



SCANNED

SMSF TRUST DEED ESTABLISHMENT

MITTING FAMILY SUPER FUND

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DEED OF ESTABLISHMENT OF MITTING FAMILY SUPER FUND

THIS DEED IS DATED: 15-12-2016

PARTIES:

TRUSTEE: Shoreleave Pty Ltd - ACN 616314099 of 79 Perseus Road, SILVER SANDS, WA 6210

RECITALS:

- A. The Trustee wishes to establish an indefinitely continuing self-managed superannuation fund ("**Fund**"), for the purpose of providing superannuation benefits to the Members of the Fund, the Member's Dependants (should the Member die during membership) and such other allowable purposes permitted by the *Superannuation Industry (Supervision) Act 1993 (Cth)* ("**SISA**"), *Superannuation Industry (Supervision) Regulations 1994 (Cth)* ("**SISR**") and any other Federal or State legislation determinative on the matter.
- B. The Trustee accepts to act as trustee of the Fund, and agrees to hold the Trust Assets on trust for the Members of the Fund in accordance with the Governing Rules shown at Annexure A.
- C. The following Persons have applied for membership in the Fund: **Jeffrey Mark Mitting and Jodie Kathleen Moffat**, and such Persons have represented to the Trustee that each has had the opportunity to read this Deed, and have considered and sought advice in respect to the benefits and burdens of membership in the Fund.
- D. The Trustee settles the Fund as a complying self-managed superannuation fund ("**Complying SMSF**"), as the term is interpreted in accordance with the *SISA*, *SISR* *Income Tax Assessment Act 1997 (Cth)* ("**ITAA97**") and any other Federal or State legislation determinative on the matter. Notwithstanding the Fund is settled as a Complying SMSF, the Trustee may resolve to change the type of Fund during the course of the Fund's life.

OPERATIVE PARTS:

- 1. Establishment of the Fund:** The Trustee establishes the Fund as a trust to be administered in accordance with the Governing Rules shown at Annexure A ("**Governing Rules**") on the date of this Deed.
- 2. Name of the Fund:** The Fund shall be known by the name: **Mitting Family Super Fund**, and such other name or names resolved by the Trustee in accordance with the Governing Rules of the Fund.
- 3. Initial Trustee:** The Trustee accepts to act as the initial Trustee of the Fund and covenants to hold the Trust Assets on trust for the Members of the Fund, in accordance with the Governing Rules and the Superannuation Laws.
- 4. Governing Rules of the Fund:** The Governing Rules of the Fund include those shown at Annexure A, and any further amendments, changes or additions to the Governing Rules made in accordance with the provisions of this Deed and such further instruments executed by the Trustee from time to time determinative on the matter.
- 5. Operations of the Fund:** The Trustee settles the Fund as a Complying SMSF, which Fund shall be administered in accordance with the Governing Rules, including but not limited to processing the application by Members, receipting of Contributions, Rollovers

and Transfers on behalf of Members, invest and deal with the Assets of the Fund, attend to the payment of Member's benefits (including the payment of Death Benefits in respect to deceased Members), and report and account to the Regulator and Members in accordance with the Governing Rules and the Superannuation Laws.

6. Interpretation: This Deed and the Governing Rules are subject to the interpretation and definition provisions shown in the Governing Rules.

Executed as a Deed.

The Trustees

Shoreleave Pty Ltd - ACN 616314099 of 79 Perseus Road, SILVER SANDS, WA 6210 by being signed by the persons authorised to sign on behalf of the company pursuant to section 127 of the Corporations Act 2001 (Cth):



Jeffrey Mark Mitting
Director

Dated: _____

15 Dec 16



Jodie Kathleen Moffat
Director

Dated: _____

15/12/16

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ANNEXURE "A"

NOWINFINITY SMSF TRUST DEED - GOVERNING RULES

Part One – Rules to Establish the Fund

Rule 1 – Things to know about these Rules and the Fund

- 1.1** Significant proposed changes in the taxing and administration of Superannuation Funds, including Self-Managed Superannuation Funds (SMSFs) have been announced since April 2016, and the proposed changes have not been finalized. The Trustee and Members should, but are not required to, execute a Deed of Variation updating the Governing Rules of the Fund to show the changes in the Superannuation Laws, and in the absence of such Deed of Variation, the Rules of this Deed are to be read in accordance with the Superannuation Laws as they exist from time to time, notwithstanding any one or more of the Rules of this Deed permit a matter of thing which is otherwise prohibited or restricted by the Superannuation Laws as modified from time to time.
- 1.2** The Explanatory Memorandum to the Rules of the Fund is designed for information purposes only and is not to be construed as forming part of the Rules of the Fund. If in any dispute, misunderstanding or action regarding the Rules, the Trustee, Court, the Regulator or any other person may have regard to any part of the Explanatory Memorandum to determine the Rule's ordinary meaning.
- 1.3** Where singular is used in the Rules it is to also mean plural and if a gender is used it is also to mean the opposite gender.
- 1.4** A reference to any entity, body, company or person (each referred to as a "party" for this Rule) also includes a reference to those persons or entities that have authority to act on behalf of the party including their successors, assigns, representatives, Responsible Officers, a person holding a party's Power of Attorney, Enduring Power of Attorney and/or the party's Legal Personal Representative.
- 1.5** Where a word is Capitalised it may be found in the "Definitions" Rule in Part Six of the Rules.
- 1.6** The Rules of the Fund are to be governed by the law where the Trustee resides unless the Trustee resides outside Australia or chooses elsewhere. If the Trustee resides outside Australia or the Trustees reside in different Australian States then the governing law is that chosen by the Trustee and if not chosen by the Trustee it is the governing law of the State of Queensland.
- 1.7** Where the term "SMSF" is used it means a "Self-Managed Superannuation Fund" as defined in the Superannuation Laws.
- 1.8** Where there is conflict between the Rules and the Superannuation Laws, the Superannuation Laws are paramount unless, at the discretion of the Trustee a breach of the Superannuation Laws by the Trustee of the Fund or Member does not result in a fine, penalty or non-compliance certificate or adverse determination delivered to the Regulator for the Trustee, Fund or Member.

Example: The Rules of the Fund provide that the Trustee of the Fund may accept an in-specie contribution. However, as the Superannuation Laws and in particular section 66(1) of the SISA do not allow the Trustee of a SMSF to acquire residential property from a Member or Related Party, Rule 1.7 limits the Trustee's abilities to acquire an Asset from a related party as it breaches the Superannuation Laws.
- 1.9** Subject to the Superannuation Laws and the Fund retaining its Complying SMSF

status the Rules may allow the Trustee to add to, vary, change or otherwise amend a Rule of the Fund. Any such addition, variation, change or amendment, provided it meets the relevant Rule variation requirements, is to be considered part of the original Rule. The Trustee may also create an additional Rule for the Fund where authorised under the Rules of the Fund including the creation of a Reserve, SMSF Living Will, SMSF Will, Binding Death Benefit Nomination (whether incorporated in a SMSF Will or made separately), Non-Binding Death Benefit Nomination, or Member Pension. *Any additional Rule may become a Special Rule of the Fund if declared by the Trustee as such and may not be varied by any variation of these Rules unless with the specific consent of the Trustee and any Member affected by the Special Rule.*

1.10 In accordance with Rule 1.7 and the requirement for the Trustees of the Fund to ensure that the Fund remains a Complying SMSF, the Rules are written as being subject to the Superannuation Laws. Where the Trustee or any other person enters into a transaction, undertaking, agreement, understanding or any other arrangement that has the effect of the Trustee breaching the Superannuation Laws or being deemed a non-complying SMSF by the Regulator as a consequence of the Trustee's or other persons action, the transaction, undertaking, agreement, understanding or any other arrangement is to be rendered to the extent it has breached the Superannuation Laws void ab-initio subject to and conditional upon the Superannuation Laws allowing.

1.11 The Sole Purpose Test, including the core and ancillary purposes of the Fund are specified in Section 62 of the SISA. These are to provide retirement, incapacity, sickness, death and any other benefits allowed by the Superannuation Laws to Members of the Fund or to Members, former Members or for any other purpose, determined by the Fund Trustee, upon the winding up of the Fund. This shall be the case except where the Trustees of the Fund are individuals then the primary purpose of the Fund shall be to provide old age pensions.

1.12 Where the Trustee of the Fund and the Member have agreed or put in place arrangements including but not limited to Reversionary Pensions, SMSF Wills, Death Benefit Nominations, under previous Governing Rules that are of the same effect as a Special Rule then these Rules are to be retained in their original form as a Special Rule of this Fund. They cannot be varied by this Rule, Deed or any other variation if it is detrimental to the Member.

Example: *A Member of a Fund has in place a Lifetime Complying Pension that was commenced in 2004 and seeks to retain the benefits of this Pension such that the Pension is not to be terminated. This sub-rule 1.11 ensures that the Pension continues on unvaried whilst the remaining Governing Rules are varied at execution of the deed of variation.*

1.13 Where the Superannuation Laws or an interpretation of those laws by the Regulator or Courts provides the Trustee or Members of the Fund with an opportunity to enter into an advantageous transaction, series of transactions or strategy and the Governing Rules of the Fund do not specifically provide for the Trustee to undertake the transaction or strategy then the Trustee may hold a meeting that specifically authorises the transaction or strategy. The specific authorisation of the transaction or strategy is to become a Rule of the Fund and part of the Fund's Governing Rules.

1.14 The Trustee and Members are authorised to conduct the dealings and communications in respect to the Fund, as between the Members, Trustees, advisors, other parties and Government conducted electronically, in accordance with the *Electronic Transactions Act 1999 (Cth)* (ETA), including but not limited to consenting to the authority of the Trustee to sign, and deliver by electronic means and digital signature, on behalf of the Fund, all legal documents, minutes, resolutions, nominations, upgrades and/or other instruments produced or producible in respect to the operation, administration or conduct of the Fund, subject only to the consent of the receiver of such transaction. Notwithstanding

any restriction on the application of the ETA, or any State based ETA, to the application of the SISA or SISR, the Trustee and Members expressly authorise and adopt the ETA as a consensual means of conduct and communication in respect to all matters relevant to Membership and administration of the Fund. Except where parties are not at liberty to contract or consent out of a matter being conducted in accordance with the ETA, or a State based ETA, the Trustee, Members, advisors and other parties may rely on the terms of the ETA in the conduct of communications by the relevant parties in respect to the administration and conduct of the Fund.

Rule 2 – Trusteeship of the Fund

- 2.1** At all times there must be a Trustee of the Fund commencing from the appointment of the Initial Trustee of the Fund. The Trustee may be one or more individuals and/or a constitutional company or constitutional companies acting as Trustee or Trustees of the Fund.
- 2.2** Where the Trustees are natural persons, the primary purpose of the Fund is to pay Income Streams or Pensions inclusive of old age pensions to Members of the Fund unless otherwise authorised by the Superannuation Laws or the Regulator.
- 2.3** If the Trustee is a company ("Corporate Trustee"), the company must be a constitutional corporation and each and every director of the Trustee Company must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws.
- 2.4** If the Trustee are natural persons, each must not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws (a single natural person acting as Trustee may represent another natural person by enduring power of attorney or proxy, in accordance with the Rules of the Fund and as permitted by the Superannuation Laws).
- 2.5** The Trustee must ensure that, while these Rules are in force, the Fund is maintained as a Complying SMSF and a regulated superannuation fund including but not limited to meeting the Membership and trustee standards as they apply at the time for a SMSF under the Superannuation Laws.

Note: *In order to obtain concessional taxation benefits the Trustee of the Fund must ensure that during any income year the Fund is maintained as a Complying SMSF. The Trustee is to be vigilant in that regard and may engage the services of professionals to ensure compliance.*

- 2.6** The Trustee or Members of the Fund may appoint a new Trustee provided the Fund remains a Complying SMSF and the new Trustee or Trustees appointed may include a Replacement Trustee or an Additional Trustee. The new Trustee, Replacement Trustee or Additional Trustee must consent to their appointment, not be a Disqualified Person unless otherwise allowed by the Regulator or the Superannuation Laws and agree to abide by the Rules of the Fund, the Superannuation Laws and with best endeavors ensure the Fund remains a complying SMSF. The surviving Trustee cannot delay the appointment of an incoming Trustee by not enabling the incoming Trustee to provide its consent.

Example: *One Member of a two Member Fund with individual Trustees dies and a Legal Personal Representative becomes a Replacement Trustee of the Fund. When Death Benefits become payable the Legal Personal Representative must resign and an Additional Trustee or new Member/Trustee must be appointed within six months from the date of resignation of the Replacement Trustee. If the remaining Trustee does not appoint a Replacement Trustee or new Member/Trustee the Fund will no longer be a SMSF and serious financial consequences may arise. It is advisable that the Trustee seek advice from a suitably qualified SMSF legal expert at the time of death of any Member of the Fund.*

- 2.7** Any Trustee is to be removed as Trustee under one or more of the following conditions:

- a) The Members of the Fund in a Member's Meeting remove the Trustee of the Fund;
 - b) The Trustee retires or resigns and a new Trustee has been appointed;
 - c) Where the Trustee is of the opinion that the continued appointment of the Trustee will result in the Fund becoming a non-complying SMSF or the Fund becoming impractical;
 - d) If the Trustee is prohibited from being a Trustee under the Superannuation Laws or where the Regulator otherwise determines including where the Trustee is a Disqualified Person; and/or
 - e) Where the Member that the Trustee, Replacement Trustee or Additional Trustee acts for is no longer a Member of the Fund including the Trustee/Member or Director/Member themselves.
- 2.8** The Trustee agrees to be bound by the Rules of the Fund, the Superannuation Laws and any direction the Regulator may provide if reasonable.
- 2.9** The Trustee or Member may be required at relevant times under the Superannuation Laws to notify or make a declaration to the Regulator or some other person of events, things, happenings or changes to the Fund. The Trustee or Member will ensure that it seeks to meet any such notification or declaration requirement in the specified time required. The Trustee is not required to register any change in Trustee under any Superannuation or State Law.
- 2.10** Where the Fund is determined by the Regulator to no longer be a SMSF or the Trustee decides not to retain the Fund's SMSF status, the Trustee is to immediately resign and an RSE Licensee is to be appointed or all Members Superannuation Interests are to be rolled over to another regulated Superannuation Fund.
- 2.11** Where a Member of the Fund dies, within a period of five months from the date of the Member's death:
- a) The deceased Member's Legal Personal Representative, provided they have given written consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;
 - b) At the commencement of the payment of the Member's Death Benefits to the deceased Member's Dependents or their Legal Estate the Replacement Trustee appointed on behalf the deceased Member must resign;
 - c) If the Fund's Corporate Trustee has appointed the deceased Member's Legal Personal Representative as a director they are to be removed once Death Benefits commence to become payable to the deceased Member's Dependents or their Legal Estate. If the Corporate Trustee does not remove the deceased Member's Legal Personal Representative as a director upon the payment of the deceased Member's Death Benefits then the Corporate Trustee is to be replaced as Trustee.
- 2.12** Where a Member loses their mental capacity and is no longer able to function as a Trustee of the Fund:
- a) The mentally incapacitated Member's Legal Personal Representative, subject to their consent, is to be appointed as a Replacement Trustee of the Fund or director of the Corporate Trustee if permitted under the constitution of the Corporate Trustee;
 - b) The Replacement Trustee is to have the same voting powers as the Member if they were acting as Trustee.
- 2.13** Where the Superannuation Laws are amended in terms of Trustee and Member requirements for a SMSF the Trustee is to ensure that the Trustee meets the required changes for a SMSF within the time frame specified under the Superannuation Laws.

- 2.14** Any removal or appointment of a Trustee shall be effected by deed or written resolution by the Trustees or Members of the Fund as required in Rule 2. Any deed or resolution for this purpose does not need to be registered unless the Superannuation Laws otherwise require.
- 2.15** Where the Trustee is liable to pay a fine for a breach of the Superannuation Laws the Trustee, unless the Superannuation Laws allow, may not be indemnified from assets of the Fund or accounts of the Fund including Reserve Accounts, Earnings, Insurances or from any other monies in the Fund provided the Trustee of the Fund does not incur further penalties. Where the Trustee is an individual consideration should be given to changing the Trustee to a company to limit personal liability for any fines imposed by the Regulator.
- 2.16** The Regulator may require the Trustee of the Fund or a director of the Fund's Trustee to complete trustee superannuation education. The Trustee of the Fund must comply with any formal education notice.

Rule 3 – Membership of the Fund

- 3.1** Any person or entity with the consent of the Trustee and including a deceased Member's Legal Personal Representative without Trustee consent may become a Member of the Fund provided the Superannuation Laws allow and the Fund retains its status as a Complying SMSF. The Trustee must not accept a Member to the Fund if the person's Membership would result in the Fund no longer being a SMSF unless the Trustee otherwise decides.
- 3.2** The Trustee may:
- a) Impose terms and conditions for Members joining the Fund including but not limited to future Members;
 - b) Establish different classes of Membership if so desired. Prior to establishing a new class of Membership, existing Members must be notified of the new class of Membership and the associated rights, entitlements and benefits attached thereto. The Trustee may classify, in writing, that recipients of Income Stream benefits are a separate class if so desired;
 - c) Limit the persons who may become or be Members of the Fund with any such amendment to be by way of a variation to the Rules of this Fund; or
 - d) Limit future Members of the Fund and, if reasonable, current Members of the Fund to a specific Member's bloodline. This may require future Members to undertake physical, blood or DNA testing to meet requirements established by the Trustee in relation to bloodline Membership.
- 3.3** On becoming a Member of the Fund, the Member must agree to abide by the Rules of the Fund. This includes but is not limited to acting as trustee or director of the corporate trustee (whichever is applicable) where required, providing a Member's Tax File Number and any other information the Trustee may require including relevant insurance details. The Member must adhere to any other requirements that may be necessary of Members joining a Complying SMSF.
- 3.4** The Legal Personal Representative of a Member including a deceased Member is deemed to be the Member for the purposes of the Rules and therefore holds all rights and entitlements of the Member or a deceased Member. For the sake of clarity a deceased Member's Legal Personal Representative continues the deceased Member's Membership under the Rules of the Fund provided the Superannuation Laws allow.
- 3.5** The Member, on joining the Fund, acknowledges the Member has read and understands the Fund's Product Disclosure Statement, and has otherwise had sufficient opportunity to seek professional advice in respect to the risks and benefits of SMSF Membership, including but not limited to Membership in the Fund.

- 3.6** A Member ceases to be a Member of the Fund, subject to the Trustee's discretion and the Superannuation Laws, upon the earliest of any of the following to occur:
- a) The Member Rolls Over or transfers all of their Superannuation Interests to another complying Superannuation Fund unless the Trustee otherwise allows the Member to remain as a Member;
 - b) The Member dies and the Trustee has paid out all the deceased Member's Death Benefits to the Member's Legal Personal Representative or Dependants or any other person, trust or entity. In these circumstances the deceased Member's Legal Personal Representative will cease to be a Member or be the continuation of the deceased Member of the Fund at the time Death Benefits are fully paid;
 - c) More than five months has elapsed since the Member was capable of being a Trustee of the Fund or a director of the Corporate Trustee unless the Member has appointed a Replacement Trustee;
 - d) In the opinion of the Trustee the Member is a Disqualified Person and the Member's continuing Membership may result in the Fund no longer being a Complying SMSF or result in a penalty or fine unless the Regulator provides otherwise;
 - e) The Trustee declares that a Member should cease being a Member where the Member's continued Membership may cause the Fund to lose its Complying SMSF status or for disregarding the laws resulting in the Trustee being continuously fined or for any other reason including the effective operation of the Fund or to ensure the Fund remains a SMSF;
 - f) The Member is a party to proceedings or any agreement pursuant to the *Family Law Act 1975* or equivalent legislation for de facto relationships under Commonwealth, State, Territory or a foreign law and the Trustee is of the opinion that the Member should cease being a Member of the Fund;
 - g) When the Member no longer has any Superannuation Interest in the Fund and the Trustee determines that the Member should no longer be a Member of the Fund;
 - h) If the Superannuation Laws, the Regulator or a Court requires the Member to cease their Membership of the Fund; or
 - i) Where the Trustee is of the opinion that for the benefit of the Fund the Member should cease their Membership of the Fund, at the same time the Trustee is to remove the Member as Trustee or request the Corporate Trustee to remove the Member as director of the Corporate Trustee.
- 3.7** Where a Member ceases Membership of the Fund, the Trustee must resolve to pay the Member their Superannuation Interest as a Superannuation Benefit and/or Transfer Superannuation Interest within a reasonable time or as otherwise required under the Superannuation Laws.
- 3.8** If, upon cessation of Membership of the Fund, a Member is required to Rollover or transfer their Superannuation Benefits the Trustee must request from the transferring Member notification of the complying status of the transferee Superannuation Fund. The request must include a demand for a response in relation to the proposed transferee Superannuation Fund from the departing Member within a reasonable period of time or such other time as is required under the Superannuation Laws. If the departing Member does not respond to the Trustee's request within a reasonable time, or such other time as the Superannuation Laws require, the Trustee may transfer the transferring Member's Superannuation Benefits to an Eligible Rollover Fund.
- 3.9** Any Transfer, Rollover or Superannuation Benefit payment must be made by the Trustee within any time required under the Superannuation Laws or alternatively within a reasonable period of time. The payment where required may be processed through any appropriate government required payment system including Super

Stream.

Rule 4 – Becoming an Operating Regulated SMSF

- 4.1** Upon establishment of the Fund and the initial appointment of the Trustee, the Trustee is to ensure that the Fund becomes a Regulated Superannuation Fund under the Superannuation Laws.
- 4.2** As soon as practicable, the Trustee must take such action to:
- a) Appoint SMSF Professionals and Advisers, including but not limited to an Auditor;
 - b) Deal with the Regulator and do all things necessary to make the Fund operational as a Complying SMSF including obtaining a tax file number and Australian business number;
 - c) Undertake such mandatory training or education as required by the Superannuation Laws and/or the Regulator;
 - d) Open a bank account or similar account to enable the Trustee to receive contributions, dividends, income and other monies on behalf of the Fund; and
 - e) Do such further and additional things as may be required by the Superannuation Laws and/or the Regulator from time to time.
- 4.3** If it is required to establish the Fund as a trust at law by the receipt of monies or other property, the Trustee is to ensure that the Trust is properly established. In this regard a cheque or promissory note may be used as an initial contribution to the Fund to establish it as a genuine trust at law.

Rule 5 – Creating and Transferring Member Superannuation Interests

- 5.1** The Trustee may, at the request of a Member, the Member's Legal Personal Representative or at the Trustee's discretion, create one or more Superannuation Interests on behalf of a Member or for the benefit of the Fund including a Reserve for the benefit of the Member or any other account allowed under the Superannuation Laws including a Pension Reserve. The Trustee may hold one or more Superannuation Interests on behalf of a Member or their Legal Estate.
- 5.2** Any Superannuation Interest created by the Trustee for the Member may include a Member Lump Sum Superannuation Interest, a Member Income Stream Superannuation Interest, a Reserve or any other Superannuation Interest or Member's account allowed under the Superannuation Laws.
- 5.3** A Member Superannuation Interest does not have to commence or be maintained with any Assets or Contributions.
- 5.4** A Member may request the Trustee to transfer a Member Income Stream Superannuation Interest Roll Back amount to a Member Lump Sum Superannuation Interest. Unless otherwise allowed under the Superannuation Laws and requested by the Member this will not create a new Superannuation Interest.
- 5.5** Where the Member requests the transfer of a Member Lump Sum Superannuation Interest to commence a new Member Income Stream Superannuation Interest, notwithstanding that the Member may have an existing Member Income Stream Superannuation Interest, this will create a new Superannuation Interest where the Trustee decides a new Superannuation Interest is to be created and that the Superannuation Laws allow.
- 5.6** Where the Trustee transfers an amount between Superannuation Interests the Trustee may satisfy the transfer amount by allocating Assets between the Member's Superannuation Interests equal in value to the transfer amount.
- 5.7** The Trustee may transfer a Member Superannuation Interest to another Complying SMSF or superannuation fund where the Trustee of the transferee fund accepts the terms and conditions of any transfer including to continue any Income Stream

Superannuation Interest on behalf of the Member under the same terms and conditions as the Income Stream Superannuation Interest in the Transferor Fund.

Example: *A Member of the Fund may be a reversionary beneficiary of a pension ("the original pension") in accordance with the requirements of a SMSF Will. To ensure that the deceased Member's wishes are met upon transfer of the original pension to another fund the Trustee of the transferor fund must require the Trustee of the transferee fund to pay the pension in identical terms and conditions without variation to that of the original pension.*

Rule 6 – Accepting Member Contributions, Rollovers and Transfers

- 6.1** The Trustee may accept an Authorised Contribution, a Rollover Superannuation Benefit or a Transfer Superannuation Interest on behalf of a Member or for the Fund from a Trustee of a Superannuation Fund, a Foreign Superannuation Fund, an employer, a Spouse, a Relative or any other person or entity.
- 6.2** The Authorised Contribution, Rollover Superannuation Benefit or any Transfer Superannuation Interest may be by way of Cash, Assets or a Contribution In Kind. Where an Authorised Contribution is made by way of one or more Assets or a Contribution In Kind the Trustee is to determine a value for the Contribution under the Superannuation Laws or as required by the Regulator.
- 6.3** The Superannuation Laws may provide a maximum Contribution limit for Non-Concessional Contributions, Concessional Contributions and No-Tax File Number Contributions made on behalf of a Member during an income year or a period. The Trustee may raise and confirm with the Member on the making of any excessive contribution however is not required to do so.
- 6.4** Where the Trustee, by mistake accepts a Contribution in excess of any caps or limits under the Superannuation Laws, the Trustee may refund the Contribution to the contributor or any other person and ensure that it is within the time required under the Superannuation Laws or where the Regulator otherwise allows so as not to incur any penalty taxes. The Trustee is to also refund or pay back any Contribution as required by the Regulator pursuant to an assessment, amended assessment or any other direction.
- 6.5** The payment where required may be processed through any appropriate government required payment system including Super Stream.
- 6.6** Where a system, including Super Stream is implemented to facilitate the process of forwarding contributions including employer contributions to the Fund the Trustee of the Fund must do all that is necessary to comply with the conditions of the contributions system.

Note: *SuperStream is a government reform aimed at improving the efficiency of the superannuation system. Under SuperStream, employers must make super contributions on behalf of their employees by submitting data and payments electronically in accordance with the SuperStream standard. All superannuation funds, including SMSFs, must receive contributions electronically in accordance with this standard. The only exclusion relates to contributions made by related party Employers.*

Rule 7 - Creating an Investment Strategy for the Fund and Members

- 7.1** The Trustee of the Fund must formulate and give effect to an Investment Strategy for the Fund that meets the Superannuation Law and Regulators requirements for a complying SMSF. The Investment Strategy which includes the Fund's Insurance Strategy pursuant to Rule 12 and must be regularly reviewed by the Trustee of the Fund.

Note: *The Explanatory Memorandum of the Superannuation Laws states that "SIS sub-regulation 4.09(2) to require trustees to regularly review the entity's investment strategy. Trustees should conduct a review of the entity's investment*

strategy on a regular basis to take into account factors such as the changing circumstances of their fund and its Members. Trustees may evidence this requirement by documenting decisions in the minutes of trustee meetings that are held during the income year."

- 7.2** The Trustee may at any time create a separate Investment Strategy on behalf of one or more Member Superannuation Interests or Fund Accounts including a Reserve Account.
- 7.3** The Trustee may at the request of a Member, but subject to the Trustee's discretion, establish a separate Investment Strategy for a Member Superannuation Interest. The Trustee may acquire a specific Asset on behalf of a Member Superannuation Interest provided the Member Superannuation Interest has sufficient resources to do so and the Superannuation Laws allow.
- 7.4** The Trustee may transfer Assets between Investment Strategies and also between Superannuation Interests in the Fund. Any such transfer will be at a value to be determined by the Trustee or as required by the Superannuation Laws or the Regulator.

Example: *A SMSF holds BHX shares in a separate investment strategy for a Member's Lump Sum Superannuation Interest ("LSI") with a market value of \$50,000. Additionally the Member has a Transition to Retirement Income Stream Interest ("TRIS") in the same SMSF with a separate investment strategy that has exhausted its cash component. The Trustee of the Fund may transfer the BHX shares to the TRIS, sell them to pay the income stream requirements in accordance with the TRIS. Simultaneously the Trustee transfers \$50,000 of CBA shares from the Member's TRIS to the Member's LSI to fund the transfer of assets.*

- 7.5** The Trustee of the Fund does not have to hold separate Assets aside for Reserve Account purposes unless the Superannuation Laws require and the Trustee determines to do so.
- 7.6** The Trustee may alter an Investment Strategy for the Fund, an Account of the Fund, a Superannuation Interest or Reserve Account at any time.
- 7.7** Where the Trustee has received an Authorised Contribution or the payout of an Insurance Policy that results in the Trustee of the Fund inadvertently breaching any Investment Strategy of the Fund, the Investment Strategy subject to receipt of the Authorised Contribution or Insurance Policy proceeds is deemed to be amended to encompass the Contribution or Insurance Policy proceeds until such time as the Trustee decides otherwise.
- 7.8** The Trustee may be required under the Superannuation Laws to complete a Risk Management Statement or such other Statement where the Trustee invests in derivatives, options, instalment warrants or other products with underlying borrowings or leverage. The Trustee is to comply with any such requirements to ensure the Fund remains a Complying SMSF.
- 7.9** Despite anything else contained in the Rules of the Fund, where a Member transfers property or an interest in property to the Fund on condition that the property or interest in property is to be held specifically for the Member to enable the Member to obtain a tax or duty exemption or concession under State taxes, then:
 - a) The property or interest in the property can only be held in the Fund specifically for the transferring Member so that the property or interest in the property cannot be pooled with the contributions or other assets of another Member and no other Member can obtain an interest in the property. If necessary the Trustee may create a sub-fund for the purposes of holding the property; and
 - b) The property or interest in property, or the proceeds of sale of the property or interest in the property if sold, can only be held in the Fund to be provided to the transferring Member as a Retirement Benefit.

Rule 8 – Making Investments for the Fund and Members Benefit

- 8.1** The Trustee must invest the Cash and Assets of the Fund in accordance with the Investment Strategy of the Fund. Each such investment must be considered and comply with the Superannuation Laws and any relevant Trustee Law. The Trustee shall consider the investment in lieu of the necessity for the Fund to maintain a Complying SMSF status by avoiding investments which breach the limitations and/or restrictions in respect to related party investments or loans, In-House Assets Test, Sole Purpose Test or requirements in respect to the holding of any specific Asset class or type.
- 8.2** Provided the Superannuation Laws allow, the Trustee may acquire and invest in any Asset or Cash wherever situate in or outside Australia including, but not limited to the following:
- a) Stocks and shares and other equity and debt-equity interests of any entity (including a company), units in a unit trust both private and public with an investment to include preference, convertible preference shares and units or any other type of equity, unit or hybrid equity instrument in an entity;
 - b) Property either as a passive investment or for development purposes, sale or rental income purposes directly, indirectly or by way of joint venture, partnership, unit trust, bare trust, custodial trust, holding trust or trust provided that the property is not encumbered and the Trustee does not provide a guarantee in respect of any direct or indirect loan agreement incidental to the property unless the Superannuation Laws allow. In instigating any property transaction, the Trustee must ensure that the documentation relating to the transaction, including any indirect, joint venture or partnership interest, satisfies the Fund's Auditor if required and the Superannuation Laws allow. These include, but are not limited to, an appropriate valuation;
 - c) Financial products including instalment warrants, SMSF borrowing trusts, options, futures, warrants, certificates of deposit, endowment warrants, unit trusts, property syndicates, joint ventures, hybrid trusts, pooled superannuation trusts and other instruments that provide the Trustee with a reward on its investment;
 - d) Debt instruments including government and corporate bonds, mortgages, chattel leases, fixed term deposits, hybrid debt instruments and any other type of instrument where the investor receives an interest type of return;
 - e) Discount investments where the Members of the Fund may obtain a discount on services under an agreement with a third party provided that the return available on the investment is the same as that which would be obtained by an investor not able to participate in the discount unless the Superannuation Laws or Regulator allow and that the investment does not cause the Trustee to breach the Superannuation Laws;
 - f) Art, sculpture, wine, vintage cars or any other collectable provided the Superannuation Laws allow and the Trustee complies with any and all requirements in relation to the holding of a collectable;
 - g) A business, either directly or indirectly including an active business such as share trading, property development or primary production provided the investment in the business does not breach the Sole Purpose Test, the Fund's Audit Standards or the Superannuation Laws;
 - h) Intellectual property including a trade mark, copyright, licence, patent. The holding of the intellectual property may be direct, indirect, as part of a joint venture or as an interest by way of a licence. The Trustee of the Fund may create the Intellectual Property on behalf of the Fund provided the Superannuation Laws allow;
 - i) A Superannuation Income Stream, Pension or annuity from a life insurance

company, Superannuation Fund, financial institution, credit union, friendly society, trust, body corporate or person;

- j) A life insurance or friendly society bond, policy or other investment including but not limited to an endowment, whole of life or other investment or risk policy issued by any life insurance company wherever situate;
- k) Any managed fund, managed investment scheme, collective investment vehicle, trust, Bare Trust, custodial trust, holding trust or unit trust including a pooled superannuation trust provided the investment does not breach the Superannuation Laws;
- l) Interest in a joint venture, partnership, association or co-operative provided the Trustee assesses the risk of the venture and in particular the cash flow requirements and legal nature of the venture;
- m) Assets of Member of the Fund, Related Trust or a Related Party of a Member conditional upon the acquisition of the investment not breaching the Superannuation Laws and in particular the Sole Purpose Test and the In House Assets Test (if the Superannuation Laws prevent the acquisition by the Trustee of a Related Party Asset the Trustee must not acquire the prohibited Asset);
- n) Instalment warrant and other SMSF borrowing arrangements including single acquirable assets acquired under a limited recourse lending arrangements pursuant to sections 67A and 67B of the SISA;
- o) Any investment that meets the Sole Purpose Test and sections 66, 67, 84, 85 and 109 of the SISA;
- p) Any other investment including a prudent investment under Trust Law;

provided that the acquisition, investment and holding of the Asset is in accordance with the Fund's or Superannuation Interest's Investment Strategy whichever is relevant and in addition, the acquisition, investment and holding of the Asset does not breach the Superannuation Laws, including the Sole Purpose Test or the In-House Assets test.

- 8.3** The Trustee may acquire, hold and invest in any currency including maintaining an Australian, foreign or digital currency account. This also includes any digital currency or payment system where so ever situated in the world, including but not limited to Bitcoin.
- 8.4** Subject to any requirements under the Superannuation Laws or by the Regulator, the Trustee may at any time determine the value of an Asset of the Fund but is otherwise not compelled to do so. However, if the Superannuation Laws require a valuation at a specific time in respect of a Fund Asset the Trustee is to abide by the requirements of any valuation laws, Regulator's guidelines or rules.
- 8.5** At any time, the Trustee of the Fund may create an Asset for the Fund which is to be dealt with wholly and exclusively by the Trustee of the Fund as an Asset of the Fund. This may include patents, copyright, trademarks or any other form of property.
- 8.6** Where the last surviving Member of the Fund dies, the Member's LPR if appointed as Trustee or Director of the Fund's Corporate Trustee must, prior to making any Death Benefit payments on behalf of the deceased Member distribute any surplus, Assets or monies in Fund Reserve Accounts. Such distribution may include finance for an anti-detriment payment in accordance with section 295-485(a) of the ITAA 1997, a payment to any past Member or the deceased Member's Lump Sum Superannuation Interest, Member Income Stream Superannuation Interest, their Dependants, Legal Estate or charity.

Rule 9 – Establishing a Reserve Account for the Fund

- 9.1** The Trustee may establish one or more Reserve Accounts for the Fund which may include amongst others an Investment Reserve, Anti-detriment Reserve, a Contributions Reserve, a Pensions Reserve, an Income Stream Reserve provided the Superannuation Laws allow. Any Reserve Account may be for the benefit of current, past and future Members, their Dependants, the Legal Personal Representative of the deceased Member's Estate or the Trustee.
- 9.2** The Trustee may make additional Rules regarding the use, purpose and payment of Superannuation Benefits, General or Specific Expenses or for any other thing from any Reserve Account. In making any Rule the Trustee is to take into account any guidelines or rulings issued by the Regulator or the Australian Prudential Regulatory Authority. Any Rule the Trustee makes regarding a particular Reserve Account may be declared by the Trustee to be a Special Rule.
- 9.3** Subject to the Superannuation Laws and the Fund remaining a Complying SMSF, the Trustee may add by way of Cash or Assets, of full or partial Cash Contribution, to a Reserve Account from any Member Superannuation Interest, any other account of the Fund, any other Reserve Account, from Earnings or from any other source including another Superannuation Fund, trust or entity such as distributions from a trust or other entity.
- Example:** *Part Five of the SISA prevent the Trustee of a SMSF from reducing a Member's minimum benefits except to pay a temporary incapacity benefit in limited circumstances. As such an amount cannot, under current laws be deducted from a Member's Superannuation Interests to be added to a Reserve unless it is for self- insurance according to the Commissioner. The powers authorised in Rules 9.3 and 9.4 are subject to the Superannuation Laws.*
- 9.4** The Trustee may deduct and allocate from any Reserve Account of the Fund any amount or Asset. Such amount or Asset may be applied in whole or part to be added to Earnings or for the benefit of any Superannuation Interest, to:
- a) Pay any General or Specific Expense of the Trustee or the Fund;
 - b) Add to another Reserve Account in the Fund or any other Superannuation Fund;
 - c) Add to any other account or Superannuation Interest;
 - d) Add to Fund or Superannuation Interest Earnings;
 - e) Make a Transfer Superannuation Interest to another Superannuation Fund or the Fund itself;
 - f) Fund directly from the Reserve Account, a Member Lump Sum Superannuation Interest or Member Income Stream Superannuation Interest;
 - g) Pay a Death Benefit; or
 - h) Apply for any other purpose including being transferred to another Superannuation Fund provided that the Members of the Superannuation Fund are in common with the Members of the transferor Superannuation Fund.
- 9.5** Subject to the Superannuation Laws, Regulator's Guidelines and the Fund retaining its Complying SMSF status, any trust distributions, insurance policy proceeds, other distributions, windfall gains, winnings or gifts that the Trustee does not declare as Earnings or Authorised Contributions of any Account or Member Lump Sum Superannuation Interest may be allocated to a Reserve Account. The Trustee has sole discretion as to which Reserve Account these amounts are to be added to.
- 9.6** No Member, Dependand of a Member, deceased Member, the Member's Legal Personal Representative or a deceased Member's Legal Estate has any right or entitlement to a Reserve Account unless so authorised under the Rules of the Fund.

- 9.7** If the allocation of amounts from a Fund Reserve creates a tax liability for the Trustee of the Fund or a Member of the Fund, the Trustee may seek professional advice prior to entering into any allocation to determine its taxation consequences.

Example: *An allocation from a Reserve, except where the allocation adheres to one of the exceptions in ITR 1997 - R292.25, is generally a concessional contribution for the Member of the Fund receiving the allocation of Reserve amounts. A Trustee or Trustees of a SMSF should seek competent advice from an appropriately qualified SMSF Professional Advisor where the establishment of or a payment from a Reserve of any description are contemplated.*

Part Two – Some Important Planning Considerations

Rule 10 – Creating a Member SMSF Living Will

- 10.1** A Member may provide a Trustee with a Member SMSF Living Will detailing any Superannuation Benefits requested to be paid in the event of the Member's Temporary or Permanent Incapacity, Terminal Illness or other incapacity event including mental incapacity whereupon a Member may be paid benefits, Superannuation Benefits or Reserve benefits from the Fund without breaching the Superannuation Laws or the Sole Purpose Test.

Example: *James Smith, who is in receipt of an Account Based Pension makes a binding SMSF Living Will requiring the Trustee of the Fund to continue paying \$50,000 or the minimum pension payment for the benefit of any aged care in the event that he becomes mentally incapacitated and needs to be placed into aged care.*

- 10.2** The Trustee may accept some or all of the Member's request under the Member SMSF Living Will including the category of Incapacity or other Superannuation Benefits to be paid, the amount to be paid, whether Reserve Benefits may be paid, to whom the Incapacity Superannuation Benefits are to be paid and the Member's Replacement Trustee, however, the Trustee is not compelled to do so.
- 10.3** If the Trustee formally accepts some or all of a Member's SMSF Living Will, then at the discretion of the Trustee, the terms and conditions of the Member SMSF Living Will so accepted may become a Special Rule of the Fund provided the Superannuation Laws allow and the Fund retains its Complying SMSF status.
- 10.4** The Trustee may determine whether the Member SMSF Living Will Rule can be varied and in what circumstances and by whom.
- 10.5** The Trustee and Member may seek to appoint a SMSF Professional prior to making any formal request or acceptance of a Member's SMSF Living Will.

Rule 11 – Creating a Member SMSF Estate Plan and SMSF Will

SMSF Will and Death Benefit Nomination

- 11.1** A Member may provide the Trustee with a request to accept any of the following:
- a) A Non-Binding Death Benefit Nomination;
 - b) A Binding Death Benefit Nomination;
 - c) A Non-Lapsing Binding Death Benefit Nomination;
 - d) A SMSF Will incorporating a Non-Lapsing Binding Death Benefit Nomination and non-lapsing directions to the trustee such as Reserve allocations and the payment of an anti-detriment benefit payment;
 - e) A SMSF Will incorporating any provision of Rule 11.1(a-d) (including cascading and/or conditional terms), including a nomination (including cascading terms and/or conditional terms) of the Legal Personal Representative of the Member;

- f) A SMSF Will incorporating any provision of Rule 11.1(a-e) and a SMSF Living Will; or
- g) An instrument of any one or more options of Rule 11.1.

11.2 Any of the documents referred to in Rule 11.1 may provide written direction to the Trustee as to:

- a) The manner and form in which Death Benefits will be paid in the event of the Member's death to one or more beneficiaries including as a lump sum, pension, income stream or combination thereof, of the Member's Superannuation Interests;
- b) The beneficiaries the Death Benefits are to be paid, including the Dependants of the Member, the Legal Personal Representative of the Member's Estate or such Persons as are otherwise allowed to receive a Member's Death Benefits under the Superannuation Laws;
- c) The amount or amounts of the Death Benefit to be paid to one or more beneficiaries in the event of a Member's death including the transfer of part or the whole of any Fund Asset in satisfaction of the payment of an amount of Death Benefit;
- d) The terms and conditions upon which a beneficiary is to receive a Death Benefit from the Member's Superannuation Interests, including but not limited to whether the Death Benefit (or part thereof) is to revert to another Person or the Legal Personal Representative of the Member's Estate in the event of the beneficiary's death, incapacity or the happening of a particular event;
- e) The terms and conditions regarding the payment of any Reserve Benefit to the deceased Member's Dependants, Legal Personal Representative of the Member's Estate and/or such other Persons eligible to receive payment thereof under the Superannuation Laws;
- f) The terms and conditions regarding the payment of any insurance proceeds payable on the life of the Member including a payment to an Anti-Detriment Reserve, the deceased Member's Dependants, Legal Personal Representative of the Member's Estate and/or such other Persons eligible to receive payment thereof under the Superannuation Laws; and/or
- g) The terms and conditions of appointment of a Legal Personal Representative of the Member in the life time of the Member (being a SMSF Living Will) or on and after death (**Note:** *the Member is also directed to consider Section 17(A) of the SISA*).

11.3 The Trustee may prescribe a specific format or form for the making of a Member's Non-Binding Death Benefit Nomination, Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will, by notice in writing to the Member's (which notice shall not invalidate a relevant Nomination of a Member made before such date); however, in the absence thereof the Member may make such relevant Nomination in any format which is capable of recording the Member's directions in one or more of the matters shown at Rule 11.1.

11.4 The Trustee must accept a Member's Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will, and such Nomination shall be a Special Rule of the Fund, and:

- a) The Trustee is under no obligation to interpret or determine if a Member's Non-Binding Death Benefit Nomination, Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will nominates one or more Persons ineligible to receive Death Benefits under the Superannuation Laws, or imposes terms of payment which contravene the Superannuation Laws;

(Note: The Superannuation Laws allow a Member to nominate the Member's spouse, Member's de facto spouse, Member's child (any age), Persons in an interdependency relationship with the Member, or a person who is financially

dependant on the Member to receive the Member's Death Benefits. If the Member nominates their best friend, who does not qualify under one of these categories, the nomination to the best friend is invalid under the Superannuation Laws and the Trustee cannot give effect to the nomination.)

- b) If the Trustee seeks advice and/or Trustee determines that one or more of the Persons nominated are ineligible to receive a Death Benefit, as a consequence of the Superannuation Laws, then the Trustee must accept the relevant Nomination, and may (but is not required to) advise the Member in writing of the Trustee's determination;

(Note: The category of Persons qualifying as being in an interdependent relationship with the Member can change with time, accordingly a Person may be ineligible at one point in time, but later qualify because changes in circumstances in the Member's life.)

- c) The Member's Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will (as the case may be) shall become a Special Rule of the Fund in respect to the payment of the Member's Death Benefits, and shall be amended, varied and/or revoked only with the written consent of the Member.

11.5 The Trustee must, as soon as reasonably possible after receipt of a Member's Non-Binding Death Benefit Nomination, Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will, give notice to the Member in writing of its acceptance and receipt of the relevant Nomination. A failure of the Trustee to give a notice in writing does not invalidate the relevant Nomination.

11.6 The Trustee may at the request of the Member create any further Special Rules, in respect to the Member's Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will.

Note: *The Trustee may determine whether any Special Rule created for a Member can be varied and under what circumstances including allowing a Member or the Trustee to be the only person that can vary the Special Rule.*

11.7 The Trustee may accept a Non-Binding Death Benefit Nomination from a Member; however the Trustee is not bound by the terms of a Non-Binding Death Benefit Nomination of a Member.

11.8 The Trustee is not bound by the terms of the following:

- a) A Member's Non-Binding Death Benefit Nomination;
- b) A Member's Binding Death Benefit Nomination, if the Nomination expired at or before the Member's death (for example, the Member did not make the Binding Death Benefit Nomination as a "Non-Lapsing Binding Death Benefit Nomination");
- c) Such part of the Member's Binding Death Benefit Nomination, Non-Lapsing Binding Death Benefit Nomination or SMSF Will which directs the payment of the Member's Death Benefit (in whole or in part) to a Person (or Persons) who is (are) ineligible to receive the Member's Death Benefit under the Superannuation Laws at and after the Member's death; however, the balance of the Nomination shall be binding on the Trustee.

Rule 12 – Creating an Insurance Strategy and Insurances in the Fund

12.1 The Trustee of the Fund may create an Insurance Strategy for the Fund, a Member of the Fund or any Superannuation Interest in the Fund and must create an Insurance Strategy if the Superannuation Laws require. The Insurance Strategy shall form part of the Fund's Investment Strategy.