

### **Inconsistent conditions in policy**

- 146 If an insurer will only insure a member or beneficiary on conditions that are inconsistent with the conditions in respect of a benefit payable in respect of the member or beneficiary, the trustee may impose the policy conditions on that benefit despite the conditions stated in this deed.

### **Powers not affected by conflict of interests**

- 147 The trustee may exercise any power under this deed or at law despite the fact that the trustee has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise. An indirect interest or benefit includes, without limitation, where the trustee obtains or may obtain an interest or benefit as a director, officer, shareholder, partner, unitholder or beneficiary of a third party with whom the trustee enters into a transaction or arrangement.

### **Disclosure of conflict of interest**

- 148 A trustee must disclose conflict of interests of the type described in clause 147 in accordance with superannuation law.

### **Trustee's power to effect transfer on written request**

- 149 On written request by a member or beneficiary, the trustee may transfer to the trustee of an approved benefit arrangement any part of the amount in the fund that represents the member's or beneficiary's benefit or benefit entitlement. The trustee may only do so if the following conditions are met:
- The member or beneficiary is eligible to join or has joined the arrangement.
  - The trustee is satisfied that the transfer complies with superannuation law.
  - The amount the trustee transfers must not exceed the amount in the member's or beneficiary's accumulation account, except to the extent of any amount that the trustee decides to add to that account from the equalisation account (if any) under clause 39.

### **Form and effect of transfer**

- 150 The member or beneficiary must complete and execute any documents required by the Tax Act for the transfer to be completed as a roll over payment. A receipt from the approved benefit arrangement discharges the trustee from all liability in respect of the amount transferred. The trustee is not responsible for seeing to the application of that amount by the approved benefit arrangement. On completion of the transfer, the member or beneficiary (and anyone entitled to claim in any way in respect of that person) ceases to have any rights against the trustee or the fund in respect of the relevant amount.

### **Trustee's power to transfer to successor fund**

- 151 The trustee may transfer to the trustee of an approved benefit arrangement that is a successor fund to the fund under superannuation law any part of the amount in the fund

that represents a benefit entitlement. The consent of the member or beneficiary is not required. Nor is it necessary that the member already be a member of the successor fund.

#### **Trustee's power to transfer to eligible roll over fund**

- 152 In accordance with superannuation law, the trustee may transfer to an eligible roll over fund any part of the amount in the fund that represents a member's or beneficiary's benefit entitlement. The trustee must do so if superannuation law requires it.

#### **Transfer of assets**

- 153 With the consent of a member or beneficiary to whom or in respect of whom a transfer is to be made under clauses 151 or 152, the trustee may, instead of paying or transferring cash, transfer investments of equivalent value to the member or beneficiary or to the trustee of the relevant approved benefit arrangement.

#### **The trustee's power to receive transfer**

- 154 The trustee may take over or acquire by transfer from an approved benefit arrangement any part of the assets of that arrangement that represent the interest of a participant in that arrangement who has become or is to become a member or beneficiary of the fund. The trustee will hold the amount on trust for that person in the relevant accumulation or pension account. The person will have rights in respect of that amount that are equivalent to the rights he or she had under the approved benefit arrangement. The trustee may decide that the person is to be treated as having been a member of the fund from the time he or she became a member of the approved benefit arrangement.

### **M Administration of fund**

#### **Dealing with money received**

- 155 The trustee must ensure that any money received by the fund is dealt with as soon as practicable in one of the following ways:
- Deposited to the credit of the fund in an account kept with a bank, friendly society, building society, or other similar body chosen by the trustee.
  - Paid to the credit of an insurer for the payment of premiums in relation to a policy of insurance effected by the trustee for the purposes of the fund.
  - Paid into the trust account of a lawyer, accountant or investment manager appointed in accordance with this deed.

#### **Effect of receipts**

- 156 A receipt given by the trustee or the secretary of the fund or another person authorised by the trustee in writing to issue receipts is a sufficient discharge to the person by whom money is paid to the fund.

### **Employers to provide information to trustee**

- 157 On written request by the trustee, an employer must give the trustee any information which it has or can obtain that is, in the trustee's opinion, necessary or desirable for managing and administering the fund. The trustee may act on that information and is not required to verify it.

### **Compliance**

- 158 The trustee must comply with superannuation law and with any directions of the Regulator in relation to the fund.

### **Trustee may not charge fees**

- 159 The trustee must not charge any fees in relation to acting as trustee under this deed or performing any services in respect of the fund.

### **Trustee entitled to be reimbursed for expenses**

- 160 The trustee is entitled to be reimbursed from the fund for all expenses, taxes, levies, charges, fees and other amounts necessarily or reasonably incurred in acting as trustee under this deed.

### **Trustee to keep records and accounts**

- 161 The trustee must keep proper records and accounts of all money received by the fund and paid out by it, including adequate details of all dealings by the fund in connection with that money.

### **Trustee to collect money owing to the fund**

- 162 The trustee must ensure that money owing to the fund is collected promptly and dealt with in accordance with this deed.

### **Trustee to keep records, accounts, books etc**

- 163 The trustee must ensure that all records, books, accounts, minutes, reports and other documents are maintained and kept safe in accordance with superannuation law for the period required by that law.

### **Documents to be prepared**

- 164 The trustee must ensure that each of the following is prepared in respect of the fund in accordance with superannuation law:
- A statement of its financial position.
  - An operating statement.
  - Any other account or statement required by superannuation law.

### **Annual return**

- 165 The trustee must ensure that an annual return and any other documents required under superannuation law are prepared and lodged with the Regulator in accordance with that law.

### **Audit**

- 166 The trustee must arrange for the books, accounts and records of the fund to be audited annually or as required by superannuation law by an auditor qualified in accordance with superannuation law.

### **Disclosure requirements**

- 167 The trustee must ensure that information and documents are provided to each of the following persons in accordance with the requirements of superannuation law:
- employers.
  - the Regulator.
  - the actuary (if one is appointed).
  - the auditor.
  - any other person.

### **Availability of books and records**

- 168 The trustee must ensure that the books of the fund and information relating to it are available for inspection and copying, and that access is provided to premises where the books and information are available to be inspected and copied, in accordance with superannuation law.

### **Availability of deed and documents**

- 169 The trustee must ensure that this deed and any other documents (or copies of the deed and documents) are made available for inspection by a member, or by a beneficiary on the beneficiary's request, as required by superannuation law. It is sufficient if they are available for inspection at the place of business of a trustee while that business is open.

### **Appointment of auditor**

- 170 The trustee may appoint a suitably qualified person as auditor of the fund.

### **Appointment of actuary**

- 171 The trustee may appoint as actuary of the fund:
- an actuary who is a Fellow of the Institute of Actuaries of Australia;
  - a member of a firm or company of which at least one member or director is a Fellow of the Institute of Actuaries of Australia; or
  - an auditor who is appropriately qualified and is independent according to criteria

specified by superannuation law.

#### **Appointment of administration manager**

- 172 The trustee may appoint one or more suitably qualified persons to act as administration manager of the fund or a specified part of the fund.

#### **Appointment of investment manager**

- 173 The trustee may appoint one or more suitably qualified persons to act as investment manager of the fund or a specified part of the fund in accordance with superannuation law.

#### **Appointment of custodian**

- 174 The trustee may appoint one or more suitably qualified persons to act as custodian of the fund or a specified part of the fund, including (without limitation) as part of an "instalment warrant arrangement" referred to in clause 142.3.

#### **Superannuation law to be observed**

- 175 Any appointment by the trustee must be in accordance with superannuation law.

#### **Trustee may remove person from office**

- 176 The trustee may remove from office a person the trustee has appointed to an office.

#### **Trustee not bound by advice**

- 177 Except to the extent required by superannuation law, the trustee is not bound to follow the advice of a person the trustee has appointed.

#### **Liability of the trustee is limited**

- 178 To the extent allowed by superannuation law, neither the trustee nor an employee of the trustee is liable for anything done or not done in connection with acting as trustee, unless at least one of the following applies:

- The trustee failed to act honestly.
- The trustee intentionally or recklessly failed to exercise the degree of care required.
- The trustee incurred a monetary penalty under a civil penalty order made in accordance with superannuation law.

#### **Indemnity**

- 179 To the extent allowed by superannuation law, the trustee and each employee of the trustee are entitled to an indemnity from the fund in all cases where the trustee is not liable under the preceding clause. The trustee has a lien on the assets of the fund for this purpose.

### **Other persons who may act**

- 180 Subject to superannuation law, the trustee may appoint the following persons to act as trustee of the fund.
- the legal personal representative of a deceased member, from the date of the member's death until the member's death benefits begin to be paid;
  - the legal personal representative of a member, while he or she holds an enduring power of attorney in respect of the member or while the member is under a legal disability;
  - the legal personal representative, parent or guardian of a member who is a minor; or
  - any other person if the superannuation law allows that person to be a trustee and the fund would remain a self managed superannuation fund.

### **Appointment of corporation as trustee**

- 181 The trustees may appoint a corporation as trustee by executing a deed to that effect. They may only do so if immediately after executing that deed they replace this deed with another deed which provides the mechanisms to enable a corporation to act as trustee.

### **Continuity of office**

- 182 When a person ceases to be a trustee or becomes a trustee, any other person acting as trustee must do everything necessary to vest the fund in the new or remaining trustees and must deliver all records and other books to the new or remaining trustees.

### **Appointment and resignation of trustee**

- 183 The trustee will determine who acts as trustee in accordance with this deed and superannuation law for the fund to continue as a self managed superannuation fund and will take the necessary steps to appoint or remove the persons or body to or from the office of trustee. The trustee may accept the trustee's resignation in writing for this purpose.
- The appointment or removal of a trustee must be in writing and must immediately be advised to any other trustee.
  - Where the trustee is unable or unwilling to determine who will act as trustee then the majority of members of the fund will determine who will act as trustee. If there are no members in the fund, the former members of the fund (or their legal personal representatives) will determine who acts as trustee of the fund.

## **N Miscellaneous**

### **Trustee may elect to wind up fund**

- 184 The trustee may elect to wind up the fund on a specified date in either of the following cases:
- 184.1 The trustee decides to wind up the fund.
- 184.2 There are no longer any members of the fund.

The trustee must elect to wind up the fund on a specified date if the Regulator requires the fund to be wound up.

#### **Notice of winding up**

185 The trustee must give notice to each participating employer and member that the fund is to be wound up on the specified date.

#### **Payment etc on winding up**

186 After deducting from the assets of the fund the costs of administering and winding up the fund, the trustee must pay the benefits in the following order to the extent that the assets of the fund are sufficient to do so:

- Benefits to which members, former members or their dependants are entitled but which they have not been paid on the day before the termination date.
- Additional benefits to members, former members or their dependants as the trustee thinks appropriate.
- Payment to the participating employers that have made contributions in respect of members or former members as the trustee thinks appropriate.

#### **Employment relationship not affected by this deed**

187 Nothing in this deed affects any powers an employer has in relation to a contract of employment. An actual or prospective right under this deed, or the ending of such a right, is not to be taken into account in relation to any legal action, including one based on termination of employment.

#### **Legal rights of member not affected by this deed**

188 Nothing in this deed affects any right a person may have to claim compensation or damages at common law or under statute.

#### **Variation**

189 The trustee may vary this deed either prospectively or retrospectively. The trustee may do so by oral declaration, written resolution or deed. If superannuation law requires it, the trustee must promptly give a certified copy of the resolution or a copy of the deed to the Regulator.

#### **Limits on effect of variation**

190 If there is one or more death benefit agreements under this deed, then any variation of the deed does not vary any death benefit agreement or clauses 97 or 98 – unless that variation expressly states that it does vary any one or more of those things. Instead, those agreements and clauses continue to apply in respect of the fund.

#### **Limits on power to vary**

191 The trustee does not have power to vary this deed so as to do either of the following:

- Reduce or adversely affect the rights of a member to accrued entitlements that arise before the variation is effected.
- Reduce the amount of any other entitlement that is or may become payable in relation to a time before the date of the variation.

However, this (the rule in the previous sentence with the 2 dot points) does not apply if the reduction is necessary to enable the fund to comply with superannuation law or if each affected member, or the Regulator, consents in writing to the reduction.

The trustee also does not have power to vary this deed in a way that would have either of the following effects:

- unless the trustee is a corporation, altering the purpose of the fund so that it is no longer solely or primarily the provision of old age pensions under superannuation law.
- unless the sole or primary purpose of the fund is to provide old age pensions to members, allowing any person except a corporation to be appointed trustee of the fund.

#### **Notice of variation**

- 192 If superannuation law requires it, the trustee must inform members and beneficiaries in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The trustee must do so in accordance with superannuation law.

#### **Dispute resolution**

- 193 If superannuation law requires it, the trustee must establish a system complying with that law for dealing with enquiries and complaints from members, beneficiaries and dependants.

#### **Interpretation**

- 194 A reference in this deed to:
- a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
  - a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
  - a person includes the legal personal representatives, successors and assigns of that person;
  - any body which no longer exists or has been reconstituted, renamed, replaced or whose powers and functions have been removed or transferred to another body or agency, whether expressly or impliedly, is a reference to the body which most closely serves the purpose or objects of the first-mentioned body;
  - a clause, schedule or appendix is reference to a clause, schedule or appendix in or to this deed;
  - this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;



- the singular includes the plural and vice versa; and
- a gender includes the other gender.

**Proper law**

195 This deed is governed by the law of Victoria. The parties consent to the exercise of jurisdiction by the courts of that place.

# Maged Barsoum Super Fund

## Schedule 1 to this deed

### Names and addresses of trustees

Maged Barsoum  
92 Waratah Drive  
Altona Meadows, VIC 3028

Mary A Zaky  
92 Waratah Drive  
Altona Meadows, VIC 3028

### Name and address of members

Maged Barsoum  
92 Waratah Drive  
Altona Meadows, VIC 3028

Mary A Zaky  
92 Waratah Drive  
Altona Meadows, VIC 3028

### Name of participating employer

SuperChoice on behalf of Embassy of United States of America, ACN 109 509 739

American Embassy

Moonah Place

Yarralumla, ACT, 2600

## Schedule 2 to this deed

### Application to become a Member

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

### Part 1 Application and Undertakings

I apply to become an [*Either initial Or additional*] member of this fund under the trust deed.

I make each of the following undertakings:

- [*Either I am not in an employment relationship with another member. Or I am not in an employment relationship with another member who is not a relative of mine.*]
- I am not a disqualified person under superannuation law from being a [*Either trustee Or director of the trustee*] of the fund.
- I will comply with the trust deed.
- Upon request, I will fully disclose in writing any information required by the trustee in respect of my membership of the fund. This includes disclosing:
  - Any circumstance which may lead to my entering into an employment relationship with any other member of the fund who is not also a relative of mine.
  - That I may become disqualified under superannuation law from being a [*Either trustee Or director of the trustee*] of the fund.
  - Any information in relation to my medical condition.
- I will act as a [*Either trustee Or director of the trustee*] of the fund.
- I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.
- I have read and understand the prescribed information relating to the collection of Tax File Numbers by the trustees of superannuation funds.

I attach a completed ATO Individual Tax File Number Notification form.

Applicant name [Insert applicant's name]  
 Applicant address [Insert applicant's address]  
 Applicant occupation [Insert applicant's occupation]  
 Date of birth [Insert applicant's date of birth]  
 Applicant place of birth [Insert applicant's place of birth]

**Part 2: Death Benefit: Beneficiary Nomination**

*If death benefit nomination is to be binding* This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after your death to the person or persons you mentioned in this notice, being one or more dependants or your legal personal representative. *Or if death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on your death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on your death.

I direct [Either the trustees Or the directors of the trustee] that the person[s] named in the following table [are/is] to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
[Insert beneficiary's name]	[Insert beneficiary's relationship to member]	[Insert proportion of the death benefit to be paid to this person] %
[Add rows to table as required]		

*[If death benefit nomination is to be binding (Please note, that this beneficiary direction is valid for only 3 years.)]*

Signed by the  
applicant: \_\_\_\_\_

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

[Insert member's name]

[If the death benefit is not binding]

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Or

*If the death benefit is to be binding* The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

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

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

**Notice: The types of death benefit arrangements and the order in which they take effect**

The Deed provides for:

- **death benefit agreements** (which bind the trustee and which do not expire, see clauses 97 and 98);
- **binding death benefit notices** (which binds the trustee but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustee but which do not expire until replaced or revoked).

*Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.*

**What you need to consider**

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

Annexure A to Application to become a member

*[Here you need to attach the Product Disclosure Statement from Schedule 6.]*

### Schedule 3 to this deed

#### Application to become Participating Employer

*[Insert name and address, and ACN if applicable, of applicant]* applies to become a participating employer in the Maged Barsoum Super Fund. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

\_\_\_\_\_ Date: \_\_\_\_\_  
*[Name of authorised officer]*

#### Annexure A to Application to become Participating Employer

*[Here you need to attach the Product Disclosure Statement from Schedule 6.]*



## Schedule 4 to this deed

### Application to become an Employer-Sponsor

This Application form is accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

*[Insert name and address, and ACN if applicable, of applicant]* applies to become an employer-sponsor of the *[name of fund]*. The applicant agrees to comply with the trust deed.

Signed by the applicant's authorised officer

\_\_\_\_\_ *[Name of authorised officer]*

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

### Annexure A to Application to become an Employer-Sponsor

*[Here you need to attach the Product Disclosure Statement from Schedule 6.]*

## Schedule 5 to this deed

### Application to become a member (if member is a minor)

This Application Form contains your Death Benefit Nomination and undertakings which must be made by you. It is also accompanied by the Product Disclosure Statement relevant to the fund contained in Annexure A.

### Part 1 Application and undertakings

I apply, as the parent or guardian of, and on behalf of, the person listed below (Applicant), that the Applicant become an initial member of this fund under the trust deed.

I make each of the following undertakings:

- *[Either The Applicant is not in an employment relationship with another member. Or The Applicant is not in an employment relationship with another member who is not a relative of the Applicant.]*
- I am not disqualified under superannuation law from being a *[Either trustee Or director of the trustee]* of the fund.
- I will comply with the trust deed.
- Upon request, I will fully disclose in writing any information required by the trustee in respect of the Applicant's my membership of the fund. This includes disclosing:
  - Any circumstance which may lead to the Applicant entering into an employment relationship with any other member of the fund who is not also a relative of the Applicant.
  - That I may become disqualified under superannuation law from being a *[Either trustee Or director of the trustee]* of the fund.
  - Any information in relation to the Applicant's medical condition.

*[If the parent or guardian is NOT also separate member of the fund in their own right, then]*

- *[Either I will act as a trustee of the fund. Or I will act as a director of the trustee of the fund.]*

*[If the parent or guardian IS a separate member of the fund, then]*

- *[Either I am a member of the fund myself and I will act as a trustee of the fund. Or I am a member of the fund myself and will act as a director of the trustee of the fund.]*
- I understand the trust deed, particularly its terms concerning the benefits payable under it, and I have read and understood the attached Product Disclosure Statement, annexed and marked 'A'.
- I have read and understand the prescribed information relating to the collection of Tax File Numbers by the trustees of superannuation funds.

In consideration of the Applicant's status as a minor, I have not attached a completed ATO Individual Tax File Number Notification form.

Applicant name	[Insert applicant's name]
Applicant address	[Insert applicant's address]
Applicant occupation	[Insert applicant's occupation]
Date of birth	[Insert applicant's date of birth]
Applicant place of birth	[Insert applicant's place of birth]
Parent or guardian name	[Insert parent or guardian's name]
Parent or guardian address	[Insert parent or guardian's address]
Parent or guardian date of birth	[Insert parent or guardian's date of birth]
Parent or guardian place of birth	[Insert parent or guardian's place of birth]

## Part 2: Death Benefit: Beneficiary Nomination

*If death benefit nomination is to be binding* This is a binding death benefit notice. By completing and signing it you are requiring the trustee to provide any benefit payable on or after the Applicant's death to the person or persons you mentioned in this notice, being one or more of the Applicant's dependants or the Applicant's legal personal representative. *Or if death benefit notice is to be non binding* This is a direction to the trustee as to how to apportion any benefit payable on the Applicant's death. It is a non binding death benefit notice and the trustee retains the discretion as to how to apply any benefit payable on the Applicant's death.

On behalf of the Applicant, I direct [Either the trustees Or the directors of the trustee] that the person[s] named in the following table [are/is] to receive the proportions specified in that table of the benefit that is payable if I die.

Person	Relationship to member	Proportion of death benefit
[Insert beneficiary's name]	[Insert beneficiary's relationship to member]	[Insert proportion of the death benefit to be paid to this person] %
[Add rows to table as required]		

*If the death beneficiary nomination is binding* (Please note that this beneficiary direction is valid for only 3 years.)

Signed by the  
parent/guardian: \_\_\_\_\_

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

*[Insert parent or guardian's name]*

*[If the death benefit is not binding]*

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Or

*If the death benefit is to be binding* The following persons declare that:

- they are 18 years of age or older;
- they are not persons otherwise mentioned in this notice; and
- this form was signed by or on behalf of the member in their presence.

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

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

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

Witness name: \_\_\_\_\_

**Notice: The types of death benefit arrangements and the order in which they take effect**

The Deed provides for:

- **death benefit agreements** (which bind the trustee and which do not expire, see clauses 97 and 98);
- **binding death benefit notices** (which binds the trustee but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustee but which do not expire until replaced or revoked).

**Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.**

### What you need to consider

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

---

Annexure A to Application to become a Member (where member is a minor)  
*[Here you need to attach the Product Disclosure Statement from Schedule 6.]*

## Schedule 6 to this deed

### Form of Product Disclosure Statement

## Product Disclosure Statement

### Maged Barsoum Super Fund

[Date]

[Name of member]

[Address of member]

[Contact details of member – PDS may be sent by email, fax or post]

[Name of trustee or trustees]

[Address]

[Contact details]

The details of the Product Disclosure Statement (PDS) start on the next page. Attach that page and the following pages of the PDS to the Member Application form and to any Employer-Sponsor Application form.

### Introduction

This PDS contains a summary of the important provisions of the fund's deed and the effects which those provisions may have on you. The *Corporations Act* requires that you be given this PDS within 3 months after you become a member of the fund.

If you have any questions at any time, you should refer those to the trustee. However, the trustee can only provide you with information – so you will need to seek your own legal, accounting and financial advice.

Terms which are capitalised in this PDS are either defined in the fund's deed or are contained in Schedule 1.

### You should consider getting professional advice about the fund

Your decision to become a member of the fund is important and involves issues including retirement planning, estate planning, taxation, and social security. The trustee strongly recommends that you consider consulting an appropriately qualified adviser before you decide to become a member or to have contributions made to the fund on your behalf.

This PDS is prepared for your general information only and is not, and is not intended to be, a recommendation to become a member of the fund. This PDS does not take into account your investment objectives, financial situation or retirement planning needs. You should not base a decision whether to become a member solely on the information in this PDS. You need to consider,

and obtain advice on, the suitability of the fund in view of your investment objectives, financial situation and retirement planning needs.

## Information about your potential benefits

### 1 Details of potential lump sum benefits

#### 1.1 On your retirement

On your retirement, you will become entitled to a lump sum benefit, equal to the amount in your Accumulation Account on your retirement. As the definition of retirement in Schedule 1 suggests, there will be some circumstances in which you will become entitled to payment of a retirement benefit while you are still employed or when you retire and have reached the relevant Preservation Age. Your trustee will be able to advise you further in this regard at the relevant time.

#### 1.2 Total and permanent disability

If you become totally and permanently disabled, you may become entitled to a lump sum benefit from your Accumulation Account. Your trustee will be able to advise you further in this regard at the relevant time.

#### 1.3 Temporary total disability

If you become totally disabled temporarily, you may become entitled to payment of a pension or annuity representing the amount:

- decided by the trustee, provided it does not infringe the limit set out in the superannuation law; or
- payable to the trustee under an insurance policy which the trustee may have purchased and which covers the disability you suffer. (Premiums for these insurance policies are generally paid by the trustee from your Accumulation Account but may be paid out of other Accounts of the fund (such as the Income Account)).

#### 1.4 On death

On your death, the trustee may choose to or may be required to pay a lump sum benefit from your Accumulation Account to the persons named in your 'Death Benefit: Beneficiary Nomination' (which is on your Application for Membership) or to your dependants. The trustee may have also taken out a life insurance policy for you which may also entitle your dependants, or some other person, to a lump sum benefit. Your 'Death Benefit: Beneficiary Nomination' can be binding or non-binding on the trustee (you can choose). Binding nominations need to be renewed every 3 years.

To overcome the requirement to renew binding nominations every 3 years, you can also choose to implement a 'death benefit agreement' under the fund's deed. The form of death benefit agreement is set out in Schedule 7 to the fund's deed.

Generally speaking, you should seek professional advice concerning what plans need to be made in respect of your death benefits and what options are available to you.

The Deed provides for:



- **death benefit agreements** (which bind the trustee and which do not expire, see clauses 97 and 98);
- **binding death benefit notices** (which binds the trustee but which expire after 3 years or earlier if replaced or revoked); and
- **non-binding nomination forms** (which do not bind the trustee but which do not expire until replaced or revoked).

*Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.*

#### **What you need to consider**

When you, as a member, are considering signing a death benefit agreement, a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

#### **1.5 Other circumstances**

'Severe Financial Hardship' – in the case of severe financial hardship, you may be able to apply to have all benefits owing to you, paid to you by the trustee. There are certain conditions to be met and the benefits can only be paid to you to meet expenses in the nature of treatment of life-threatening illnesses, prevention of foreclosure under a mortgage, medical transport costs, palliative care costs and so on.

## **2 Details of potential income benefits**

### *Income benefits where you retire or reach your preservation age*

When you become entitled to payment of a **lump sum benefit**, the trustee may allow you to choose to receive that lump sum in the form of regularly paid income. This is called a pension. The fund can only provide you with a 'simple pension'.

The rules for a 'simple pension' include:

- **Minimum annual amount:** a minimum amount of the capital funding the pension must be paid to the pensioner each year. The minimum, which is expressed as a percentage of the capital, is determined by reference to the pensioner's age.

- **No maximum:** there will be no maximum amount that can be paid in a year, reflecting the fact that pensions and lump sums will be taxed in the same way. RBLs do not apply from 1 July 2007.
- **But a maximum for transition to retirement pensions:** pensioners being paid a transition to retirement pension will only be able to be paid a maximum of 10% of the capital per annum.
- **Transfer on death:** on death, the pension may only be transferred to a Pension Dependant or cashed as a lump sum to the pensioner's dependants or estate.

### ***Existing pensions***

If this PDS is being provided as a consequence of an update to the fund's existing deed, and the fund is presently paying you a pension, then:

- the pension will be deemed to meet the current rules provided that it was commenced before 20 September 2007 in accordance with the rules that applied at that time;
- if the pension is a complying pension (such as a life pension) then it will only be able to be terminated pursuant to the rules as they were in force before 1 July 2007; and
- if the pension is an allocated pension then it may be transferred to a simple pension without having to first be commuted.

### ***Social Security Eligibility***

Your eligibility for a government age pension is means tested.

The assets test reduces the amount of any aged pension payments to which a member may be eligible by \$1.50 per fortnight for every \$1,000 of the member's assets.

### ***Income benefits where you may not have retired but you have reached your preservation age.***

In some circumstances, you may be able to be paid a pension before you actually retire but after you have reached your preservation age. In the fund's deed these are referred to as 'Transition to retirement pensions'.

#### **2.1 Transition to retirement pensions**

Once you reach your preservation age you may still be restricted from accessing your superannuation benefits (because, for instance, you may not have retired). However, once you reach your preservation age you may access a non-commutable pension, or what the fund's deed refers to as a transition to retirement pension.

So you may receive a transition to retirement simple pension, but additional restrictions apply if you want to commute (or cash out) that pension. Essentially the transition to retirement pensions are 'non-commutable' but there are some very limited exceptions. If you are interested in a transition to retirement pension, you should discuss this in detail with the trustee before requesting the payment of such a pension.

### 3 Taxation of benefits

#### 3.1 Seek advice

This section is general only. You must seek professional advice concerning your own circumstances and how tax will impact on your participation in the fund and on amounts payable to you.

#### 3.2 Benefits paid to you

Superannuation benefits paid to persons aged less than 60 are taxed as follows:

- **Lump sum benefits** have two components: an exempt component and a taxed component. The exempt component is tax free (it includes amounts such as pre-1983 contributions and undeducted contributions). The taxed component is tax free up to a low rate threshold (initially \$145,000). After that threshold, it is taxed at 15% — except where the recipient is aged less than 55, in which case this component is taxed at 20%.
- **Pension benefits** are taxed in a similar manner to pensions at the moment, though overall tax can be less in some circumstances. Once the recipient turns 60, the pension is tax free.
- **Proportional drawdown:** In both cases, payments are deemed to include both exempt and taxable components, paid in proportion to the amount these components constitute of the recipient's total benefit.

#### 3.3 Death benefits

Benefits paid in the event of your death are taxed as follows:

- **Lump sum benefits** to a member's dependant are tax free, as long as they are also a death benefits dependant as defined in section 302-195 of the ITAA97. Lump sum benefits paid to a dependant (who is not a death benefits dependant for ITAA97 purposes) have the taxable component taxed at 15%.
- **Reversionary pensions** are taxed according to the age of the primary and reversionary beneficiaries. If the primary beneficiary was aged 60 or over at the time of death, then the payments to the reversionary will be tax free. If the primary beneficiary was aged less than 60, then the payments will be taxed at the reversionary beneficiary's marginal tax rate until the reversionary turns 60 (then it will be tax-free). However, a reversionary pension will only be payable to a Pension Dependant. Also a pension paid to a Pension Dependant who is a child will have to be cashed to a lump sum when the child turns 25 (unless they're permanently disabled).
- Pensions can only revert to a Pension Dependant: simply being a dependant is not sufficient. Therefore, these benefits must be paid as a lump sum to a dependant or the member's estate.

## Information about risks associated with the fund

### 4 Details of risks: General

The assets of the fund must be invested in accordance with an appropriate investment strategy as devised by the trustee. Although the trustee decides on an investment strategy aimed at increasing the value of the fund's assets, this value can be reduced by movements in the underlying value of the fund's assets, for instance movement in share or property prices. This may mean the value of the assets held in the fund for your benefit, or to pay you a pension, may be reduced. Indeed, if the performance of the fund's assets is very poor, the value of the assets held in the fund for your benefit, or to pay you a pension, may be less than the value of the contributions made to the fund on your behalf. Poor investment performance may also affect the trustee's capacity to make payments to you or to sustain the level of payments made to you. More information about risks associated with the fund borrowing in order to invest are set out under "Investment of fund assets" at paragraph 10 below.

If you choose to receive a pension then the amounts you receive are calculated by reference to the value of the assets in the fund. Therefore, if the value of the assets decreases, there may be a corresponding decrease in benefit or pension amounts payable to you and you effectively bear the risk associated with potentially poor investment performance of those assets. Broadly speaking, 100% of the amount used to fund the pension will be taken into account for the aged pension means test.

Finally, if a benefit payable to you is commuted so that the trustee may purchase:

- an annuity from a third party (such as a life assurance company), then you will have a regular income stream and the associated risk will be born by the third party; or
- a simple pension from a third party (such as a life assurance company), then the situation is the same as for a simple pension from the trustee and you effectively bear the risk associated with the variations in the value of the assets which fund the pension.

### 5 Regulatory Risk

The fund is a self-managed superannuation fund regulated by the ATO. As a member, you will also have to be a trustee, or a director of the corporate trustee. These persons are responsible for ensuring the fund complies with all relevant superannuation laws, as enforced by the ATO.

Serious consequences flow if the fund is operated in a manner inconsistent with these rules. The consequences include prosecution by the ATO or a determination by the ATO that the fund is non-complying, with the result that the concessional tax treatment of the fund ends.

You must ensure that you are familiar with, and understand these rules. If you are not confident of this, then you should seek professional advice as to whether you will be in a position to comply with these obligations on joining the fund as a member.

## Information about amounts paid to the fund for or by you

### 6 Contributions

If you have an employer, who is an Employer-Sponsor or a Participating Employer of the fund, then they must contribute a certain portion of your income to the fund. In this situation, contributions made personally by you are unlikely to be deductible for taxation purposes although if you are on a smaller wage, you may be entitled to a co-contribution from the Federal Government (that is, the Government will match your payments to set units in certain circumstances which are described generally under "Superannuation co-contributions" below).

If you are unemployed or self-employed, then you may make contributions to the fund yourself. These contributions are deductible for tax purposes, subject to the caps discussed immediately below.

Alternatively you may make contributions, or another person may make contributions on your behalf.

#### Superannuation co-contributions

You will be eligible to receive a co-contribution from the Federal Government if you satisfy the following criteria:

- you make a personal super contribution by 30 June of a financial year;
- your total income is less than the prescribed amount (\$61,920 for the 2009-2010 financial year);
- 10% of your income is from employment sources, such as an employer or running your own business;
- you are 71 years or younger; and
- you lodge your income tax return.

If you are eligible, the Federal Government will match the value of your personal super contributions up to certain thresholds, which can be found at <http://www.ato.gov.au/individuals/content.asp?doc=content/42616.htm>.

**Caps on concessional contributions:** This paragraph sets out the cap for the 2009-2010 financial year and the cap is then indexed from year to year. You may make, or have made on your behalf, up to \$25,000 in concessional contributions (they used to be referred to as 'deductible contributions') in a year across all of your superannuation accounts.

Concessional contributions are taxed at 15%. Members aged 50 years or over in the 5 years from 1 July 2007 (and who are eligible to contribute to super) may make, or have made on their behalf, up to \$50,000 per annum in concessional contributions for the 2009-2010, 2010-2011 and 2011-2012 financial years. Generally, concessional contributions can only be made by employers or persons who are self-employed.

**Caps on non-concessional contributions:** This paragraph sets out the cap for the 2009-2010 financial year and the cap may then be indexed from year to year (you will need to check this at the relevant time). You are entitled to make up to \$150,000 in non-concessional contributions (they used to be referred to as 'non-deductible contributions' and are contributions that are made from money on which you have already paid applicable income tax) in a year across all of your superannuation accounts.

In addition, if you are under 65 and eligible to contribute to super, then you may bring

forward two years of contributions and contribute \$450,000 of non-concessional contributions in one year, and not make any contributions for the following two years.

#### **Contributions-splitting**

Spouses may split superannuation contributions between them. Contributions-splitting allows members to ask the trustee to transfer certain contributions made after 1 January 2006 (**Splittable contributions**) made in respect of the member to the superannuation fund, or account of that member's spouse.

At present, the split can only take place in respect of splittable contributions made in the previous financial year.

### **Information about amounts deducted from the fund**

#### **7 Debits from your Accumulation and Pension Accounts**

The trustee can make deductions from your Accumulation or Pension Accounts to, for example, meet the fund's expenses, to pay taxes (or to set aside for anticipated taxes), to pay for an insurance policy or Annuity premiums or to pay an amount from your Pension Account to your Accumulation Account or vice versa.

#### **8 Other application of income**

The trustee also:

- maintains an income account: This is a general account of the fund and does not relate to a specific member. Amounts such as the income and profits of the fund or proceeds of insurance policies (which the trustee decides not to pay to a member or beneficiary) are paid into this account. From this income account the trustee can make payments to your Accumulation Account, but it may also make deductions from the income account to:
  - pay the expenses of the fund;
  - pay taxes due and payable, or likely to become due and payable;
  - pay costs of insurance policies;
  - meet losses suffered on disposal of an asset of the fund and so on.
- may maintain an Equalisation Account: This is also a general account of the fund. The trustee may decide to pay amounts into this account to:
  - smooth the investment earnings of the fund (that is, to even out years of good growth and performance with years of poor growth and performance);
  - provide for tax liabilities;
  - pay fund expenses;
  - otherwise provide for contingencies of the fund.

The trustee is not permitted to charge fees in relation to the services it provides to the fund.

## Other significant information about the fund

### 9 Preservation Age

Set out below are the Preservation Ages relevant to members of the fund:

- for a person born before 1 July 1960 – 55 years
- for a person born during the year 1 July 1960 to 30 June 1961 – 56 years
- for a person born during the year 1 July 1961 to 30 June 1962 – 57 years
- for a person born during the year 1 July 1962 to 30 June 1963 – 58 years
- for a person born during the year 1 July 1963 to 30 June 1964 – 59 years
- for a person born after 30 June 1964 – 60 years.

### 10 Investment of fund assets

The trustee is permitted to make a wide range of investments provided that they accord with the trustee's investment strategy. The trustee is required to establish an investment strategy or strategies, outlining how the assets of the fund will be invested. The trustee can alter the strategy or strategies provided they remain appropriate. If the trustee offers more than one strategy, you may choose the appropriate strategy but you cannot choose the investments the trustee is to make within the strategy.

The trustee cannot loan money from the fund to a member or a member's relative.

The trustee may borrow money to make any investment — but only in restricted circumstances. In such cases:

- the only fund asset that may be used as security for the borrowing is the asset that the fund is acquiring with the borrowed money;
- the asset acquired must be an asset which the fund could ordinarily and lawfully acquire (for example, the fund is prohibited from acquiring assets which do not satisfy the sole purpose test in section 62 of the SIS Act – this stays the same even though the fund is borrowing to acquire the asset);
- the terms on which the asset is acquired must meet strict requirements set out in superannuation law.

The risks associated with any investment (as described generally under "Details of risks: General" at paragraph 4 above) increase when made using borrowed money. You should always obtain professional advice before making any such investment.

### 11 Taxation

#### 11.1 Income of the fund

For tax purposes, the fund's income is divided into 2 components:

- Special Component: which includes the fund's special income (income such as private company distributions, non arms-length income, trust distributions), reduced by tax deductions relating to that special income.
- Standard Component; which is the total of all fund income, less the Special Component.

The Standard Component is taxed at the concessional rate of 15% in the hands of the trustee. The Special Component is taxed at the rate of 45%.

## 11.2 Contributions

Contributions to the fund (made by your employer, yourself, your spouse, etc) are generally treated as contributions of capital and will not be included in the fund's income. However, if the person making a contribution is entitled to a tax deduction in relation to that contribution, then the contribution will usually be treated as fund income and will be taxed as outlined in paragraph 11.1 above.

Information about the deductibility of contributions is in paragraph 6 above.

## 11.3 Surcharge on High Income Earners

With effect from 1 July 2005 the superannuation contributions surcharge was abolished in respect of all contributions made on or after 1 July 2005. However it still applies to contributions made before that date.

## 11.4 Low Income Spouse Rebate

If a person makes a contribution on behalf of a member who is their low income (or no income) spouse, the person making the contribution may be entitled to a tax rebate.

Spouse's Assessable Income (AI)	Maximum Rebatable Contributions (MRC)	Maximum Rebate (18% of the lesser of)
\$0 - \$10,800	\$3,000	MRC or actual contributions
\$10,801 to \$13,799	\$3,000 - (AI - \$10,800)	MRC or actual contributions
\$13,800	\$0	\$0

For example, if the spouse's assessable income is \$5,000, the maximum amount of contributions which are rebatable is \$3,000. If actual contributions were \$2,700, then the rebate would be  $18\% \times \$2,700 = \$486$ .

The current low-income spouse rebate figures, and other key superannuation rates, can be confirmed at:

[http://](http://www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006)

[www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006](http://www.ato.gov.au/super/content.asp?doc=/content/60489.htm&mnu=26961&mfp=001/006); and

<http://www.ato.gov.au/individuals/content.asp?doc=/content/19144.htm>.



**12 The fund deed**

The fund deed is written in plain English. Provisions that are not relevant to the particular fund of which you are a member have been excluded. For example, if individuals are trustees of the fund, then all provisions relevant to a company being a trustee of the fund have been removed. Therefore, if a company is later appointed as trustee, the fund deed will have to be varied to include the relevant provisions.

You should read the trust deed and seek professional advice if you do not understand it.

**13 Other considerations concerning investments made by the fund**

The trustee is required to inform you of whether labour standards or environmental, social or ethical considerations are, or will be, taken into account when the trustee selects, retains or realises an investment. At this stage, the trustee does not take any such considerations into account. However, the trustee is obviously free to incorporate this into its investment strategy if it sees fit.

**14 Contacting the trustee for additional information**

If at any time you require further information including information concerning the fund, the fund deed, the fund's performance or your rights as a member, you can contact the trustee using the contact details at the beginning of this PDS.

## Product Disclosure Statement – Schedule 1

### Definitions

Where a term is capitalised in this PDS, the meaning is either explained below or is explained in the trust deed:

**Accumulation Account** means the account established for you by the trustee. Each member of the fund has an Accumulation Account, into which are paid that member's contributions or contributions made on behalf of that member, as well as other amounts specific to that member (such as the proceeds of an insurance policy taken out by the trustee for your benefit).

**Annuity** means what it means under superannuation law. Essentially, it refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier who undertakes to pay you an income for a specified time. Unlike a pension, the capital disappears when you purchase the annuity and you receive a contractual right to receive income.

**Commute** refers to when a right to receive a regular payment (like pension or annuity payments) is converted into the right to receive a lump sum payment.

**Dependant** – *in relation to a member, former member or beneficiary (the 'primary person')*, means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

**Life Expectancy** means the period which a person is expected to live in addition to their age, calculated in accordance with the life expectancy table published by the Australian Government Actuary. For instance, a 40 year old Australian male would have a life expectancy of approximately an additional 35 years.

**Pension** refers to a financial product which is purchased by providing a lump sum (capital) to the financial product supplier, who invests the lump sum, manages that investment, and pays you a regular income from the proceeds of those investments. As well as paying you the proceeds of the investments, the financial product supplier may include in your payments part of the initial capital you contributed.

**Pension Dependant** means a dependant of a member to whom a pension may be paid on the member's death, as defined by regulation 6.21(2A) of the SIS Regulations.

**Preservation Age** means what it means under superannuation law. Essentially it is the minimum age after which your benefit arising from a preserved payment may be paid to you. Those ages are set out in paragraph 9 above.

**Preserved Payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

**Retirement** occurs:

- 
- if you have reached a Preservation Age less than 60, and
    - an arrangement under which you were gainfully employed comes to an end; and
    - the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time); or
  - if you have reached age 60 and an arrangement under which you were gainfully employed has come to an end and either of the following circumstances apply:
    - you have attained that age on or before ending employment; or
    - the trustee is reasonably satisfied that you never intend to become gainfully employed (either full time or part time).

**Superannuation Contributions Surcharge** means an amount which you may be liable to pay if your taxable income is greater than the relevant superannuation surcharge level for a year of income.



## Schedule 7 to this deed

### Death Benefit Agreement – Maged Barsoum Super Fund (Fund)

- 1 This Agreement, executed as a deed, is between the Fund's trustee listed below and the Fund's member listed below.
- 2 This Agreement is an addition to the "Superannuation Trust Deed for a Self-Managed Fund" for the Fund (Deed). It has effect in the way described in Part H of that Deed. This Agreement is not a binding death benefit notice given in accordance with regulation 6.17A of the *Superannuation Industry (Supervision) Regulations*. Therefore:
- 2.1 it continues in force until amended or terminated; and
- 2.2 it does not end after 3 years as binding death benefit notices are required to do by the law.

3 On execution, this Agreement forms part of the Deed.

4 The member directs the trustee that, on the member's death, the persons named in the following table are to receive the proportion specified in that table of any benefit that is payable:

Person	Relationship to member	Proportion of death benefit
[Insert beneficiary's name]	[Insert beneficiary's relationship to member]	[Insert proportion of the death benefit to be paid to this person] %
[Add rows to table as required]		
Total (which must total to 100%)		100%

- 5 The trustee consents to acting on this direction as evidenced by it executing this Agreement.
- 6 If compliance with superannuation law prevents any part of the benefit being paid to the named person, then that part of the benefit will be dealt with under Part H of the Deed.
- 7 The parties agree that:
- 7.1 the member may terminate this Agreement by serving a notice terminating the Agreement on the trustee; and
- 7.2 this Agreement may be replaced by the trustee and the member executing a later death benefit agreement at which time this Agreement terminates.

**[If the Fund's trustee is a company:**

- 8 The details of the trustee are:
- 8.1 Trustee Company Name:.....

8.2 Trustee ACN: .....

8.3 Trustee Address: .....

9 The member is:

9.1 Member's name and address: .....

***[If the Fund's trustees are individuals:***

10 The trustees are:

10.1 Trustee 1 Name and address: .....

10.2 Trustee 2 Name and address: .....

10.3 Trustee 3 Name and address: .....

10.4 Trustee 4 Name and address: .....

11 The member is:

11.1 Member's name and address: .....

**Executed by the parties as a deed:**

Signed sealed and delivered by  
[Insert name of member making death benefit  
arrangements]  
in the capacity of member in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of member

\_\_\_\_\_  
Name of witness (please print)

***[If the Fund's trustee is a company and signs under common seal, then it uses this sort of signing clause:***

Dated: \_\_\_\_\_

The common seal of [Insert company name]  
ACN [Insert ACN]  
was affixed in its capacity as trustee in the  
presence of authorised persons:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director (please print)

\_\_\_\_\_  
Name of director/secretary (please print)

***[If the Fund's trustee is a company and an authorised representative signs on its behalf, then use this sort of signing clause:***

Signed for and on behalf of  
[Insert company name]  
ACN [Insert ACN] in its capacity as trustee by  
its authorised representative:

\_\_\_\_\_  
Signature of authorised representative

in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Witnesses' name and title (please print)

***[If the Fund's trustees are individuals, then each of them needs one of these signing clauses***

Signed sealed and delivered by  
[Insert trustee's name]  
in the capacity of trustee in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of trustee

\_\_\_\_\_  
Name of witness (please print)

**Notice: The types of death benefit arrangements and the order in which they take effect**

The Fund's Deed allows three types of death benefit payment arrangements. They, and the order in which they take effect, are as follows:

- the above form of **death benefit agreement** — which binds the trustee and which does not expire, see Part H of the Deed;
- **binding death benefit notices** — which bind the trustee but which expire after 3 years or earlier if replaced or revoked; and
- **non-binding nomination forms** — which do not bind the trustee but which do not expire until replaced or revoked.

***Death benefit agreements take priority over binding death benefit notices and non-binding nomination forms.***

**What you need to consider**



When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority* over any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the Fund's Deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

## Superannuation Trust Deed Definitions

**Annuity** means what it means under superannuation law.

**Approved benefit arrangement** means an arrangement into which or from which assets of the fund can be transferred without a breach of superannuation law. It includes a roll over fund, a complying superannuation fund, an approved deposit fund and an annuity arrangement.

**Approved deposit fund** means a fund which is a complying ADF under the *Tax Act*.

**Amount standing to the credit** in relation to an accumulation account, includes an amount the trustee decides to pay to that account from the equalisation account (if any).

**Assets** means the cash, investments and other property of the fund held by the trustee (or by a nominee or custodian for the trustee) on the trusts established by or under this deed, including:

- any amount standing to the credit of the fund on or after the date when this deed commences.
- contributions made by a member.
- contributions made by an employer.
- contributions allowed by this deed that are superannuation lawfully made by another person.
- interest, dividends, distributions, profits and other benefits of any kind arising from investments and accumulation of income.
- the proceeds of any annuity or insurance policy effected by the trustee.
- the value of any annuity or insurance policy effected by the trustee.
- money, investments and other property received by the trustee as a roll over payment.
- shortfall components and financial assistance received by the trustee.

**ATO release authority** means a written authority given by the Commissioner of Taxation to the trustee to release funds in accordance with section 292-410 of the *Tax Act*.

**Beneficiary** means a person immediately and absolutely entitled to a benefit under this deed in respect of a member. It does not include a member except where that member is immediately and absolutely entitled to a benefit under this deed in respect of another member.

**Benefit** means an amount payable out of the fund to or in respect of a member or beneficiary.

**Benefit entitlement** means an amount in the fund which may become payable to a member, dependant or beneficiary, but to which that person has not become absolutely entitled. It includes a contingent right to payment.

**Binding death benefit notice** means a notice given by a member or beneficiary to the trustee in accordance with regulation 6.17A of the Superannuation Industry (Supervision) Regulations and with this deed.

**Business day** means Monday to Friday excluding public holidays in the state or territory identified in clause 195.

**Business hours** means between 9:00 am and 5:00 pm on a business day.

**Cash** means what it means under superannuation law.

**Complying superannuation fund** means a complying superannuation fund under superannuation law.

**Contributions** means gross contributions made to the fund before tax in accordance with this deed.

**Corporation** means a constitutional corporation under superannuation law.

**Death Benefit Agreement** means all, or that part of, an agreement (in the form set out in Schedule 7 to this deed) describing the trustee's obligations concerning the payment of benefits on a member's death which:

- directs the trustee to pay the benefits to a person to whom those benefits may be paid in accordance with superannuation law;
- has been executed by the trustee and the member; and
- has not later been:
  - terminated by the member; or
  - replaced by a separate death benefit agreement with the agreement of the trustee and the member.

**Dependant** – *in relation to a member, former member or beneficiary (the 'primary person')*, means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

**Doctor** means a registered medical practitioner.

**Eligible roll over fund** means what it means in Part 24 of the SIS Act.

**Employee** means a person who is an eligible person under superannuation law for the purpose of an employer making contributions in order to avoid a liability for the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992*.

**Employer** means what it means under superannuation law and includes a participating employer.

**Employment relationship** – an employment relationship exists between 2 persons if any of the following applies:

- one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the SIS Act, or is taken to be an employee under superannuation law.
- one person is the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary.
- one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner.
- one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the trustee of which is a partner.

However, an employment relationship does not exist between 2 persons if superannuation law has the contrary effect.

**Excess contributions** means contributions by or on behalf of a fund member which exceed the annual cap amounts for concessional contributions and non-concessional contributions as defined in sections 292-20 and 292-85 respectively of the Tax Act.

**Expenses of the fund** means the expenses for which the trustee is entitled to be reimbursed under this deed.

**Family Law Act** means the *Family Law Act 1975* (Cth).

**Fund earning rate** means the positive or negative earning rate the trustee determines after taking account of any provision or reserve for future contingencies.

**Fund year** means the 12 month period ending on 30 June or a substitute date decided on by the trustee. At the beginning of the trust, and at the end of the trust, it means the lesser period ending on that date, or commencing on the following day.

**Gainful employment** means what it means under superannuation law. It includes gainful employment on a full-time basis and gainful employment on a part-time basis.

**Insurance policy** means an insurance policy effected on the life of the member or a beneficiary of the member or in respect of the member's or beneficiary's illness, accident or disablement.

**Interdependency relationship** has the same meaning as in the SIS Act.

**Levy** means a levy payable by the fund under superannuation law.

**Member release authority** means a written authority given by a member to the trustee to release funds in accordance with section 292-410 of the Tax Act.

**Nominated dependant** means a person nominated (except in a death benefit notice) by a member as his or her 'nominated dependant'. The nomination must, in the trustee's opinion, be in accordance with superannuation law.

**Non-binding nomination form** means a notice given by a member or beneficiary to the trustee in the form set out in Part 2 of Schedule 2, but which does not meet the requirements of regulation 6.17A of the Superannuation Industry (Supervision) Regulations.

**Non-member spouse** means a person who is:

- a spouse or former spouse of a member; or
- a Non-Member Spouse within the meaning of that term under Part VIII B of the *Family Law Act 1975*.

**Non-preserved amount** means an amount (including a roll over payment) that is payable to or in respect of a member that is not subject to cashing restrictions under superannuation law at the time of payment.

**Normal retirement age** means 65, or a substitute age that is at least 55 (or, if the trustee is not a corporation, 60) that is accepted or required by superannuation law and is agreed by the trustee.

**Participating employer** means an employer the trustee admits as a participating employer under clause 47 including the participating employer specified in schedule 1.

**Payment flag** means an agreement or court order referred to in clause 132.

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

**Pension account** means a pension account established under clause 87.

**Pension age** means what it means under superannuation law.

**Pension dependant** means a dependant of a member to whom a pension may be paid on the member's death, as defined by r6.21(2A) of the SIS Regulations.

**Preservation age** means what it means under superannuation law.

**Preserved payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

**Preserved payment benefit** means a benefit arising from a preserved payment.

**Regulator** means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the Regulator of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

**Relative** for the purpose of the definition of 'employment relationship' and for the purpose of eligibility to be a trustee, means each of the following in respect of a person:

- a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;
- another person who has any such relationship to the person by reason of adoption or re-marriage;
- the spouse or former spouse of the person or of any of the persons listed in the previous bullet points.

For any other purpose, means each of the following in respect of a person:

- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the spouse of the person;
- the spouse of the person or of any person listed in the previous bullet point.

**Retires** in relation to employment, means retirement for the purpose of the payment of benefits under superannuation law.

**Reversionary beneficiary** means an eligible dependant for the purpose of superannuation law, including a Pension Dependand, nominated by a pensioner at the commencement of the pension as his or her residuary beneficiary.

**Roll over payment** includes a transitional employment termination payment made or received by the trustee in accordance with superannuation law and an eligible benefit payment rolled out of or in to a complying superannuation fund.

**RSA Regulations** means the regulations made under the *Retirement Savings Account Act 1997*.

**Securities** includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities. Neither security nor registration is required.

**Self managed superannuation fund** means what it means under the SIS Act.

**Shortfall component** means what it means in section 64 of the *Superannuation Guarantee (Administration) Act 1992* and regulations made under that Act.

**SIS Act** means the Superannuation Industry (Supervision) Act 1993, as amended from time to time.

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994, as amended from time to time.

**Spouse** means a person legally married to the member at any time; and a person who is not legally married to the member, but who, in the trustee's opinion, lives or lived with the member on a bona fide domestic basis as the partner of that member.

If there are 2 or more persons who are spouses within this definition, 'spouse' means that person or those persons whom the trustee decides to treat as the spouse or spouses.

**Superannuation law** means any law of the Commonwealth of Australia including the *Corporations Act 2001* and the *Social Security Act 1991*, which deals with any aspect of superannuation or taxation in relation to superannuation, or any lawful requirement in relation to the fund by the Commissioner of Taxation, the Australian Taxation Office, APRA, ASIC or any other body that has responsibility in connection with the regulation of superannuation. It includes changes to any superannuation law after the date of this deed. It also includes any proposed law or lawful requirement that the trustee believes may have retrospective effect.

**Tax** includes any form of taxation, surcharge, levy, duty or other government charge that the trustee is required to pay out of the fund, or a member, former member or beneficiary is required to pay.

**Tax Act** means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, as appropriate, and the regulations made under the relevant Act.

**Taxation** includes any tax, charge duty or levy of any type paid or payable by the trustee, or by a member, former member or beneficiary, in relation to any part of the fund.

**Temporary total disablement** means what it means in the relevant policy effected by the trustee.

If there is no such policy, it means total physical or mental disablement that is not total and permanent disablement that makes the relevant member incapable of continuing in the gainful employment that the member was in immediately before the incapacity.

**Total permanent disablement** means what it means in the relevant policy effected by the trustee.

If there is no such policy, it means such total physical or mental disablement that the trustee is reasonably satisfied that the relevant member is unlikely ever again to be able to engage in gainful employment for which the member is reasonably qualified by education, training or experience.

**Transition to retirement pension** means a transition to retirement income stream paid as a pension, as defined by r6.01(2) of the SIS Regulations.

**Transitional employment termination payment** means the same as it means in section 82-130 of the *Income Tax (Transitional Provisions) Act 1997 (Cth)*.

**Trustee** means the trustee or the trustees as set out in Schedule 1.

**Unclaimed benefits** means benefits described as 'unclaimed money' under superannuation law.

**Unrestricted non-preserved benefit** means what it means under superannuation law.

**Withdrawal benefit** means the minimum benefit that must be paid to a member on withdrawal from the fund under superannuation law.

To the extent that a member's contributions have been applied towards an endowment or whole of life policy, the member's withdrawal benefit is the surrender value of that policy.