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Lawyers

PC KROEHN SMSF PTY LTD

ACN 605 593 208

Trustee

**SUPERANNUATION FUND DEED  
THE PC KROEHN SELF MANAGED  
SUPERANNUATION FUND**

DATED *6<sup>th</sup> May* 2015

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**DEED**

**THE PC KROEHN SELF MANAGED SUPERANNUATION FUND**

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THE PC KROEHN SELF MANAGED SUPERANNUATION FUND  
DEED

COMMISSIONER OF STATE TAXATION

S.A. STAMP DUTY PAID  
DOCUMENT 1 of 1  
09/06/2015 14:15:44 ZH1564.1  
EXEMPT / NOT CHARGEABLE

THIS DEED is made the 6<sup>th</sup> day of May 2015

BY:-

PC KROEHN SMSF PTY LTD (ACN 605 593 208) of 322 Glen Osmond Road,  
Myrtle Bank in the State of South Australia [Trustee]

RECITALS:

- A. The Trustee hereby establishes an indefinitely continuing complying superannuation fund [Fund] which is:
- (a) a self-managed superannuation fund for the purposes of the *Superannuation Industry (Supervision) Act 1992*;
  - (b) a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997*;
  - (c) a regulated superannuation fund for the purposes of the *Superannuation Industry (Supervision) Act 1993*;
  - (d) (unless the Trustee determines otherwise) an accumulation fund within the meaning of the *Superannuation Industry (Supervision) Regulations*; and
  - (e) subject to the duties and powers under this Deed for the purpose of providing superannuation benefits for those persons who, being eligible for membership, become Members of the Fund and their Dependants.
- B. The Trustee agrees to continue to act as Trustee of the Fund.

**NOW THIS DEED WITNESSES THAT** the Trustees hereby constitute an indefinitely continuing superannuation fund known as the “**PC KROEHN SELF MANAGED SUPERANNUATION FUND**” vested in and controlled and administered by the Trustees upon the trusts of this Deed (which includes this preamble, the Recitals and all of the following Parts hereof) effective from the date hereof.

## 1. PRELIMINARY

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### 1.1. Name of Fund

The Fund is known as the PC KROEHN SELF MANAGED SUPERANNUATION FUND.

### 1.2. Definitions

In this Deed unless otherwise stated, or inconsistent with the context:

**Acquirable Asset** means an *acquirable asset* in accordance with Section 67A(2) of the SIS Act;

**Actuary** means a person who is:

- (a) an actuary within the meaning of that expression in Section 10 of the SIS Act; and
- (b) engaged by the Trustee under Sub-clause 15.3;

**Allot** means to credit an amount to the benefit of a Member's Benefit;

**Appendix** means an appendix to this Deed;

**Approved Deposit Fund** has the meaning that expression is given in Section 10 of the SIS Act;

**Assessment Act** means:

- (a) ITAA36; and
- (b) ITAA97;

**Associate** has the same meaning that expression has in Section 10 of the SIS Act;

**Benefit** means a Member's Benefit;

**Cashed** means payment of and in respect of a Benefit:

- (a) in the case of money – by payment; and
- (b) in the case of Property other than money – by transfer of that Property (and not being a Roll-Over or Transfer) in the form provided for in Sub-clause 9.6 and **Cashing** and **Cash** is to have a similar or cognate meaning;

**Cashing Restriction** in relation to a Member means a cashing restriction specified in Column 3 of Schedule 1 of the SIS Regulations in relation to that Member;

**Child** means an individual who has not yet attained the age of 18;

**Complying Superannuation Fund** has the meaning given in Sub-section 995-1(1) of ITAA97;

**Condition of Release** in relation to a Member means a condition of release specified in Column 2 of Schedule 1 of the SIS Regulations;

**Constitutional Corporation** has the meaning given in the SIS Act;

**Death Benefits Notice** means a notice given by a Member to the Trustee for the purpose of Sub-clause 9.8 which is substantially in the form, or to the effect of the form, attached hereto as Appendix B;



**Deed** means this deed as amended from time to time, and, where the context permits or does not exclude, includes the Rules (if any);

**Dependent** at any time in relation to a Member means:

- (a) the spouse (including a person who lives with that Member on a genuine domestic basis as the husband or wife of that Member) of that Member;
- (b) if the Member is deceased, a person who was a spouse (including a person who lived with that Member on a genuine domestic basis as the husband or wife of that Member) immediately prior to the death of that deceased Member;
- (c) any child (including an adopted child, a step-child or ex-nuptial child) of a Member;
- (d) any other person with whom the Member has an interdependency relationship (within the meaning of Section 10A of the SIS Act) just before he or she died; or
- (e) any other person who was a dependent of the Member just before he or she died;

**Disqualified** in relation to a Person means a person who is disqualified within the meaning of Section 120 of the SIS Act;

**Division** means a Division of the SIS Regulations;

**Eligible Rollover Fund** has the meaning that expression is given in Section 242 of the SIS Act;

**Employee** has the meaning that expression has in Section 15A of the SIS Act;

**Employer** has the meaning that expression has in Section 15A of the SIS Act;

**Employer Contribution** means a contribution by or on behalf of an Employer Sponsor of the Fund;

**Employer Sponsor** means an Employer who:

- (a) contributes to the Fund; or
- (b) would (apart from a temporary cessation of contributions) have contributed to the Fund

for the benefit of a Member of the Fund who is an Employee of that Employer or of any Associate thereof or for the Dependents of that Member in the event of his or her death;

**the Fund** means the superannuation fund constituted by this Deed and to which the terms and provisions of this Deed apply;

**Government Co-Contribution** means a contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*;

**Income Stream Arrangement** includes:

- (a) a pension, annuity (including as obtained from a third party) and other periodic or regular payments and whether or not:
  - (i) subject to any limitations or restrictions including as to duration, regularity of payment, quantum or commutability; and
  - (ii) based on the life or life expectancy of the recipient; and

- (b) without limitation arrangements recognised or designated by the Regulations as allocated pensions, non-commutable allocated pensions, non-commutable market linked pensions, lifetime income streams, life expectancy income streams and market linked income streams;

**Indexed** has the meaning that expression "indexed" has in relation to a Benefit in Regulation 6.01; and the expressions **Indexed** and **Indexed Amount** have similar or cognate meanings;

**ITAA 36** means the *Income Tax Assessment Act 1936 (Commonwealth)*;

**ITAA 97** means the *Income Tax Assessment At 1997 (Commonwealth)*;

**Legal Personal Representative** means:

- (a) the executor of the will or administrator of the estate of a deceased person;
- (b) the trustee of the estate of a person under a legal disability; or
- (c) a person who holds an enduring power of attorney granted by a person;

**Mandated Employer Contributions** has the meaning that expression has in Regulation 5.01;

**Member** means, except as excluded by the Regulations:

- (a) a Person whom the Trustee has admitted as a member of the Fund;
- (b) a Person to whom the Trustee has given a notice under Regulation 7A.03H or 7A.03I confirming that he or she has an interest in the Fund;
- (c) for the purposes provided for in Regulation 1.04AAA a Non-Member Spouse; and
- (d) a person recognised by the Regulations as a member of the Fund

and **Membership** shall be construed accordingly; and where applicable means the legal personal representative of a deceased or legally incapacitated Member;

**Member's Benefits** at any time in relation to a Member means the aggregate of:

- (a) the Member's Contributions;
- (b) all Employer Contributions in respect of that Member;
- (c) any Government Co-Contributions in respect of that Member;
- (d) all amounts that have been Rolled Over or Transferred to the Fund in respect of that Member;
- (e) all amounts Allotted to that Member under Clause 7.6;
- (f) all amounts credited to that Member as a result of a Payment Split;
- (g) all amounts credited to that Member as a result of the commutation or cessation of an Income Stream Arrangement on death of another member;
- (h) all other amounts held for the benefit of that Member (including without limitation Employer Contributions not within Sub-clause (b));
- (i) all amounts recognised or provided by the Regulations to be benefits of that Member; and
- (j) all earnings credited to that Member or that Member's Benefits (including any amounts transferred or allocated to the benefit of that Member from a Reserve)



less all costs applicable to the foregoing amounts or items or otherwise charged against that Member or his or her Benefits at that time;

**Member Contributions** in relation to a Member means contributions by for or on behalf of the Member to the Fund but does not include Employer Contributions made in respect of that Member;

**Minimum Benefits** has the meaning that expression has Division 5.2;

**Minimum Guaranteed Benefit** has the meaning that expression has in Regulation 9.35;

**Month** means calendar month;

**Non-complying** at any time (**the Test Time**) in relation to a fund means a fund that:

- (a) is not a Complying Superannuation Fund at the Test Time; or
- (b) otherwise does not obtain the tax concessions that are or tax treatment that is:
  - (i) available or applicable to a Self Managed Superannuation Fund that is a Complying Superannuation Fund at the date of this Deed; and
  - (ii) (or concessions or treatment of a similar nature) available or applicable at the Test Time for Self Managed Superannuation Funds which qualify for those concessions or that treatment,

subject to Sub-clause 5.1.7 of this deed;

**Non-Member Spouse** has the meaning that expression has in Regulation 1.03;

**Non-Member Spouse Interest** has the meaning that expression has in Division 7A.1A;

**Payment Split** means a payment split under Part VIII B of the *Family Law Act 1975*;

**Period of Technical Insolvency** has the meaning that expression has in Regulation 9.35;

**Person** includes:

- (a) an association firm or corporation; and
- (b) any person (including within Sub-clause (a)) acting in the capacity as trustee of a trust estate or settlement;

**Preserved Benefits** in relation to a Member and in relation to an amount has the meaning given in Regulation 6.03;

**Property** includes:

- (a) all real or personal property; and
- (b) (without limiting Sub-clause (a)) chattels, choses in action and money;

**Quorum** in relation to a meeting of the Trustees means all of the persons constituting the Trustee;

**Regulated Superannuation Fund** has the same meaning that expression is given in Section 19 of the SIS Act;

**Regulation** means a regulation of the SIS Regulations;

**Regulator** means the Person;

- (a) the subject of Sub-section 10(1) of the SIS Act who administers statutory provisions relating to Self Managed Superannuation Funds; and
- (b) (subject to sub-clause (a)) appointed by or under a statute to supervise regulate or administer the conduct of Self Managed Superannuation Funds;

**Related Party** has the meaning that expression has in Section 10 of the SIS Act;

**Replacement Asset** means a *replacement asset* in accordance with Section 67B(2) of the SIS Act;

**Reserve** means a reserve (if any) established in accordance with Sub-clause 8.3;

**Restricted Non-Preserved Benefits** in relation to a Member and in relation to an amount has the meaning given in Regulation 6.08;

**Retirement Savings Account** has the meaning that the expression "RSA" is given in the SIS Act;

**Roll-Over** means payment of an amount or transfer of property to or from:

- (a) another Regulated Superannuation Fund;
- (b) an Approved Deposit Fund; or
- (c) another **entity within the Superannuation System**

**but excluding a Transfer; and Rolled-Over is to be construed accordingly;**

**Rules** means the rules or provisions:

- (a) annexed as Appendix C (if any) to this Deed (as amended or revoked by the Trustee from time to time pursuant to Clause 5.1); or
- (b) made or amended by the Trustee from time to time pursuant to Clause 5.1;

**Segregated Current Pension Assets** has the meaning that expression has in ITAA 97;

**Self Managed Superannuation Fund** has the meaning that expression has in Section 17A of the SIS Act;

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

**SIS Regulations** means:

- (a) the *Superannuation Industry (Supervision) Regulations 1994*; and
- (b) (where the context requires or admits) any other Statutory Rules made under and pursuant to the SIS Act;

**Solvent** in relation to the Fund has the meaning that expression has in Regulation 9.35;

**Split** means to Roll-Over, Transfer or Allot for the benefit of that Member's spouse an amount of Benefits as provided for in Division 6.7 and to deduct from that Member's Benefits that amount;

**the State** means South Australia;

**Statutory Rule** includes regulations, by-laws and rules made under the authority of a statutory enactment;

**Successor Fund** has the meaning that expression has in Regulation 1.03;

**Superannuation Law** means:



- (a) the SIS Act;
- (b) the SIS Regulations;
- (c) the applicable provisions of the Assessment Act;
- (d) any other law or regulation regulating the conduct or affairs of superannuation funds of which the Fund is one;
- (e) any direction ruling or condition:
  - (i) made by the statutory authority responsible for the supervision or conduct of superannuation funds;
  - (ii) applicable to superannuation funds of which the Fund is one; or
- (f) any prescribed standard applicable to Self Managed Superannuation Funds;

**Superannuation System** has the meaning that expression has in Division 5.1;

**Technically Insolvent** or **Technical Insolvency** in relation to the Fund has the meaning that expression has in Regulation 9.35;

**Transferred** in relation to an amount in a Regulated Superannuation Fund means the payment of an amount from that fund in respect of a Member's Benefits to:

- (a) another Regulated Superannuation Fund;
- (b) an Approved Deposit Fund; or
- (c) a Retirement Savings Account

otherwise than upon the satisfaction by that Member of a Condition of Release in respect of that amount; and **Transfer** is to be construed accordingly;

**Trustee** means the individual or company, or individuals or companies, initially a party to this Deed and described as the Trustee at the commencement of this Deed and any individual or company appointed as an additional Trustee or replacement Trustee pursuant to Clause 19 and the expression extends to and includes their respective successors and permitted assigns in respect of the Fund;

**Unrestricted Non-preserved Benefits** in relation to a Member and in relation to an amount has the meaning given in Regulation 6.10;

### 1.3. Interpretation

In the interpretation, construction and application of this Deed:

- 1.3.1. The above Recitals are true and correct and are to apply in the interpretation and application of the provisions of this Deed;
- 1.3.2. A word or term which is defined in the SIS Act or the SIS Regulations and used in this Deed shall (subject to the preceding sub-clauses) have that same definition in this Deed;
- 1.3.3. The provisions of the SIS Act and the SIS Regulations are deemed to be incorporated in this Deed to the extent necessary or expedient to enable:
  - (a) the Regulator to give notice to the Trustee that the Fund is a Complying Superannuation Fund; and
  - (b) the Fund to be a Complying Superannuation Fund;
- 1.3.4. A reference (in relation to any act matter or thing) to the Fund not being a Complying Superannuation Fund or being a Non-complying Fund includes



- a reference to any ground existing or occurring which may (including as a result of the exercise of any power or discretion by any Person) cause the Fund to be Non-complying or to cease to be eligible to be a Complying Superannuation Fund;
- 1.3.5. Any provision that is treated or held by the Regulator or a court or tribunal of competent jurisdiction to be void or voidable or unenforceable shall not affect the validity or enforceability of any other term or provision;
- 1.3.6. A reference to a provision in the ITAA36 that is or has been re-enacted (whether in the same or similar words or otherwise) in the ITAA97 shall be construed as that re-enacted provision;
- 1.3.7. A reference to a statutory enactment (including the Assessment Act and the SIS Act) or a Statutory Rule (including the SIS Regulations):
- (a) is to that enactment or Statutory Rule as amended from time to time; and
  - (b) extends to any replacement or successor legislation or Statutory Rule;
- 1.3.8. Specific section and Regulation numbers are referred to assist the Trustee in the administration of the Fund but a reference to a provision of a statutory enactment (including the SIS Act) or Statutory Rule (including the SIS Regulations) includes any equivalent replacement provision in that or any replacement or successor enactment or Statutory Rule;
- 1.3.9. The headings and sub-headings are for convenience and reference part of this Deed, but in the event of any inconsistency do not limit or affect the interpretation of any other provision of this Deed;
- 1.3.10. Unless the context otherwise requires, the words denoting one gender include other genders and words in the singular number include the plural number and words in the plural number include the singular;
- 1.3.11. The provisions of any clause or sub-clause that contains any subordinate sub-clause shall be read distributively to that subordinate sub-clause and that subordinate sub-clause shall be construed accordingly;
- 1.3.12. a reference to an act matter or thing being:
- (a) subject to or subject to compliance with; or
  - (b) in accordance with
- a section of the SIS Act or a Regulation or Division of shall be read as if that Regulation Division or section imposed an obligation in relation to that act matter or thing on the Person to whom the reference relates; and
- 1.3.13. where a section of the SIS Act or a Regulation or Division provides for, or permits or authorises, (including subject to an express or implied qualification that the constituent instrument of a superannuation fund allows or authorises or does not prohibit) an act matter or thing to be done then subject to Clause 7 and any express provision herein to the contrary, that act matter or thing may be done by the Trustee.

**1.4. Law of Deed**

This Deed shall be construed and shall take effect according to the laws of the State (other than Section 35B of the *Trustees Act 1936* of the State which shall not apply) and all rights liabilities and obligations hereunder shall be subject by the Trustees to the jurisdiction of the courts of the State and of the Commonwealth of Australia;

**2. DECLARATION OF TRUST**

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**2.1. Declaration**

The Trustee **HEREBY DECLARES** that on and from the date first appearing in this Deed the Fund is held for the benefit of the Members on and subject to the terms and conditions of and applying to this Deed for one or more of the purposes in Sub-section 62(1)(a) of the SIS Act.

**2.2. Intention of Deed**

It is intended that the Fund remain a Self Managed Superannuation Fund that is a Complying Superannuation Fund and a Regulated Superannuation Fund and the Trustee will (except where expressly excused by all of the Members):

- 2.2.1. exercise its powers and discretions in accordance with that intention; and
- 2.2.2. ensure that the prescribed standards applicable to the operation of the Fund shall be complied with at all time (as provided for in Section 34 of the SIS Act).

**3. PURPOSE OF FUND**

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Subject to this Deed:

**3.1. Constitutional Corporation Trustee**

Subject to this Deed, the Trustee must be a Constitutional Corporation or where the Trustee is not a Constitutional Corporation the primary purpose of the Fund shall be to provide old age pensions.

**3.2. Maintenance of the Fund**

(without affecting Sub-clause 3.1) the Trustee must ensure that the Fund is maintained solely:

- 3.2.1. for one or more of the core purposes in Sub-section 62(1)(a) of the SIS Act, which include at the date hereof:
  - (a) the provision of benefits to each Member on or after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged or upon the Member's attainment of an age specified in the Regulations; or
  - (b) on the death of the Member the provision of benefits to one or more of the Member's Legal Personal Representatives or Dependents;



- 3.2.2. solely for one or more of those core purposes and one or more of the ancillary purposes in Sub-section 62(1)(b) of the SIS Act.

#### **4. PARAMOUNTCY OF SUPERANNUATION LAW**

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##### **4.1. Application of Superannuation Law**

The provisions of the Superannuation Law applicable to Self Managed Superannuation Funds are to apply to this Deed and to the Fund:

- 4.1.1. so that any provision of the Superannuation Law which prohibits, requires or permits any act matter or thing in relation to a fund which, if that provision is complied with, is or would be a Self Managed Superannuation Fund that is a Complying Superannuation Fund and a Regulated Superannuation Fund, shall apply;
- 4.1.2. so that any provision of the Superannuation Law, non-compliance with which would result in the Fund not being a Self Managed Superannuation Fund that is a Complying Superannuation Fund and a Regulated Superannuation Fund is required to be complied with by the Trustee;
- 4.1.3. and in the event of any inconsistency between the provisions of this Deed and any such provision of the Superannuation Law (non-compliance with which would make the Fund Non-complying or not a Self Managed Superannuation Fund):
- (a) such provisions of the Superannuation Law shall apply notwithstanding, and shall take paramouncy over, conflicting provisions of this Deed; and
  - (b) the conflicting provisions of this Deed shall not apply to the extent of the inconsistency subject to the operation of Sub-clause 5.1.7.

#### **5. RULES**

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##### **5.1. Rules**

The Trustee may from time to time make amend and revoke Rules which:

- 5.1.1. may regulate the powers and discretions of the Trustee;
- 5.1.2. may provide for any matter not specified in this Deed;
- 5.1.3. may provide for the terms of or applicable to any Income Stream Arrangement which the Trustee wishes to make to a person including as to one or more of the following:
- (a) regularity of payment;
  - (b) the minimum amount of each payment or of all payments in a year;
  - (c) the maximum amount of each payment or of all payments in a year;
  - (d) the commutability thereof; and
  - (e) whether it would be transferable to any person (including on the death of the recipient);
- 5.1.4. may more particularly provide for any matter referred to in or the subject of this Deed;

- 5.1.5. shall be subject to the provisions of the Superannuation Law;
- 5.1.6. shall not have the effect of making the Fund Non-complying; and
- 5.1.7. Notwithstanding any other provision herein the Trustee may, on application of all Members of the Super Fund, resolve to amend this Deed such that the fund meets the conditions required of a small APRA fund and must then notify the regulator as required under Regulation 11.07A.

## **6. MEMBERSHIP**

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### **6.1. Admission**

A natural person subject to Sub-clause 6.2) may be admitted as a Member of the Fund by the Trustee if that person makes application for membership by (or in the case of a Child an application is made on its behalf by a parent or legal guardian of that Child by):

- 6.1.1. completing a written application generally in, or to the effect of, the form annexed hereto as Appendix A or as otherwise accepted at that time by the Trustee; and
- 6.1.2. delivering to the Trustee that application together with any supporting documents and information requested by the Trustee in the absolute discretion of the Trustee which may include but is not limited to:
  - (a) proof of correct age and citizenship; and
  - (b) medical and employment records.

### **6.2. Restrictions on Membership**

A natural person shall not be a Member if:

- 6.2.1. the number of Members as a result of that admission would be greater than that permitted for a Self Managed Superannuation Fund; or
- 6.2.2. (other than in the case of a Child) that person is not able or eligible to, or does not consent to, and does not, become:
  - (a) in the case of the Trustee being a corporation – a director of the corporate trustee; or
  - (b) in the case of the Trustee being one or more individuals – a trustee of the Fund;
- 6.2.3. (in the case of a Child) a legal personal representative (if any) or otherwise a parent or guardian of that Child is not able or eligible to, or does not consent to, and does not, become:
  - (a) in the case of the Trustee being a corporation – a director of the corporate trustee; or
  - (b) in the case of the Trustee being one or more individuals – a trustee of the Fund.

### **6.3. Continued Advice of Status**

A natural person who is a Member shall from time to time advise the Trustee of any change in his or her employment status.

**6.4. Compliance with provisions**

A natural person who is a Member shall:

- 6.4.1. take and hold his or her interest in the Fund subject to; and
- 6.4.2. in relation to his or her interest in the Fund comply with the provisions of this Deed (including any Rules) and all other provisions applicable to the Fund.

**6.5. Rights to benefits and statements**

Each Member:

- 6.5.1. shall not have any right to or interest in the Member's Benefit of that Member except as provided herein and in the SIS Act;
- 6.5.2. shall not have a right to have distributed any specific asset of the Fund;
- 6.5.3. (and their respective Dependants) has an entitlement to receive Benefits from the Fund only as provided for in this Deed or the Superannuation Law; and
- 6.5.4. shall be provided with statements and information in relation to the administration of the Fund and their Benefits in accordance with the requirements of the SIS Act, the SIS Regulations and the Corporations Act.

**6.6. Cessation of Membership**

A natural person shall cease to be a Member if:

- 6.6.1. (except where the Trustee expressly determines that this sub-clause does not apply) that person's continued Membership would result in the Fund being Non-complying or ceasing to be a Self Managed Superannuation Fund; or
- 6.6.2. the Trustee determines that that person shall no longer be a Member; or
- 6.6.3. his or her Member's Benefits are fully paid out

on the date:

- 6.6.4. where Sub-clause 6.6.1 applies – immediately prior to the day when the Fund would:
  - (a) be Non-complying; or
  - (b) cease to be a Self Managed Superannuation Fund
 by reason of that person's Membership;
- 6.6.5. where Sub-clause 6.6.2 applies – the date determined by the Trustee and specified in a notice delivered to that person; and
- 6.6.6. where Sub-clause 6.6.3 applies – on the date that sub-clause has effect.



## **7. CONTRIBUTIONS TO THE FUND**

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### **7.1. Acceptance of Contributions**

Subject to Sub-clause 7.4 the Trustee may accept contributions:

- 7.1.1. in respect of a Member where permitted to do so (or not prohibited from doing so) pursuant to Regulation 7.04;
- 7.1.2. (subject to but without limiting Sub-clause 7.1.1) from an Employer-Sponsor in relation to a Member who is an Employee of that Employer-Sponsor or Associate thereof; or
- 7.1.3. which are Government Co-contributions in respect of a Member but the Trustee is not obligated to do so and has an absolute discretion whether to accept any or all of a contribution proffered in respect of a Member.

### **7.2. Advice to Trustee**

It shall be a condition of acceptance by the Trustee of a contribution that the Person making the contribution shall advise the Trustee:

- 7.2.1. of the amount of the contribution and the Member in respect of whom it is made;
- 7.2.2. of the identity of the Person making the contribution; and
- 7.2.3. such other matters as the Trustee may require (including without limitation the tax file number of the Member in respect of whom it is made).

### **7.3. Life Policies Etc.**

Any payment of a contribution by the Employer or any other Person in respect of a Member by way of payment made directly to a life insurance company or investment manager shall be deemed to be a payment of contributions to the Trustee and a payment by the Trustee to that life insurance company or investment manager in respect of that Member.

### **7.4. Restriction on Acceptance of Contributions**

The Trustee shall not accept contributions to the Fund:

- 7.4.1. from any Employer Sponsor where any current direction applies under Section 63 of the SIS Act; or
- 7.4.2. where the acceptance or receipt of the contribution would cause the Fund to be Non-complying; and

### **7.5. Form of Contributions**

Subject to Sub-clause 7.4 contributions may be accepted in cash or any other form of Property.

### **7.6. Splittable Contributions**

The Trustee may at its discretion Split an amount if:

- 7.6.1. a Member makes an application to the Trustee to Split that amount;

7.6.2. the application is in accordance with, and is not invalid under, Regulation 6.44; and

7.6.3. the Trustee is permitted to accept the application under the SIS Regulations.

**7.7. Roll Overs & Transfers to the Fund**

The Trustee may at any time and from time to time accept from another Regulated Superannuation Fund or another entity in the Superannuation System as an accretion to the Benefits of a Member cash or other Property by way of Roll Over or Transfer but:

7.7.1. the Trustee shall not do so where it would result in the Fund being Non-complying;

7.7.2. (subject to Sub-clause 7.7.1) the Trustee will not be obligated to, and has an absolute discretion whether to do so; and

7.7.3. the Trustee may impose conditions on that acceptance.

**8. BENEFITS TO MEMBERS**

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**8.1. Allocation of Contributions**

The Trustee shall allocate to a Member's Benefits the contributions made for that Member.

**8.2. Division**

The Trustee may divide a Member's Benefits into two or more separate accounts or components for such purposes as the thinks fit.

**8.3. Reserve**

The Trustee may establish and maintain a reserve:

8.3.1. to which the Trustee may credit amounts set aside by the Trustee (which would otherwise be credited or debited to a Member's Benefit under Sub-clause 8.4):

(a) to pay tax payable in respect of contributions to the Fund and earnings of the Fund (including disposals of Property of the Fund);

(b) to provide a buffer for the effect of fluctuations in the value of the investments of the Fund on the Benefits of Members; and

(c) for such other purposes as the Trustee thinks appropriate; and

8.3.2. to which shall be debited:

(a) tax paid by the Trustee in respect of any contributions and any earnings;

(b) any decrease in the value of investments held by the Trustee which the Trustee thinks appropriate to so debit; and

- (c) amounts which the Trustee determines from time to time to transfer to Members' Benefits in accordance with Sub-clauses 8.4 and 8.6.

**8.4. Determination of Investment Return**

The Trustee shall in accordance with Sub-clause 8.6 determine that part of the earnings of the Fund from time to time which are to be credited or debited to a Member's Benefit (or Benefits of a particular kind including without limitation Benefits representing Mandated Employer Contributions and Member Contributions) in the Fund having regard to, inter alia:

- 8.4.1. the return of the Fund on investments;
- 8.4.2. the return of assets or investments allocated or referable to that Member or his or her Benefits; and
- 8.4.3. the appropriate level of the Reserves of the Fund.

**8.5. Establishment, Operation and Termination Costs**

The Trustee shall in accordance with Sub-clause 8.6 determine the costs to be charged against a Member's Benefits and for the purposes hereof the Trustee may include:

- 8.5.1. the direct costs of establishing operation and terminating the Fund; and
- 8.5.2. any administrative insurance and taxation costs relating to the establishment operation and termination of the Fund and its investments; and
- 8.5.3. if a Member's Benefits are subject to a Payment Split, the costs incurred in administering the Payment Split (other than the costs offset by any fees payable under the *Family Law (Superannuation) Regulations 2001* in respect of the Payment Split).

**8.6. Determination to be Fair and Reasonable**

The Trustee in distributing costs of the Fund and allocating investment returns shall act fairly and reasonably as between all the Members of the Fund and the various kinds of benefits of each Member of the Fund.

**8.7. Valuations and allocation of Profits or Losses**

In debiting or crediting any amount to a Member's Benefit or a Reserve pursuant to the preceding sub-clauses:

- 8.7.1. the Trustee may take into account provision for depreciation, liabilities, losses and taxation as the Trustee in the Trustee's absolute discretion considers appropriate;
- 8.7.2. the Trustee may whenever it thinks it appropriate make a valuation of the assets of the Fund (other than policies of life insurance and annuities) in the manner that the Trustee determines and after allowing for the estimated costs of realising the investments and provision for taxation may debit or credit the balance (as the case may be);



- 8.7.3. the Trustee may allocate to the account of a Member to whom a Benefit is being paid an interim earning rate determined by the Trustee to apply from the date on which an allocation was last made to the date on which the Benefit is being paid; and
- 8.7.4. an amount credited or debited to a Member's Benefit shall be allocated between such of the categories in Sub-clause 14.1.5 and in such manner and proportion as the Trustee thinks appropriate (and in the absence of determination in the proportions which those categories represent of the Member's Benefits).

**8.8. Maintenance of Benefit Category**

Subject to Sub-clauses 8.9 - 8.11 the Trustee shall ensure that any Member's Benefits in the Fund that were Rolled Over or Transferred from another entity in the Superannuation System and that was on the date of that Roll Over or Transfer:

- 8.8.1. Preserved Benefits in that source entity – shall continue to be Preserved Benefits in the Fund;
- 8.8.2. Restricted Non-Preserved Benefits in that source entity - shall continue to be Restricted Non-preserved Benefits in the Fund;
- 8.8.3. Unrestricted Non-Preserved Benefits in that source entity - shall continue to be Unrestricted Non-Preserved Benefits in the Fund; or
- 8.8.4. not identified as either Restricted Non-preserved Benefits, Preserved Benefits or Unrestricted Non-Preserved Benefits - shall be treated as Preserved Benefits for the purposes of this Deed unless the Trustee is satisfied that they are not Preserved Benefits

**unless the Superannuation Law does not so require and** any amounts that were Indexed amounts of that source entity shall continue to be subject to Indexation in the Fund where they are required to be under the Superannuation Law.

**8.9. Conversion of Preserved Benefits**

The Trustee shall convert a Member's Preserved Benefits to Unrestricted Non-Preserved Benefits if:

- 8.9.1. the Member satisfies a Condition of Release; and
- 8.9.2. the relevant Cashing Restriction in respect of that Preserved Benefit is "nil";

**8.10. Conversion of Restricted Non-Preserved Benefits**

The Trustee shall convert a Member's Restricted Non-Preserved Benefits to Unrestricted Non-Preserved Benefits if:

- 8.10.1. the Member satisfies a Condition of Release; and
- 8.10.2. the relevant Cashing Restriction in respect of that Restricted Non-Preserved Benefits is "nil".

### 8.11. Conversion of Benefit Category

The Trustee may with the consent of a Member (and subject to the provisions of the Superannuation Law) alter the category of the Member's Benefits but no alteration shall be made that:

- 8.11.1. decreases the amount of the Member's Preserved Benefits in the Fund; or
- 8.11.2. increases the amount of the Member's Unrestricted Non-preserved Benefits in the Fund.

## 9. PAYMENT ETC. OF BENEFITS

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### 9.1. Maintenance of Benefits

The Trustee must ensure that a Member's Minimum Benefits are maintained in the Fund until they are:

- 9.1.1. Cashed;
- 9.1.2. Rolled Over or Transferred; or
- 9.1.3. Allotted to another Member pursuant to Clause 7.6 in accordance with this Deed.

### 9.2. Restrictions on provision of Benefits

The Trustee must not:

- 9.2.1. Cash a Benefit unless a Condition of Release is satisfied;
- 9.2.2. provide a benefit where prohibited by law, including without limitation:
  - (a) where a payment flag (within the meaning given in Part VIII B of the *Family Law Act 1975*) applies to that Member or that Member's Benefit; and
  - (b) where a flagging order (within the meaning given in Part VIII B of the *Family Law Act 1975*) applies to that Member or that Member's Benefit; or
- 9.2.3. otherwise provide a Benefit except as permitted under this Deed or the Superannuation Law.

### 9.3. Voluntary Cashing of Benefits

- 9.3.1. Preserved Benefits of a Member in the Fund may, subject to the Superannuation Law and Sub-clause 9.4, be Cashed as follows:
  - (a) on or after the satisfaction by the Member of a Condition of Release and in accordance with any Cashing Restriction applicable to Preserved Benefits for that Condition of Release;
  - (b) in the amount that had accrued at the time when the Member satisfied the Condition of Release; and
  - (c) in the form in accordance with Sub-clause 9.6.



- 9.3.2. Restricted Non-Preserved Benefits of a Member in the Fund may, subject to the Superannuation Law and Sub-clause 9.4, be Cashed as follows:
- (a) on or after the satisfaction by the Member of a Condition of Release and in accordance with any Cashing Restriction applicable to Restricted Non-preserved Benefits for that Condition of Release;
  - (b) in the amount the Restricted Non-preserved Benefits of the Member that had accrued at the time when the Member satisfied the Condition of Release; and
  - (c) in the form in accordance with Sub-clause 9.6.
- 9.3.3. Unrestricted Non-preserved Benefits of a Member in the Fund may, subject to the Superannuation Law and Sub-clause 9.4, may be Cashed as follows:
- (a) at any time;
  - (b) in the whole or part of the amount of the Member's Unrestricted Non-preserved Benefits in the Fund; and
  - (c) in the form in accordance with Sub-clause 9.6.

**9.4. Temporary incapacity**

Where the Condition of Release is temporary incapacity of the Member, Cashing is only permitted as provided for in Regulation 5.08(3).

**9.5. Compulsory Cashing of Benefits**

- 9.5.1. Subject to the Superannuation Law the Trustee shall Cash a Member's Benefits which:
- (a) is eligible to be Cashed pursuant to Sub-clause 9.3.1; and
  - (b) is the subject of an application by the Member to the Trustees to be Cashed.
- 9.5.2. The Trustee shall Cash a Member's Benefits in the Fund when required to do so by law including without limitation on death of that Member.

**9.6. Form in which Benefits may be Cashed**

A Member's Benefits may be Cashed:

- 9.6.1. if there is a Cashing Restriction that applies to the Cashing of those benefits that restricts the form or method of payment – then only in accordance with that Cashing Restriction (but nothing herein is to affect the Cashing of that Member's Benefit under another Condition of Release that does not have that Cashing Restriction);
- 9.6.2. otherwise in any of the forms permitted or not prohibited by Division 6.3 (or any other provision of the Superannuation Law) that the Trustee thinks fit including without limitation:
- (a) by way in whole or part as a lump sum or an Income Stream Arrangement permitted or provided for by this Deed or permitted by, or not prohibited by, the Superannuation Law, or a combination of both; and

- (b) where permitted or not prohibited by the Superannuation Law and with the consent of the proposed recipient - a distribution of Property other than cash and/or cash (including by cheque and fund transfer) in Australian currency

but excluding in the form of a defined benefit pension (within the meaning of Regulation 9.04E).

**9.7. Roll-Over**

Benefits may be Rolled-Over instead of Cashed.

**9.8. Death Benefits Notice**

Each Member of the Fund may by delivery to the Trustee of a Death Benefits Notice in the form attached hereto or in such other form as shall be accepted by the Trustee require the Trustee to make payment of the whole or any part of that Member's Benefits, on or after the death of that Member, to the legal personal representative or a Dependent of that Member in such manner or in such proportions as the Member may nominate or direct in that Death Benefits Notice, and in accordance with and subject to the provisions of Sub-clauses 9.9 and 9.10. A Death Benefits Notice:

- 9.8.1. Must be witnessed by at least one person who has legal capacity and is neither a beneficiary of that notice nor an Associate of a beneficiary of that notice;
- 9.8.2. may from time to time be amended or revoked by the Member by giving written notice to the Trustee of the amendment or revocation;
- 9.8.3. will be binding on the Trustee, subject to this Deed and the Superannuation Law, as to all directions and nominations contained in the Death Benefits Notice;
- 9.8.4. will, unless otherwise provided in the Death Benefits Notice, be indefinitely continuing and non-lapsing and will continue in full force and effect unless and until the Death Benefits Notice is revoked or replaced by the Member; and
- 9.8.5. may be replaced, in whole or in part, by a further Death Benefits Notice by the Member to the Trustee, and to such extent, if any, as any nomination or direction to the Trustee by a Member in a Death Benefit Notice is contrary to the Superannuation Law or this Deed, the Trustee shall endeavour to deal with or distribute that Member's Benefits in a manner that is consistent with or as nearly as possible will give effect to the intentions of the Member expressed in the Death Benefits Notice but in compliance with the Superannuation Law and this Deed.

**9.9. Limitation for Bankruptcy**

- 9.9.1. When at the time of the death of the Member any Dependant nominated in a Death Benefits Notice is an undischarged bankrupt a Death Benefits Notice shall not apply in respect of that person.
- 9.9.2. To the extent that a Death Benefits Notice does not apply due to the operation of this clause 9.9 the Trustee shall endeavour to deal with and distribute the Member's Death Benefit in a manner that is consistent with



or as nearly as possible will give effect to the best interests of the Dependants of that Member at the complete and unlimited discretion of the Trustee but in compliance with the Superannuation Law and this Deed.

**9.10. Timing of Death Benefits Payment**

The Trustee must pay a Benefit in respect of a Member as soon as practicable after the death of that Member:

- 9.10.1. if a Death Benefits Notice had been given by that Member – to the person or persons specified in that Death Benefits Notice if:
  - (a) the Death Benefits Notice has not been withdrawn in writing by the member; and
  - (b) the person or persons specified in the Death Benefits Notice are the Legal Personal Representative or Dependants of the member;
- 9.10.2. where Sub-clause 9.10.1 does not apply - to:
  - (a) the legal personal representative of that Member and/or one or more dependents of that Member as the Trustees may select and in the amounts amongst those persons (if more than one) as the Trustees may select;
- 9.10.3. if the Trustee has not after making reasonable enquires found either a legal personal representative or a Dependant of the Member - one or more individuals chosen by the Trustee; or
- 9.10.4. to the extent the Member's benefits are fully segregated in payment of a Pension or Pensions which revert to a permitted reversionary beneficiary Sub-clause 9.10.2 shall have no application in respect of that Member.

**9.11. Release of Benefits on Compassionate Grounds**

The Trustee shall release an amount of a Member's Preserved Benefits or Restricted Non-Preserved Benefits if:

- 9.11.1. the Regulator has made a determination under Regulation 6.19A allowing the release;
- 9.11.2. the Member makes application to the Trustee for release of that amount (which application may be made by delivering notice of the Regulator's determination to the Trustee); and
- 9.11.3. the release is in accordance with that determination.

**9.12. Cashing in favour of Persons other than Members**

A Member's Benefits can be Cashed in favour of only:

- 9.12.1. that Member;
- 9.12.2. in respect of an interest or Member's Benefits subject to a Payment Split – the person entitled to payment in accordance with the Payment Split;
- 9.12.3. (if there is legal personal representative in respect of that Member) – that legal personal representative;



- 9.12.4. if that Member has died – the persons provided for in Sub-clause 9.10; and
- 9.12.5. such other Person or Persons as permitted by the Superannuation Law but (subject to the Superannuation Law) the foregoing provisions do not prevent the Trustee, in respect of an amount of a Benefit which is Cashed in favour of a Member, from making payment of that amount to a Person nominated by that Member.

**9.13. Priority of Cashing**

If a Member has satisfied a Condition of Release and there is a Cashing Restriction other than "nil" in respect of that Condition of Release, the Trustee must Cash the Benefits in the following order of priority:

- 9.13.1. firstly – Unrestricted Non-Preserved Benefits;
- 9.13.2. secondly – Restricted Non-Preserved Benefits; and
- 9.13.3. thirdly – Preserved Benefits.

**9.14. Roll Over to another Fund**

The Trustee shall Roll Over the amount of an unpaid Benefit of a Member:

- 9.14.1. if the amount is permitted under the Superannuation Law to be Rolled Over;
- 9.14.2. upon written request by that Member; and
- 9.14.3. to the entity within the Superannuation System nominated by the Member if that entity will accept the Roll Over.

**9.15. Transfer to another Fund**

The Trustee shall Transfer the amount of a Member's Benefit:

- 9.15.1. upon written request by that Member to:
  - (a) another Regulated Superannuation Fund;
  - (b) an Approved Deposit Fund; or
  - (c) a Retirement Savings Account
 specified by that Member if that entity will accept the Transfer;
- 9.15.2. upon termination of the Membership of that Member pursuant to Sub-clause 6.6 to:
  - (a) an entity within Sub-clauses 9.15.1(a), 9.15.1(b) or 9.15.1(c) if nominated and consented to that Member in writing and if that entity will accept the Transfer; or
  - (b) (otherwise) an Eligible Rollover Fund chosen by the Trustee where Section 243 of the SIS Act applies; or
- 9.15.3. to a Successor Fund chosen by the Trustee if determined by the Trustee.

**9.16. Commutation of Benefits**

A Member's Benefit which is being Cashed in the form of an Income Stream Arrangement may be commuted by the Trustee upon request by that Member if permitted, or not prohibited, under:

- 9.16.1. the terms of that Income Stream Arrangement; and
- 9.16.2. the Superannuation Law.

**9.17. Source of payment of Benefits**

The Trustee may allocate, or make arrangements in relation to, one or more assets (or interests therein) to:

- 9.17.1. represent or be referable to all or part of a Member's Benefits; or
- 9.17.2. to meet expected liabilities to pay an Income Stream Arrangement so as to constitute those assets as Segregated Current Pension Assets.

**10. PAYMENT SPLITS**

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**10.1. Notification**

In the event that an interest of a Member in the Fund becomes subject to a Payment Split the Trustee must notify the Member and the Non-Member Spouse in relation to that Payment Split in accordance with the Superannuation Law (being at the date hereof Regulations 2.36C and 7A.03).

**10.2. Dealing with interests**

The Trustee must comply with the requirements of, and is empowered to do the acts matters and things provided for in, Part 7A of the SIS Regulations including in relation to:

- 10.2.1. the payment to the Non-Member Spouse in respect of his or her interest in or rights in, the interest or Benefits the subject of the Payment Split; and
- 10.2.2. the creation of an interest in the Fund for the Non-Member Spouse or a Transfer or Roll-Over for the benefit of the Non-Member Spouse.

**10.3. Fees**

The Trustee may charge fees as the Trustee considers appropriate involving Payment Splits and acts done in relation thereto but subject to the Superannuation Law and the *Family Law Act 1975*.

**11. INVESTMENTS**

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**11.1. Investment Strategy**

- 11.1.1. the Trustee shall formulate, document and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:

- (a) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
- (b) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the fund in being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
- (d) the ability of the Fund to discharge its existing and prospective liabilities.

11.1.2. Notwithstanding Sub-clause 11.1 the Trustee may have and implement an investment strategy in respect of an interest of a Member or a class of Members that is in accordance with directions of that Member or that class of Members to which Sub-section 52(4) of the SIS Act applies.

## 11.2. Permitted Investments

- 11.2.1. Subject to Sub-clause 11.3 the Trustee shall invest the whole or any part of the Property of the Fund not presently required for other purposes and may do so in investments of any kind which the Trustee in exercising its absolute discretion think fit as if the Trustee were the absolute beneficial owner, including without limiting the generality of the foregoing:
- (a) investments authorised by the laws of any State or Territory of the Commonwealth of Australia for the investment of trust funds (but the Trustee is not limited to these investments);
  - (b) any investments of the kind from time to time approved or permitted by the SIS Act including all Acquired Assets or a Replacement Asset;
  - (c) investments permitted by the regulations made pursuant to Section 62A of the SIS Act;
  - (d) shares bonds stocks securities or any other investments of the kind described in, or similar to those in, Sub-section 67(3)(a) of the SIS Act;
  - (e) instalment warrants including arrangements described in section 67A of the SIS Act;
  - (f) any real or personal property whether tangible or intangible and whether income producing or not;
  - (g) undertaking the construction, creation or development of any real or personal property;
  - (h) deposit with or investment in any bank, building society or other financial institution; and
  - (i) loans to or investment in any Person, the drawing accepting or endorsing of any bills of exchange, promissory notes or other negotiable instruments, with or without security

**but** the proportion of Fund assets invested in any single investment shall be limited to the amount provided for in the SIS Act (if any) in order for the Fund to be and remain a Complying Fund;



**11.3. Excluded Investments**

The Trustee shall not enter into any contract or arrangement or apply the monies or assets of the Fund in any investments or in any form, or hold or acquire any investments:

- 11.3.1. which will or may be unable to be readily realised to enable amounts or Property to be Cashed as and when required under and pursuant to this Deed (but nothing shall prevent the investment in illiquid assets if it is not anticipated they will be required to be readily realised);
- 11.3.2. that constitute the acquisition of an asset from a Related Party of the Fund unless:
  - (a) the asset is business real property of the transferor or a listed security within the meaning of Sub-section 66(5) of the SIS Act, in either case acquired at market value;
  - (b) the asset is of a kind which the Regulator has determined under Sub-section 66(2) of the SIS Act may be acquired by the Fund (or a class of funds of which the Fund is included);
  - (c) the asset is an in-house asset or other asset within Sub-section 66(2A) of the SIS Act, is acquired for market value and its acquisition would not result in the level of in-house assets exceeding the level permitted by Part 8 of the SIS Act; or
  - (d) the Trustee is otherwise permitted to do so under the Superannuation Law;
- 11.3.3. constituting a loan to, or an investment in. a person which:
  - (a) is prohibited under the SIS Act; or
  - (b) would result in the Fund being Non-complying ;
- 11.3.4. being a borrowing of money except as permitted under the SIS Act; or
- 11.3.5. notwithstanding the foregoing - that would result in the Fund being Non-complying.

**11.4. Trustee's Powers for Investments**

The Trustee shall in investing and applying the Property of the Fund and exercising its powers in relation to the Fund have the following powers (in addition to any required to effect the investments permitted under Sub-clause 11.1):

- 11.4.1. to hold an interest in a part of any investment and undertake or hold an investment with one or more other Persons;
- 11.4.2. to:
  - (a) vary and transpose; and
  - (b) replace
 those investments of any of them in any manner that the Trustee in its absolute discretion thinks fit;
- 11.4.3. to purchase, sell, licence, grant options to acquire or purchase Property or otherwise deal with or dispose any Property;

- 11.4.4. to lease, sub-lease, grant, subdivide any real property or interest therein;
  - 11.4.5. to hire, lease or bail any personal property;
  - 11.4.6. to engage employees and contractors on such wages and salary and with such benefits and providing such amenities as the Trustee thinks fit;
  - 11.4.7. to pay all expenses, premiums, rates, taxes, rents and outgoings in relation to Property of the Fund;
  - 11.4.8. to undertake repairs, maintenance and replacement of any Property of the Fund;
  - 11.4.9. to pay or not pay calls on shares, permit securities to be forfeited and sold, take up rights and bonus issues, exercise all voting and other ownership rights in respect of securities;
  - 11.4.10. to take action to enforce or defend the rights of the Trustee as legal owner and of the Fund as beneficial owner of Property of the Fund, or in respect of the rights and interests of Member, or the rights or obligations of the Trustee, including legal proceedings against any Person (including the Commissioner of Taxation), the bankruptcy or liquidation of any Person, any arbitration or mediation;
  - 11.4.11. to settle or compromise any debts, rights claims, entitlement or obligations or liabilities;
  - 11.4.12. to apply for or surrender any licences, authorities or rights (including in respect of any intellectual property) with any statutory authority or other Person;
  - 11.4.13. to take out and maintain policies of insurance on any Property of or relating to the Fund or on any Person relevant to the Fund;
  - 11.4.14. appoint or act as agent or attorney; and
  - 11.4.15. do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities conferred on the Trustee
- provided that no provision of this Sub-clause shall limit any other provision of this Sub-clause or of Sub-clause 11.1.

#### **11.5. Investments for Members**

The Trustee may in its absolute discretion hold particular investments for particular Members and:

- 11.5.1. all earnings thereon shall be credited to the relevant accounts of the Member or Members for whom those particular investments are held; and
- 11.5.2. income tax or any other tax charge or duty payable in respect of those investments shall be debited to the accounts of the relevant Member or Members.

## **12. APPLICATION OF ASSETS**

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Without limiting the powers of the Trustee, assets of the Fund may be invested, held in reserve or otherwise dealt with to enable the discharge of, or for the purpose of providing the Fund with the resources to discharge, one or more specified liabilities as the Trustee thinks fit, including pension liabilities in respect of a Member.



## **13. POLICIES OF INSURANCE AND ANNUITIES**

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### **13.1. Policies of Insurance & Annuities**

- 13.1.1. The Trustee may in its absolute discretion invest the whole or any part of the amount standing to the credit of a Member in payment of:
- (a) premiums on a policy or policies of life, disability or accident insurance in which the Trustee has a legal or equitable interest; or
  - (b) the consideration for an annuity or any combination thereof.
- 13.1.2. The Trustee may effect any policies or annuities with any company trust or association on any terms and conditions and for any periods as the Trustee thinks fit and shall also have the power to accept an assignment of a policy of life disability or accident insurance or an annuity on the terms and conditions that the Trustee in its absolute discretion determines.

### **13.2. Term of Policies of Insurance & Annuities**

The Trustee shall have power to continue any policies or annuities for any periods as the Trustee thinks fit and to discontinue or surrender those policies or annuities.

## **14. RECORDS, ACCOUNTS AND AUDITOR**

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### **14.1. Records**

The Trustee shall prepare and maintain all records and statements required by or under the SIS Act and (without limiting the generality thereof) the Trustee shall keep a complete record of all matters essential to the administration of the Fund including:

- 14.1.1. a minute book in which proceedings and resolutions of the Trustee are recorded;
- 14.1.2. records of the Property of the Fund;
- 14.1.3. statements showing the income and returns from the investments of the Property of the Fund and the financial position of the Fund;
- 14.1.4. accounts applicable to each Member showing contributions received, benefits paid and amounts debited and credited (including from any Reserve);
- 14.1.5. (where appropriate) records showing the amounts of:
  - (a) Member Contributions;
  - (b) Mandated Employer Contributions;
  - (c) Government Co-contributions; and
  - (d) any Roll Over or Transfer
 in respect of each Member;
- 14.1.6. (where appropriate) records showing the investment earnings credited or debited in respect of each of Sub-clauses 14.1.5(a) - 14.1.5(d) for each Member;



- 14.1.7. records enabling:
  - (a) the Minimum Benefits; and
  - (b) Minimum Guaranteed Benefits
 for each Member to be determined;
- 14.1.8. records enabling components of any payments to a Member which have different tax treatments to be separately identified and quantified;
- 14.1.9. statements concerning the Reserve and amounts debited and credited thereto; and
- 14.1.10. any other books and records to be maintained by the Trustee in order to comply with the standards imposed under, or the provisions of, the SIS Act.

#### **14.2. Delivery of Records**

The Trustee shall deliver to any Member no later than **21** days after a written request by that Member so to do certified copies of the books records and other documents then in the possession of the Trustee and relating to that Member but no other Member.

#### **14.3. Fund Deed**

A copy of this Deed and the Rules shall be kept by the Trustee and be available for inspection by any Member during normal professional business hours but the Trustee shall not be obliged to deliver to any Member copies of any books records or other documents in respect of that Member otherwise than pursuant to Sub-clauses 14.2 and 6.5.4.

#### **14.4. Appointment of Auditor**

The Trustee shall appoint an approved auditor (as defined in the SIS Act) to conduct an audit of the records and accounts of the Fund and of the operations of the Fund for:

- 14.4.1. the purpose of, and in compliance with, the SIS Act; and
- 14.4.2. such other purposes as the Trustee may think appropriate.

### **15. SOLVENCY AND TERMINATION OF FUND**

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#### **15.1. Addition to Minimum Guaranteed Benefits**

The Trustee shall not allow or suffer any addition to the Minimum Guaranteed Benefits payable by the Fund if:

- 15.1.1. the Fund was Solvent at the beginning of the year of income and as a consequence of the proposed addition of earnings of the Fund, the Fund would become Technically Insolvent at the end of the year of income; or
- 15.1.2. the Fund was Technically Insolvent at the beginning of the year of income except in either case to the extent permitted under and pursuant to a program referred to in Sub-clause 15.3;

**15.2. Trustee to Initiate Program or Winding-up**

If at any time the Fund is Technically Insolvent the Trustee shall either:

- 15.2.1. initiate and carry out a program in accordance with Sub-clause 15.3; or
- 15.2.2. initiate winding-up proceedings in accordance with Sub-clause 15.5.

**15.3. Program by Actuary**

The Trustee may:

- 15.3.1. where the Fund is Technically Insolvent - initiate; or
- 15.3.2. otherwise – elect to apply

a program designed by an Actuary engaged by the Trustee to ensure that the Fund is in a solvent position not later than the end of the fifth financial year following the financial year in which the Fund became Technically Insolvent, or where Sub-clause 15.3.2 applies, the Trustee made the election to apply the Program.

**15.4. Payment from and addition to the Fund**

During any Period of Technical Insolvency of the Fund the Trustee shall not make any payment from the Fund or add an amount to the Minimum Guaranteed Benefits unless:

- 15.4.1. an Actuary gives written approval for that particular payment or addition to be made; or
- 15.4.2. the amount is added, or amount of the payment is determined, in accordance with a scheme approved in writing by an Actuary for that purpose.

**15.5. Winding-up**

The Trustee shall initiate and undertake winding-up proceedings in accordance with Division 9.7 if:

- 15.5.1. the Fund fails to comply with Sub-clauses 15.2.1 or 15.4 during a Period of Technical Insolvency;
- 15.5.2. the Fund is not Solvent on the date on which that Period of Technical Insolvency ends;
- 15.5.3. required to do so under the Superannuation Law; or
- 15.5.4. the Trustee wishes to, or consider it appropriate to, wind-up the Fund.

**15.6. Wind up of the Fund**

Subject to the application of the provisions of Division 9.7, on a winding up of the Fund the Trustee shall:

- 15.6.1. deduct from the assets of the Fund the cost of administering and winding-up the Fund; and
- 15.6.2. pay or transfer to the Members or dependents (if the Member is deceased) the Benefits in accordance with the provisions of the SIS Act and any Rules of the Fund

and payments or transfers made by the Trustee in accordance with this sub-clause shall be accepted by the Members and former Members in full discharge of all claims in respect of the Fund.

### **15.7. Actuary's Recommendations**

- 15.7.1. If as an alternative to commencing winding-up proceedings:
- (a) an Actuary recommends in writing to the Trustee a specified course of action; and
  - (b) the Trustee wishes to accept the recommendations of the Actuary;
- the Trustee must within 21 days after receiving those recommendations forward to the Regulator a copy of those recommendations together with a request that the Regulator approve them.
- 15.7.2. If the Regulator approves the recommendations of the Actuary and notifies the Trustee in writing of the approval, the Trustee must thereafter follow the specified course of action as recommended.

## **16. CONSEQUENCES OF INVOLVEMENT OF EMPLOYER SPONSOR**

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### **16.1. Employer Sponsor**

- 16.1.1. The provisions of this Deed and the involvement of any Employer Sponsor shall not in any way affect the right of a Member or the personal representatives of that Member or any other Person to claim compensation or damages under an Act of Parliament or at common law if that Member is injured or dying as a result of an event arising out of and in the course of the employment of that Member.
- 16.1.2. Nothing herein contained restricts the rights of the Employer Sponsor to:
- (a) dismiss or determine the employment of a Member; or
  - (b) (if the Employer is a company) - remove a director of the Employer from office
- or otherwise do any act matter or thing in the capacity of an Employer of that Member.

### **16.2. Assumptions of Members**

The fact of being a Member shall not be:

- 16.2.1. taken as a guarantee of continuation:
- (a) of employment; or
  - (b) (if the Employer is a company) - as a director of the Employer;
- 16.2.2. used as a ground for claiming or increasing damages in a claim by a Member for alleged wrongful termination of employment; or
- 16.2.3. used as a ground for claiming the payment of any amount on retrenchment.



## **17. POWERS OF THE TRUSTEE**

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The Trustee shall have complete management and control of the Fund and in addition to the powers otherwise granted or restricted or prohibited herein or under the SIS Act and at law, the Trustee shall have the following powers:

### **17.1. Costs incurred as Trustee**

To pay out of the Fund all costs, charges and taxes incidental to the administration, management and winding up of the Fund.

### **17.2. Expenses**

To pay out of the Fund all expenses incurred in:

- 17.2.1. providing for the secretarial work required for proper record keeping and administration to be performed;
- 17.2.2. having the accounts of the Fund audited;
- 17.2.3. having taxation returns and returns to Government authorities prepared; and
- 17.2.4. engaging Persons that the Trustee considers appropriate for the proper administration and maintenance of records of the Fund.

### **17.3. Contracts**

To enter into contracts and deeds on behalf of the Fund that the Trustee considers appropriate for the administration of the Fund.

### **17.4. Property**

To purchase or otherwise acquire Property and to sell or otherwise dispose of Property of the Fund and to take Property on lease and to lease out Property of the Fund, on such terms and conditions as the Trustee thinks fit.

### **17.5. Delegation**

To delegate (by power of attorney or otherwise) to any Person or company any of the powers duties and discretions vested in the Trustees on terms and conditions that the Trustee in its absolute discretion thinks fit and the Trustee shall not be responsible for any loss incurred as a result of such delegation.

### **17.6. Advisors**

To take and act upon the advice of a barrister, solicitor, accountant, actuary auditor or superannuation consultant in relation to the administration of the Fund and to pay out of the Fund the fees payable to those advisers.

### **17.7. Legal Proceedings**

To commence, carry on and defend any legal proceedings that the Trustee in its absolute discretion thinks necessary for the proper administration of the Fund or to protect the rights of Members.

**17.8. Bank Accounts**

To open maintain and close accounts with, have cheque facilities with, and put money on deposit with, financial institutions as the Trustee thinks fit.

**17.9. Sale of Assets**

To sell the assets of the Fund by private sale or public auction, for cash or on terms and in manner and on any terms that the Trustees think fit.

**17.10. Insurance**

To insure or reinsure any risks of liabilities or contingencies relating to the Fund or its Property.

**17.11. Borrowings**

To borrow any sum of money for any purpose permitted by the Superannuation Law, including, without limitation:

- 17.11.1. any limited recourse borrowing arrangement pursuant to Section 67A or Section 67B of the SIS Act; or
- 17.11.2. for the purposes of obtaining temporary finance (as defined in the SIS Act);
- 17.11.3. upon terms and conditions and at the rate of interest as the Trustee thinks fit,

BUT no lender shall be concerned to inquire as to whether the necessity for any borrowing has arisen or as to the purpose for which it is required or as to the application of money borrowed.

**17.12. Administration**

Generally to do all things and perform all acts as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Deed and the SIS Act and Regulations.

**17.13. Custodian**

Subject to the Superannuation Law the Trustee may hold, or procure the holding of, assets and property of the Fund in the name of or by a custodian or nominee provided that the Trustee remains liable in all respects for the acts and omissions of such nominee or custodian.

**17.14. Conflicts of Interest**

Subject to the Superannuation Law the Trustee may have any dealing or enter into any transaction with or in respect of any person or persons including any Member and including any person being a shareholder, director or other officer of or who is in any other way interested in the Trustee, if a company, or related to or associated with the Trustee, if a natural person, or any Member, and may exercise or refrain from exercising any power, authority or discretion in favour of that person or persons or otherwise and may give or grant any guarantee, assurance or indemnity or any mortgage, charge or other security for or in respect of any liability, duty or obligation

of that person or persons or otherwise notwithstanding any real, apparent or possible conflict of interest of the Trustee which may exist or arise at any time or from time to time.

#### **17.15. Specific Exclusions**

The Trustee must not:

- 17.15.1. lend or otherwise give financial assistance using the resources of the Fund to a Member or a relative (within the meaning of section 65 of the SIS Act) of a Member;
- 17.15.2. charge or mortgage, grant or create or permit the creation of a lien or other encumbrance all or any of the assets of the Fund except as permitted by the Superannuation Law;
- 17.15.3. recognise or in any way encourage or sanction:
  - (a) an assignment of an interest of a Member; or
  - (b) a charge, mortgage, lien or other encumbrance over or in relation to a Member's Benefits; and
- 17.15.4. otherwise do any act prohibited or restricted under the Superannuation Law or this Deed or which would cause the Fund to be Non-complying.

### **18. TRUSTEE' COVENANTS**

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#### **18.1. Trustee Covenants**

The Trustee covenants as follows:

- 18.1.1. to act honestly in all matters concerning the Fund;
- 18.1.2. to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent Person would exercise in dealing with Property of another for whom the Person felt morally bound to provide;
- 18.1.3. to ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- 18.1.4. to keep the money and other assets of the Fund separate from any money and assets:
  - (a) that are held by the Trustee personally; or
  - (b) that comprise money or assets, as the case may be, of an Employer-Sponsor, or an Associate of an Employer-Sponsor, of the Fund;
- 18.1.5. not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- 18.1.6. to formulate and give effect to an investment strategy in accordance with Sub-clause 11.1;
- 18.1.7. if there are any reserves of the Fund – to formulate and to give effect to a strategy for prudential management, consistent with the Fund's



investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;

- 18.1.8. to allow a Member access to information and documents as permitted under Superannuation Law;
- 18.1.9. not to intentionally acquire an asset from a Related Party of the Fund unless that acquisition is permitted by the SIS Act; and
- 18.1.10. at all times to do the things and perform the acts as may be imposed by the SIS Act to ensure that the Fund does not become a Non-complying Fund

but subject in relation to the foregoing to any extension of the powers of the Trustee or relaxation of any restrictions on the Trustee permitted by the Superannuation Law.

## **19. TRUSTEE – APPOINTMENT AND REMOVAL**

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### **19.1. Individual Trustee**

Except if the Trustee is a corporation an individual shall become a trustee of the Fund if he or she has consented in writing to be a trustee of the Fund:

- 19.1.1. upon that individual becoming a Member of the Fund;
- 19.1.2. if the individual is a relative (as defined in Section 17A of the SIS Act) of the Member – where Sub-section 17A(2) of the SIS Act applies and the Member of the Fund has approved that person as a trustee of the Fund;
- 19.1.3. if the individual is:
  - (a) a legal personal representative;
  - (b) a partner or a guardian of a Member who is a Child; or
  - (c) an appointee
 to whom Sub-section 17A(3) of the SIS Act applies; or
- 19.1.4. if that individual is a Non-Member Spouse who receives notice under Regulation 7A.03H or 7A.03I confirming that he or she has an interest in the Fund

and that individual shall execute any document required by the Trustee of the Fund to be executed by the individual in relation to his or her becoming a trustee of the Fund.

### **19.2. Corporate Trustee**

A corporation may be appointed as Trustee of all or part of the Fund where:

- 19.2.1. each Member of the Fund consents in writing to be a director of that corporation; and
- 19.2.2. the only directors of the corporation are Members of the Fund or persons provided for in Sub-sections 17A(2) and (3) of the SIS Act; and
- 19.2.3. all of the Members are (subject to Sub-sections 17A(2) and (3) of the SIS Act) directors of that corporation

and that corporation shall execute any document required to be executed by the company in relation to its becoming a Trustee of the Fund and procure the execution by each director of any document in relation to their being directors of the Trustee.

**19.3. Appointment**

The Trustee and the Members shall have the power by deed or by written resolution to appoint as a new or additional Trustee or Trustee over all or part of the assets and Property of the Fund either:

- 19.3.1. a corporation that may be appointed under Sub-clause 19.2 above; or
- 19.3.2. all of the individuals who would be Trustee under Sub-clause 19.1 above.

**19.4. Disqualified Persons**

Notwithstanding any other provision of this Deed, a Person who is a Disqualified person shall not be appointed as Trustee of the Fund.

**19.5. Removal**

A Person shall cease to hold the office of Trustee if:

- 19.5.1. that Person resigns that office (provided that if that Person resigns only in respect of part of the Property of the Fund and appoints a person or persons within Sub-clause 19.1 as to that part, that first mentioned Person remains as Trustee for the balance);
- 19.5.2. that Person becomes Disqualified;
- 19.5.3. in the case of a corporation:
  - (a) it is Disqualified or ceases to be able to be appointed as a trustee in which case all of the individuals who would (subject to clause 19.4) be Trustee under Sub-clause 19.1 above shall become the Trustee of the Fund; or
  - (b) some but not all of the Members become Disqualified in which case those Members who are not Disqualified shall become the Trustee of the Fund; and
  - (c) the Fund would cease to be a Regulated Super Fund by reason of the corporation being the Trustee, in which case the Members, other than any Member that is Disqualified shall become the Trustee of the Fund; or
- 19.5.4. that Person is declared mentally ill or becomes liable to have his or her affairs dealt with under laws relating to mental health – in which case a legal personal representative of that person within Sub-section 17A(3)(b) of the SIS Act is entitled to be a director in place of that person.

**20. DEATH OR LEGAL DISABILITY OF A MEMBER**

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**20.1. Legal Personal Representative**

In the event that any Member dies or is under a legal disability the Legal Personal Representatives of that Member shall become:

- 20.1.1. where the Trustee is an individual – a Trustee of the Fund; or
- 20.1.2. where the trustee is a corporation – a director of that corporation in place of the deceased or incapacitated Member during the period:
- 20.1.3. in the event of death of a Member:
  - (a) commencing on the death of the Member; and
  - (b) ending when the Benefits of the deceased Member have been paid; and
- 20.1.4. in the event the Member is under a legal disability:
  - (a) during which the Member is under a legal disability; or
  - (b) during which the Legal Personal Representative has an enduring power of attorney in respect of the Member.

## **20.2. Minors**

If a Member who is a Trustee is under a legal disability because of age and does not have a Legal Personal Representative a parent or guardian of the Member shall be a Trustee of the Fund in place of the Member.

## **20.3. Superannuation Law**

The Trustee must comply with the requirements of the Superannuation Law, including Parts 11 and 12 of the SIS Regulations, in relation to any information to be provided to the Regulator.

## **21. TRUSTEE – EXERCISING DISCRETIONS AND DISCRIMINATION**

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### **21.1. Discretion**

At all times the Trustee shall, subject to the express provisions of the Deed (including in particular Sub-clause 1.3.2 and Clause 4.1), have an absolute and uncontrolled discretion:

- 21.1.1. to exercise or refrain from exercising the trusts, powers and authorities vested in it; and
- 21.1.2. where it is provided with a choice or two or more courses of action available to it (whether under this Deed or the Superannuation Law).

### **21.2. Discrimination**

The Trustee shall not discriminate against any Person on the grounds of that Person's race, sex or marital status if that discrimination infringes any law of the Commonwealth or an applicable State or Territory.

## **22. TRUSTEES' AND MEMBERS' INDEMNITY**

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### **22.1. Indemnity**

The Trustee, and any director of a corporate Trustee, and all Members shall be indemnified by the Fund against all liabilities incurred by them as a result of any action taken or omitted to be taken in administering (including a person acting as



director of a corporate Trustee in administering) the Fund and exercising the powers and discretions provided for in this Deed:

22.1.1. (subject to Sub-clause 22.1.2) including:

- (a) any liability in the nature of a claim against the Trustee for any loss suffered by the Fund;
- (b) any liability attributable to the neglect or default of an agent or employee employed or engaged in good faith by the Trustee; and
- (c) the cost of seeking advice from any person in respect of any matter relating to performance of the duties or the exercise of the powers of a trustee;

22.1.2. excluding:

- (a) any liability arising out of the Trustee (or any particular director of a corporate Trustee) failing to act honestly in a matter concerning the Fund or intentionally or recklessly failing to exercise, in relation to a matter affecting the Fund, the degree of care and diligence required to be exercised; or
- (b) liability for a monetary penalty under a civil penalty order within the meaning of the SIS Act.

## **22.2. Indemnity from Members**

The Trustee shall not be entitled to any indemnity, reimbursement or recompense from any Member, and no Member shall be liable for the debts or liabilities of the Fund.

## **23. TRUSTEE' MEETINGS AND RESOLUTIONS**

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### **23.1. Meetings**

If there is more than one Trustee:

- 23.1.1. a meeting of the Trustee at which a Quorum is present shall be competent to exercise the trusts, powers, authorities and discretions vested in the Trustee herein but any exercise or purported exercise of the trusts, powers, authorities and discretions at a meeting of the Trustee at which a Quorum is not present shall render that exercise or purported exercise to be void and unenforceable;
- 23.1.2. the Trustee may determine the conduct of their meetings, including as to notice, adjournment and appointment of a Chairman as they think appropriate; and
- 23.1.3. a resolution of the Trustee shall be valid and binding if all of the Trustee present at that meeting and entitled to vote have voted in favour of it.

### **23.2. Location of Meeting**

If there is more than one Trustee, a meeting of Trustees may be held, and the Trustee shall be deemed to be present (including for the purpose of determining a Quorum), where all of the Trustees participating, even though not physically present, are able communicate with each other, and without limitation this includes

participating by telephone or video (with audio facilities) or a meeting which occurs by instant messaging.

### **23.3. Minutes**

The Trustee shall keep minutes of the resolutions and proceedings of the Trustee in a book provided for that purpose and, if there is more than one Trustee, the Chairman, or in the absence of a Chairman all Trustees present, shall sign the minute of every resolution passed at a duly convened meeting.

### **23.4. Interests of Trustee**

23.4.1. A Trustee and any firm or body in which a Trustee has a direct or indirect interest may:

- (a) enter into any contract or arrangement with the Trustee; and
- (b) act in a professional capacity in relation to the Trustee or the Fund (other than as auditor)

and may receive and retain any remuneration, profit or benefit in doing so as if he or she were not a Trustee or connected with that Trustee.

23.4.2. any Trustee who has a direct or indirect interest in any business to be considered by the Trustee or in any transaction contemplated by the Trustee:

- (a) must disclose his or her interest to the Trustee (provided that failure to do so does not render a contract or contract in which the Trustee has an interest void or voidable);
- (b) shall be counted in any Quorum to consider that business or proposed transaction;
- (c) may vote on that business or proposed transaction; and
- (d) may execute any document relating thereto.

### **23.5. Resolutions**

23.5.1. A resolution in writing signed by:

- (a) where there is one Trustee – that Trustee; and
- (b) where there is more than one Trustee – all of the Trustees

shall have the same effect and validity as a resolution of the Trustee passed at a duly convened meeting.

23.5.2. If the Trustee is a corporation a resolution of the directors of the Trustee shall be deemed to be and be treated as a resolution of the Trustee and be and evidence a decision or exercise of power or discretion by the Trustee.

## **24. SIGNING OF DOCUMENTS BY THE TRUSTEE**

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If there are more than two Trustees any two Trustees are hereby authorised on behalf of the Trustee to execute, sign, enter into and acknowledge all cheques, negotiable



instruments, agreements, contracts, writings, proposals for insurance, transfers of shares, policies of insurance or units in a unit trust and all other documents and all acts matters and things as validly and effectually as all the Trustee could do.

## **25. REMUNERATION**

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### **25.1. Trustee**

The Trustee and any director of a corporate Trustee shall not be entitled to receive, obtain or be paid any remuneration from the Fund or from any Person for any duties or services as Trustee or as director of a corporate trustee in relation to the Fund.

### **25.2. Professional Persons**

Any Person being:

- 25.2.1. an accountant, actuary, solicitor, barrister, auditor or other professional Person; and
- 25.2.2. called upon or whose firm is called upon to perform any service in relation to the Fund (not being services as Trustee)

shall be entitled to make the same professional charges for any services as that Person would make had that Person not been a Trustee or a director of a company acting as Trustee of the Fund.

## **26. TRUSTEE AS MEMBER'S ATTORNEY**

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Each Member hereby irrevocably appoints the Trustee to be that Member's attorney for the purpose of executing and signing all deeds and instruments and doing all things the Trustee considers necessary or desirable in administering the Fund and in accordance with the Superannuation Law but such appointment shall not be for purposes in relation to the implementation or revocation of death benefit nominations.

## **27. VARIATION OF FUND DEED**

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### **27.1. Variation of Deed and Rules**

The Trustee may at any time and from time to time either by deed executed by the Trustee or by written resolution vary, add to or rescind all or any of the provisions from time to time of this Deed and the Rules (if any) in relation thereto and the new provisions so made shall have the same validity and effect as if they had been originally contained herein and shall be subject to being varied, added to or rescinded in like manner but no variation, addition or rescission shall have the effect of:

- 27.1.1. reducing the amount of a Benefit except where permitted under the Superannuation Law;
- 27.1.2. allowing a person to be appointed as a trustee or the trustee of the Fund which is not a Constitutional Corporation – unless the Fund Deed has and will continue to provide that the Fund has as its sole or primary purpose the provision of old age pensions; and



27.1.3. providing that the sole or primary purpose of the Fund is other than the provision of old age pensions – unless the Fund Deed has and will continue to provide that the Trustees must be a Constitutional Corporation.

**27.2. Complying Self Managed Superannuation Fund**

In accordance with the intent of this Deed that the Fund continue to:

27.2.1. be a Self Managed Superannuation Fund subject to Sub-clause 5.1.7 of this deed;

27.2.2. be a Complying Superannuation Fund; and

27.2.3. not be a Non-complying Fund

any variation by the Trustee for any or all of those purposes is not to be taken to be the creation of a new trust or a resettlement of the trust constituted by the Fund and by this Deed.

**28. APPENDICES**

**28.1. Appendices to Deed**

The following Appendices are attached and form part of this Deed:

28.1.1. Appendix A, Application for Membership;

28.1.2. Appendix B, Binding Death Nomination Form;

28.1.3. Appendix C, Rules.

**SIGNED** and delivered as a Deed

**SIGNED** for and on behalf of **PC KROEHN SMSF PTY LTD** (ACN 605 593 208) in accordance with Section 127(1) of the *Corporations Act 2001* (Cth) by:

Phillip Kroehn

Name of Director

  
Signature

Cindy kroehn

Name of Director

  
Signature

**DECLARATION BY DIRECTOR OF TRUSTEE**  
**UNDER SECTION 118 OF THE**  
**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 [SIS]**

*56 Benlow Rd*

I, **PHILLIP KROEHN** of ~~Dunstan Road~~ Waikerie in the State of South Australia

**HEREBY DECLARE** that I am not a disqualified person as defined by SIS and am therefore not disqualified from acting as a director of the trustee of a superannuation fund under SIS.

**HEREBY CONSENT** to act as a director of the corporate trustee of "THE PC KROEHN SELF MANAGED SUPERANNUATION FUND" [Fund].

**HEREBY DECLARE** that I am aware of my responsibilities under the deed governing the Fund [Fund Deed], having read and fully understood its contents, as well as my responsibilities under SIS.

**HEREBY AGREE** to administer the Fund in accordance with the terms and conditions set out in the Fund Deed and other legislative requirements.

**HEREBY UNDERTAKE** to notify any other trustee of the Fund and the Australian Taxation Office in writing if I am for any reason disqualified from continuing to act as a director of the corporate trustee of the Fund.

**DATED** the *6<sup>th</sup>* day of *May* 2015

  
\_\_\_\_\_

The following are defined by SIS as being disqualified persons:

1. a person who has at any time been convicted of an offence in respect of dishonest conduct;
2. a person against whom a civil penalty order has been made;
3. a person who is an insolvent under administration.

A corporate trustee is a disqualified person where:

1. a receiver and manager has been appointed in respect of property beneficially owned by the body;
2. an official manager or deputy official manager has been appointed in respect of the body;
3. a provisional liquidator has been appointed in respect of the body;
4. the body has begun to be wound up;
3. Section 120(2A) applies (a director of a Corporate trustee must not be a disqualified person as described above).

**APPLICATION FOR MEMBERSHIP OF**  
**THE PC KROEHN SELF MANAGED SUPERANNUATION FUND**

1. I, the person whose details appear in the Schedule, hereby apply for membership of the above mentioned Fund.
2. In consideration of my admission to membership, I hereby agree to abide by and be bound by the provisions of the Fund Deed and any rules made thereunder.
3. I hereby consent to:
  - (a) (where the Trustee of the Fund is a corporation) – be a director of the trustee corporation and I provide the information in the Schedule in compliance with my obligations under the *Corporations Act 2001 (Cth)*; and
  - (b) (where the Trustee is or are natural persons) – to be a trustee of the Fund.
4. I declare that I am not a disqualified person within the meaning of Section 120 of the *Superannuation Industry (Supervision) Act 1993*.
5. Where there is an Employer Sponsor applicable to me I hereby authorise that Employer Sponsor to deduct from my salary and pay to the Fund as contributions the amounts (if any) as are from time to time agreed upon by myself and my Employer as contributions to be made by me to the above mentioned Fund.

**SCHEDULE**

<b>FULL NAME</b>	PHILLIP KROEHN
<b>FORMER GIVEN AND FAMILY NAMES (IF ANY)</b>	
<b>ADDRESS</b>	<del>Dunstan Road</del> 56 Benlow Rd Waikerie SA 5330
<b>DATE OF BIRTH</b>	25 April 1972
<b>PLACE OF BIRTH</b>	
<b>TAX FILE NUMBER</b>	180 273 161

Signature 

Date 6<sup>th</sup> May 2015



SUPERANNUATION INDIVIDUAL TAX FILE NUMBER NOTIFICATION

---

Name: Phillip Kroehn

Address: ~~Dunstan Road~~ 56 Benlow Rd Waikerie SA 5330

Date of Birth:

Sex:

Male

Female

I agree to provide my Tax File Number:

My Tax File  
Number

180 273 161

Signature



Date

6<sup>th</sup> May 2015

Collection of tax file numbers is authorised by tax laws, the *Superannuation Industry (Supervision) Act 1993* and the *Privacy Act 1998*. Changes to the tax file number law require Trustee to ask you to provide your tax file number to your superannuation fund. By completing this form and providing it to your fund will allow your fund trustee to use your tax file number for the purposes contained in the *Superannuation Industry (Supervision) Act 1993* and for the purpose of paying eligible termination payments.

The purposes currently authorised include:

- taxing eligible termination payments at concessional rates;
- finding and amalgamating your superannuation benefits where insufficient information is available;
- passing your tax file number to the Australian Taxation Office whereby you receive a benefit or have unclaimed superannuation money after reaching the aged pension age; and
- allowing the trustee of your superannuation fund to provide your tax file number to a superannuation fund receiving any benefits you may transfer. Your trustee won't pass your tax file number to any other fund if you tell the trustee in writing that you don't want them to pass it on.

You are not required to provide your tax file number. Declining to quote your tax file number is not an offence. However, if you do not give your superannuation fund your tax file number, either now or later, you may pay more tax on your superannuation benefits than you have to.

The lawful purposes for which your tax file number can be used and the consequences of not quoting your tax file number may change in future, as a result of legislative change.

**RESOLUTIONS OF DIRECTORS OF  
PC KROEHN SMSF PTY LTD (ACN 605 593 208) [Trustee]  
AS TRUSTEE FOR THE PC KROEHN SELF MANAGED SUPERANNUATION FUND  
[Fund]**

**EFFECTIVE THE 6<sup>th</sup> DAY OF May 2015**

Directors: **PHILLIP KROEHN**  
and  
**CINDY EMMA KROEHN**

Establishment of  
Superannuation  
Fund

A Superannuation Fund Deed prepared by DW Fox Tucker Lawyers for establishment of the PC Kroehn Self Managed Superannuation Fund was tabled.  
The DEED was considered by the Directors.

**IT WAS RESOLVED** as follows:-

1. That the Trustee adopt the deed of the Fund to provide retirement benefits for PHILLIP KROEHN and CINDY EMMA KROEHN on the terms set out in the DEED.
2. That the Trustee accept appointment as the trustee of the Fund under the terms set out in the DEED.

Signed by the Directors in favour of the resolutions:



PHILLIP KROEHN



CINDY EMMA KROEHN

**DECLARATION BY DIRECTOR OF TRUSTEE**  
**UNDER SECTION 118 OF THE**  
**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 [SIS]**

I, **CINDY EMMA KROEHN** of <sup>56 Benlow Road</sup> ~~Dunstan Road~~ Waikerie in the State of South Australia

**HEREBY DECLARE** that I am not a disqualified person as defined by SIS and am therefore not disqualified from acting as a director of the trustee of a superannuation fund under SIS.

**HEREBY CONSENT** to act as a director of the corporate trustee of "THE PC KROEHN SELF MANAGED SUPERANNUATION FUND" [Fund].

**HEREBY DECLARE** that I am aware of my responsibilities under the deed governing the Fund [Fund Deed], having read and fully understood its contents, as well as my responsibilities under SIS.

**HEREBY AGREE** to administer the Fund in accordance with the terms and conditions set out in the Fund Deed and other legislative requirements.

**HEREBY UNDERTAKE** to notify any other trustee of the Fund and the Australian Taxation Office in writing if I am for any reason disqualified from continuing to act as a director of the corporate trustee of the Fund.

**DATED** the <sup>6<sup>th</sup></sup> day of *May* 2015  


The following are defined by SIS as being disqualified persons:

1. a person who has at any time been convicted of an offence in respect of dishonest conduct;
2. a person against whom a civil penalty order has been made;
3. a person who is an insolvent under administration.

A corporate trustee is a disqualified person where:

1. a receiver and manager has been appointed in respect of property beneficially owned by the body;
2. an official manager or deputy official manager has been appointed in respect of the body;
3. a provisional liquidator has been appointed in respect of the body;
4. the body has begun to be wound up;
4. Section 120(2A) applies (a director of a Corporate trustee must not be a disqualified person as described above).




**APPLICATION FOR MEMBERSHIP OF**  
**THE PC KROEHN SELF MANAGED SUPERANNUATION FUND**

1. I, the person whose details appear in the Schedule, hereby apply for membership of the above mentioned Fund.
2. In consideration of my admission to membership, I hereby agree to abide by and be bound by the provisions of the Fund Deed and any rules made thereunder.
3. I hereby consent to:
  - (c) (where the Trustee of the Fund is a corporation) – be a director of the trustee corporation and I provide the information in the Schedule in compliance with my obligations under the *Corporations Act 2001 (Cth)*; and
  - (d) (where the Trustee is or are natural persons) – to be a trustee of the Fund.
4. I declare that I am not a disqualified person within the meaning of Section 120 of the *Superannuation Industry (Supervision) Act 1993*.
5. Where there is an Employer Sponsor applicable to me I hereby authorise that Employer Sponsor to deduct from my salary and pay to the Fund as contributions the amounts (if any) as are from time to time agreed upon by myself and my Employer as contributions to be made by me to the above mentioned Fund.

**SCHEDULE**

<b>FULL NAME</b>	CINDY EMMA KROEHN
<b>FORMER GIVEN AND FAMILY NAMES (IF ANY)</b>	
<b>ADDRESS</b>	<del>Dunstan Road</del> 56 Benlow Road Waikerie SA 5330
<b>DATE OF BIRTH</b>	18 September 1970
<b>PLACE OF BIRTH</b>	MILDURA
<b>TAX FILE NUMBER</b>	151 182 018

Signature



Date

6<sup>th</sup> May 2015

SUPERANNUATION INDIVIDUAL TAX FILE NUMBER NOTIFICATION

---

Name: Cindy Emma Kroehn

Address: ~~Dunstan Road~~ 56 Benlow Road Waikerie SA 5330

Date of Birth:

Sex: Male

Female

X

I agree to provide my Tax File Number:

My Tax File  
Number

151 182 018

Signature



Date

6<sup>th</sup> May 2015

Collection of tax file numbers is authorised by tax laws, the *Superannuation Industry (Supervision) Act 1993* and the *Privacy Act 1998*. Changes to the tax file number law require Trustee to ask you to provide your tax file number to your superannuation fund. By completing this form and providing it to your fund will allow your fund trustee to use your tax file number for the purposes contained in the *Superannuation Industry (Supervision) Act 1993* and for the purpose of paying eligible termination payments.

The purposes currently authorised include:

- taxing eligible termination payments at concessional rates;
- finding and amalgamating your superannuation benefits where insufficient information is available;
- passing your tax file number to the Australian Taxation Office whereby you receive a benefit or have unclaimed superannuation money after reaching the aged pension age; and
- allowing the trustee of your superannuation fund to provide your tax file number to a superannuation fund receiving any benefits you may transfer. Your trustee won't pass your tax file number to any other fund if you tell the trustee in writing that you don't want them to pass it on.

You are not required to provide your tax file number. Declining to quote your tax file number is not an offence. However, if you do not give your superannuation fund your tax file number, either now or later, you may pay more tax on your superannuation benefits than you have to.

The lawful purposes for which your tax file number can be used and the consequences of not quoting your tax file number may change in future, as a result of legislative change.

**BINDING DEATH BENEFIT NOMINATION FORM  
THE PC KROEHN SELF MANAGED SUPERANNUATION FUND [Fund]**

Name: PHILLIP KROEHN [Member].  
 Address: 56 Benlow Rd Waikerie in the State of South Australia  
 Date of Birth: 25 April 1972

In accordance with the trust deed of the **PC KROEHN SELF MANAGED SUPERANNUATION FUND**

I, PHILLIP KROEHN make a non-lapsing binding nomination that in the event of my death the benefits to which I am entitled from the Fund be paid to the following person(s):

Name	Address	Percentage of Total Benefit or \$ amount
Cindy Kroehn	56 Benlow Rd Waikerie SA	100 %

**However** in the event that Cindy Kroehn does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount
Alicia Kroehn	56 Benlow Rd Waikerie SA	50 %
Lucy Kroehn	56 Benlow Rd Waikerie SA	50 %

**However** in the event that \_\_\_\_\_ does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount





**However** in the event that \_\_\_\_\_ does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount

I understand that I may only nominate my Legal Personal Representative(s) or one or more Dependents.

Signature: .....

Date: 11 / 5 /20 15

<p>I <u>Eleanor Redemski</u> (Name of Witness) declare that I have witnessed</p> <p><u>Phillip Kroehn</u> sign this nomination form in my presence and I declare as follows:-</p> <p>3. I am over 18 years of age; and</p> <p>4. I am not a dependent or a legal personal representative of <u>P Kroehn</u>.</p> <p><u></u> Signature of Witness</p>	<p>I <u>Norman Honeyman</u> (Name of Witness) declare that I have witnessed</p> <p><u>Phillip Kroehn</u> sign this nomination form in my presence and I declare as follows:-</p> <p>3. I am over 18 years of age; and</p> <p>4. I am not a dependent or a legal personal representative of <u>P Kroehn</u>.</p> <p><u></u> Signature of Witness</p>
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**Instruction for completing Binding Death Benefit Nomination**

- The Binding Death Benefit Nomination if properly executed enables the Member to nominate certain people to receive their superannuation benefits on their death and the nomination is binding on the Trustee once received by the Trustee.
- The member may only nominate one or more dependents (a spouse, child or other dependent) and/ or their legal personal representative(s).
- The nomination must clearly state either the percentage of the member's benefits the nominated person is to receive or a specific amount.

The nomination must be signed by the member in the presence of at least one independent witness who must be at least 18 years old and cannot be the member's legal personal representative or dependent or an associate thereof.

**BINDING DEATH BENEFIT NOMINATION FORM  
THE PC KROEHN SELF MANAGED SUPERANNUATION FUND [Fund]**

Name: CINDY EMMA KROEHN [Member].  
 Address: 56 Benlow Rd Waikerie in the State of South Australia  
 Date of Birth: 18 September 1970

In accordance with the trust deed of the **PC KROEHN SELF MANAGED SUPERANNUATION FUND**

I, CINDY EMMA KROEHN make a non-lapsing binding nomination that in the event of my death the benefits to which I am entitled from the Fund be paid to the following person(s):

Name	Address	Percentage of Total Benefit or \$ amount
Phillip kroehn	56 Benlow Road Waikerie SA	100%

**However** in the event that Phillip kroehn does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount
Alicia kroehn	56 Benlow Road Waikerie SA	50%
Lucy kroehn	56 Benlow Road Waikerie SA	50%

**However** in the event that \_\_\_\_\_ does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount



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**However** in the event that \_\_\_\_\_ does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount

I understand that I may only nominate my Legal Personal Representative(s) or one or more Dependents.

Signature:  Date: 13 / 05 / 2015

<p>I <u>Alicia Harvey</u> (Name of Witness) declare that I have witnessed</p> <p><u>Cindy Kroehn</u> sign this nomination form in my presence and I declare as follows:-</p> <p>5. I am over 18 years of age; and 6. I am not a dependent or a legal personal representative of <u>C Kroehn</u>.</p> <p><u></u> Signature of Witness</p>	<p>I <u>Carolyn Tilbrook</u> (Name of Witness) declare that I have witnessed</p> <p><u>Cindy Kroehn</u> sign this nomination form in my presence and I declare as follows:-</p> <p>5. I am over 18 years of age; and 6. I am not a dependent or a legal personal representative of <u>C Kroehn</u>.</p> <p><u></u> Signature of Witness</p>
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**Instruction for completing Binding Death Benefit Nomination**

- The Binding Death Benefit Nomination if properly executed enables the Member to nominate certain people to receive their superannuation benefits on their death and the nomination is binding on the Trustee once received by the Trustee.
- The member may only nominate one or more dependents (a spouse, child or other dependent) and/ or their legal personal representative(s).
- The nomination must clearly state either the percentage of the member’s benefits the nominated person is to receive or a specific amount.

The nomination must be signed by the member in the presence of at least one independent witness who must be at least 18 years old and cannot be the member’s legal personal representative or dependent or an associate thereof.



**BINDING DEATH BENEFIT NOMINATION FORM  
THE PC KROEHN SELF MANAGED SUPERANNUATION FUND [Fund]**

Name: PHILLIP KROEHN [Member].  
 Address: 56 Bentlow Rd  
~~Dunstan Road~~ Waikerie in the State of South Australia  
 Date of Birth: 25 April 1972

In accordance with the trust deed of the PC KROEHN SELF MANAGED SUPERANNUATION FUND

I, PHILLIP KROEHN make a non-lapsing binding nomination that in the event of my death the benefits to which I am entitled from the Fund be paid to the following person(s):

Name	Address	Percentage of Total Benefit or \$ amount
Cindy Kroehn	56 Bentlow Rd Waikerie SA	100 %

However in the event that Cindy Kroehn does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount
Alicia Kroehn	56 Bentlow Rd Waikerie SA	50 %
Lucy Kroehn	56 Bentlow Rd Waikerie SA	50 %

However in the event that \_\_\_\_\_ does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount

**However** in the event that \_\_\_\_\_ does not outlive me by 28 days or is unwilling or unable to accept the benefit of this non lapsing binding nomination, then I direct the benefits to which I am entitled referred to above to be paid to:

Name	Address	Percentage of Total Benefit or \$ amount

I understand that I may only nominate my Legal Personal Representative(s) or one or more Dependents.

Signature:  .....

Date: 11 / 05 /20 15

<p>I _____ (Name of Witness) declare that I have witnessed</p> <p>_____</p> <p>sign this nomination form in my presence and I declare as follows:-</p> <p>3. I am over 18 years of age; and</p> <p>4. I am not a dependent or a legal personal representative of _____.</p> <p>_____ Signature of Witness</p>	<p>I _____ (Name of Witness) declare that I have witnessed</p> <p>_____</p> <p>sign this nomination form in my presence and I declare as follows:-</p> <p>3. I am over 18 years of age; and</p> <p>4. I am not a dependent or a legal personal representative of _____.</p> <p>_____ Signature of Witness</p>
---	---

***Instruction for completing Binding Death Benefit Nomination***

- The Binding Death Benefit Nomination if properly executed enables the Member to nominate certain people to receive their superannuation benefits on their death and the nomination is binding on the Trustee once received by the Trustee.
- The member may only nominate one or more dependents (a spouse, child or other dependent) and/ or their legal personal representative(s).
- The nomination must clearly state either the percentage of the member's benefits the nominated person is to receive or a specific amount.

The nomination must be signed by the member in the presence of at least one independent witness who must be at least 18 years old and cannot be the member's legal personal representative or dependent or an associate thereof.