Approved Deposit Fund**.
- 9.2 The **Trustee** may accept or refuse any application for membership in its absolute discretion and shall not be required to assign any reason for any refusal.
- 9.3 A person shall become a Member from the date when notice in writing by the **Trustee** that it approves that person's application has been given to that person.
- 9.4 A person ceases to be a Member on the happening of the first of the following:
 - (a) when that Member dies;
 - (b) when the total amount of all amounts payable under the Rules in respect of membership has been paid; or

- (c) when any agreement, court order or approved settlement is made pursuant to the *Family Law Legislation Amendment (Superannuation) Act 2001*; or
 - (d) when under the Rules any benefit payable to that Member or any person on that Member's account ceases to be payable.
- 9.5 Each Member shall, by virtue of making an application to join the Fund, be deemed to have consented to be bound by the provisions of this deed and the Rules.

10. CONTRIBUTIONS

10.1 Subject to the provisions of this Rule and the Act:

- (a) a Member may contribute to the Fund at such rate and in such manner as that Member determines;
- (b) with the consent of the Member, any other person (including a spouse of that Member and another Member) may make contributions to the fund in respect of that member.
- (c) the government may make a **Government Co-Contribution** to the fund in respect of any Member.
- (d) A Member may choose to offer **Contributions Splitting** to their **Spouse** for contributions made on or after 1 January 2006 in accordance with the Act.

10.2 No Member shall make a contribution to the Fund in any **Financial Year** which would bring the total amount of that Member's deductible contributions (as defined in the Income Tax Assessment Act 1936 (Cth)) made during that **Financial Year** to the Fund, and to any other **Complying Superannuation Fund**, above the limit approved from time to time by the **Statutory Authority PROVIDED THAT** if a Member is unable to make in any **Financial Year** the maximum approved deductible contribution to the Fund that Member may by additional deductible contributions in excess of the approved maximum in either or both of the next two succeeding Financial years make up all or any part of the deficiency **BUT** nothing in this Rule shall limit the amount of non-deductible contributions (as defined in the Income Tax Assessment Act 1936 (Cth)) which may be made to the Fund in any **Financial Year** by a Member.

10.3 If any Member ceases to be an Eligible Person, the Member shall not make any further contribution to the Fund until that Member shall again become an Eligible Person.

10.4 Subject to the provisions of this Rule, if and so long as a Member is employed, that Member's **Employer** may contribute to the Fund in respect of the Member at such rate as may be agreed from time to time between the **Employer**, the Member and the **Trustee**.

10.5 An **Employer** wishing to contribute to the Fund in respect of a Member shall make application to the **Trustee** in the form prescribed by the **Trustee** from time to time provided that every such application shall include an undertaking by the **Employer** to be bound by the provisions of this deed and Rules. Until the **Trustee** determines to the

contrary such form of application shall be in the form appended to these Rules.

- 10.6 No **Employer** shall make a contribution at any time to the Fund in respect of a Member which would make the total of the benefit of such Member or that Member's **Dependants** under the Fund, and the benefit payable to the Member or that Member's **Dependants** under any other **Complying Superannuation Fund**, or **Approved Deposit Fund**, exceed the amount as may from time to time be approved by the **Statutory Authority**.
- 10.7 An **Employer** may, at any time and from time to time, by notice in writing to the **Trustee** suspend payment of or reduce the contributions payable by it in respect of a Member.
- 10.8 The **Trustee** shall not accept from a Member or from any person in respect of a Member any contribution to the Fund while to its knowledge that Member continues not to be an Eligible person.
- 10.9 Within 60 days of becoming aware that a Member has ceased to be an Eligible person, the **Trustee** shall refund to the Member or to the other person making the same as the case may be, any contributions made to the Fund in respect of the Member since that Member ceased to be an Eligible person, and for the purpose of determining the Member's interest in the Fund it shall be assumed that such contributions were not made to the Fund.
- 10.10 If at any time the anticipated benefit payable hereunder to, or in respect of, a Member together with benefits payable to, or in respect of, that Member from any other **Complying Superannuation Fund** or **Approved Deposit Fund** of which the Member may be a participant or the contributions made by a Member hereunder together with contributions made by that Member to any **Complying Superannuation Fund** or **Approved Deposit Fund** of which such Member is a participant are deemed to be excessive, the **Trustee** may arrange for a reduction of such benefit or such contributions hereunder, as the case may be, but only to the extent that is necessary to comply with the **Statutory Requirements**.

11. ACCOUNTS

- 11.1 In relation to each Member who is an employee of an **Employer** (including the **Trustee** in its capacity as an **Employer**), the **Trustee** shall cause the following accounts to be opened and maintained in respect of each Member:
 - (a) an **Employer** contribution account in which shall be recorded:
 - (i) contributions to the Fund by an **Employer** (other than Mandated **Employer** contributions) in respect of the Member;
 - (ii) amounts debited to the account to pay premiums on policies of insurance effected to provide benefits on the death or disability of the Member;

- (iii) proceeds of policies of insurance effected to provide benefits on the death or disability of a Member;
 - (iv) amounts transferred to or from the forgone benefits account;
 - (v) any part of an amount transferred from another fund in respect of the Member which the **Trustee** has determined shall be credited to this account;
 - (vi) amounts credited or debited to this account in respect of the earnings of the Fund; and
 - (vii) any amounts debited to this account in respect of any contributions tax liability referable to amounts credited to this account.
- (b) A member contribution account in which shall be recorded:
- (i) contributions to the Fund by the Member;
 - (ii) Mandated **Employer** contributions;
 - (iii) amounts transferred from another fund in respect of the Member except to the extent that the **Trustee** has determined that the same shall be credited to the **Employer** contribution account in respect of the Member;
 - (iv) amounts credit or debited to this account in respect of earnings of the Fund;
 - (v) amounts debited to this account in respect of any contributions tax liability referable to amounts credited to this account; and
 - (vi) eligible termination payments which shall be credited to the Member's **Allocated Pension Account**.

11.2 The **Trustee** shall maintain a forgone benefits account to which shall be credited any balance remaining of any Member's credit after payment or preservation of his withdrawal benefit, and any other amounts required by these Rules to be transferred to the forgone benefits account. The amount standing to the credit of the forgone benefits account may be applied as the **Trustee** in its discretion determines for any one or more of the following purposes:

- (a) the payment of contributions otherwise payable by any **Employer** or Member;
- (b) the provision of additional benefits for Members or their **Dependants** on a basis that is reasonable having regard to all the circumstances;
- (c) by way of refund to an **Employer** of contributions made by it; or

- (d) other purposes that comply with **Statutory Requirements**.
- 11.3 The **Trustee** may establish such other reserve accounts as is necessary for the proper operation of the Fund in accordance with the **Act PROVIDED THAT** any such account or accounts would not cause the Fund to cease to be a **Complying Superannuation Fund**.
- 11.4 The **Trustee** shall, on such distribution dates as it shall determine but at least once in each **Financial Year**, after taking such advice as it thinks fit, declare a **Fund Earning Rate** or rates in respect of particular individuals for the distribution period being the period commencing on the commencement date or the day after a distribution date and ending on the next distribution date concerned, being such rate, whether positive or negative, as the **Trustee** may in its discretion determine, but in making such determination the **Trustee** shall have regard to:
- (a) the actual earnings of the Fund, including all income and realised and unrealised capital gains;
 - (b) the losses and expenses of the Fund including expenses of taxation;
 - (c) the past and likely future earnings and losses of the Fund and the desirability or otherwise of avoiding large fluctuations of **Fund Earning Rates** from year to year;
 - (d) the amount, if any, standing to the credit of the general reserve account; and
 - (e) such other matters as it thinks fit.
- 11.5 The **Trustee** shall on the distribution date, credit or debit as the case may be to the **Employer** contribution account and member contribution account of each Member earnings or losses at the **Fund Earning Rate** on the balance standing thereto from time to time since the preceding distribution date or, in the case of the first distribution period, since the commencement date.
- 11.6 Any difference between the actual earnings or losses of the Fund and the total amounts required to be credited or debited pursuant to Rules 11.5 and 11.7 shall form an adjustment to a reserve account to be called the general reserve account, provided that, notwithstanding the terms of Rule 11.4, the **Trustee** shall not in respect of any **Financial Year** declare a **Fund Earning Rate** that would leave the general reserve account in debit.
- 11.7 At the commencement date and at each distribution date the **Trustee** shall declare an interim **Fund Earning Rate** which shall be applied to credit earnings or losses as the case may be to the **Employer** contribution accounts and member contribution accounts of Members or deceased Members in respect of whom, and at such time as, the last benefits payable from the Fund in respect of them become payable before the next distribution date. Such interim **Fund Earning Rate** shall be determined on such basis as the **Trustee** thinks fit provided

that the **Trustee** may in its discretion alter an interim **Fund Earning Rate** during the period to which it applies.

- 11.8 In relation to each Member who is not an employee of an Employer (including the **Trustee** in its capacity as an **Employer**) the **Trustee** shall cause to be opened and maintained in respect of each Member a member contribution account in which shall be recorded the matter referred to in Rule 11. 1(b)(i), (iii), (iv) and (v) and, so far as is relevant, the provisions of Rules 11.2, 11.4, 11.5, 11.6 and 11.7 shall apply equally thereto.

12. BENEFITS

- 12.1 A Member who **Retires** on or after attaining the **Preservation Age** shall be entitled to receive a retirement benefit equal to that Member's **Accumulated Contributions**.
- 12.2 A Member who **Retires** before attaining the **Preservation Age** shall on the date of attaining the **Preservation Age**, or at such earlier date as the **Statutory Authority** may approve, be entitled to receive a retirement benefit equal to **Accumulated Contributions** made by that Member.
- 12.3 A Member who **Retires** on the grounds of **Total and Permanent Disablement** shall be entitled to receive a **Total and Permanent Disablement** benefit equal to **Accumulated Contributions** made by that Member.
- 12.4 A Member who has temporarily ceased work due to a **Temporary Incapacity** may be paid a non-commutable benefit equal to **Accumulated Contributions** made by that Member.
- 12.5 A Member who is experiencing severe financial hardship as defined in the **Act** may be paid certain benefits in accordance with the **Act**.
- 12.6 On the death of a Member a death benefit shall become payable equal to **Accumulated Contributions** made by that Member.
- 12.7 A Member may withdraw any part of the unrestricted non-preserved amount from the Member's accumulation account.
- 12.8 A Member on or after attaining the **Preservation Age** may be paid a **Non-Commutable Income Stream** equal to **Accumulated Contributions** made by that Member in accordance with the **Act**.

13. PAYMENT OF BENEFITS

- 13.1 A Member's retirement benefit or **Total and Permanent Disablement** benefit shall be paid by way of annuities, pensions or other periodical payments, or lump sum payments, or any combination of such methods of payment as permitted by the **Act** as the **Trustee** and the Member shall agree **PROVIDED THAT**, subject to **Statutory Requirements**, the Member shall be entitled to require the **Trustee** to pay a retirement benefit or **Total and Permanent Disablement** benefit as a lump sum.

- 13.2 Any payment pursuant to Rule 13.1 shall commence to be paid as permitted in the **Act**.
- 13.3 (a) A Member wishing to designate a Dependant as a nominated beneficiary shall do so in writing to the **Trustee** in such form as it may from time to time approve.
- (b) A Member may from time to time change his nominated beneficiary by completing and lodging with the **Trustee** a new form.
- 13.4 (a) Where a member and a **Trustee** have agreed to pay all or any part of the benefit to the Member as a Pension, the **Trustee** must establish one or more pension accounts for that Member, and the **Trustee** will transfer amounts determined in accordance with this Deed and these Rules which the **Trustee** believes are necessary in order to provide the benefits as a pension.
- (b) (i) The following amounts shall be credited to the pension account of the Member:
- A. any amount transferred under paragraph (a) above;
 - B. any amount paid into the Fund in respect of the Member as a transfer or a roll over payment which the **Trustee** considers appropriate to credit;
 - C. the proceeds of any policy effected by the **Trustee** in respect of the Member and paid to the **Trustee**, which the **Trustee** considers it appropriate to credit;
 - D. any earnings of the Fund as the **Trustee** shall determine to be equitable;
 - E. any shortfall component paid in respect of the Member;
 - F. any amount of financial assistance determined by the **Trustee** to be appropriate to credit.
- (ii) The following amounts are to be debited to the Pension account of a Member:
- A. Any amount transferred out of the fund in respect of a pensioner as a transfer of a roll over payment which the **Trustee** considers it appropriate to debit;
 - B. any payments made to or in respect of the Member or a Dependant Beneficiary pursuant to the provisions of this Deed;
 - C. the costs of any policy effected by the **Trustee** in respect of the Member which are not debited to a Member's member contribution account;
 - D. such proportion of any amount payable by way of Taxation in respect of the earnings of the Fund credited to the pension account of a Member or

arising as a result of a roll over payment as the **Trustee** shall determine;

- E. such of the costs, and expenses as the **Trustee** shall determine to be equitable;
 - F. such of the amount paid in respect of the **Trustee** indemnity as the **Trustee** shall determine to be equitable;
 - G. a proportion of any loss sustained on the disposal of any investments of the Fund as the **Trustee** shall determine to be equitable
 - H. such negative earnings of the Fund as the **Trustee** shall determine to be equitable;
 - I. any amount of levy determined by the **Trustee** to be appropriate to debit;
 - J. such other amounts as the **Trustee** shall from time to time determine.
- (c) in relation to each pension payable to a Member. The **Trustee** may:
- (i) segregate or set apart the assets which represent the pension account of the Member for the sole purpose of enabling the discharge of the whole or part of the current or non-current liabilities in relation to the payment of pensions as those liabilities fall due for payment; and
 - (ii) constitute the segregated assets as segregated current and non-current pension assets within the meaning of Section 273A and Section 273B of *the Income Tax Assessment Act 1936* and obtain such certificates in relation to the adequacy of the assets segregated and set apart to meet the current and non current pension liabilities as the **Trustee** considers necessary for the purposes of the *Income Tax Assessment Act 1936* or as the **Statutory Requirements** shall require.

- 13.5 (a) Any death benefit shall be paid, as the **Trustee** in its absolute discretion, decides by way of purchased annuities, pensions or other periodical payments (in each such case upon such terms as the **Trustee** may decide), or lump sum payments, or any combination of such methods of payment, either:
- (i) to such one or more of the nominated beneficiaries (if any) or other **Dependants** of the Member and in such proportions as the **Trustee** in its absolute discretion decides; or
 - (ii) to the legal personal representative of a Member.

- (b) If the **Trustee** of the Fund holds, at the time of a Member's death, a Notice of Binding Death Benefit Beneficiary Nomination ("BDBBN Notice"), which is effective and valid, the **Trustee** must pay a Member's superannuation death benefit to the Nominated Beneficiary referred in the BDBBN Notice.
- 13.6 The **Trustee** may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any benefit or other amount payable pursuant to the provisions of this deed or the Rules, transfer any of the assets of the Fund of equivalent value to the person so entitled **PROVIDED THAT** in the case of a transfer of an asset other than a life insurance policy the **Trustee** obtains any consent necessary for the Fund to remain a Complying Superannuation Fund.
- 13.7 The **Trustee** may, at the request of a person entitled, pay all or part of any benefit payable pursuant to the provisions of the Rules to such **Approved Deposit Fund, Complying Superannuation Fund**, or for the purchase of such annuity as the person so entitled may request.
- 13.8 In the case of the death of a Member who is in receipt of a pension, the **Trustee**, in its absolute discretion shall determine which dependant or **Dependants** shall receive a reversionary pension.
- 13.9 In relation to the payment of any pension benefit the **Trustee** must act in accordance with the Act and where appropriate prior to determining any benefit, seek the advice of an actuary as defined in the **Act**, as to the level of pension benefit that should be paid.

14. FORFEITED BENEFITS

- 14.1 Benefits payable out of the Fund shall be:
 - (a) forfeited if, without the prior approval of the **Trustee**, the person entitled thereto purports to assign, alienate or charge such benefits or part thereof; or
 - (b) suspended if the person entitled thereto (being either under Preservation Age or not yet having retired at the relevant time) becomes or is in the opinion of the **Trustee**, mentally ill, or of unsound mind, or incapable of managing themselves or their own affairs.
- 14.2 The whole of the benefits forfeited by a person under Rule 14.1(a) shall be applied by the **Trustee** as the **Trustee** may think fit for the benefit of such person and that person's **Dependants** (or any one or more of them) **PROVIDED THAT** while such person is a Member the **Trustee** shall not make any payment to, or for the benefit of, the person or that person's **Dependants** until the Member's Preservation Age other than for personal maintenance and support in case of hardship in accordance with the Act.
- 14.3 The whole of the benefits to which a person would otherwise have been entitled but which have been suspended under Rule 14.1(b) shall be dealt with in accordance with, and shall be subject to, the following provisions:

- (a) upon such suspension the person shall cease to have any right, title or interest whatsoever to or in such benefits;
- (b) if, prior to the date upon which the person ceases to be a Member for any reason whatsoever, the person ceases to be one to whom Rule 14.1(b) applies then the suspension of such benefits shall cease and the **Trustee** shall thereafter hold such benefits in respect of the person as if the suspension had not intervened;
- (c) if such benefits remain suspended at the time when the person ceases to be a Member for any reason whatsoever, such benefits shall thereupon be forfeited; or
- (d) while such benefits are suspended, the **Trustee** may pay amounts there out to, or for the benefit of, the relevant person or that person's **Dependants** for, but only for, personal maintenance and support in the case of hardship.

14.4 The **Trustee** shall treat unclaimed money in accordance with the Act.

15. TRANSFERS FROM AND TO OTHER FUNDS

15.1 The **Trustee** may make such arrangements as it thinks proper with any Member, or any previous **Employer** of the Member, or the **Trustees** of any superannuation fund of which the Member was or is a member, or any of them, for any transfer of assets to the Fund, and may make arrangements about any other matter which in the opinion of the **Trustee** is incidental to, or consequent upon, the transfer of such assets to the Fund.

15.2 Should a Member become eligible to join another **Complying Superannuation Fund** the **Trustee** may, if requested by the Member, in lieu of part or all of any other benefit to which the Member may be entitled under these Rules, transfer to the **Trustee** of such fund such portion of the assets of the Fund as the **Trustee** considers equitable having regard to the Member's accrued benefit at the date of transfer.

16. TERMINATION OF TRUST

16.1 The trusts hereby declared shall cease and terminate and the Fund shall be wound up as hereinafter provided upon the happening of any of the following events:

- (a) if it shall appear to the **Trustee** that the Fund is insolvent and it resolves to terminate the Fund;
- (b) if for any reason the **Trustee** thinks it is appropriate to and does resolve to terminate the Fund; or
- (c) if there are no Members in the Fund and the **Trustee** resolves to terminate the Fund.

- 16.2 Upon the trusts hereof ceasing and terminating in accordance with Rule 16.1 the **Trustee** shall give notice in writing to each **Employer** and the Members, if any, that the Fund shall be wound up on a specified date (“the closing date”). As from the closing date the following shall apply:
- (a) no further contributions shall be made by any **Employer** or any Member, other than arrears of contributions due to the closing date; and
 - (b) arrears of contributions, if any, shall be called in immediately.
- 16.3 Upon the trusts ceasing and terminating in accordance with Rule 16.1, the **Trustee** shall make such provision out of the Fund, after meeting expenses and liabilities as is necessary to provide for the payment of the following benefits in the following order of priority:
- (a) payments which on, or before the closing date have become payable to Retired Members or **Dependants**;
 - (b) payments to each Retired Member who has not yet attained the **Preservation Age** equal to that Member’s **Accumulated Contributions**; or
 - (c) payments to each Member who has not Retired equal to that Member’s **Accumulated Contributions**.
- 16.4 Where a Member dies before receiving a benefit to which that Member has become entitled pursuant to Rule 16.3 such benefit shall be paid to such of the Member’s legal personal representatives and **Dependants** and in such proportions as the **Trustee** determines.
- 16.5 If after providing benefits for Members and their **Dependants** in terms of Rule 16.3 a surplus remains, such surplus shall be paid by the **Trustee**, to or for the benefit of:
- (a) any Members;
 - (b) any former Members;
 - (c) any **Dependants** of any such Members or former Members;
 - (d) the legal personal representatives (in their capacities as such) of any such Member, former Members or **Dependants**; or
 - (e) any **Employer** or former **Employer** who has contributed, as the **Trustee** in its absolute discretion determines and, if provided to or for two or more persons, in such proportions as the **Trustee** in its absolute discretion determines.
- 16.6 Subject to Rule 13.7 the payment to be provided under Rules 16.3 and 16.5 shall be in cash, life insurance policies, participation in any other **Complying Superannuation Fund**, or otherwise as determined by the **Trustee**, but shall not be payable to, or for the benefit of, a Member unless and until that Member has attained the **Preservation Age** and Retired other than for personal maintenance and support in case of hardship.

17. AMENDMENT OF DEED

- 17.1 So long as the Fund is a **SMSF** fund and subject to Rule 17.2, the **Trustee** with the consent of at least 75% of the Members may at any time by resolution, or by instrument in writing, amend all or any of the provisions of these Rules.
- 17.2 No reduction of the accrued benefit of a Member shall be made without that Member's consent in writing.
- 17.3 As soon as practicable after the Rules have been amended pursuant to Rule 17.1, the **Trustee** shall give to each Member a written statement explaining the nature and purpose of the amendment and the effect (if any) of the amendment on the entitlement of the Member.

18. MISCELLANEOUS

- 18.1 To the extent that they are not incorporated in these Rules, the **Statutory Requirements** applicable to the Fund from time to time shall be deemed to be incorporated herein. If there is any inconsistency between these Rules and the **Statutory Requirements**, the latter provisions shall prevail.
- 18.2 Where in these Rules the **Trustee** is expressed to have a power or discretion, it shall be exercised at all times having regard to the **Statutory Requirements**.
- 18.3 So long as the Fund is a **SMSF** the **Trustee** shall give to each person who becomes a Member of the Fund a statement in the following terms:

“This fund is not subject to detailed prudential supervision”.

- 18.4 Binding Death Benefit Beneficiary
- (a) A member may nominate to the **Trustee** one or more Beneficiaries to receive the Death Benefit provided by the Fund provided:
- (i) The Member completes the Binding Death Benefit Beneficiary Nomination Form (“the Nomination”) and provides the Nomination to the **Trustee**;
- (ii) the Nominated Beneficiary must, at the time of Member's death, be either a Dependant or Legal Personal Representative; and
- (iii) the Nomination is current.
- (b) A Nomination will cease to be current, if not revoked by the Member earlier, 3 years from the date of its issue.
- (c) To remain current the Nomination must be reissued by the Member before it expires.

ATTESTATION CLAUSES

EXECUTED by the Parties as a Deed on the Execution Date.

BY THE TRUSTEE/MEMBER

SIGNED and **DELIVERED** by

in the presence of:

Witness

Name (please print)

SIGNED and **DELIVERED** by

in the presence of:

Witness

Name (please print)

PARTICULARS OF THE FUND

NAME OF FUND:

EXECUTED DATE OF THIS DEED: ____/____/____

COMMENCEMENT DATE OF THE

FUND: The execution date of this Deed

TRUSTEE/MEMBER:

TRUSTEE/MEMBER: