

# TRUST DEED

establishing

## SEARLE FAMILY SMSF



FINANCIAL ADVICE | SUPERANNUATION  
INVESTMENTS | INSURANCE | MORTGAGES

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## SUPERANNUATION FUND TRUST DEED

**THIS DEED** is executed on the Signing Date by the Person named in Schedule A as the Trustee.

### **BACKGROUND**

- A. The Trustee has decided to set up a Self-Managed Superannuation Fund for the sole purpose of providing Retirement Benefits to Members, Death Benefits to Members' Dependants and certain Ancillary Benefits permitted under the Superannuation Law.
- B. The Self-Managed Superannuation Fund is known by the name stated in Schedule A and is referred to as "the Fund" in this Deed.
- C. The Trustee agrees to be the Trustee of the Fund and to be bound by this Trust Deed.
- D. The Fund's sole purpose is to provide Retirement Benefits to Members, Death Benefits to Members' Dependants and certain other Ancillary Benefits permitted under the Superannuation Law and its primary purpose is to provide Old-Age Pensions.
- E. The Fund will satisfy the criteria for Regulated Funds.
- F. The Trust deed does not permit the Trustee to do any act that may prejudice the Fund's status as a Regulated Fund and requires the Trustee to do all acts necessary to ensure the Fund remains a Regulated Fund.

### **OPERATIVE PART**

#### **1. INTRODUCTION**

##### **1.1 Establishment of the Fund**

- 1.1.1 The Trustee establishes a trust to operate as a Self-Managed Superannuation Fund known by the name specified in Schedule A and referred to in this Deed as "the Fund".
- 1.1.2 The Fund will start on the Signing Date.
- 1.1.3 The Fund will satisfy the conditions set out in section 17A of the Superannuation Industry (Supervision) Act 1993 and other relevant legislation for Superannuation Funds to be treated as Regulated Funds.
- 1.1.4 The Fund is an indefinitely continuing Superannuation Fund.

##### **1.2 The Fund's Sole Purpose and the Fund's Primary Purpose**

- 1.2.1 The Fund's Sole Purpose is to provide Retirement Benefits to Members, Death Benefits to Members' Dependants and certain Ancillary Benefits to Members as permitted under the Superannuation Law.
- 1.2.2 The Fund's Primary Purpose is to provide Old Age Pensions to Members.
- 1.2.3 The Trustee must not use the Fund for any purpose other than the Sole Purpose stated above and the Primary Purpose stated above.

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### **1.3 Investment of Fund Assets**

The Trustee must invest the Fund's Assets to maximise its ability to achieve its Sole Purpose and Primary Purpose under this Deed and to maximise the investment returns earned on its Assets.

### **1.4 Member's Benefits Fully Secure**

1.4.1 The rights of the Members and their Dependants to receive the Benefits payable under this Deed must be fully secure as required by the Superannuation Law.

1.4.2 The Trustee must not do any act or thing or fail to do any act or thing where the consequence is a reduction in the rights of Members and their Dependents to receive the Benefits payable under this Deed.

## **2. RULES RELATING TO THE TRUSTEE**

### **2.1 Persons Who May Act As Trustee**

The following Persons may be a Trustee of the Fund:

2.1.1 a Person specified in Schedule A as the Trustee;

2.1.2 a Company;

2.1.3 a natural Person; or

2.1.4 any other Person able to act as a trustee of the Fund under the Superannuation Law.

### **2.2 Persons Who Must Be Trustees**

2.2.1 In the case of Individual Trustees, all Persons who must be Trustees for the Fund to be a Regulated Superannuation Fund must be Trustees, unless they are within one of the exceptions stated in the SISA.

2.2.2 In the case of a Corporate Trustee (Company), all Persons who must be Directors of the Company for the Fund to be a Regulated Superannuation Fund must be Directors, unless they are within one of the exceptions stated in the SISA.

2.2.3 In the case of a Member who is under age 18 or is under another legal disability that Member's legal personal representative must act as a Trustee for that Member.

### **2.3 Persons Who Must Not Be Trustees**

A Person must not act as a Trustee or as a Director of a Company that is a Trustee if that Person is bankrupt or is not of full capacity.

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### **2.4 Appointment of New Trustee**

- 2.4.1 A new Trustee may be appointed in writing by the current Trustee and the form of such appointment must comply with any specific requirements in the Superannuation Law dealing with the appointment of a trustee.
- 2.4.2 If there is no Person acting as Trustee and there are Members of the Fund then those Members will be deemed to be the Trustees, and if for any reason a Member of the Fund is unable to act as a Trustee that Member's legal personal representative will be deemed to be a Trustee.
- 2.4.3 On the death of a Trustee the Trustee's legal personal representative is deemed to be a Trustee until a new Trustee is appointed.
- 2.4.4 On the loss of legal capacity of a Trustee the Trustee's legal personal representative will be deemed to be a Trustee until a new Trustee is appointed under this Deed.

### **2.5 Change of Trustee**

- 2.5.1 A Trustee will not cease to be a Trustee if to do so would prejudice the Fund's status as a Regulated Superannuation Fund.
- 2.5.2 Subject to the preceding sub-paragraph, a Trustee may resign on one month's notice to each other Trustee and to each Member. Such notice must be in any form required by the Superannuation Law for a notice of resignation of trustee to be effective.
- 2.5.3 A Trustee must cease to act as a Trustee:
  - 2.5.3.1 if the Trustee becomes bankrupt or, in the case of a Company, goes into receivership or liquidation;
  - 2.5.3.2 if remaining a Trustee may prejudice the ability of the Fund to remain a Regulated Superannuation Fund;
  - 2.5.3.3 if the Trustee resigns as a Trustee of the Fund;
  - 2.5.3.4 if in the case of an Individual Trustee, the Trustee dies or is mentally unable to act as a Trustee; or
  - 2.5.3.5 if the Trustee is removed from office by notice in writing given by a majority of Members.
- 2.5.4 On ceasing to be a Trustee a Person must deliver the Fund's Assets to the other Trustee and to any replacement Trustee and must sign all documents required to pass title to the Fund's Assets to the other Trustee. That Person must co-operate with the new Trustees and must do all things reasonably necessary to ensure the Fund continues to be a Regulated Superannuation Fund.

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2.5.5 A change of Trustee will not be effective unless any procedure or requirement stipulated in the Superannuation Law is observed.

2.5.6 A Person will cease to be a Trustee on ceasing to be a Member.

### **2.6 Trustee Meetings**

2.6.1 A quorum of Trustees will be all Persons who are Trustees or who are Directors of a Corporate Trustee or their legal personal representatives (referred to as "Trustees" in this clause).

2.6.2 Trustee meetings will follow the general protocol established for meetings of trustees and similar persons.

2.6.3 All decisions must be recorded in a minute of meetings of the Trustee.

2.6.4 Trustees must be given at least 30 days notice of a meeting. This notice may be waived by unanimous consent. Such consent will be assumed if there is no reference to waiver in the minute of the meeting and no Trustee complains of its absence.

2.6.5 Trustees must retain all minutes of meetings and related documents and other Records for ten years or such longer period as is needed to comply with the Superannuation Law.

2.6.6 Each Trustee will have one vote. A simple majority of votes will determine all issues at the meeting. Each meeting shall appoint a chairperson ("the Chairperson") and the Chairperson shall have a casting vote if a matter cannot be otherwise resolved.

### **2.7 Procedures for Complaints and Disputes**

2.7.1 The Trustee must establish procedures to deal with all complaints and disputes where required to do so by the Superannuation Law.

2.7.2 The Trustee must comply with any order of any tribunal or court dealing with any matter in which the Trustee is a party or is otherwise connected.

### **2.8 Trustee Not To Receive Any Reward**

2.8.1 A Trustee must not directly or indirectly receive any financial reward or incentive for acting as a Trustee of the Fund unless permitted to do so under the Superannuation Law.

2.8.2 The Trustee may be reimbursed from the Fund for all costs incurred in connection with the Fund.

### **2.9 The Trustee's Powers**

2.9.1 The Trustee has all the powers provided to trustees under the general law and the Superannuation Law and the powers provided under this Deed including those set out in the Schedules to this Deed.

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- 2.9.2 The Trustee's powers may be exercised notwithstanding that the Trustee or any person being a director or shareholder of a Trustee (being a company) has an interest in the exercise of those powers or may benefit as a result of the exercise of those powers, whether as trustee of any other settlement or in his personal capacity or a shareholder or director or Member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise.
- 2.9.3 The Trustee may exercise its powers as it determines provided this does not breach any law relating to discrimination or the Superannuation Law.
- 2.9.4 The Trustee may delegate its powers to any Person on such conditions as the Trustee may determine and execute any powers of attorney or other instruments necessary to affect such a delegation.

### **2.10 Limitation of the Trustee's Liability**

The Trustee is not liable to a Member for any liability incurred or loss or cost incurred by the Fund due to any act or thing done or omitted to be done in connection with the Fund except if the Trustee:

- 2.10.1 acts dishonestly or fraudulently;
- 2.10.2 fails to exercise the standard of care required of a reasonable Person; or
- 2.10.3 incurs a penalty under the Superannuation Law as a result of an act or an omission by the Trustee.

### **2.11 Trustee's Indemnity**

The Trustee will be indemnified out of the Fund's Assets against all claims arising from the exercise of its powers except if the Trustee:

- 2.11.1 acts dishonestly or fraudulently;
- 2.11.2 fails to exercise the standard of care required of a reasonable Person; or
- 2.11.3 incurs a penalty under the Superannuation Law as a result of an act or an omission by the Trustee.

### **2.12 Trustee's Covenants**

The Trustee is bound by the covenants set out in clause 52(2) of the SISA and similar covenants imposed by the Superannuation Law including the covenant to:

- 2.12.1 act honestly in all matters concerning the Fund;
- 2.12.2 exercise in all matters affecting the Fund the same degree of care, skill and diligence as an ordinary prudent Person would exercise in dealing with Assets of another for whom the Person felt morally bound to provide;

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- 2.12.3 ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- 2.12.4 keep the Fund's Assets separate from other assets held by the Trustee;
- 2.12.5 not to enter into any contract, or do anything else, that may prevent the Trustee from properly performing the Trustee's powers;
- 2.12.6 to formulate, review at regular intervals and give effect to an Investment Strategy that has regard to the circumstances of the Fund including, but not limited to, the following:
  - 2.12.6.1 the risk and return involved in holding the Investments, having regard to its objectives and expected cash-flow requirements;
  - 2.12.6.2 the composition of the Investments including whether they are diverse or exposed to risks from inadequate diversification;
  - 2.12.6.3 the liquidity of the Investments, having regard to expected cash flow requirements;
  - 2.12.6.4 the ability of the Fund to discharge its liabilities as and when they fall due;
  - 2.12.6.5 the Member's risk insurance arrangements;
  - 2.12.6.6 the need to value investments at market value;
  - 2.12.6.7 the need to keep the Fund's investments separate from other assets owned by the Trustee or related persons; and
  - 2.12.6.8 the particular preferences of a Member or a class of Members.
- 2.12.7 if there are any reserves of the Fund, give effect to a strategy for their management, consistent with the Fund's Investment Strategy and its capacity to discharge its liabilities as they fall due; and
- 2.12.8 allow a Member access to any prescribed information or documents.

### **2.13 Extent of Section 52 Covenants**

- 2.13.1 The above covenants do not prevent the Trustee from delegating the tasks necessary for the Trustee to observe these covenants and these tasks need not be completed personally by the Trustee.
- 2.13.2 The above covenants do not prohibit the Trustee from accepting directions from the Members on the Fund's Investment Strategy.

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### **3. FUND MEMBERSHIP AND RELATED MATTERS**

#### **3.1 Application for Membership**

- 3.1.1 The Trustee may accept applications from Persons to be Members.
- 3.1.2 The application may be in such form as the Trustee determines. It may include the date of the application; the Person's name, address and contact details; the name of any other Superannuation Fund the Member is a member of, the amount and composition of any benefits to be transferred into the Fund and any other matter stated by the Trustee.
- 3.1.3 The written application to become a Member must not be accepted by the Trustee if that person is employed by another Member unless that person is related to the other Member.
- 3.1.4 A Person shall not become a Member if to do so would cause the Fund to not be a Regulated Superannuation Fund or to otherwise breach the Superannuation Law.

#### **3.2 Individuals Who May Be Members**

The following individuals may be Members:

- 3.2.1 persons who are employed;
- 3.2.2 persons who are self-employed including self-employed investors;
- 3.2.3 persons who have retired, irrespective of age;
- 3.2.4 a Child;
- 3.2.5 any other person for whom a contribution can be paid to the Fund under the Superannuation Law including a spouse of a Member.

#### **3.3 Acceptance of Contribution Deemed to be Acceptance of Member**

The acceptance of a Contribution for a person is deemed to be the acceptance of that Person as a Member. If that Person has not applied to become a Member that Person is deemed to have applied to become a Member.

#### **3.4 Trustee's Discretion to Accept an Application to Become a Member**

- 3.4.1 The Trustee may refuse to accept an application from any Person to become a Member and will not be required to give that Person or any other Person any reason for doing so.
- 3.4.2 The Trustee may impose conditions on the acceptance of any Person's application to become a Member.



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3.4.3 The Trustee may ask a Member to cease being a Member and may transfer that Member's Benefits to another Regulated Fund or Approved Superannuation Arrangement without giving any reason for doing so.

### **3.5 Members to be Bound by the Deed**

Persons who become Members are deemed to be bound by this Deed as if they are parties to it. A deemed application to become a Member under the above clauses is deemed to be a consent by the Member to be bound by this Deed.

### **3.6 Members to Provide Information**

3.6.1 The Trustee may require a Member to provide information as the Trustee determines, including information regarding their age, address, financial situation, health and Dependants.

3.6.2 A Member must inform the Trustee within seven days of any event occurring, including the attainment of an age where the Trustee must pay or start to pay a Benefit to the Member under the Superannuation Law.

3.6.3 A Member must provide the Trustee with the information necessary to allow the Trustee to comply with the Superannuation Law and to discharge its obligations under this Deed.

### **3.7 Ceasing to be a Member**

A Member will remain a Member until:

3.7.1 the Member's Benefits are paid to the Member or to the Member's Dependants;

3.7.2 the Member's Benefits are paid to an Approved Superannuation Arrangement;

3.7.3 the Member's Benefit is nil;

3.7.4 the Member dies; or

3.7.5 the Member nor the Member's legal personal representative ceases to be a Trustee or a Director of the Trustee.

### **3.8 Information to be Provided to Members**

3.8.1 The Trustee must provide to Members all information required under the Superannuation Law or which the Trustee believes is appropriate to be provided to the Member under the Superannuation Law.

3.8.2 On a Person ceasing to be a Member the Trustee must provide to the Member and all other relevant Persons all information required to be provided under the Superannuation Law.

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3.8.3 The Trustee must provide a copy of this Deed and any other information regarding the Fund when requested to do so by the Member or when required to do so by the Superannuation Law.

### **3.9 Members' Accumulation Accounts**

The Trustee must set up an Accumulation Account for each Member.

### **3.10 Credits to Members' Accumulation Accounts**

The Member's Accumulation Account may be credited with any:

- 3.10.1 amount paid into the Fund for the Member from any other Approved Superannuation Arrangement;
- 3.10.2 Contributions paid by a Member;
- 3.10.3 Contributions paid by a Member's employer;
- 3.10.4 Contributions made by a Spouse;
- 3.10.5 other Contributions made by any person for the Member;
- 3.10.6 proceeds of any life insurance policy or similar contract held by the Trustee on the life of the Member;
- 3.10.7 share of any income derived from the Assets;
- 3.10.8 amounts transferred from the Member's Pension Benefit Account;
- 3.10.9 amounts transferred from another Member's Accumulation Account; and
- 3.10.10 such other amounts as the Trustee may determine.

### **3.11 Debits to Accumulation Accounts**

The Member's Accumulation Account may be debited with:

- 3.11.1 any amount paid to an Approved Superannuation Arrangement for the Member;
- 3.11.2 any amount paid to or for the Member;
- 3.11.3 the costs of any life insurance policy or similar contract held by the Trustee on the life of the Member;
- 3.11.4 a share of the Fund's Taxation liability;
- 3.11.5 a share of the costs of the Fund including any realised or unrealised losses on Investments as determined by the Trustee;
- 3.11.6 any amount transferred to the Member's Pension Benefit Account;

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3.11.7 any tax or excess contributions tax paid on a Contribution;

3.11.8 such other amounts as the Trustee may determine.

### **3.12 No More Than Four Members**

There shall be no more than four Members at any time.

## **4 THE FUND'S OPERATION**

### **4.1 Fund's Assets vest in the Trustee**

4.1.1 The Fund's Assets vest in the Trustee and will be managed by the Trustee subject to this Deed and the Superannuation Law.

4.1.2 The Fund's Assets must be held in the name of the Trustee or a bare trustee and where possible all ownership records will include a reference to the Trustee's capacity as a trustee.

4.1.3 The Trustee must keep the Fund's Assets separate from any assets owned by the Trustee in any other capacity.

4.1.4 The Members will not hold any specific legal or equitable interest in any Asset held by the Trustee under this Deed.

4.1.5 The Trustee may accept gifts of Assets provided the acceptance of such a gift does not breach the Superannuation Law.

4.1.6 The Trustee may acquire Assets from a Member or a related party provided that the acquisition is at market value and does not breach the Superannuation Law.

### **4.2 The Fund's Assets**

The Fund's Assets comprise all property held by the Trustee under this Deed.

### **4.3 Income and Expense Accounts**

The Trustee must prepare a set of accounts including a profit and loss statement and a balance sheet to satisfy all relevant information requirements, including those created by the Deed and the Superannuation Law. This includes the Fund's income tax return and all related statutory compliance documents.

### **4.4 Determination and Allocation of Net Income**

4.4.1 Net Income must be determined by the Trustee each Year and must be allocated amongst the Members or transferred to a General Reserve Account as the Trustee may determine.

4.4.2 Without limiting the generality of the preceding sub-paragraph, the Fund's Net Income may be allocated to the Members in accordance with the

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amounts in the Member's Accounts at the start of the Year adjusted for Contributions received and Benefits paid in respect of each Member during the Year.

- 4.4.3 The Trustee may allocate any Taxation liability attached to such Net Income as the Trustee sees fit.
- 4.4.4 The Trustee may allocate any Taxation credit or refund attached to such Net Income as the Trustee sees fit.

### **4.5 General Reserve Account and Other Reserve Accounts**

#### **General Reserve Account or Similar Reserve Account**

- 4.5.1 The Trustee may set up a General Reserve Account or a similar reserve account as it determines.
- 4.5.2 The purpose of the General Reserve Account is to smooth investment returns and provide for future contingencies, including losses on Investments, the payment of future Benefits to Members and the payment of income tax on unrealised capital gains and expected capital gains.
- 4.5.3 The Trustee may transfer such amounts as the Trustee determines to or from the General Reserve Account from or to the Members' Benefit Accounts and Members' Pension Accounts provided that the rules regarding the vesting and preservation of Member Benefits in the Superannuation Law are not breached.
- 4.5.4 The Trustee may transfer such amounts as the Trustee determines from the Fund's profit and loss account to the General Reserve Account or similar reserve account as an expense or a charge prior to any surplus or deficiency being transferred to the Members' Benefit Accounts.
- 4.5.5 The Trustee may credit any Member's forfeited benefits to the General Reserve Account.
- 4.5.6 The Trustee may allocate specific Assets to the General Reserve Account. The income from the Assets allocated to the General Reserve Account must be credited to the General Reserve Account.
- 4.5.7 The Trustee may create other reserve accounts for specific purposes including a pension reserve account and an income tax reserve account where this is permitted under the Superannuation Law and the above clauses will apply equally to such other reserve accounts.

#### **Unallocated Contributions Account or Contributions Reserve Account**

- 4.5.8 The Trustee may establish a reserve account known as an Unallocated Contributions Account or a contributions reserve to smooth member investment returns or provide for unforeseeable events such as disablement and anti-detriment payments.

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4.5.9 If the Trustee establishes an Unallocated Contributions Account the Trustee must execute a written resolution which includes:

4.5.9.1 its details and purpose; and

4.5.9.2 a reserving strategy to manage reserves, setting out clear and consistent objectives.

4.5.10 The Unallocated Contributions Account can be used for all Members.

4.5.11 The Trustee must execute a written resolution when funds are allocated to or from the Unallocated Contributions Reserve.

4.5.12 An allocation to a Member from the Unallocated Contributions Account must be made within 28 days of the end of the month in which the Contribution is made to the Unallocated Contributions Account.

### **4.6 Specific Assets and Member's Sub-funds**

4.6.1 The Trustee may allocate a specific Asset to a specific Member and may allocate the Net Income generated by that Asset and the related tax liability or credit to that Member's Accumulation Account.

4.6.2 The Trustee may create a sub-fund for a specific Member or group of Members. The sub-fund will consist of an Asset or a group of Assets held for the benefit of the specific Member or group of Members. The Trustee may credit the Net Income generated by those Assets less the related tax liability to that Members' Accumulation Accounts.

4.6.3 The Trustee may accept directions from the specific Member or a specific group of Members in connection with the sub-fund and the acceptance of these directions may be conditional upon the Member or Members agreeing to bear the burden of any extra costs or losses connected to that direction including capital losses.

### **4.7 Bank Account**

4.7.1 The Trustee must maintain a bank account or similar facility with an appropriate institution. All monies paid to the Fund must be credited to it and all payments made by the Fund must be debited to it.

4.7.2 The Trustee may maintain more than one bank account.

### **4.8 Reports to be Kept and Returns to be Lodged**

4.8.1 The Trustee must create all Reports required by the Superannuation Law.

4.8.2 The Trustee must retain all such Reports and related documents for ten years or such other the period specified in the Superannuation Law

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4.8.3 The Trustee must lodge with the Regulator and other Persons Returns required for the Fund to comply with any law or to remain a Regulated Superannuation Fund.

### **4.9 Audit of Accounts**

The Trustee must:

4.9.1 arrange for an appropriately qualified Person to be appointed as the Auditor. The Auditor must audit the Fund's Records as required for the Fund to remain a Regulated Superannuation Fund;

4.9.2 provide all information required by the Auditor to audit the Fund; and

4.9.3 obtain from the Auditor the certificate required for the Fund to remain a Regulated Superannuation Fund.

### **4.10 Disclosure and Reporting Requirements**

The Trustee must provide to Members, the Regulator, the Actuary, the Auditor and any other relevant Person all information as is necessary for the Fund to remain a Regulated Superannuation Fund.

### **4.11 Directions of the Regulator**

The Trustee must comply with any direction by the Regulator necessary for the Fund to remain a Regulated Superannuation Fund.

### **4.12 Limitation of Trustee's Liability**

The Trustee will not be liable for any failure by any Auditor or other Person to whom a responsibility has been delegated to exercise a reasonable standard of care in discharging their duties.

### **4.13 Appointment of Actuary**

The Trustee may engage an Actuary on such terms as it determines.

### **4.14 Appointment of Other Persons**

The Trustee may engage other persons to provide other services to the Fund including but not limited to administration services, investment management and advice services, accounting services, tax services and custodian services.

### **4.15 Loans to Members**

The Trustee may not lend money or other Assets to Members except where permitted under the Superannuation Law.

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### **4.16 Borrowings and Security**

4.16.1 The Trustee may borrow, maintain a borrowing of money and use Assets as security for such a borrowing where this is specifically permitted under the Superannuation Law. This is provided:

4.16.1.1 the Asset is held on trust for the Fund;

4.16.1.2 the Fund may acquire full legal ownership of the Asset on the repayment of the borrowing; and

4.16.1.3 the lender does not acquire any other rights against the Fund or a related Person other than rights relating to the Asset acquired using the borrowings.

4.16.2 The Trustee may not otherwise borrow money except for temporary borrowings to pay Member's Benefits or to settle security purchases where to do so does not breach the Superannuation Law.

## **5 THE TRUSTEE'S INVESTMENT POWERS**

### **5.1 Investment Strategy**

5.1.1 The Trustee must implement an Investment Strategy. This strategy must consider risk and return, liquidity, the diversification of Assets, the ability of the Fund to pay Benefits to Members as and when called to do so, it's actual and prospective liabilities and other cash flow considerations.

5.1.2 The Investment Strategy must consider such matters as are required for the Fund to remain a Regulated Superannuation Fund.

5.1.3 The Trustee may create separate Investment Strategies for separate Members or classes of Members.

5.1.4 The Investment Strategy may be prepared with the direction of Members and may reflect the preferences of different Members and different classes of Members.

5.1.5 The Trustee may create a separate Investment Strategy for any reserve account created under this Deed.

5.1.6 The Trustee may amend the Investment Strategy at any time. If the Trustee amends the Investment Strategy the Trustee must advise all Members in writing of that amendment.

5.1.7 The Trustee must provide a copy of the Investment Strategy to a Member when requested by that Member.

### **5.2 Authorised Investments**

5.2.1 The Assets must be invested by the Trustee in accordance with its Investment Strategies and the investment powers in Schedule B.

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5.2.2 The Trustee may sell any Assets and otherwise deal with the Fund's Assets as it sees fit. This is provided the Trustee is satisfied that this maximises the investment returns and the dealing is consistent with the Fund's Sole Purpose and the Fund's Primary Purpose.

5.2.3 The Trustee may not acquire or retain an In-House Asset where the acquisition or retention of that asset would breach any maximum permitted for In-House Assets or any other maximum limit for In-House Assets applying to the Fund.

## **6 MEMBERS' BENEFITS**

### **6.1 Transfers to Approved Superannuation Arrangements**

6.1.1 A Member may request that all or a part of their Member's Benefit be transferred to an Approved Superannuation Arrangement.

6.1.2 On receiving the request the Trustee must pay to the Approved Superannuation Arrangement the amount stated in the request less such costs, including Taxation and other government charges, as the Trustee believes are appropriate. The payment may be in cash or other Assets and will be made within a reasonable time of receiving this request.

6.1.3 The receipt of the Member's Benefit by the Approved Superannuation Arrangement will be a complete discharge to the Trustee of all liabilities in respect of the amount transferred. The Trustee will thereafter not be responsible for the Member's Benefit and the Member will have no further claim on the Trustee for the amount transferred.

6.1.4 The Trustee must provide the Approved Superannuation Arrangement with all information required under the Superannuation Law.

6.1.5 Amounts transferred may be in cash or in Assets other than cash. In the case of Assets other than cash the amount recorded in the Member's Accumulation Account or the Member's Pension Account will be the Market Value of the other Assets at the date of the transfer.

### **6.2 Preserved Benefits**

Preserved Benefits may only be transferred to an Approved Superannuation Arrangement if the Governing Rules of the Approved Superannuation Arrangement require the Preserved Benefits to be preserved under the Superannuation Law.

### **6.3 Transfers from Approved Superannuation Arrangements**

6.3.1 A Member may request the Trustee to accept a transfer of Benefits from another Approved Superannuation Arrangement.



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- 6.3.2 The Trustee may accept or decline this request with or without conditions and will not be required to give reasons to the Member or any other Person for its decision.
- 6.3.3 The acceptance of the request will be subject to any relevant preservation requirements applying under the Superannuation Law to the Approved Superannuation Arrangement.
- 6.3.4 The Trustee must record the value of the transferred Benefits in the Member's Accumulation Account.
- 6.3.5 Amounts transferred may be cash or other Assets. In the case of other Assets the amount recorded in the Member's Accumulation Account or the Member's Pension Account will be the Market Value of the other Assets at the date of the transfer.

## **7 THE PAYMENT OF BENEFITS**

### **7.1 Pension Benefits**

- 7.1.1 A Member may request for the Trustee to pay the Member a Pension or a other Benefit out of the Member's Benefit Account.
- 7.1.2 This application may only be made if the Member's Benefit can be paid without breaching the preservation rules in the Superannuation Law or any other rules set out in the Superannuation Law.
- 7.1.3 On receiving the request the Trustee may pay a Pension Benefit to the Member in a form agreed with the Member.
- 7.1.4 The Trustee may commute any Pension Benefit at any time and may replace it with a Lump Sum Benefit or another form of Pension Benefit unless to do so would breach the Superannuation Law.
- 7.1.5 Without limiting the generality of the above the Trustee may pay:
  - 7.1.5.1 an allocated pension;
  - 7.1.5.2 a complying pension;
  - 7.1.5.3 a growth pension;
  - 7.1.5.4 a commutable lifetime pension;
  - 7.1.5.5 a transition to retirement pension;
  - 7.1.5.6 an account based pension;
  - 7.1.5.7 a fixed term pension; or
  - 7.1.5.8 any other form of pension benefit recognised under the Superannuation Law,

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and the Trustee may attach any conditions on the form of payment of these pensions that it determines.

### **7.2 Pension Account**

7.2.1 Where a Member applies for a Pension Benefit and the Trustee determines to pay the Member a Pension Benefit, the Trustee must create a Pension Benefit Account for the Member.

7.2.2 The Trustee must transfer all or part of the Member's Benefit to the Member's Pension Benefit Account.

### **7.3 Operation of the Pension Benefit Account**

7.3.1 Credits to the Member's Pension Benefit Account may include:

7.3.1.1 amounts transferred from the Member's Benefit Account;

7.3.1.2 amounts paid into the Fund for the Member that are not credited to the Member's Benefit Account;

7.3.1.3 any earnings on the investment of the Fund, as if the Member's Pension Account was a Member's Benefit Account; and

7.3.1.4 such other amounts as the Trustee may determine.

7.3.2 Debits to the Member's Pension Benefit Account may include:

7.3.2.1 all amounts transferred out of the Fund to an Approved Superannuation Arrangement for the Member;

7.3.2.2 any payments made to or for the benefit of the Member;

7.3.2.3 a share of any expenses or losses of the Fund, as determined by the Trustee; or

7.3.2.4 such other amounts as the Trustee may determine.

### **7.4 Segregation of Pension Assets**

7.4.1 The Trustee may segregate the Assets comprising each Member's Pension Benefit Account from the other Assets of the Fund.

7.4.2 The Trustee may treat these Assets as segregated assets for the purposes of the Superannuation Law.

### **7.5 Death of a Member Receiving a Pension Benefit**

On the death of a Member receiving a Pension Benefit, the Trustee may pay a Pension Benefit or a Lump Sum Benefit to any Automatic Reversionary Beneficiary and may otherwise pay a Pension Benefit or a Lump Sum Benefit to a

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Reversionary Beneficiary or such other Person as the Trustee may determine on such conditions as the Trustee may determine.

### **7.6 Commutation of Pension Benefits**

The Trustee may commute a Pension Benefit in full or in part to a Lump Sum Benefit or to another Pension Benefit on the written application of the Member unless to do so would breach the Superannuation Law.

### **7.7 Adjustment of Pension Following the Commutation**

If a Member commutes all or part of a Pension Benefit to a Lump Sum Benefit the Trustee must reduce the Member's Pension Benefit by such amount as the Trustee determines.

### **7.8 Payment of Benefits to Disabled Members**

7.8.1 The Trustee may pay a Benefit to a Member or to the Member's legal personal representative where the Member is disabled.

7.8.2 The payment must be in a form and of an amount that does not breach the Superannuation Law.

### **7.9 Payment of Benefits to Members in Severe Financial Hardship or Other Adverse Circumstances**

7.9.1 The Trustee may pay a Benefit to a Member or to the Member's Legal personal representative where the Member is in severe financial hardship or other adverse circumstances.

7.9.2 The payment must be in a form and of an amount that does not breach the Superannuation Law.

### **7.10 Payment of Benefits on Compassionate Grounds**

7.10.1 The Trustee may pay a Benefit to a Member or to the Member's Legal personal representative on compassionate grounds.

7.10.2 The payment must be in a form and of an amount that does not breach the Superannuation Law.

### **7.11 Payment of Benefit where Member has left Australia**

7.11.1 If a Member has left Australia permanently and the retention of the Member's Benefits in the Fund will breach the Superannuation Law, the Trustee must pay the Member's Benefits to the Member or transfer the Member's Benefits to an Approved Superannuation Arrangement.

7.11.2 If for any reason the Trustee fails to deal with the Member's Benefits as required under the above clause 7.11.1, the Trustee will be deemed to have dealt with the Member's Benefits as required by the above clause, and will be deemed to be holding the Member's Benefits under a bare

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trust for the benefit of the Member or the Approved Superannuation Arrangement as the case may be and must complete the transaction as soon as possible thereafter.

### **7.12 Payment of Benefit on Death of a Member**

Subject to clause 7.5:

- 7.12.1 The Trustee may pay a Benefit to a Member's legal personal representative on the death of a Member.
- 7.12.2 The Trustee must pay a Benefit to a person nominated in a Binding Death Benefit Nomination by the Member on the death of the Member.
- 7.12.3 Before paying a Death Benefit the Trustee must do all things necessary to comply with all provisions in the Superannuation Law concerning the payment of Death Benefits and in particular the notification of the proposed payment to persons who may have an interest in that payment.

### **7.13 Payments on Behalf of Beneficiaries**

Where a Person to whom a benefit is to be paid is under age eighteen, is under a legal disability or the Trustee believes is unable to properly look after his or her own affairs the Trustee may hold the Benefits payable to that Person on a separate trust for that Person and:

- 7.13.1 apply them to the maintenance, education, advancement, support or benefit of that Person as the Trustee may determine; or
- 7.14.2 pay them to any other Person who appears to be a guardian or custodian of that Person as the Trustee may determine,

and this will be deemed to be the payment of the Benefit to that Person.

### **7.14 Preservation Conditions on Benefits Paid**

- 7.14.1 A Preserved Benefit may be paid to a Member where permitted under the Superannuation Law.
- 7.14.2 The Trustee may pay a Benefit other than a Preserved Benefit to the Member at any time on the written request of the Member.
- 7.14.3 The Trustee may pay all or part of a Preserved Benefit to a Member on the grounds of financial hardship or compassionate grounds or such other grounds as the Trustee may determine provided that the payment is first approved in writing by the Regulator and any conditions set by the Regulator for the payment are complied with.

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### **7.15 Mandatory Payment of Benefits**

7.15.1 The Trustee must pay the Member's Benefit to the Member where this is necessary to maintain the status of the Fund as a Regulated Superannuation Fund.

7.15.2 The Trustee must not pay a Benefit to a Member for the sole reason that the Member has reached a certain age.

### **7.16 Unclaimed Benefits**

The Trustee must provide to the Regulator a statement of Unclaimed Benefits and must pay any Unclaimed Benefits to the Regulator as required to maintain the Fund's status as a Regulated Superannuation Fund.

### **7.17 Other Pension Benefits**

The Trustee may pay a Member or a Member's Dependant or any other Person a Pension Benefit other than an Allocated Pension Benefit or a Complying Pension Benefit where permitted to do so by the Superannuation Law.

## **8 LUMP SUM BENEFIT PAYMENT**

8.1 The Trustee may on the written application of a Member pay a Lump Sum Benefit to the Member. The payment of the Lump Sum Benefit will be a complete discharge of all liabilities owed by the Trustee to the Member in respect of the amount paid. The Trustee will not be bound to see to the application of this amount once it is paid to the Member.

8.2 The Lump Sum Benefits paid under the preceding sub-paragraph may comprise all or only part of the Member's Benefits.

8.3 The Trustee may withhold from the Lump Sum Benefit such amounts as is necessary to comply with the Tax Act and the Superannuation Law. These amounts will be deemed to have been paid to the Member and will be remitted to the Australian Taxation Office.

## **9 CONTRIBUTIONS**

### **9.1 Contributions**

9.1.1 A Member, an Employer and any other person who is able to contribute to the Fund under the Superannuation Law may pay a Contribution to the Fund for a Member and the Trustee may accept that Contribution.

9.1.2 The Trustee may accept Contributions:

9.1.2.1 in relation to the Superannuation Guarantee Charge;

9.1.2.2 in respect of a Member who is incapacitated by ill health;

9.1.2.3 by an Employer for an Employee;

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- 9.1.2.4 paid for or by a Member over age 65 and under age 75 where the member is gainfully employed
- 9.1.2.5 paid for or by a Member over the age of 75 where permitted by the Superannuation Law;
- 9.1.2.6 paid by the Government as a superannuation co-contribution or similar amount;
- 9.1.2.7 paid under a contribution splitting arrangement;
- 9.1.2.8 paid for or by a Member on authorised maternity leave or similar parental leave where permitted by the Superannuation Law; or
- 9.1.2.9 otherwise paid by any other person for a Member provided doing so does not breach the Superannuation Law.

### **9.2 Acceptance of Contributions**

- 9.2.1 The Trustee may refuse to accept any Contribution to the Fund from any person and will not be required to give any reasons for doing so.
- 9.2.2 If the Trustee accepts a payment from a Person which is intended to be a Contribution in good faith (Payment) but the acceptance of the Payment as a Contribution would either:
  - 9.2.2.1 breach the Superannuation Law; or
  - 9.2.2.2 cause any annual Contribution limit applying to the Member to be exceeded;the Trustee must not treat it as part of the Fund and must instead hold the Payment on a bare trust for the Person who made the Payment.
- 9.2.3 The Trustee must return any Contribution refused under clause 9.2.1 or Payment made under 9.2.2 to the Person who paid it soon as practicable.

### **9.3 No Requirement to Contribute**

- 9.3.1 No Person will be required to contribute to the Fund.
- 9.3.2 A Member will remain a Member notwithstanding that no Contributions have been made for that Member in any particular Year.

### **9.4 Time of Contributions**

A Contribution will be deemed to be received by the Trustee in the Year it is received by the Trustee under the Tax Act or as otherwise determined by the Trustee.

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### **9.5 Quantum of Contributions**

There is no limit on the amount of Contributions to the Fund for a Member either as a total or in a particular Year including both Concessional Contributions and Non-Concessional Contributions except any limits imposed on Regulated Funds by the Superannuation Law.

### **9.6 Form of Contributions and Non-cash Contributions**

9.6.1 Contributions may be in cash or any other Asset including real property and listed securities able to be acquired and held by the Fund under the Superannuation Law.

9.6.2 The value of non-cash Contributions will be their Market Value on the day the Contributions are made.

### **9.7 Spouse Contributions**

The Trustee may accept Contributions made for a Spouse and may allocate all or part of a Member's Contributions to the Member's Spouse's Accumulation Account or Pension Account.

### **9.8 Superannuation Co-Contribution Scheme and Other Contributions**

9.8.1 The Trustee may accept Contributions made for the benefit of a Member by the federal government or any federal government agency or authority under the superannuation co-contribution scheme or any similar government arrangement.

9.8.2 The Trustee may accept any other contributions for any person provided doing so does not breach the Superannuation Law.

## **10 PAYMENT OF TAX AND PAYMENT OF INSURANCE PREMIUMS**

### **10.1 Payment of Taxation and other amounts on Benefits**

10.1.1 The Trustee must deduct from any Benefit any Taxation required to be deducted from it. The Trustee must pay this Taxation to the Australian Taxation Office in accordance with the relevant laws.

10.1.2 The Trustee must deduct from any Benefit any other amount required to be deducted from it under any state or government law. The Trustee must pay this amount to the relevant authority in accordance with the relevant laws.

### **10.2 Payment of Tax on Net Income**

10.2.1 The Trustee must provide for an appropriate amount of Taxation on the Net Income of the Fund and may allocate this amount between the Members' Benefits as it determines.

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10.2.2 The Trustee may provide for Taxation and transfer any amount so provided to a General Reserve Account or similar account.

### **10.3 Transfer of Taxation Liability**

The Trustee may transfer all or part of the Fund's liability to pay Taxation to other Persons where permitted under the Superannuation Law.

### **10.4 Life Insurance Policies**

10.4.1 The Trustee may enter into an insurance contract on the life of a Member. The Trustee may debit the cost of the insurance to the Member's Benefit Account or the Member's Pension Account.

10.4.2 The Trustee may enter into a group insurance arrangement rather than individual contracts of insurance should it wish to do so.

10.4.3 The Trustee may use the proceeds of an insurance contract to supplement the Death Benefit paid on the death of a Member or as the Trustee may otherwise determine including a transfer to a General Reserve Account or other reserve account.

10.4.4 Except in the case of fraud or negligence, the Trustee will not be liable for any loss sustained by the Member where false or misleading information has been provided to an insurer or the premiums due on a contract of insurance have not been paid as required under the insurance contract.

## **11 PRODUCT DISCLOSURE STATEMENTS**

11.1 The Trustee must provide the Members with a Product Disclosure Statement unless the Trustee is satisfied that the Members are already aware of the information that must be set out in the Product Disclosure Statement or are aware of where this information can be obtained.

11.2 The Product Disclosure Statement must provide the Member with the information the Member needs to compare the Fund to alternative financial products and to decide whether to acquire or retain an interest in the Fund.

11.3 The information in the Product Disclosure Statement may include details of:

- (i) any significant benefits that may accrue to the Member;
- (ii) any significant risks faced by the Member;
- (iii) the costs faced by the Member;
- (iv) any commissions payable;
- (v) the rights, terms, obligations and conditions attaching to the product;
- (vi) any cooling off scheme;



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- (vii) any dispute resolution process; and
- (viii) any ethical considerations connected to the product.

- 11.4** The Trustee must retain the Product Disclosure Statement for ten years or such longer period as is required to comply with the Corporations Act or the Superannuation Law.
- 11.5** A fresh Product Disclosure Statement must be provided to the Members by the Trustees when required to comply with the Corporations Act or the Superannuation Law.
- 11.6** This Deed will form part of the Product Disclosure Statement.
- 11.7** The signing of this Deed by the Trustee records the Trustee's belief on reasonable grounds that the Members are aware of the information that should be provided in a Product Disclosure Statement and that they have access to the information that should be provided in a Product Disclosure Statement.
- 11.8** The Product Disclosure Statement may be in the form of Schedule D or any other form permitted by the Superannuation Law.

## **12 BINDING DEATH BENEFIT NOMINATIONS**

- 12.1** The Trustee may accept a Binding Death Benefit Nomination from a Member to pay all or part of the Member's Benefits on the death of the Member to a person specified in the notice who is the deceased Member's Dependant or the deceased Member's legal personal representative.
- 12.2** The Binding Death Benefit Nomination will be binding on the Trustee provided the following conditions are satisfied:
- (i) each person nominated in the deceased Member's binding death benefit nomination is a Dependant or is the deceased Member's legal personal representative;
  - (ii) the allocation of Benefits is clear;
  - (iii) the nomination is in writing;
  - (iv) the nomination is signed and dated by the Member in the presence of two witnesses over age 18 and who are not nominated as Dependents or a legal personal representative or are otherwise capable of benefiting under the nomination; and
  - (v) the notice contains a statement that the notice was signed by the Member in the presence of the witnesses;
- 12.3** A Binding Death Benefit Nomination may only be revoked or amended by a notice served on the Trustee in a form that satisfies the conditions set out in the preceding clause.

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**12.4** A Binding Death Benefit Nomination may be in the form set out in Schedule F or any other form that complies with the Superannuation Law.

**12.5** A Binding Death Benefit Nomination may be for any period specified in the nomination.

### **13 FAMILY LAW COURT ORDERS AND SIMILAR ORDERS**

**13.1** The Trustee may pay all or part of any Member's Benefit to another person or Approved Superannuation Arrangement where to do so is necessary to comply with or observe any Family Law Court Order or similar order applying to a Member or to a Member's Benefits.

**13.2** The Trustee must give appropriate written notice to a Spouse or former Spouse or other person of any Benefits proposed to be paid to a Member or a Member's Dependant where necessary to comply with any Family Law Court Order or similar order applying to a Member or to a Member's Benefits.

**13.3** The Trustee must do any act or thing that is necessary to comply with any Family Law Court Order or similar order applying to a Member or a Member's Benefits.

### **14 PROCEDURAL PROVISIONS**

#### **14.1 Amendment of the Trust Deed**

14.1.1 This Deed may be amended as permitted under this clause.

14.1.2 An Amendment must be by deed executed by the Trustee and any other Person required to execute the deed for it to be effective at law.

14.1.3 All Trustees must execute the Amendment and all Members must be provided with a copy of the Amendment.

14.1.4 The Trustee must provide each Member whose Benefits are affected by the Amendment with an explanation of the purpose of the Amendment and its effect on the Member's Benefits if requested to do so by the Member or where required by the Superannuation Law.

14.1.5 An Amendment must not reduce the Benefits payable to a Member unless the reduction is required to comply with the Superannuation Law.

14.1.6 An Amendment must not change the Primary Purpose of the Fund unless the Trustee is a Company.

14.1.7 An Amendment will not be effective unless any procedure specified in the Superannuation Law or this Deed is complied with.

#### **14.2 Amendment by Reference**

14.2.1 The Trustee may amend the Fund by reference to a standard trust deed made available to the Trustee by the Trustee's solicitor, the Trustee's accountant or auditor or some other person.

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14.2.2 Such an amendment may be in any form generally recognised under the law including electronic form.

14.2.3 The standard trust deed may be printed by the Trustee or created electronically and retained by the Trustee in electronic form or otherwise dealt with as determined by the Trustee provided that doing so does not breach the Superannuation Law.

### **14.3 Termination of the Fund**

14.3.1 The Trustee may terminate the Fund if there are no Members in the Fund or if each Member has consented to the termination.

14.3.2 The Fund will terminate automatically if there are no Fund Assets or no Members.

14.3.3 To terminate the Fund voluntarily the Trustee must:

14.3.3.1 pay all costs of the Fund including the Taxation liability of the Fund in the year of termination;

14.3.3.2 prepare a set of accounts and other relevant documents for the year of termination; and

14.3.3.3 transfer all Member Benefits and any reserve amounts to an Approved Superannuation Arrangement, pay the Member Benefits and any reserve amounts to the relevant Members or otherwise deal with the Member Benefits under this Deed.

## **15 DEFINITIONS**

In this Deed unless the context otherwise requires words and phrases have the meaning given to those words and phrases or similar words and phrases in the Superannuation Law and the following specific words and phrases have the following specific meanings:

"Accumulation Account" means an account established under clause 3.9;

"Actuary" means an actuary (if any) appointed under clause 4.13;

"Allocated Pension Benefit" means a Benefit paid as an allocated pension under the Superannuation Law;

"Amend" means any change to the words or meaning of a clause and "Amendment" means the document evidencing the amendment;

"Ancillary Benefits" means benefits other than Lump Sum Benefits, Pension Benefits or Death Benefits that are permitted under the Superannuation Law and include payments made to a Disabled Member or a Member in financial distress;

"Annuity" has the meaning given in the Superannuation Law;

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"Approved Deposit Fund" has the meaning given in the Superannuation Law;

"Approved Superannuation Arrangement" means a complying Superannuation Fund, Approved Deposit Fund, Retirement Savings Account and any similar arrangement which can accept transfers of superannuation benefits under the Superannuation Law;

"Asset" has the meaning given in the Superannuation Law;

"Auditor" is the auditor appointed under clause 4.9;

"Automatic Reversionary Beneficiary" means a Dependant nominated by a Member at the time of establishing the Pension, to be a Reversionary Beneficiary, to take effect automatically upon the death of the Member;

"Beneficiary" means a Person to whom a Benefit is or may be payable under this Deed;

"Benefit" means any benefit payable by the Trustee to or for a Member and includes the Member's Pension Benefit Account and the Member's Accumulation Account;

"Binding Death Benefit Nomination" means any written death benefit nomination form given by a member to the Trustee;

"Books" has the meaning given in the Superannuation Law and includes all books commonly used to record financial transactions and other transactions engaged in by Superannuation Funds or by trusts generally;

"Child" has the meaning given in the Superannuation Law and includes an adopted child, a step child, an ex-nuptial child and any other person who may be a child under the Family Law Act 1975;

"Company" means a "Constitutional Corporation" as defined in the Superannuation Law;

"Complying Pension Benefit" means a Benefit paid as a complying pension under the Superannuation Law;

"Concessional Contribution" means a concessional contribution as defined in the Superannuation Law;

"Contributions" means the amounts paid to the Fund for Members gross of any Taxation and includes concessional contributions, non-concessional contributions and contributions made for the benefit of a Person other than a Member;

"Corporate Trustee" has the meaning given in the Superannuation Law;

"Corporations Act" has the meaning given in the Superannuation Law;

"Death Benefits" means a Benefit payment made on the death of a Member;

"Deed" means this deed and any amendments to it;

"Dependant" means the Spouse or Child of a Member or a deceased Member or any other Person who is a dependant of a Member under the Superannuation Law;

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"Director" has the meaning given in the Superannuation Law;

"Disabled" in respect of a Member on whose life the Trustee holds an insurance policy covering total and permanent disablement, has the meaning given in that insurance policy and in respect of other Members, means a physical or mental incapacity that two registered medical practitioners have certified result in the Member being unable to continue in the the Member's normal employment;

"Employee" has the meaning given in the Superannuation Law and includes a person who is employed by another person;

"Employer" has the meaning given in the Superannuation Law and includes a person who employs another person or a person related to such a person;

"Entity" has the meaning given in the Superannuation Law;

"Fund" means the fund created by this Deed;

"Gainful Employment" has the meaning given in the Superannuation Law;

"General Reserve Account" means any account created under clause 4.5.1;

"Governing Rules" has the meaning given in the Superannuation Law;

"Individual Trustee" has the meaning given in the Superannuation Law;

"Investments" means any application of Assets to produce income or profits;

"In-House Asset" has the meaning given in the Superannuation Law;

"Investment Strategy" has the meaning given in the Superannuation Law;

"Loan" has the meaning given in the Superannuation Law;

"Lump Sum Benefit" means any benefit other than a Pension Benefit;

"Market Value" has the meaning given in the Superannuation Law;

"Member" means a Person who has been accepted as a Member under this Deed;

"Members' Accumulation Account" means an accounts set up under clause 3.9;

"Member's Benefits" means the total of the Member's Accumulation Account and the Member's Pension Account and any other amounts held by the Trustee for the Member;

"Member's Pension Benefit Account" means any account set up under clause 7.2;

"Net Income" means the net income of the Fund under general accounting principles, unless the trustee otherwise determines;

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"Nominated Beneficiary" means a Dependant or other person nominated in writing by the Member under clause 12;

"Non-Concessional Contributions" has the meaning given in the Superannuation Law;

"Old-Age Pension" has the meaning given in the Superannuation Law;

"Pension" means any series of payments or payment that is a pension under the Superannuation Law including but not limited to:

- (i) a life time complying pension;
- (ii) an allocated pension;
- (iii) a flexi-pension;
- (iv) a fixed term pension;
- (v) a fixed term complying pension;
- (vi) a market linked pension; and
- (vii) a lifetime or fixed term pension payable under the Social Security Act 1991 or the Veteran's Entitlement Act 1986 or related legislation.
- (viii) an account based pension
- (ix) a transition to retirement pension

"Pension Account" means an account set up under clause 7.2;

"Pension Benefit" is a Benefit payable over a period out of a Member's Pension Benefit Account and includes an Allocated Pension Benefit and a Complying Pension Benefit;

"Pension Benefit Account" means an account established under clause 7.2;

"Person" means an individual, a company or other entity as the context requires;

"Preserved Benefit" means a benefit preserved under the Superannuation Law;

"Primary Purpose" relates to the primary purpose of paying pensions and has the meaning given in the Superannuation Law;

"Product Disclosure Statement" has the meaning given in the Corporations Act;

"Regulated Fund" has the meaning given in the Superannuation Law;

"Regulator" has the meaning given in the Superannuation Law;

"Relative", in relation to a Member means a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, Child or grandchild; and a Spouse of such a Person;

"Report" means a financial report or similar document required under the Superannuation Law and includes Books;

"Retirement Benefits" means Pension Benefits payable on the retirement of a Member and other superannuation benefits;

"Reversionary Beneficiary" means a Dependant nominated by a Member, a Dependant nominated by the Trustee to be a Reversionary Beneficiary;

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"Retirement Savings Account" has the meaning given in the Superannuation Law;

"Self-Managed Superannuation Fund" has the meaning given in the Superannuation Law;

"Signing Date" is the date the Deed was executed;

"SISA" means the Superannuation Industry (Supervision) Act (1993) and any replacement or supplementary legislation;

"Sole Purpose" has the meaning given in the Superannuation Law;

"Superannuation Fund" has the meaning given in the Superannuation Law;

"Superannuation Guarantee Charges" has the meaning given in the Superannuation Law and the Tax Act;

"Superannuation Law" means the SISA, the Tax Act and any other laws or regulations that the Fund must comply with to be a Regulated Fund;

"Spouse" means a Person who is legally married to a Member or a Person who is not legally married to the Member but who lives with the Member as the husband or wife of the Member and may include a same sex partner;

"Tax Act" means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 and any related Acts and any regulations made under those Acts;

"Taxation" includes income tax, payroll tax, land tax, stamp duty and any other taxes or duties paid or payable by the Trustee on behalf of the Fund or, where applicable, by any Member, former Member, Dependant or Beneficiary;

"Trustee" means the person(s) nominated as the Trustee(s) in Schedule A and any Person(s) who become(s) the Trustee(s) of the Fund pursuant to the terms of this Deed;

"Unallocated Contributions Account" means a reserve account established under Clause 4;

"Unclaimed Benefits" has the meaning given in the Superannuation Law; and

"Year" means a period of twelve months ending on 30 June or such other period as the Trustee determines.

## **16 INTERPRETATION**

### **16.1 Plural and Gender of Words**

In this Deed, references to one gender include the other gender and references to the singular number include the plural number, and vice versa.

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### **16.2 Headings to Clauses**

Headings to clauses are for convenience only and do not affect the interpretation of any provision in this Deed.

### **16.3 Acts of Parliament**

References to Acts of Parliament are references to those Acts as amended, modified or re-enacted and include replacements Acts and Acts of similar intent and purpose. References to a provision of a statutory enactment include the relevant provision of the enactment as amended, modified or re-enacted.

### **16.4 Severability**

If any part of a clause in this Deed is construed as illegal, invalid or void the legality and validity of the remaining parts of the clause will not be affected and the illegal, invalid or void part will be deemed to be deleted from this Deed.

### **16.5 Superannuation Law Definitions**

If there is any doubt regarding the meaning of a word or phrase used in this Deed and the same or a similar word or phrase is used in the Superannuation Law, the meaning given to that word or phrase in the Superannuation Law will be deemed to be the meaning of that word or phrase in this Deed.

### **16.6 References to breaching the Superannuation Law**

Any reference to "breaching the Superannuation Law" or similar phrases will be taken as a reference to breaching the Superannuation Law in a way that prejudices the Fund's status as a Regulated Fund or which otherwise exposes the Fund to a risk of a penalty under the Superannuation Law.

### **16.7 References to Clauses**

A reference to a clause will be a reference to a clause of this Deed.

### **16.8 Schedule C Additional Administrative Powers**

The Trustee has the powers set out in Schedule C.

## **17 THE TRUSTEES HAVE READ AND UNDERSTOOD THE DEED**

**17.1** Each Individual Trustee or Director of a Company Trustee has read and understood this Deed and is aware of all matters that should be considered by a Trustee before agreeing to act as a Trustee of the Fund.

**17.2** Each Individual Trustee or Director of a Company Trustee believes on reasonable grounds that the Members have access to all information required to decide whether to become or remain a Member of the Fund and are aware of where and how this information can be obtained.



## SUPERANNUATION FUND TRUST DEED

**17.3** Each Individual Trustee or Director of a Company Trustee affirms that she understands superannuation law and does not need a Product Disclosure Statement to decide to become a Member or a Trustee of the Fund.

### **18 DEEMED COMPLIANCE WITH THE SUPERANNUATION LAW**

**18.1** The Fund has been established to be a Regulated Superannuation Fund

**18.2** The Trustee may do any act or thing necessary to ensure that the Fund complies with the Superannuation Law and remains a Regulated Superannuation Fund.

**18.3** The Trustee may not do any act or thing that breaches the Superannuation Law or prejudices the Fund's status as a Regulated Superannuation Fund.

**18.4** Each provision in this Deed is subject to a provision that it will not be of any effect if it prejudices the Fund's status as a Regulated Superannuation Fund.

**18.5** If there is conflict between the specific provisions of this Deed and the provisions deemed to be included in the Deed under this clause then the deemed provisions will prevail over the specific provisions to the extent of any inconsistency.

SUPERANNUATION FUND TRUST DEED

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**EXECUTED AS A DEED** on the Signing Date

EXECUTED BY JJ SEARLE PTY LTD (A.C.N 166 338 325)

In accordance with section 127 of the *corporations act 2001* (CTH) and / or the constitution of the company by being signed by **two directors, a director and a secretary, or a sole director:**



.....  
Jacqueline Searle (DIRECTOR / SECRETARY)



.....  
Robert Mizzi (DIRECTOR)



.....  
Eve Mizzi (DIRECTOR)

**SUPERANNUATION FUND TRUST DEED**

**SCHEDULE A: DETAILS OF THE FUND**

**SIGNING DATE:** 19th October 2013

**TRUSTEE:** JJ Searle Pty Ltd  
(ACN: 166 338 325)

**MEMBER:** Jacqueline Searle  
Robert Mizzi  
Eve Mizzi

**NAME OF FUND:** Searle Family SMSF

**PROPER LAW GOVERNING FUND:** VIC