

# **SELF MANAGED SUPERANNUATION FUND DEED**

## **BRASCOTT SUPERANNUATION FUND**



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**THIS TRUST DEED** is made by:

**CAMERON TOWERS SCOTT** of 240 WOODLANDS DRIVE, THORNLANDS, QLD 4164

AND

**TANYA LYNETTE SCOTT** of 240 WOODLANDS DRIVE, THORNLANDS, QLD 4164

AND

**HELEN TOWERS SCOTT** of 94 BONNIE SPRINGS ROAD, PROSERPINE, QLD 4800

referred to as the **Trustees**.

**BACKGROUND:**

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

**AGREEMENT OF THE PARTIES:**

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**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Unless the context otherwise requires:

**Account** means one or more of:

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

**account-based pension** means a pension established for the benefit of a Member in accordance with regulation 1.06(9A) of the SIS Regulations or an annuity established for the benefit of a Member in accordance with regulation 1.05(11A) of the SIS Regulations;

**Accumulation Account** means an account established on behalf of each Member pursuant to clause 8.1(a);

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

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

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

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

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

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

**Child** includes ex nuptial child, a legally adopted child, a person recognised by the Trustees as an adopted child and a child of a Member born within 10 months after the death of the Member, and (provided such child is a dependant of the Member under SIS) a step child;

**Commissioner of Taxation** means the Federal Commissioner of Taxation;

**Concessional Contributions** has the meaning given in section 292.25 of the ITAA 1997;

**Contributions** means a contribution made to a Member's Accumulation Account including:

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

**Deed** means this Deed as amended from time to time;

**Dependant** in relation to a Member means:

- (a) the Spouse of a Member or the widow or widower of a deceased Member; or
- (b) any Child of a Member including any person who, in the opinion of the Trustee, is or was actually maintained by the Member as his child; and
- (c) any other person who, in the opinion of the Trustee, was wholly or partially financially dependent on the Member;

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

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

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

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

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

**Member** means a person who has been accepted by the Trustees as a Member of the Fund and has not ceased to be a Member pursuant to this Deed and includes a pensioner. The following persons are currently Members: CAMERON TOWERS SCOTT of 240 WOODLANDS DRIVE, THORNLANDS, QLD 4164, TANYA LYNETTE SCOTT of 240 WOODLANDS DRIVE, THORNLANDS, QLD 4164, HELEN TOWERS SCOTT of 94 BONNIE SPRINGS ROAD, PROSERPINE, QLD 4800;

**Nominated Dependant** means a Dependant nominated by a Member as such (whether binding or not) and includes a reversionary beneficiary of a Pension;

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

**Pension** means an income stream and includes a pension or annuity permitted by the Requirements;

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

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

**Permanent Incapacity** or **Temporary Incapacity** has the same meaning as in SIS or as prescribed by the Regulator provided that where any part of a Benefit payable in that event is insured, the definition contained in the policy of insurance applies and prevails to the extent of any inconsistency in respect of that part of the Benefit;

**Preservation Age** for a Member means the age determined in accordance with regulation 6.01(2) of the SIS Regulations;

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



**Regulator** means the regulator to whom the Trustees must provide reports under SIS or whose determination is relevant in the circumstances, being the Australian Securities and Investment Commission, the Australian Taxation Office or Australian Prudential Regulation Authority as the case may be (including the authorised officers of these bodies, or such other persons or bodies empowered to administer the Requirements);

**Requirements** means SIS, ITAA and any other laws or legislation, or the requirements of the Regulator or any other competent authority, which must be satisfied so that:

- (a) the Fund obtains concessional tax treatment;
- (b) the Fund remains a regulated superannuation fund;
- (c) the Employer or Member retains any entitlement to a tax deduction unless they choose not to claim a tax deduction;
- (d) no dealing with the Fund gives rise to a taxable fringe benefit to an Employer unless the Employer chooses to incur a fringe benefits tax liability;
- (e) benefits are concessionally taxed;
- (f) if appropriate, a Pension Benefit is asset test exempt for social security purposes; and
- (g) no penalty is imposed on the Trustees or directors of the Trustee;

**Reserve Account** means an account established by the Trustees in accordance with clause 8.6;

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

**SGC** means the Superannuation Guarantee Charge Act 1992, the Superannuation Guarantee (Administration) Act 1992 and the Superannuation Guarantee (Administration) Regulations as the context requires;

**SIS** means the Superannuation Industry (Supervision) Act 1993 (and includes the SIS Regulations where the context requires);

**SIS Regulations** means the Superannuation Industry (Supervision) Regulations;

**Spouse** means:

- (a) a person legally married at any time to a Member; or
- (b) a person not legally married to the Member who, in the opinion of the Trustee, lives or lived with the Member as the de facto spouse or partner of the Member;

**Trustee** means the Trustees for the time being of the Fund (and where the context permits includes the directors of a corporate Trustee), the current Trustees are CAMERON TOWERS SCOTT, TANYA LYNETTE SCOTT, HELEN TOWERS SCOTT.

- 1.2 It is expressly stipulated that those restraints (if any) placed upon the ability for a sole Trustee to act as the Trustee of a trust by the Trusts Act 1973 (Queensland) including but not limited to Section 12(2)(c), Section 33(1)(l), Section 61 Trusts Act 1973, (Queensland) and all other corresponding provisions of comparable legislation, and it shall be permissible for one trustee only to act as Trustee of the Fund irrespective of the number of Trustees appointed whether or not originally appointed at the time of creation of the Fund constituted by this Deed. For the absence of doubt, subject always to the Requirements it shall at all times be permissible for a single person or corporation to occupy the office of Trustee of the Fund.
- 1.3 Throughout this Deed there are italicised square brackets that appear like this - [*Ref: detail*]. These references are to various sections in SIS, regulations within the SIS Regulations, ATO Taxpayer Alerts, ATO Interpretative Decisions, ATO Rulings and Determinations that you may wish to read to obtain a greater understanding of the subject matter dealt with by that section of this Deed. These may be accessed via the ATO website [www.ato.gov.au](http://www.ato.gov.au). These references have been included for information purposes only and do not effect the interpretation of this document.
- 1.4 The singular shall mean and include the plural and vice versa, any gender shall mean and include all other genders and Person means and includes a natural person, firm or corporation.
- 1.5 The provisions of a Schedule constitute part of this Deed.
- 1.6 References to any statutory enactment shall mean and be construed as reference to that enactment as amended modified and re-enacted from time to time.
- 1.7 The index does not form part of and shall not affect the interpretation of this Deed.
- 1.8 Clause headings and highlighting of text shall not affect the interpretation of this Deed. A reference to a clause number, shall be a reference to a clause in this Deed.
- 1.9 The perpetuity period in relation to all dispositions made by this Deed shall be the period of eighty (80) years commencing on the date of this Deed.

- 1.10 Unless a contrary intention applies, any word or expression defined in SIS, the ITAA or the Requirements which is used but not defined in this Deed, has the same meaning.
- 1.11 This Deed shall bind each of the parties hereto and their respective personal representatives successors and permitted assigns.

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## 2. THE FUND

### 2.1 Establishment

The Trustees establish a fund to be known as **BRASCOTT SUPERANNUATION FUND (the Fund)** as from the date of execution of this Deed.

### 2.2 Commencement of the Fund

Unless the Trustees declare otherwise, the Fund starts on the date of this Deed.

### 2.3 Purpose

The Trustees agree to maintain the Fund for the purpose of providing superannuation and such other benefits (either by way of a lump sum payment or one or more income streams) as may be permitted by SIS from time to time and:

- (a) if the Trustees comprise individuals these benefits must be primarily in the form of old age pensions; and
- (b) If the Trustee is a company, the Fund must have a corporate trustee.

### 2.4 Self Managed Fund

The Trustees will manage the Fund so that:

- (a) it is a complying self managed superannuation fund under the Requirements; and
- (b) the Fund and payments from it, qualify for concessional tax treatment.

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## 3. FUND TRUSTEE

### 3.1 General

The initial Trustees of the Fund are CAMERON TOWERS SCOTT, TANYA LYNETTE SCOTT, HELEN TOWERSSCOTT. The Fund is vested in the Trustees and managed by the Trustees upon the terms and conditions of this Deed.

### 3.2 Trustees Covenants

The Trustees for themselves and their successors agree :

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

### 3.3 Retirement, Removal of the Trustee

A Trustee holds office until:

- (a) retirement or resignation from office by giving notice in writing to the other Trustees of the Fund or to the Members; or
- (b) disqualification by law from holding office or becomes a disqualified person within the meaning of SIS; or
- (c) the Trustee:
  - (i) dies;
  - (ii) becomes, in the opinion of the other Trustee, mentally or physically incapable of fulfilling the office of Trustee of the Fund;
  - (iii) is removed by the Regulator, or
  - (iv) is precluded from being a Trustee in other circumstances prescribed by SIS.

### 3.4 Appointment

The power of appointing a new Trustee is held by:



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

### **3.5 Appointment of directors**

The power of appointing a new director of a corporate Trustee is held by:

- (a) the then directors or if none, the shareholders of the corporate Trustee; and
- (b) if no person under paragraph (a) is available then a new director may be appointed by any person who is or may be a Beneficiary and if more than one, then by majority.

### **3.6 Vesting of Assets**

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

### **3.7 Minors as a Trustee**

If a Member is under a legal disability because of age and does not have a legal personal representative to become a Trustee, the parent or guardian of the Member may become a Trustee in place of the Member.

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## **4. TRUSTEE'S POWERS OF MANAGEMENT**

### **4.1 Powers**

The Trustees may do anything considered necessary or expedient to manage the Fund according to this Deed and to administer the Fund so as to comply with the Requirements, including, but not limited to:

- (a) open any Bank Account and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
- (b) the Trustees may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustees and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- (c) paying any costs, charges and Taxes relating to the Fund;
- (d) appointing persons to:
  - (i) perform administrative functions;
  - (ii) audit the Fund's accounts; and
  - (iii) prepare tax and any returns for the Regulator, and to pay any expenses incurred for this;
- (e) delegating Trustee functions other than the exercise of discretions;
- (f) conducting and settling legal proceedings;
- (g) entering contracts and executing deeds;
- (h) obtaining and acting on the advice of a barrister, solicitor, adviser, financial adviser, accountant, actuary or superannuation consultant and paying their fees;
- (i) giving receipts and discharges;
- (j) incurring liabilities, giving guarantees or indemnities;
- (k) insuring risks, including without limitation income protection insurance (or salary continuance insurance) for a Member (in accordance with the Requirements (and specifically section 295.460 of ITAA 1997, subparagraph 62(1)(b)(v) of SIS and the payment standards in Part 6 of the SIS Regulations) covering temporary disability benefits to be paid to a Member for a period not exceeding the period of incapacity;
- (l) acting as an underwriter;
- (m) making rules for the efficient administration of the Fund;
- (n) providing for and transferring liability for any taxes;
- (o) irrevocably electing that the Fund becomes a regulated superannuation fund;

- (p) generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee has or may have a direct or personal interest (irrespective of how and why that interest may have arisen) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

#### **4.2 Regulation of Trustee Proceedings**

The Trustees may:

- (a) regulate Trustee meetings as the Trustees see fit;
- (b) act by way of resolution passed by all the Trustee;
- (c) hold meetings by telephone, webcam or other similar means;
- (d) appoint one of them to act as chairman and replace the chairman whenever seen fit.

#### **4.3 Written Resolutions**

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

#### **4.4 Minutes**

- (a) The Trustees must keep minutes of their resolutions and proceedings kept for that purpose and otherwise keep such records of their proceedings in such manner as provided for in the Requirements.
- (b) Minutes are evidence of the matters recorded in them if they are signed by all of the Trustees or alternatively confirmed at the next Trustee meeting and signed by the chairman.

#### **4.5 Trustees may Act on Authorisations**

The Trustees may treat an authorisation or information purported to be given by a Member or Beneficiary as given by the Member or Beneficiary and may rely on it.

#### **4.6 Trustees Fees**

For any period in which the Fund is a self managed fund, the Trustees must not be paid any fees but may recover costs and disbursements incurred.

#### **4.7 Trustees Indemnity**

The:

- (a) Trustees are (and in the case of a corporate Trustee, each director is) indemnified out of the Fund to the maximum extent permitted by SIS against all liabilities incurred by it (or them) in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in it (or them) hereunder or at law, except in the case of:
  - (i) fraud;
  - (ii) wilful or reckless failure to exercise proper care and diligence; or
  - (iii) a civil penalty order pursuant to SIS;
- (b) indemnity under sub-clause (a) is a continuing indemnity and applies to former Trustees (and directors of a corporate Trustee) for any period in which they acted in that capacity.

#### **4.8 Insurance against Fund losses**

- (a) The Trustees may in their discretion take out insurance against:
  - (i) any liability which arises against:
    - (A) a Trustee or director of a Trustee company; or
    - (B) the Fund; and
  - (ii) any losses or damages which the Fund, a Trustee or director of a Trustees company may suffer or incur, as a result of or arising from any act or omission of the Trustees or any person to whom the Trustees may have delegated their powers duties and discretions or any servant, agent or employer of the Trustees or any contractor (including persons acting in any professional role), administrator, custodian or other person or body engaged by the Trustees for the purposes of the Fund.

#### **4.9 Trustee's Discretion**

Unless otherwise specifically indicated, the Trustees in the exercise of the powers and discretions conferred by this Deed have an absolute and uncontrolled discretion. The Trustees may, subject to the Requirements, re-exercise a discretion.

#### 4.10 Comply with the Regulator

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

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## 5. TRUSTEE'S POWERS OF INVESTMENT AND SALE

### 5.1 Investment strategy

*[Section 31 SIS, regulation 4.09 SIS Regulations]*

The Trustees:

- (a) will, in accordance with the Requirements, formulate and give effect to an investment strategy for the Fund that has regard to all the circumstances of the Fund, including:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments;
  - (ii) the composition of the Fund's investments as a whole, including the extent to which they are suitably diverse;
  - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;
- (b) will not invest in any investment that is forbidden by the Requirements;
- (c) will not make an investment in the form of a loan or other financial assistance to a Member or a relative of a Member or which may otherwise be in breach of the Requirements.
- (d) will formulate one or more investment strategies for the Fund. The Trustees must inform Members and Beneficiaries of the strategies adopted by the Trustees. The Trustees may review and change a strategy at any time. The Trustees must continually monitor the strategies to ensure that they remain appropriate;
- (e) may decide to allow one or more Members or Beneficiaries to choose between investment strategies. If the Trustees do, the Trustees must establish a range of possible investment strategies, and may designate particular assets for those strategies. The Trustees must provide the Members or Beneficiaries with information concerning the strategies and the relevant investment objectives to enable the Member or Beneficiary to choose between them on an informed basis. The Trustees must also provide the Members or Beneficiaries with information concerning their rights under this Deed;
- (f) will allow a Member or Beneficiary who has been offered an investment choice by the Trustees to select one or more of the strategies prepared by the Trustees by completing any documents the trustee requires. On having done so, the Member or Beneficiary may direct the Trustees to invest any part of the Fund that is held for that person in accordance with those strategies. Any direction must be in accordance with the Requirements;
- (g) may sell, transfer or vary any investment made in accordance with an investment strategy, in the absolute discretion of the Trustees in accordance with this Deed. The Trustees must do so in the interests of the relevant Members or Beneficiaries. The Trustees must continually monitor the investments to ensure that they remain appropriate;
- (h) will, if a Member adopts an investment strategy, do as follows:
  - (i) establish a sub-account of the Member's Accumulation Account in respect of that strategy;
  - (ii) credit and debit that sub-account in relation to any amount attributable to that strategy as if it were the Member's Accumulation Account itself;
  - (iii) allocate earnings attributable to that strategy to the Member's or Beneficiary's Accumulation Account in a way that the trustee thinks equitable;
  - (iv) determine a Fund Earning Rate for that sub-account (see clause 5.2).

### 5.2 Earning Rate

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

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

- (a) all the Members; and
- (b) the various kinds of Benefits of each Member,  
taking into account:
  - (a) the earnings of the Fund, including all income and realised and unrealised capital gains;

- (b) the realised and unrealised losses and expenses of the Fund, including any tax that is or may be incurred by the Trustees which are not debited to an account;
- (c) any provisions established by the Trustees for taxes and expenses;
- (d) the appropriateness of averaging profits, earnings, losses and expenses over two or more years;
- (e) the Fund's Reserve Accounts (and the purposes of those reserves); and
- (f) such other matters the Trustees consider appropriate.

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

### 5.3 Interim Earning Rate

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

### 5.4 Averaging Income

If the Trustees in determining a Fund Earning Rate decides to average the losses, profits, expenses and earnings of the Fund over two or more years, the Trustees may establish a Reserve Account in accordance with clause 8.6.

### 5.5 Allocation of Earning Rate

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

### 5.6 Unallocated earnings

Any unallocated earnings must be credited to a Reserve Account.

### 5.7 Specific Investments

- (a) The Trustees may invest or hold assets separately in respect of:
  - (i) certain Members;
  - (ii) current Pension liabilities (whether for all Members or some Members); or
  - (iii) a Reserve Account.
- (b) The Trustees must record on whose behalf (or for which Member and Account) such specific investments are made.
- (c) The income, profits, losses and expenses arising from such specific investments are to be allocated to the appropriate Account.

### 5.8 Power to Invest

*[ATO ID 2010/162 - borrowing from a related party on terms favourable to the SMSF.]*

*[ATO ID 2010/184 - capitalisation of interest, limited recourse borrowings.]*

*[ATO ID 2010/185 - limited recourse borrowings and charges.]*

*[ATO ID 2008/51 & 2010/52 - interest in another entity, units in a unit trust.]*

*[Ref: Taxpayer Alert 2008/5 - Certain borrowings by self managed superannuation funds.]*

*[TA 2009/16 - Circumvention of in-house asset rules by self-managed superannuation funds using related party agreements.]*

*[Draft Self Managed Superannuation Funds Ruling 2007/D2 - Superannuation: giving financial assistance using the resources of a self managed superannuation fund to a member or relative of a member that is prohibited for the purposes of paragraph 65(1)(b) of the Superannuation Industry (Supervision) Act 1993.]*

*[Section 62A SIS and Regulation 13.18AA - investment in collectables and personal use assets.]*

*[Ref: Self Managed Superannuation Funds Determination SMSFD 2010/1 - Self Managed Superannuation Funds: can a trustee of a self managed superannuation fund purchase a trauma insurance policy in respect of a member and still satisfy the sole purpose test in section 62 of the Superannuation Industry (Supervision) Act 1993.]*

- (a) Subject to the Requirements and all current investment strategies, the Trustees may invest all or part of the money and other assets of the Fund which are not required for the payment of Benefits or other amounts under this Deed (referred to in this clause as **Asset**) in any manner or form in which they could invest if they were acting personally and as the sole and absolute legal and beneficial owner thereof. Trustee investments may include, but are not limited to the following:



- (i) the purchase, improvement or mortgage of real property in Australia or overseas;
  - (ii) shares, stocks, options, debentures, bonds, unsecured notes or other securities in Australian resident companies or companies domiciled outside the Commonwealth of Australia, whether or not quoted on a stock exchange;
  - (iii) securities in any company incorporated anywhere, whether carrying on business in Australia or not;
  - (iv) investments in which it is permissible to invest trust funds under the law of any jurisdiction in Australia;
  - (v) units (including sub-units) in a unit trust (established or situated anywhere in the world) by subscription or purchase (including joint subscription or purchase). Whether the units are fully paid or partly paid, and whether their issue involves a contingent or reserve liability is irrelevant;
  - (vi) cash on deposit with any bank or building society or any other company partnership or person with or without security;
  - (vii) futures, options or any other synthetic investment;
  - (viii) investments in units or sub-units of any unit trust, whether listed on a stock exchange or not, including units in a pooled superannuation trust;
  - (ix) a policy or annuity with an insurer, whether by proposal or purchase;
  - (x) investments in common funds;
  - (xi) investments in bills of exchange or any other negotiable instruments;
  - (xii) investments in options, hedging contracts, futures contracts and other financial instruments;
  - (xiii) any other investment permitted by the Regulations and which the Trustees deem appropriate including but not limited to investment in collectables and personal use assets providing the relevant provisions of SIS are adhered to.
- (b) The Trustees must not invest in any investment that is forbidden by the Requirements whether by way of a loan or other financial assistance to a Member or a relative of a Member.

#### 5.9 Associated Powers

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

- (i) take such steps as may be necessary to ensure the Fund's ownership of the assets, is recognised;
- (ii) open an Bank Account with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument;
- (iii) acquire or use Financial Instruments in any manner whatsoever consistent with the Trustee's investment strategy for the Fund, or for any Investment Option, including for the purposes of risk management and enhancing investment returns or in substitution for physical holdings;
- (iv) mix investments with investments of other people (as long as separate records are maintained that enable Assets attributable to the Fund or any investment option to be identified) or otherwise dealing with Assets in any manner;
- (v) delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose; and
- (vi) exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.
- (vii) acquire an interest in an Asset jointly with any other person;
- (viii) sell any Asset by private sale or public auction, for cash or on terms or in any other way or subject to any other terms that the Trustees consider appropriate;
- (ix) allow any Asset to be held in the name of the Trustees or that of any other person acceptable to the Trustees;
- (x) make loans or give financial assistance to any person;

- (xi) borrow in any manner consistent with the Requirements and in particular, sections 67A and 67B of SIS and to secure the repayment of that money in any manner and on any terms and conditions and at the rate of interest it considers appropriate;
- (xii) appoint investment managers and custodians;
- (xiii) raise money in any lawful manner including by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument. The Trustee may secure the repayment of any moneys so raised with interest at such rate as the Trustee thinks fit and upon any terms and conditions in all respects as the Trustee thinks fit. Any money raised by the Trustee will form part of the Fund;
- (xiv) exercise any other power that a legal owner of the Asset may exercise.
- (xv) give indemnities to or on behalf of any person the Trustee thinks fit.

#### 5.10 Assets in Name of the Trustees or Custodian

The Trustees must hold the Fund's assets in the name of the Trustees or may appoint another person in writing for that purpose as custodian (provided that if the Fund is not a self managed fund the person must satisfy the Requirements to be a custodian of Fund assets).

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## 6. MEMBERSHIP OF FUND

### 6.1 Initial Members

*[Ref: SIS s17A]*

*[Ref: Self Managed Superannuation Funds Ruling SMSFR 2010/2 - Self Managed Superannuation Funds: the scope and operation of subparagraph 17A(3)(b)(ii) of the Superannuation Industry (Supervision) Act 1993 (Enduring Powers of Attorney).]*

The initial Members of the Fund are CAMERON TOWERS SCOTT, TANYA LYNETTE SCOTT, HELEN TOWERS SCOTT. Each Member has signed an Application Form in the form set out in Schedule 1.

### 6.2 Additional Members

- (a) The Trustees may appoint further Members to the Fund. Membership is by written application to, and acceptance by, the Trustees. The Trustees may reject any application for membership in their absolute discretion.
- (b) Before accepting a person as an additional Member (**applicant**), the Trustees may require the person to provide such information or documents considered relevant or execute such documents as the Trustees determines, including but not limited to:
  - (i) an Application Form signed by the applicant;
  - (ii) the applicant's tax file number;
  - (iii) the applicant signing (as a trustee or a director of a corporate trustee) a declaration in the approved form (being a Trustee Declaration (NAT 71089)), no later than 21 days after becoming a trustee or director to ensure that the Fund remains a self managed fund;
  - (iv) a signed binding nomination or a signed non-binding nomination; and
  - (v) a statement made by the applicant that they do not suffer from any disqualification to act as a Trustee.

For the avoidance of doubt, the applicant will not become an additional Member, and the Trustees must not accept the applicant as an additional Member:

- (i) if the total number of Members will be more than 4;
  - (ii) if the applicant is disqualified from being either a director of the corporate trustee or an individual trustee;
  - (iii) if the applicant is in an employment relationship with another Member (except another Member who is a relative);
  - (iv) before the applicant has been given a Product Disclosure Statement.
- (c) If the Trustees decide to admit the applicant as a Member, the applicant:
    - (i) becomes a Member on the date determined by the Trustees;
    - (ii) if the Trustees make no such determination, the date that the applicant completed the Application Form.

### 6.3 Minors as Members



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

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

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

**6.4 Conditions of Membership**

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

**6.5 Cessation of Membership**

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

- (a) the Member dies;
- (b) the Member ceases to be a director of the corporate trustee;
- (c) all Benefits which are or may be payable for the Member have been paid whether to the Member, a Beneficiary or to a rollover fund; or
- (d) the Member's entitlement to Benefits is terminated.

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

**6.6 Growth or pension Members**

*[ITAA Regulations 1997 regulations 307.200.02 and 307.200.05]*

A Member may progress through two phases:

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

Once a Member has elected to take a Pension and a superannuation income stream commences, any assets or investments that support the superannuation income stream are always to be treated as a separate superannuation interest. The Member cannot make further Contributions or rollover amounts to that particular account. The Member may start a new Accumulation Account and make Contributions to that account.

**7. RECORDS AND AUDIT**

**7.1 Records**

*[Sections 35A, 103, 104 SIS]*

The Trustees must:

- (a) prepare, maintain and where relevant lodge records of Members, assets and liabilities, income and expenditure, and all other matters specified in the Requirements, and retain them for the period required including the following:

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

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

- (b) The Requirements provide that the Trustees keep certain records for a minimum period including:
- (i) for a minimum of 5 years:
    - (A) accurate and accessible accounting records that explain the transactions and financial position of the Fund
    - (B) an annual operating statement and an annual statement of the Fund's financial position, and
    - (C) copies of all income tax returns for the Fund.
  - (ii) for a minimum of 10 years:
    - (A) minutes of Trustee meetings and decisions (where matters affecting the Fund were discussed);
    - (B) records of all changes of Trustees;
    - (C) Trustee declarations (whether as a individual trustee, or director of a corporate trustee);
    - (D) Members' written consent to be appointed as Trustees, and
    - (E) copies of all reports given to Members;
    - (F) Member contributions statements;
    - (G) copies of all annual returns lodged (for corporate trustees).
    - (H) audit reports.

**7.2 Auditor**

*[SIS Section 35C and Regulation 8.02A]*

The Trustees must appoint an auditor for each Financial Year or as otherwise specified in the Requirements to:

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

**7.3 Preparation and lodgment of documents**

*[Section 35B SIS]*

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

- (a) an income and expenditure account (the Balance Sheet);
- (b) an operating statement (the Profit and Loss);
- (c) an income tax return for the Fund;
- (d) Member Contribution statements;
- (e) Trustee declarations (NAT 71089);
- (f) Change of details for superannuation entities (Regulation 11.07A);

**7.4 Disclosure**

The Trustees must disclose to:

- (a) the Regulator;
- (b) the Members (including prospective and former Members);
- (c) any Employers;
- (d) the Trustee of any other fund to which a rollover payment is made;
- (e) the auditor; and
- (f) such other persons as may be specified in the Requirements,

such information from time to time concerning the Fund, Contributions and Benefit entitlements as the Trustees determine reasonable, and in particular so as to satisfy the disclosure provisions in the Requirements.

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## **8. ACCOUNTS**

### **8.1 Establishment of Accounts**

The Trustees must:

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

### **8.2 Credits to Accumulation Account**

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

- (a) Contributions;
- (b) Any amount paid to the Trustees as a result of a successful application made pursuant to Part 23 of SIS and which the Trustees thinks fit to credit to the Member's account;
- (c) Any amount rolled over from another superannuation account in respect of the Member;
- (d) the proceeds of any policy of insurance effected by the Trustees (and owned by the Fund) in respect of the Member;
- (e) any allocation by the Trustees from the Reserve Account;
- (f) any allocation of earnings by the Trustees;
- (g) any other amount that the Requirements do not expressly exclude.

### **8.3 Debits to Accumulation Account**

*[Regulation 5.02]*

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

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

### **8.4 Contribution splitting**

*[SIS Regulation 6.44(1). ATO form Superannuation contributions splitting application (NAT 15237-03.2006)]*

The following clauses apply to a contribution split:

- (a) Unless a contrary intention appears, words and phrases used in this clause 8.4 have the same meanings as in the SIS Regulations. In addition **Benefit Arrangement** means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions.
- (b) Notwithstanding any other provision of this Deed, but subject to the Requirements, where the Trustee receives from a Member a Contribution Splitting Application (being ATO form Superannuation contributions splitting application (NAT 15237-03.2006)) which is not invalid under the Requirements, the Trustee may in its absolute discretion determine to split the splittable contributions received for the Member during the financial year applicable to the Contribution Splitting Application.
- (c) Where the Trustee under clause 8.4(b) determines to split the Member's splittable contributions, notwithstanding any other provision of this Deed but subject to the Requirements, the Trustee may:
  - (i) either:
    - (A) if a receiving Spouse is not a Member, create a new interest in the Fund for the receiving Spouse and credit the amount set out in the Contribution Splitting Application to that interest, in which case the Trustee may determine the terms and conditions that will apply to the new interest;
    - (B) if the receiving Spouse already has an interest in the Fund, credit the amount set out in the Contribution Splitting Application to the receiving Spouse's Accumulation Account; or
    - (C) transfer or roll over the amount set out in the Contribution Splitting Application to a Benefit Arrangement for the receiving Spouse; and
  - (ii) adjust the Accumulation Account of the applicant Member in such manner as it considers appropriate to reflect the splitting of the Member's splittable contributions pursuant to clause 8.6(c)(i).
- (d) The Trustee may from time to time specify conditions and restrictions relating to Contribution Splitting Applications (**Contribution Splitting Rules**) which, in addition to the requirements of the Act, must be complied with by the Member and receiving Spouse in order for a Contribution Splitting Application to be valid. The Contribution Splitting Rules may also set out rules regulating the splitting of contributions.
- (e) The Trustee may vary or revoke the Contribution Splitting Rules from time to time in its absolute discretion.
- (f) The Trustee may charge reasonable fees in respect of any thing done by the Trustee in relation to the splitting of contributions under this clause 8.4.
- (g) The Trustees may, with the consent of the recipient of the Benefit, and if the Requirements permit, reallocate Benefits (including account balances) otherwise payable to (or held for) the recipient to other Members of the Fund, or other persons who are able to receive such reallocation in accordance with the law. It shall be a condition precedent of the reallocation that the recipient of the Benefit completes and provides to the Trustees a Notice of Contribution Split together with such other information and documentation as the Trustees may require in order to adhere to the provisions set out in Division 6.7 of the SIS Regulations.
- (h) **Splitting Superannuation interests on Divorce**  
 If a Member's interest in the Fund is subject to Part VIII B of the Family Law Act 1975 (**Part VIII B**):
  - (i) the Trustees must take action as lawfully required of it in respect of a Member's interest in the Fund pursuant to Part VIII B, the Family Law (Superannuation Regulations) or by the Requirements; and
  - (ii) a non-member Spouse as defined in Part VIII B is deemed not to be a Member of the Fund solely by virtue of his or her entitlement under Part VIII B except:
    - (A) as specified by the Requirements; or
    - (B) as necessary to give effect to:
      - (1) the non-member Spouse's rights under Part VIII B or the Family Law (Superannuation) Regulations; and
      - (2) payment or transfer of the non-member Spouse's entitlement (including on his or her death in which case the Trustees have the same discretions and powers to pay his or her entitlement as if the non-member Spouse were a Member);
 and except as specified in this clause, a non-member Spouse has no rights or entitlements under the Fund.
- (i) **Separate interest**

The Trustees may (but are not obliged to) create a separate interest or account for a non-member Spouse.

### 8.5 Pension Account

After the Trustees have received a Pension Payment Application from a Member, the Trustees must:

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

### 8.6 Reserve Account

- (a) The Trustees may establish one or more Reserve Accounts for the Fund.
- (b) Any amount held in a Reserve Account does not form part of any Accumulation or Pension Account.
- (c) A Reserve Account may be used at the Trustee's absolute discretion to:
  - (i) increase Member's Benefits;
  - (ii) stabilise the investment earnings of the Fund;
  - (iii) pay complying or other Pensions; or
  - (iv) for such other purpose as the Trustees see fit.
- (d) The Trustees have the discretion to deal with the assets of a Reserve Account in any manner consistent with the Requirements.
- (e) The following amounts may be credited to a Reserve Account:
  - (i) unallocated earnings;
  - (ii) income generated from assets held specifically for the Reserve Account;
  - (iii) contributions the contributor has advised the Trustees are to be credited to the Reserve Account.

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

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## 9. CONTRIBUTIONS

### 9.1 Trustee Obligations

*[SIS Regulation 7.04(2)]*

The Trustees:

- (a) may accept:
  - (i) Contributions in accordance with the Requirements;
  - (ii) mandated employer contributions provided the Trustees have consented to become a participating employer and to make contributions in respect of a Member subject to the Employer completing such documents as the Trustees may require from time to time;providing the Member for whom the Contribution is being made, has given their tax file number to the Trustees.
- (b) must not accept:
  - (i) a Contribution that is not permitted by the Requirements;
  - (ii) a Contribution that would result in the Fund becoming a non complying superannuation fund;
  - (iii) any Contribution that the Regulator directs the Trustees not to accept;
- (c) subject to clause 9.2, must only accept Contributions that comply with the Requirements, and in particular must only accept Contributions from Members aged 65 years and older if they meet the requirements of regulation 7.04 of the SIS Regulations;
- (d) may refuse such Contributions as the Trustees in their absolute discretion consider appropriate;
- (e) must pay to the Australian Taxation Office the amount specified in a release authority issued by a Member in accordance with either clause 9.2(a)(iii) or 9.2(b)(ii).



## 9.2 Contributions in excess of prescribed limits

Each Member acknowledges that:

- (a) the contribution limits for concessional contributions (being section 292-25 (2) ITAA 1997) are a taxpayer based limit, not a contributor based limit. Accordingly each Member is required to monitor their concessional contributions to ensure that their individual limit is not exceeded. If a Member's contribution cap is exceeded then contributions (subject to a written determination being made by the Commissioner of Taxation in accordance with section 292.465(1)(a) of the ITAA 1997):
  - (i) in excess of the Member's concessional contributions cap will be subject to excess contributions tax;
  - (ii) included in the Member's non-concessional contributions; and
  - (iii) the Member may, by providing the Trustees with a voluntary release authority have the Trustees pay directly to the Australian Tax Office the amount of excess concessional contributions tax stated in the release authority
- (b) the contribution limits for non-concessional contributions (being section 292-20 (2) ITAA 1997) are a taxpayer based limit depending on the Member's individual circumstances. Accordingly each Member is required to monitor their non-concessional contributions to ensure that their individual limit is not exceeded. If a Member's non-concessional contribution cap is exceeded then contributions (subject to a written determination being made by the Commissioner of Taxation in accordance with section 292.465(1)(b) of the ITAA 1997):
  - (i) in excess of the Member's non-concessional contributions cap will be subject to excess contributions tax; and
  - (ii) the Member must withdraw an amount equal to the excess contributions tax, by providing the Trustees with a compulsory release authority and have the Trustees pay directly to the Australian Tax Office the amount of excess non-concessional contributions tax. If the Member withdraws the amount of the excess contributions tax stated in the compulsory release authority from the fund, the Member will also be required to pay tax on that amount at their marginal tax rate.

## 9.3 Unallocated Contributions

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

## 9.4 Contributors notify

The contributor must:

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

## 9.5 Contribution in Cash or Assets

*[Ref: Australian Taxation Office Superannuation Circular 2003/1.]*

Contributions may be paid in cash or by transfer of assets provided that where a Contribution is made by the transfer of an asset the Trustees must determine:

- (a) if the asset transferred is appropriate;
- (b) if the party that is transferring the asset is a related party to the Member;
- (c) whether the Contribution has been made on behalf of a non-resident Member and the consequence that the Contribution may have on the status of whether the Fund is an Australian superannuation fund;
- (d) the market value of the asset for the purposes of the Contribution; and
- (e) there will be no breach of the Requirements.

## 9.6 Reallocation of Contributions

Where an asset is transferred to the Fund by a Member or Members in accordance with clause 9.5 notwithstanding any other provision in this Deed:

- (a) that asset **must be held in the relevant Member's Accumulation Account** and the Trustees shall identify the asset, the Member or Members for whom the asset is held and where more than one Member contributed the asset, the proportions in which the asset was contributed by and is held for the Members, in the records of the Fund;
- (b) the earnings and expenses in relation to those assets shall be dealt with in accordance with clause 5.7 as a Specific Investment of the relevant Member or Members;



- (c) for the absence of doubt, such assets shall not be pooled with the other assets or investments of the Fund;
- (d) the Trustees may only reallocate Contributions to other Members, or to other accounts within the Fund, with the written consent of the contributor, or the Member for whom the Contribution was made.

### 9.7 Repayment of Contributions

*[Ref: ATO ID 2007/225 - Superannuation contributions: acceptance of fund capped contributions by a self managed superannuation fund.*

*Taxpayer Alert 2010/2 - Circumvention of Excess Contributions Tax Regulation 7.04(4)]*

Upon becoming aware that a contribution is contrary to the Requirements, the Trustees must, subject to the Requirements:

- (a) advise the Member (to whom the contribution was made) as soon as is practicable in the circumstances, that the contribution has resulted in that Member receiving a contribution in excess of the prescribed limits and that the contribution will be subject to excess contributions tax; or
- (b) refund the amount to the entity or the person that paid the amount within any time prescribed by the Requirements.

### 9.8 Taxes and Costs of Contributions

The Trustees may deduct from any Contribution:

- (a) any tax payable;
- (b) any expense of the Fund attributable to the Contribution.

### 9.9 Employer Contributions

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

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

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

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

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## 10. TRANSFERS TO OTHER FUNDS

### 10.1 Transfers out

If a Member requests the Trustees to transfer all or part of his entitlement to another superannuation or like entity (**Entity**) the Trustees may pay the amount (or transfer investments of equivalent value) to the Trustee of the Entity (**Rollover**).

### 10.2 Requirements

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

### 10.3 Transfer of Restricted Benefits

Where the Rollover contains Restricted Benefits the Trustees may assume that the Entity's governing rules will ensure that such amounts are preserved or dealt with in accordance with the Requirements.

### 10.4 Discharge

Payment of the Rollover is a discharge to the Trustees of all liability in respect of it and the Trustees are not responsible to see to its application.

### 10.5 Consent

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

---

## 11. TRANSFERS FROM OTHER FUNDS

### 11.1 Transfers in

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

### 11.2 Acceptance of Restricted Benefits

Where the Trustees are advised that a transfer is or contains an amount that is a Restricted Benefit, the Trustees must deal with such amount in accordance with the Requirements.

### 11.3 Amount, Composition of Entitlement

On any transfer in accordance with this clause, the amount of any entitlement for the Member is the amount or the value of the assets transferred as determined by the Trustees and the composition thereof is as determined by the Trustees having regard to the information provided by the Trustee of the Entity.

### 11.4 Crediting account

If, or to the extent that, the transfer is in respect of a Member, the Member's Accumulation Account shall be credited accordingly. Any remaining amount must be credited to a reserve or other account as the Trustees determine .

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## 12. PAYMENT OF BENEFITS - GENERAL

### 12.1 Payment of preserved benefits

*[SIS Regulation 6.18(1), Schedule 1 of the Regulations]*

The Trustees must only pay to a Member their preserved benefits in accordance with the Regulations. As at the date of this Deed, the Trustees may pay a preserved benefit to a Member upon the satisfaction of a condition of release, namely in any of the following situations or any other circumstance that the Requirements permit. The Member:

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

## **12.2 Payment of non-preserved benefits**

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

## **12.3 Compulsory cashing of benefits**

*[SIS Regulation 6.21(1)]*

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

## **12.4 Methods of Paying Benefits**

*[Regulations 1.05(11A), 1.06(9A) and Schedule7]*

The Trustees may, subject to the Requirements, provide Benefits as:

- (a) a lump sum;
- (b) an account-based pension;
- (c) a transition to retirement pension;
- (d) any other pension as permitted by the Requirements; or
- (e) a combination of the above which may include more than one of each.

## **12.5 Procedure before Benefits payable**

Benefits are not payable until:

- (a) the Member has satisfied a condition of release as specified by the SIS Regulations; and
- (b) the Member (or the Nominated Dependant or other Beneficiary if the Member has died) has given to the Trustees:
  - (i) a Pension Payment Application being a written request that the Trustees pay the Benefit to or in respect of the Member identifying the intended recipient;
  - (ii) any evidence and documents the Trustees require as to entitlement to the Benefit; and
  - (iii) everything, including executing documents, the Trustees require, and
- (c) the Trustees have :
  - (i) received the request and any evidence and executed documents;
  - (ii) determined that the Benefit is payable; and
  - (iii) notified the person requesting the Benefit of the Trustee's determination.

## **12.6 Payment of Benefits**

The Trustees:

- (a) may act on any proofs or presumptions the Trustees consider satisfactory, even if they are of no legal effect;
- (b) may postpone the payment of any Benefit until the Trustees are satisfied that the requirements of this clause have been adequately met; and
- (c) is not obliged to credit any interest or earnings for the period that the payment is postponed pursuant to this clause.

## **12.7 Receipt**

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

## **12.8 Deduction of Tax from Benefits Payable**

The Trustees must deduct any necessary tax from the Benefit.

## **12.9 Discharge of Trustee**

The Trustees are discharged from all liability in respect of a Benefit where it pays the Benefit in good faith to or on behalf of the person the Trustees believe is entitled to it, or in accordance with this Deed.

## **12.10 Requirements**

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

## **12.11 Benefits paid by transfer of assets**

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

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

#### **12.12 Insured Benefit**

An insured Benefit is only payable to the extent the Fund has received money from the insurer. The Trustees may assign the benefit of the insurance policy as a Benefit.

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### **13. PAYMENT TO OTHERS ON BEHALF OF MEMBERS OR BENEFICIARIES**

#### **13.1 Member Under Legal Disability**

- (a) If in the reasonable opinion of the Trustees a Member or Beneficiary is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with a Benefit the Trustees may pay or apply the whole or part of any such Benefit in one or more of the following ways:
  - (i) for or towards the maintenance, education, advancement or otherwise for the benefit of the person in such form and manner and subject to such terms and conditions as the Trustees think fit; and
  - (ii) without limiting the generality of paragraph (a) by payment to a person who is, or appears to be a trustee, a parent, or guardian of the Member, or to have for the time being the care or custody of the person or to meet the financial expenses of the care or custody of the person.
- (b) The receipt of the person to whom the Benefit is paid is a good discharge to the Trustees and is deemed to be payment to the Member or the Beneficiary. The Trustees are not bound or concerned to see to the application of the Benefit so paid.

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### **14. PENSION BENEFITS**

#### **14.1 Limit on Benefits**

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

#### **14.2 Payment of Benefits**

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

#### **14.3 Forms of Pension**

[TR 2011/D3 - Income tax: when a superannuation income stream commences and ceases]

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

- (a) an Account Based Pension;
- (b) a Transition to Retirement Pension; and
- (c) any other form of pension that the Trustee chooses to make available at any time and which is permitted pursuant to the Requirements.

#### **14.4 Provisions of the Requirements**

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

#### **14.5 Account based pensions**

[SIS Regulation 1.06(9A)]

The following terms apply to an Account Based Pension:

- (a) Capital supporting the pension cannot be added to by way of contribution or rollover after the pension has commenced;
- (b) The pension must be paid annually, but pension payments may be made more frequently as the Trustee determines;



- (c) The total pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the Regulations;
- (d) The pension will cease when the Account Balance is nil;
- (e) The pension is transferable to another person only on the death of the primary beneficiary or reversionary beneficiary, as the case may be;
- (f) The Trustee may, upon application of the Member, determine that, on the death of a primary beneficiary or reversionary beneficiary, a pension may be paid to one or more reversionary beneficiaries;
- (g) Where a reversionary pension is payable, subject to compliance with these pension standards, the amount and terms and conditions of the reversionary pension will be agreed on between the reversionary pensioner concerned and the Trustee;
- (h) Notwithstanding any other provision of this Trust Deed, the pension can only be transferred:
  - to a Dependant of the primary beneficiary or reversionary beneficiary, as the case may be; and in the case of a Child of the primary beneficiary or reversionary beneficiary, as the case may be, to a Child who:
    - (A) is less than 18 years of age;
    - (B) being 18 years of age or more, either was financially dependent on the primary beneficiary or reversionary beneficiary (as the case may be) and is less than 25 years of age, or has a disability as contemplated by the Disability Services Act 1986 (Cth).
- (i) The capital value of the pension and the income from it cannot be used as a security for a borrowing.
- (j) The pension cannot be commuted, in whole or in part, except in the following circumstances:
  - (i) the commutation results from the death of the primary pensioner or reversionary pensioner;
  - (ii) the sole purpose of the commutation is:
    - (A) to pay a superannuation contributions surcharge;
    - (B) to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
    - (C) to meet the rights of a Member to return a financial product under the Corporations Act 2001 (Cth);
  - (iii) for a commutation in part, the account balance of the pension immediately after the commutation, is at least equal to the minimum amount calculated in accordance with Schedule 7 of the SIS Regulations, as reduced by the amount of pension payments that have already been made to the primary beneficiary or reversionary beneficiary in the financial year in which the commutation occurs; or
  - (iv) the pension has paid, in the financial year in which the commutation takes place, at least the minimum amount required by the Regulations.

#### **14.6 Transition to retirement pensions**

The following terms apply to a transition to retirement pension:

- (a) Capital supporting the pension cannot be added to by way of contribution or rollover after the pension has commenced;
- (b) The pension must be paid annually, but pension payments may be made more frequently as the Trustee determines;
- (c) The total pension payments in a year may not be smaller than the minimum limits calculated in accordance with Schedule 7 of the SIS Regulations;
- (d) The total pension payments in a year may not be greater than the maximum limits calculated in accordance with the SIS Regulations;
- (e) The pension will cease when the Account Balance is nil;
- (f) The pension is transferable to another person only on the death of the primary beneficiary or reversionary beneficiary, as the case may be;
- (g) The Trustee may, upon application of the Member, determine that, on the death of a primary beneficiary or reversionary beneficiary, a pension may be paid to one or more reversionary beneficiaries;
- (h) Where a reversionary pension is payable, subject to compliance with these pension standards, the amount and terms and conditions of the reversionary pension will be agreed on between the reversionary pensioner concerned and the Trustee;
- (i) Notwithstanding any other provision of this Deed, the pension can only be transferred:

- (i) to a Dependant of the primary beneficiary or reversionary beneficiary, as the case may be; and
- (ii) in the case of a Child of the primary beneficiary or reversionary beneficiary, as the case may be, to a Child who:
  - (A) is less than 18 years of age;
  - (B) being 18 years of age or more, either was financially dependent on the primary beneficiary or reversionary beneficiary (as the case may be) and is less than 25 years of age, or has a disability as contemplated by the Disability Services Act 1986 (Cth).
- (j) The capital value of the pension and the income from it cannot be used as a security for a borrowing.
- (k) The pension may be commuted, in whole or in part. However, if the pension is commuted, the resulting lump sum amount cannot be cashed unless:
  - (i) the purpose of the commutation is:
    - to cash unrestricted non-preserved benefits; to pay a superannuation contributions surcharge; or to give effect to an entitlement of a Non-Member Spouse under a Payment Split; or
  - (ii) before commutation, the primary beneficiary or reversionary beneficiary, as the case may be, has satisfied a condition of release in respect of which the cashing restriction for preserved benefits and restricted non-preserved benefits is 'nil'.

#### **14.7 Particular Pension arrangements**

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

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

#### **14.8 Pension variations**

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

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### **15. COMMUTATION OF PENSION**

**15.1** The Trustees may on the request of a Member or Beneficiary commute all or part of a Pension to a Lump Sum if permitted under, and in a manner consistent with, the terms on which the Pension is payable and the Requirements.

**15.2** If necessary the Trustees (who may obtain the advice of an actuary) must determine the remaining Pension.

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### **16. LUMP SUM BENEFITS**

#### **16.1 Time for Payment**

The Trustees:

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

#### **16.2 Instalments**

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

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### **17. CONVERSION OF LUMP SUM TO PENSION**

#### **17.1 Application**

Subject to and only in accordance with the Requirements, on the written application of a Member or Beneficiary the Trustees may pay a Pension in lieu of the whole or any part of a Lump Sum.



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## 18. RETIREMENT, TERMINATION AND UNRESTRICTED BENEFITS

### 18.1 Form of Benefit

If a Member:

- (a) satisfies the Requirements to permit the Benefit to be paid and the Member has provided the Trustees with a written request that the Benefit be paid; or
- (b) satisfies the Requirements under which the Benefit must be paid,

the Trustees must pay to the Member his Benefit by way of Pension or Lump Sum as requested by the Member, and in a manner that is consistent with the Requirements.

### 18.2 Amount of Benefit

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

### 18.3 Discretionary Benefit

The Trustees may pay an additional amount of Benefit.

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## 19. BENEFITS FOR PERMANENT/TEMPORARY INCAPACITY OR TERMINAL MEDICAL CONDITION

### 19.1 Form of Benefit

If a Member has ceased to be gainfully employed as a result of Permanent Incapacity or Temporary Incapacity, the Trustees may pay to or in respect of the Member, his Benefit by way of:

- (a) Pension or Lump Sum as requested by the Member or the Member's Legal Personal Representative in the case of Permanent Incapacity; and
- (b) Pension to replace lost income for the period of incapacity in the case of Temporary Incapacity.

### 19.2 Amount of Benefit

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to the Member's Accumulation Account (and for Temporary Incapacity be no more than permitted under SIS).

### 19.3 Additional Benefit

The Trustees may pay an additional amount of Benefit.

### 19.4 Terminal Medical Condition

*[Ref: Accessing your super if you have a terminal medical condition (NAT 72437)]*

- (a) For a terminal medical condition to exist, the Member must satisfy the conditions set out in Regulation 6.01A of the Regulations;
- (b) a Member that has a terminal medical condition meets the condition of release detailed in Item 102A of Schedule 1 of the Regulations;
- (c) The terminal medical condition of release does not have any cashing restrictions and applies to a Member irrespective of their age or work status (meaning that the Member can still be gainfully employed at the time their benefits are withdrawn);
- (d) the Trustees may pay to or in respect of the Member, his Benefit by way of Pension or Lump Sum as requested by the Member (or the Member's Legal Personal Representative whichever may be relevant) pursuant to clauses 14.2 and 18.1.

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## 20. DEATH BENEFITS

### 20.1 Form of Benefit

*[SMSFD 2008/3 - Section 59 of the Superannuation Industry (Supervision) Act 1993 (SISA) and regulation 6.17A of the Superannuation Industry (Supervision) Regulations 1994 (SISR) do not apply to self managed superannuation funds.]*

Upon the death of a Member or Pensioner before the whole of his Benefit has been paid to him, the Trustees must pay the Benefit by way of Lump Sum or Pension as determined by the Trustees in consultation with each Beneficiary. The Trustees may claim a deduction under section 295-485 of the ITAA 1997 (sometimes referred to as an 'anti-detriment deduction') if they are to pay a lump sum death benefit, providing the Fund has complied with the conditions specified in that section.

## **20.2 Amount of Benefit**

The Benefit shall, subject to this Deed be of an amount equal to or be calculated by reference to the former Member's Accumulation Account (or Pension as the case may be).

## **20.3 Discretionary Benefit**

The Trustees may pay an additional amount of Benefit.

## **20.4 Binding Nomination**

The Trustees must pay all or part of the Benefit as specified in a binding nomination if it is valid (provided the required information from the Trustees to the Member has been given as per SIS Regulation 6.17A).

## **20.5 No Binding Nomination**

- (a) To the extent to which clause 20.4 does not apply, the Trustees must pay the Benefit amongst one or more of:
  - (i) the Dependants of the former Member or Pensioner;
  - (ii) the Estate of the former Member or Pensioner;
  - (iii) any other person to whom the Benefit can be paid under SIS;
- (b) The Trustees must have regard to, but is not bound by a non-binding nomination of a Nominated Dependant.
- (c) If there is no Dependant and no legal personal representative is appointed within twenty-four (24) months of death the Trustees must pay the Benefit to one or more other persons (having regard to any wishes stated by the Member, the Member's next of kin and all relevant circumstances) as the Trustees determine or be held in trust and maintained in the Fund (where permitted by the Requirements).
- (d) Any amount held in trust and maintained under clause 20.5(c) may be subsequently paid under this clause if a Dependant is found or a Legal Personal Representative appointed.

## **20.6 Components**

The Trustees may allocate the separable components of a Lump Sum amongst the recipients as it sees fit (and must do so as specified in a binding nomination).

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# **21. TERMINATION OF THE FUND**

## **21.1 Trustees Determination**

The Trustees may determine to wind up the Fund. The Trustees must determine to wind up the Fund if:

- (a) all of the Members give notice in writing to the Trustees of their desire to terminate the Fund; or
- (b) the Regulator or the Requirements require the Fund to be wound up.

## **21.2 Notification**

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

## **21.3 Wind-Up**

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

## **21.4 Application of Assets**

On a winding up the Trustees must apply the Fund's assets in the following order of priority:

- (a) meet all expenses and liabilities of the Fund;
- (b) payment (including by rollover) of Benefits;
- (c) increase Benefits as the Trustees may in its absolute discretion determine;
- (d) pay any Forfeited Benefits or amounts in any Reserve Account in accordance with the Trustee's powers;
- (e) pay any remaining amounts amongst such of:
  - (i) the Members;
  - (ii) former Members;
  - (iii) deceased Member's Dependants or Legal Personal Representative; and
  - (iv) contributors to the Fund, in such proportions as the Trustees determine.

## 21.5 Dissolution

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

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## 22. ARBITRATION

### 22.1 Dispute

Unless the Fund is no longer a self managed fund (thus giving the right to appeal to the Superannuation Complaints Tribunal) any question or dispute with respect to the Fund the payment of Benefits or to the construction or meaning of this Deed shall be determined by the Trustees but (if the Trustees so requires) be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed by the Trustees pursuant to the provisions of the Commercial Arbitration Act 1985.

### 22.2 Right of Action

If the Trustees have referred the dispute to an arbitrator, no right of action accrues in respect of any dispute until the question or dispute has been adjudicated upon by the arbitrator.

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## 23. SIS

### 23.1 Deemed inclusion

Despite any other provision in the Deed:

- (a) the Deed is deemed to include those covenants and requirements of SIS as are necessary to enable SIS and the Requirements to be met and for the Trustees to elect for the Fund to become a regulated fund (and to the extent of any inconsistency those provisions of SIS prevail);
- (b) if SIS no longer requires any such covenant or Requirement to be so included then that covenant or requirement ceases to be included;
- (c) if any such covenant or requirement or its operation is modified then the Trustees are only required to comply with the covenant or requirement as modified;
- (d) the Trustees are not taken to be in contravention of this Deed or in breach of trust if the Trustees do or omit to do anything which is in contravention of such a covenant or requirement if the contravention is waived or accepted by the Regulator as not being sufficient to result in the loss of the Fund's complying status;
- (e) the Trustees have power to operate and administer the Fund in such a way to ensure that the Fund complies with SIS and the Requirements;
- (f) the Trustees have power to elect under SIS for the Fund to become a regulated fund;
- (g) the SIS provisions which do not apply to certain small funds (whether defined in SIS as **self managed funds** or otherwise) do not apply to the Fund for any period during which the Fund meets the relevant definition;
- (h) the Trustees may follow, comply with, implement and obey any directions, instructions, orders or guidelines which may be issued or given by the Regulator;
- (i) the Trustees may disclose to the Regulator any event, omission or thing that SIS requires to be disclosed to the Regulator and seek the advice, ruling or direction of the Regulator as considered necessary.

### 23.2 Non-mandatory Requirements

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

### 23.3 Trustees not to be in breach of Trust

The Trustees are not contravening the Deed or in breach of trust if in giving effect the Deed it:

- (a) construes or interprets this Deed; or
- (b) does such acts or things; or
- (c) omits to do such acts or things;

which might otherwise contravene this Deed or in breach of trust but which the Trustees consider necessary, desirable or expedient to avoid a contravention of SIS.

### 23.4 Rectification of contraventions

The Trustees are not taken to contravene this Deed or be in breach of trust if it does anything or omits to do anything in contravention of SIS if:

- (a) the Trustees rectify the contravention within such period as may be allowed by SIS or within such further period as the Regulator allows; or
- (b) the Regulator notwithstanding the contravention treats the Fund as a Complying Superannuation Fund.

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## **24. GENERAL TERMS**

### **24.1 Proper Law**

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

### **24.2 Counterparts**

This Deed may be executed in any number of counterparts each of which is an original and all of which constitute one and the same instrument. A facsimile copy of this Deed constitutes a **counterpart** for the purposes of this clause.

### **24.3 Complete Agreement**

This Deed supersedes all prior agreements, documents, writings, representations, warranties and verbal understandings between the parties relating to the subject matter of this Deed.

### **24.4 Amendment**

The Trustees may by Deed amend the Deed subject to the following:

- (a) no amendment may reduce a Member's accrued benefits or impose any increase in liability on a Member without the Member's consent;
- (b) any amendment is effective from the date (if any) specified (for that purpose) in such Deed or failing such a date, the date on which the Deed is executed;
- (c) the Trustees must promptly notify each Member of the nature and purpose of any such amendment and of the effect (if any) that the amendment may have on the Member's entitlements.

### **24.5 Severable**

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

### **24.6 Waiver**

No waiver of any provision of this Deed nor consent to any departure from any provision, by any of the parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the parties in exercising any rights, powers or privileges pursuant to this Deed (together referred to as **rights**) shall operate as a waiver of any of those rights; nor shall a single or partial exercise of those rights preclude any other or further exercise of them, or the exercise of any other right, power or privilege.

### **24.7 Notice etc**

- (a) Any notice or other communication to be made or given under this Deed shall be in writing and signed by the party giving it and shall be served either by delivery, by facsimile transmission or by prepaid registered mail to the address of the party as herein specified or at the last known address of such party.
- (b) All notices shall be deemed to be received on the date of delivery or at the expiration of 48 hours after it has been posted.
- (c) Notices sent by facsimile transmission shall be deemed to be delivered on the date of transmission.

**SCHEDULE 1 - EXAMPLE APPLICATION FOR MEMBERSHIP**

**BRASCOTT SUPERANNUATION FUND**

**CONFIDENTIAL**

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

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

Dated: \_\_\_\_\_/\_\_\_\_\_/2011

Signature: \_\_\_\_\_

Occupation: \_\_\_\_\_

Date of birth: \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_

Tax File Number: \_\_\_\_\_

**NON-BINDING NOMINATION OF DEPENDANT(S)**

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

NAME	RELATIONSHIP	% OF TOTAL BENEFIT
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**SCHEDULE 2 - EXAMPLE BINDING DEATH BENEFIT NOMINATION**

To: The Trustees of BRASCOTT SUPERANNUATION FUND (the Fund)

I, \_\_\_\_\_ [Member Name], of \_\_\_\_\_ [Member Address] (date of birth \_\_\_\_\_ [Member's DOB]) nominate that the total benefits payable on my death are to be paid to the following in the percentages set out below.

I wish to nominate the dependant person(s) and/or my estate in the proportions listed below.

**Full name of Dependent:** \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Percentage benefit: \_\_\_\_\_ % of the total benefits payable

Relationship to you: \_\_\_\_\_ (eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

**Full name of Dependent:** \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Percentage benefit: \_\_\_\_\_ % of the total benefits payable

Relationship to you: \_\_\_\_\_ (eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

**Full name of Dependent:** \_\_\_\_\_

DOB: \_\_\_\_\_

Address: \_\_\_\_\_

Percentage benefit: \_\_\_\_\_ % of the total benefits payable

Relationship to you: \_\_\_\_\_ (eg Spouse/a child of mine/a person who is financially dependent on me/a person with whom I have an interdependency relationship with - see Requirements)

I confirm that:

- (a) I understand that this nomination (unless amended or revoked) is binding on the Fund Trustees until the earlier of it being revoked in writing by me or upon the date three years from the day it was first signed;
- (b) this nomination revokes any previous nomination which I may have made and delivered to the Fund Trustees;
- (c) I have signed this nomination in the presence of the two witnesses who are aged eighteen years or over and each of them have signed below;
- (d) I understand that if I have nominated persons who are not 'dependants' as explained on page one of this Form, this nomination will be void and of no effect and the Fund Trustees will have a discretion as to when the benefit is payable and in what proportion.



Signature:

\_\_\_\_\_  
[Name]

Date:

\_\_\_/\_\_\_/2011

**WITNESS ONE DECLARATION**

I confirm that:

- (a) I am over the age of 18 and I am not a nominated beneficiary under this binding death nomination notice.
- (b) this binding death nomination notice was signed by [Member Name] in the presence of both witnesses.

Witness 1 Full Name:

\_\_\_\_\_

Witness 1 Signature:

\_\_\_\_\_

Date:

\_\_\_/\_\_\_/2011

**WITNESS TWO DECLARATION**

I confirm that:

- (a) I am over the age of 18 and I am not a nominated beneficiary under this binding death nomination notice.
- (b) this binding death nomination notice was signed by [Member Name] in the presence of both witnesses.

Witness 2 Full Name:

\_\_\_\_\_

Witness 2 Signature:

\_\_\_\_\_

Date:

\_\_\_/\_\_\_/2011

**SCHEDULE 3 - EMPLOYER PARTICIPATION AGREEMENT**

To: The Trustee(s) of BRASCOTT SUPERANNUATION FUND (the Fund)

The Employer named below applies to participate in the Fund and to contribute in respect of some or all of its employees as Members and acknowledges receipt of a current Product Disclosure Statement in respect of the Fund, supplied with this Application.

The Employer agrees that if admitted to participate in the Fund it will:

- (a) observe and comply with all obligations placed on an employer under the Trust Deed governing the Fund as amended from time to time (Trust Deed); and
- (b) otherwise be bound by the terms of the Trust deed as if it had been named as a party to it.

The Employer agrees that written acknowledgment by the Trustee, or acceptance of a contribution by the Employer to the Fund, will constitute acceptance of this application from the date that it is executed, unless another date is specified in writing by the Trustee(s).

<b>Name of Employer</b>	
<b>Address of Employer:</b>	
<b>Date:</b>	_____ day of _____ 2 _____

**Select whichever signing clause is relevant:**

Executed for and on behalf of

\_\_\_\_\_  
Employer's name

(ACN \_\_\_\_\_)  
by the authority of its Directors and in accordance with s127 of the Corporations Act 2001, by:

Director Signature: \_\_\_\_\_

Director/Secretary Signature: \_\_\_\_\_

Signed by \_\_\_\_\_  
Employer's name  
in the presence of \_\_\_\_\_

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

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

Accepted by:

Signed by **CAMERON TOWERS SCOTT**  
in the presence of

\_\_\_\_\_

Witness Name:

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Signed by **TANYA LYNETTE SCOTT**  
in the presence of:

\_\_\_\_\_

Witness Name:

\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

Signed by **HELEN TOWERS SCOTT**  
in the presence of:

\_\_\_\_\_

Witness Name:

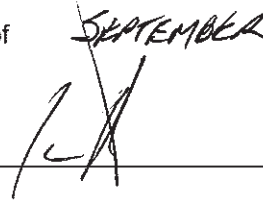
\_\_\_\_\_

Witness Signature:

\_\_\_\_\_

**EXECUTED AS A DEED** on the 5 day of SEPTEMBER 2011

Signed by **CAMERON TOWERS SCOTT**  
in the presence of



Witness Name:

DAVID BOXER

Witness Signature:

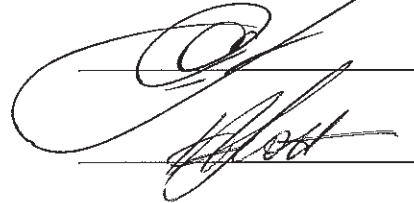


Signed by **TANYA LYNETTE SCOTT**  
in the presence of:

DAVID BOXER

Witness Name:

Witness Signature:



Signed by **HELEN TOWERS SCOTT**  
in the presence of:

DAVID BOXER

Witness Name:

Witness Signature:



Order #20410  
BRASCOTT SUPERANNUATION FUND  
(Superannuation - SMSF Deed with PDS [KP])

**Key Legal Pty Ltd (ACN 143 226 484)**  
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**Email:** [info@businessmentor.com.au](mailto:info@businessmentor.com.au)