

- (a) the Trustee has obtained that Beneficiary's consent in writing to the Amendment by following the procedure specified in the Act; or
- (b) the Act permits the proposed Amendment to be made by the Trustee without that Beneficiary's consent.

68.5 Notice to Members

As soon as practicable after the Deed has been amended, the Trustee must give to each Member a written statement explaining the nature and purpose of the Amendment and the effect of the Amendment on the entitlement of the Members.

68.6 Notice to Responsible Authority

If required by the Act, the Trustee must lodge a copy of the Deed or Minutes of Meeting effecting the Amendment with the Responsible Authority.

68.7 Amendments concerning Compliance with the Act

If the proposed Amendment is to be made to enable the Fund to comply with any relevant requirement of the Act, the Amendment may be made without the consent of any Member even if the Member's Benefit may be adversely altered by the Amendment.

68.8 Restriction on Amendments

An Amendment must not be made to this Deed (including an Amendment to this clause) if it would have the effect or result that the Fund does not have or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions as provided in this Deed; or
- (b) a Corporate Trustee as Trustee of the Fund.

69. TAXATION

69.1 Taxation of Benefits

If any Taxation is payable in respect of a Benefit payable to a Beneficiary, then the Trustee must if required by the Act deduct or arrange to have deducted the amount of the Taxation (including any interest payable thereon) from the Benefit, and account for the Taxation to the proper Responsible Authority and pay the net Benefit to that Beneficiary.

69.2 Taxation on Contributions

If any Taxation is payable in respect of any Contribution made by or on behalf of a Member, the Trustee must if required by the Act deduct or arrange to have deducted the amount of the Taxation (including any interest payable thereon) from the relevant Member's Accumulation Account, and account for the Taxation to the proper Responsible Authority.

65. TERMINATION OF THE FUND

65.1 Grounds for Termination

The Fund must be terminated if:

- (a) a resolution of the Members determines to terminate the Fund and they give notice in writing of the determination to the Trustee;
- (b) there are no Members in the Fund and no Beneficiary with any interest in the Fund; or
- (c) subject to a resolution (of approval) of the Members, the Trustee resolves to terminate the Fund.

65.2 Notice of Termination

Upon the termination of the Fund the Trustee must give notice in writing to each Employer and each of the Members that the Fund has or is to be terminated as from a specified date ("the Termination Date").

65.3 Winding up of the Fund

On and from the Termination Date:

- (a) no further Contributions may be made or accepted other than any arrears of Contributions due prior to the Termination Date;
- (b) the Trustee must call up and collect any arrears of Contributions;
- (c) the Trustee must pay out of the Fund any expenses incurred by or on behalf of the Fund;
- (d) the Trustee must distribute the balance of the Fund in a manner that the Trustee considers appropriate in accordance with the Deed until all Benefits which are or could become payable to Beneficiaries have been paid, applied or dealt with by the Trustee;
- (e) the Trustee must otherwise continue to administer the Fund in accordance with the Deed;
- (f) if a surplus in the Fund remains after the payment of all Benefits to Members or their Dependants, the Trustee must distribute the surplus to or for the benefit of any Members or former Members, any Dependants of those Members or former Members, or the Legal Personal Representatives of any such Members, former Members, or Dependants, as the Trustee determines in its discretion; and
- (g) the Trustee must take all other necessary steps, including lodging a final return with the Responsible Authority, to wind up the Fund in accordance with the requirements of the Act.

62.3 Payment of Special Unpreserved Benefits

If an interest which is transferred to the Fund from an Approved Superannuation Entity was not a preserved Benefit in the Approved Superannuation Entity, then, subject to compliance with the Act and any other conditions pertaining to the payment of that interest, the interest may be paid by the Trustee to the Beneficiary of the interest at the request of the Beneficiary.

62.4 Member Subject to Fund

A person whose interest in another Approved Superannuation Entity is transferred to the Fund under this clause becomes a Member and is subject to the rights and obligations of this Deed. If the Trustee so determines the person becomes a Member of the Fund effective from the date on which the person's interest was transferred to the Fund.

63. TRANSFERS TO APPROVED SUPERANNUATION ENTITIES

63.1 Trustee May Transfer with Member's Consent or Request

- (a) The Trustee may if requested by a Member, or if the Member consents subject to any conditions that the Trustee determines, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate any Benefit of that Member as at the date of transfer ("the Transferred Amount").
- (b) If the Trustee requires further information in relation to the Member's request, the Trustee must within 10 working days after receiving the request, ask the Member for the information. If the Trustee has not received the information within 10 working days after making the request, the Trustee must make reasonable further inquiries of the Member to obtain the information.

63.2 Trustee May Transfer without Member's Consent

The Trustee may, and where required by the Act must, transfer to any Approved Superannuation Entity in which the Member is or will be a participant or eligible to participate, the Benefit of that Member as at the date of transfer ("the Transferred Amount") if:

- (a) the Trustee believes on reasonable grounds that the trustee of the Approved Superannuation Entity into which the Transferred Amount is to be transferred or rolled over has received the Member's consent to the transfer or rollover; or
- (b) the transfer or rollover is required by the Act.

63.3 Receipt of Transferred Amount

The receipt by the proper officer of the other Approved Superannuation Entity of the Transferred Amount will be a sufficient discharge to the Trustee. The Trustee is not responsible for the payment or disposal by the trustees of the other Approved Superannuation Entity of the Transferred Amount.

- (b) the payment is made as a Superannuation Lump Sum and not as the payment of a Pension;
- (c) the Trustee is satisfied that the transfer is permitted by the Act; and
- (d) unless the Trustee otherwise determines, the value of any assets to be transferred is based on the current market value of those assets.

58.2 Transfer of Policy of Insurance

If a Benefit is payable to a Beneficiary and the Benefit includes any interest in a Policy of Insurance, the Trustee may, in its absolute discretion and in lieu of surrendering the Policy of Insurance, assign the Policy of Insurance to that Beneficiary. The value of the Policy of Insurance as at the date of assignment must be debited as a payment made to the Beneficiary in the relevant Account. The Trustee is not responsible for payment of any further premiums which become payable under the Policy of Insurance on and from the date of assignment.

59. RESTRICTIONS ON PAYMENT OR DEALINGS WITH BENEFITS

59.1 Compliance with the Act

- (a) The Trustee must not pay or deal with any Benefit or other amount from the Fund to or in respect of any Beneficiary in any circumstances which would cause the Trustee or the Fund to be in breach of any relevant requirement of the Act.
- (b) The Trustee may pay or deal with any Benefit to or in respect of a Member if the Trustee's action is permitted under this Deed or under the Act in respect to a member of an Australian complying regulated self managed superannuation fund.

59.2 Trustee Must Act

The Trustee must do anything necessary that the Trustee sees fit including adjusting the amount or terms of payment of Benefits in order to comply with any relevant requirements of the Act.

60. CONDITIONS FOR PAYMENT OF PRESERVED BENEFITS

60.1 Entitlement to Preserved Benefit

A Beneficiary is only entitled to receive a Benefit comprising preserved benefits within the meaning of, and as permitted by, the Act.

60.2 Unrestricted Non-Preserved Benefits

The Trustee may pay to a Beneficiary at any time, any part of a Member's Benefit comprising unrestricted non-preserved benefits within the meaning of, and as permitted by, the Act.

57.7 **Limitation on Pension Amount**

The total instalments of a Pension payable in respect of a Pensioner must not exceed the balance of the Pensioner's Pension Account at the relevant time.

57.8 **Death of Pensioner**

Subject to the Act and any Agreed Pension Rules made in a Pension Agreement under clause 57.2(b), if a Pensioner dies leaving an amount in credit in the Pension Account of the Pensioner:

- (a) if one or more persons have been nominated in a Pension Agreement as reversionary beneficiaries (**Reversionary Beneficiaries**) who are Dependants of the Pensioner within the meaning of the Act, the Trustee must pay the Pension to the Reversionary Beneficiary(ies) as a Reversionary Pension in accordance with the Pension Agreement; or
- (b) if no Reversionary Pension is payable under a Pension Agreement, the Trustee must pay the balance of the Pension Account as a Death Benefit in the manner determined under clause 52.3 to the persons determined under clause 53.

For the avoidance of any doubt, if the Pensioner has made a Beneficiary Nomination, then upon the death of the Pensioner, the Trustee's obligations under a Pension Agreement to pay the Agreed Pension to a Reversionary Beneficiary takes priority over the payment of any death benefit that would be payable under the Pensioner's Beneficiary Nomination if not for the Trustee's obligations under the Pension Agreement to pay the Agreed Pension to the Reversionary Beneficiary.

57.9 **Application to Convert Superannuation Lump Sum Benefit to Pension**

A Member may by written application to the Trustee elect to convert to a Pension the whole or any part of a Benefit which is payable as a Superannuation Lump Sum but has not already been paid under this Deed.

57.10 **Commutation of Pension to a Superannuation Lump Sum**

On the written application of a Pensioner or Nominated Beneficiary of a deceased Pensioner, the Trustee must commute the whole or any part of a Pension payable from the Fund to the Pensioner or Nominated Beneficiary, as the case may be, provided that the commutation would not cause the Trustee or the Fund to breach any relevant requirement of the Act. The Trustee must not commute the Pension if a relevant requirement of the Act prohibits its commutation.

- (a) The Trustee may apply the amount of the commuted Pension by either:
 - (i) retaining the amount in the Fund as a credit to an Accumulation Account for the Pensioner or Nominated Beneficiary; or
 - (ii) paying the amount as a Benefit in the form of a Superannuation Lump Sum or Pension in accordance with the provisions of this Deed.
- (b) If part of a Pension is commuted, the Trustee may reduce the total amount of the instalments in respect of the balance of the Pension payable to the Pensioner by

Member must be determined by the Trustee subject to the requirements of the Act but must not exceed the balance of the Member's Accumulation Account as advised to the Member by the Trustee.

56.3 Temporary Residents Permanently Departing Australia

If a Member was the holder of an eligible temporary resident visa within the meaning of the Act that has expired or that has been cancelled and the Member has departed from Australia, the Trustee must, upon receiving a request from the Member and being satisfied of the foregoing, pay that Member's Benefit as a single Superannuation Lump Sum in a time and manner as permitted by the Act and after withholding or deducting any Taxation or other charges that the Trustee is required or entitled to withhold or deduct.

57. BENEFITS PAYABLE AS A PENSION

57.1 Payment of Pension

A Benefit that is payable as a Pension must be paid to the Pensioner as a Pension in accordance with this Deed but always subject to the requirements of the Act.

57.2 Type of Agreed Pension and Pension Agreement

- (a) The Trustee and the Pensioner may agree to any type, manner or form of Pension being provided to the Pensioner that suits the needs of the Pensioner, subject to the requirements of this Deed and the Act.
- (b) If the Trustee and the Pensioner agree on a particular type of Pension to be provided to the Pensioner (the "Agreed Pension"), the terms, conditions or governing rules of the Agreed Pension must be recorded and evidenced in writing, whether by formal written agreement, minutes or other document ("the Pension Agreement") including specifying any particular rules and requirements of the Act governing the Agreed Pension (the "Agreed Pension Rules") that must be included in the Pension Agreement.
- (c) Any Pension Agreement made under this clause must be read and construed in conjunction with and will be deemed to form part of this Deed as between the Trustee and the Pensioner but does not otherwise constitute an amendment to this Deed.
- (d) If there is any inconsistency between any requirement of the Agreed Pension Rules and:
 - (i) any provision of this Deed - then the requirement of the Agreed Pension Rules prevails; or
 - (ii) any relevant requirement of the Act - then the requirement of the Act prevails;

to the extent of that inconsistency.

payment to that person acting in that capacity for the estate of the deceased Member and not to that person personally.

- (f) Subject to the Trustee's complying with the Act and clauses 9.8(d) and 53(a) to (d) inclusive, the Trustee must give effect to the Beneficiary Nomination in so far as the Member directs the Trustee to pay or apply all or part of the Death Benefit:
 - (i) as to any specific amounts or proportions of the Death Benefit; or
 - (ii) as to any specific Fund assets by transfer in-specie subject to clause 58; or
 - (iii) as to any type of Pension or Superannuation Lump Sum; or
 - (iv) as to any combination of (i) to (iii) inclusive.

54. PERMANENT INCAPACITY BENEFITS

54.1 Entitlement

A Member is entitled to receive from the Fund a Permanent Incapacity Benefit if the Member suffers Permanent Incapacity.

54.2 Amount

The Permanent Incapacity Benefit is:

- (a) the balance of the Member's Accumulation Account at the date upon which payment is made; and
- (b) the proceeds of any Policy of Insurance for the Member that are received by the Trustee; and
- (c) provided that, subject to the requirements of the Act and prior to the Permanent Incapacity of a Member, the Trustee and that Member may agree in writing that the Permanent Incapacity Benefit which becomes payable upon the Permanent Incapacity of the Member is to be an amount other than as specified in this clause ("the Other Amount"), and if so agreed, then the Permanent Incapacity Benefit payable by the Trustee upon the Permanent Incapacity of that Member must be the Other Amount.

54.3 Manner of Payment - Superannuation Lump Sum or Pension

- (a) The Member may elect to receive the Permanent Incapacity Benefit as a Superannuation Lump Sum or as a Pension or in the purchase of an Annuity or partly as one or more of those forms. If the Member does not make the election, then the Benefit will be paid as a Pension.
- (b) If a Member is incapable of making an election under this clause, the election may be made on behalf of the Member by the Member's legally appointed attorney or guardian.

- (f) The Trustee is not responsible or liable to a Member or that Member's estate or any other person for any consequence arising from the Member's Beneficiary Nomination being invalid or ineffective due to the Beneficiary Nomination:
 - (i) having ceased to have effect; or
 - (ii) nominating a Nominated Beneficiary who, at the time of the Member's death, is not the Legal Personal Representative or a Dependant of the Member or is otherwise not permitted under the Act to be the recipient of the Member's Death Benefit.

53. PERSONS TO RECEIVE DEATH BENEFITS

- (a) If the Trustee holds a Three Year Binding Nomination or a Non-lapsing Binding Nomination in respect of a deceased Member, the Trustee must pay the Death Benefit to the person or persons referred to as the Nominated Beneficiary in the Beneficiary Nomination if:
 - (i) the person, or each of the persons, were the Legal Personal Representative or a Dependant of the deceased Member at the time of the Member's death; and
 - (ii) the proportion of the Death Benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the Beneficiary Nomination; and
 - (iii) the Beneficiary Nomination is in effect.
- (b) If the Trustee holds a Beneficiary Nomination which is:
 - (i) a Beneficiary Statement of Wishes; or
 - (ii) a Non-lapsing Binding Nomination or a Three Year Binding Nomination which is not valid because it does not conform to the relevant requirements of this Deed, or has lapsed (in the case of a Three Year Binding Nomination),

the Trustee must pay or apply the Death Benefit to or for the benefit of:

- (iii) a person nominated in writing as a Nominated Beneficiary by the deceased Member in the Beneficiary Nomination provided that the Trustee is satisfied that the person was a Dependant of the deceased Member at the time of death of the Member; or
 - (iv) any one or more of the Dependants of the deceased Member; or
 - (v) the Legal Personal Representative of the deceased Member;
- in such proportions between all or any of the above persons or categories of persons as the Trustee may determine in its discretion, but subject to and provided that:
- (vi) the Trustee may have regard to the wishes of the deceased Member as to the intended recipient of the Death Benefit as evidenced by the Beneficiary Nomination; and

51.3 **Manner of Payment - Non commutable Income Stream**

Subject to the conditions of preservation and any other relevant requirements of the Act, the Member may elect to receive the Preservation Age Benefit as a Non commutable income stream as defined in the Act.

If the Member does not make the election, then the Benefit will be paid as a Transition to Retirement Income Stream.

52. **DEATH BENEFITS**

52.1 **Entitlement**

A Death Benefit is payable from the Fund when the Member dies.

52.2 **Amount**

The Death Benefit is the aggregate of:

- (a) the balance of the Member's Accumulation Account as at the date upon which payment is made ("**Accumulation Account Balance**"); and
- (b) if as a result of the Member's death, the Trustee receives the proceeds of any Policy of Insurance effected on behalf of the Member under this Deed ("**Insurance Proceeds**");
 - (i) subject to the requirements of the Act, a proportion expressed as a percentage (which percentage may be anything from 0% to 100% inclusive) of the Insurance Proceeds that the Trustee and the Member have agreed in writing prior to the death of a Member, will be included in the Death Benefit which becomes payable upon the death of that Member ("**Agreed Proportion**") and the remainder (if any) of the Insurance Proceeds that is not allocated to the deceased Member may be retained by the Trustee and transferred to the Reserve Account or allocated to any other Member as the Trustee determines; or
 - (ii) if the Member has died without having made an agreement with the Trustee as to the Agreed Proportion under clause 50.2(b)(i), a proportion expressed as a percentage (which percentage may be anything from 0% to 100% inclusive) of the Insurance Proceeds that the Trustee considers in its absolute discretion to be reasonable to include as part of the Member's Death Benefit, and the remainder (if any) of the Insurance Proceeds may be retained by the Trustee and transferred to the Reserve Account or allocated to any other Member as the Trustee determines; and
- (c) any other amount (including a Tax Saving Amount) that the Trustee may determine to include in the Death Benefit in a manner that complies with the Act.

52.3 **Manner of Payment - Trustee's Discretion**

- (a) A Death Benefit may be paid in a manner that the Trustee determines in its discretion in the form of a Pension, the purchase of an Annuity or a Superannuation Lump Sum or any one or more of those forms.

- (ii) the Transferor and the Trustee desire that the Transfer be assessed for nominal duty under Section 62A of the NSW Duties Act.
- (b) Notwithstanding any other provision of this Deed to the contrary, this Deed requires, and the Trustee agrees that at all times that the Property (or proceeds of sale of the Property) are an asset of the Fund:
- (i) the Property (or proceeds of sale of the Property) must be used solely for the purpose of providing a retirement benefit to the Transferor;
 - (ii) if the Transferor comprises more than one Member, the Property is to be used for the benefit of each of the those Members comprising the Transferor in the same proportions as the Property was held by them before the Transfer; and
 - (iii) if the Transferor is not the only Member of the Fund, then the Property must be segregated from other assets of the Fund in the following manner:
 - (A) the Property is to be held by the Trustee specifically for the benefit of the Transferor as a Member or Members of the Fund; and
 - (B) the Property (or proceeds of sale of the Property) cannot be pooled with property held for any other Member of the Fund (besides the Transferor); and
 - (C) no other Member of the Fund (besides the Transferor) can obtain an interest in the Property (or proceeds of sale of the Property).
- (c) Notwithstanding any other provision of this Deed to the contrary, at all times that the Property (or proceeds of sale of the Property) are an asset of the Fund, this Deed must not be amended (including any amendment to this clause) if the amendment would have the effect or result that this clause 47.7 is revoked, repealed or amended.

48. CONTRIBUTION SPLITTING

The Trustee may allow a Member to request the Trustee to split the Contributions made in respect of that Member:

- (a) after the end of each Financial Year, in respect of contributions for the previous Financial Year; and
- (b) in the Financial Year in respect of which the contributions are made where the Member is closing the Member's account in the Fund;

with the split amount transferred to the benefit of the Member's Spouse, as long as the contribution split is made in a manner and form that is permitted by the Act.

49. FUND TO PROVIDE BENEFITS

The Trustee must ensure that the Fund is maintained solely for the purpose of providing the Benefits described in this Deed.

47. PAYMENT OF CONTRIBUTIONS

47.1 No Obligation to Contribute

A Member does not have any obligation to make a Contribution to the Fund and may remain a Member of the Fund even if a Contribution is not made by or in respect of that Member.

47.2 Contributions may be in Cash or other Assets

Any Contribution may be paid either in cash or by the transfer of an asset to the Fund (provided that the asset is an authorised investment pursuant to this Deed and the Investment Strategy) or in any other way that is not prohibited by the Act.

47.3 Limitation on Accepting Contributions

- (a) The Trustee must not accept any Contribution if the acceptance of the Contribution would contravene a requirement of the Act.
- (b) In addition to the Trustee's obligations under paragraph (a), the Trustee must not accept a Member Contribution if:
 - (i) the Member has not quoted the Member's Tax File Number to the Trustee; and
 - (ii) that Member Contribution exceeds the amount of the Non-concessional Contributions Cap applicable to the Member.

47.4 Refund of Ineligible Contributions

- (a) If the Trustee becomes aware that a Contribution (or aggregate of Contributions) has been accepted by the Trustee from or on behalf of a Member in respect of a relevant Financial Year and the Trustee's acceptance of that Contribution (or aggregate of Contributions) causes either
 - (i) a breach of the Act, or
 - (ii) the Member to exceed either the Member's concessional contributions cap or non-concessional contributions cap within the meaning of the Act for that relevant Financial Year;the Trustee:
 - (iii) must, if required to do so by the Act; or
 - (iv) may on request from the Member, and if permitted to do so or if not prohibited from doing so, under the Act;refund the Contribution (or such part or aggregate of the Contribution or Contributions) that either:
 - (v) the Trustee was not permitted to accept by the Act; or

38.2 Investment Return on Reserve Account

Any amount held in the Reserve Account does not form part of any Accumulation Account or Pension Account and any investment return (positive or negative) derived by the Fund on the Reserve Account shall be credited or debited to the Reserve Account from the Income Account.

38.3 Purpose and Use includes Reserves

- (a) The Reserve Account may be used by the Trustee for the purpose of:
 - (i) stabilising investment earnings of the Fund in accordance with the Fund's Investment Strategy; or
 - (ii) the benefit of any Member or Beneficiary or former Member or Beneficiary, including augmenting an Account on any basis that does not breach the Act; or
 - (iii) for such other purposes that are not prohibited by this Deed or the Act as the Trustee may determine in its discretion.
- (b) The Trustee may create and operate separate Reserve Accounts dealing with:
 - (i) investment reserves;
 - (ii) contribution reserves;
 - (iii) miscellaneous reserves;
 - (iv) pension reserves; or
 - (v) any other reserve that is permitted by the Act.

39. PENSION ACCOUNT

The Trustee may establish a Pension Account in respect of a Pensioner from which the Pension shall be paid. The Pension Account may be operated by the Trustee as the Trustee sees fit.

40. CALCULATION OF INVESTMENT RETURN AND EARNINGS

- (a) Following each Balance Date, the Trustee may determine the investment return and investment earnings of the Fund for that Financial Year.
- (b) Subject to the requirements of the Act, the Trustee must determine the investment return to be credited or debited to a Member's Benefit in a way that is fair and reasonable as between all the Members of the Fund and the various kinds of Benefit of each Member of the Fund.
- (c) At any point in time during a Financial Year the Trustee may calculate and determine as it sees fit in a way that is fair and reasonable as between all Members of the Fund the investment return and investment earnings of the Fund for the purpose of applying that investment return in calculating the withdrawal benefit of a Member at that time.

36. ACCUMULATION ACCOUNTS

36.1 Credits to Accumulation Accounts

The following amounts may be credited to an Accumulation Account of a Member:

- (a) Contributions made by or on behalf of the Member;
- (b) the proceeds (or any part thereof) of any Policy of Insurance or Annuity in respect of the Member which are paid to the Trustee;
- (c) any amount transferred or rolled over to the Fund from another Approved Superannuation Entity in respect of the Member;
- (d) the investment return (if positive) of the Member's Benefit as determined by the Trustee and transferred from an Income Account;
- (e) any amounts transferred from a Pension Account in respect of the Member; and
- (f) any other amounts as the Trustee may from time to time determine.

36.2 Debits to Accumulation Accounts

The following amounts may be debited to an Accumulation Account of a Member:

- (a) any Benefit paid to the Member or a Beneficiary in respect of the Member;
- (b) any amount transferred or rolled over from the Fund in respect of the Member to another Approved Superannuation Entity;
- (c) the investment return (if negative) of the Member's Benefit as determined by the Trustee;
- (d) the costs of any Policy of Insurance or Annuity obtained in respect of a Member;
- (e) the proportion of any amount payable as Taxation in respect of Contributions to the Fund or income of the Fund credited to the Member's Accumulation Account or arising as a result of a Rollover Payment to or from another Approved Superannuation Entity as the Trustee may determine;
- (f) the proportion of any amount representing the reimbursement to the Trustee of costs, charges, or expenses incurred by the Trustee pursuant to this Deed as the Trustee may determine;
- (g) any amount payable to the Trustee in respect of the Trustee's indemnity contained in this Deed;
- (h) any amount transferred from an Accumulation Account to a Pension Account in respect of a Member; and
- (i) any other amounts as the Trustee may from time to time determine.

32.1 Annual Return

an annual return in a form prescribed by the Act;

32.2 Trustee Certificate

a trustee certificate in a form prescribed by the Act;

32.3 Audit Certificate

the audit certificate given to the Trustee by the Auditor;

32.4 Contribution Statement

a statement in relation to the Contributions received by the Fund as required under the Income Tax Act; and

32.5 Other Documents or Information

any other documents or information which may be required by the Act, or are requested by the Responsible Authority.

33. COMPLAINTS PROCEDURE

33.1 If Required by the Act

The Trustee must, if required by the Act, establish and maintain arrangements for complaints and enquiries by Members.

33.2 Rights of Beneficiaries

A Beneficiary has the right to make enquiries into, or complaints about, the operation or management of the Fund in relation to that Beneficiary.

33.3 Trustee to Deal within 90 Days

The Trustee must deal with any enquiries or complaints within 90 days after they were made.

34. NOTICE TO RESPONSIBLE AUTHORITY OF SIGNIFICANT ADVERSE EVENTS

34.1 Trustee's Responsibility to Notify

If the Trustee becomes aware of an event having a significant adverse effect on the financial position of the Fund, the Trustee must if required by the Act give written notice to the Responsible Authority setting out particulars of the event. The Trustee must do this no later than the third business day after becoming aware of the event.

34.2 Meaning of Significant Adverse Event

For the purpose of this clause, an event has a significant adverse effect on the financial position of the Fund if, as a result of the event, the Trustee will not, or may not, at a time

28. REMUNERATION OF TRUSTEE AND REIMBURSEMENT FOR ADMINISTRATION EXPENSES

28.1 No Right to Charge Fees

For as long as the Fund is a self managed superannuation fund under section 17A of the SIS Act:

- (a) no Individual Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Individual Trustee in that capacity in relation to the Fund;
- (b) no Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person for any trustee duties or services performed by the Corporate Trustee in that capacity in relation to the Fund; and
- (c) no Director of the Corporate Trustee is entitled to charge or to receive professional fees or other remuneration from the Fund or any other person (including the Corporate Trustee) for any trustee duties or services performed by the Director in that capacity in relation to the Fund.

28.2 Indemnity and Reimbursement

The Trustee is entitled to be indemnified by and reimbursed from the Fund for and in respect of:

- (a) all costs, charges and expenses incurred or to be incurred in connection with the acquisition, registration, custody, disposal of or other dealings with the investments of the Fund;
- (b) all fees, wages and expenses of any Auditor, Actuary, Qualified Adviser, Investment Manager or Custodian from time to time engaged by the Trustee under this Deed;
- (c) all Taxation paid or payable by the Trustee in connection with the Fund and any Member on any account whatsoever;
- (d) all costs, charges and expenses incurred or to be incurred in relation to the preparation, maintenance and distribution of any accounting records, returns, reports or other documents in relation to the Fund; and
- (e) any other costs, charges and expenses incurred or to be incurred in relation to the establishment, management or administration of the Fund, including the cost of incorporating a special purpose company to act as Corporate Trustee of the fund.

29. ACCOUNTING RECORDS

29.1 Form of Accounting Records

The Trustee must establish and maintain accounting records in a form that:

- (a) correctly records and explains the transactions and financial position of the Fund;

24.3 Variation to the Investment

The Trustee may accept or reject a request from a Member to vary any specific investment of that Member.

25. VALUATION OF FUND

Following each Balance Date and any other date which the Trustee considers appropriate or is required by the Act, the Trustee must obtain a valuation of the Fund. The valuation must be reflected in the accounts of the Fund.

26. DELEGATION BY TRUSTEE

26.1 Trustee's Right to Delegate

Subject to clause 26.3, the Trustee may delegate any power, discretion or obligation exercisable by the Trustee (including any power or obligation which the Trustee has a duty to exercise and the power of delegation) to any person ("the Delegate") in a manner and on terms that the Trustee thinks fit.

26.2 Variation or Revocation to Delegation

The Trustee may vary or revoke any delegation and may exercise any power in conjunction with, or to the temporary or permanent exclusion of, the Delegate.

26.3 Delegation Subject to the Act

The Trustee must not make any delegation or allow any delegation to remain where the delegation contravenes the Act.

26.4 Scope of Delegation

The Delegate may only perform those duties and only has those powers that the Trustee expressly delegates to the Delegate.

27. APPOINTMENT OF ACTUARY, AUDITOR, CUSTODIAN, INVESTMENT MANAGERS AND QUALIFIED ADVISERS

27.1 Actuary

The Trustee must, if necessary, appoint an Actuary to provide actuarial advice from time to time.

27.2 Auditor

- (a) The Trustee must appoint in writing an Auditor to perform an audit of the Fund in accordance with the Act.
- (b) The Trustee must agree with the Auditor on the scope of the audit to be conducted in accordance with Australian Auditing Standards and which should include:
 - (i) the Auditor's reporting obligations under the Act;

23.2 Borrowing by the Trustee (including Limited Recourse Borrowing Arrangements)

The Trustee may borrow money or maintain an existing borrowing of money, including borrowing for the purposes of a limited recourse borrowing arrangement under the SIS Act, only in a manner that is not prohibited by the SIS Act.

23.3 Lending to Members

The Trustee may only allow any money of the Fund to be lent, or any financial assistance using the resources of the Fund to be given, to a Member or a relative of a Member in a manner that is not prohibited by the Act.

23.4 Acquisition of Certain Assets from Members or a Related Party

The Trustee may only intentionally acquire or allow to be acquired on behalf of the Fund an asset from a related party of the Fund in a manner that is not prohibited by the Act.

23.5 Investments to be made at Arm's Length

The Trustee must not invest or allow to be invested any money or other part of the Fund unless:

- (a) all parties to the relevant transaction are dealing at arm's length in respect of the transaction; or
- (b) if the parties are not dealing with each other at arm's length, the terms and conditions of the transaction are no more favourable than those which it would be reasonable to expect would apply if the parties were dealing with each other at arm's length.

23.6 Statement of Investment Strategy

The Trustee must if required by the Act formulate and prepare an Investment Strategy which sets out the investment objectives of the Fund and the policy to achieve those objectives and incorporates any other matters which are necessary for the Trustee to comply with the Act.

23.7 Member Investment Choice

- (a) The Trustee may choose in the Trustee's absolute discretion to adopt and offer to Members (or a specific class of Members) a choice of individual Investment Strategies from which a Member (or a class of Members) may choose one Investment Strategy or a combination of individual Investment Strategies ("Member Investment Choice").
- (b) In determining individual Investment Strategies to offer as a choice to Members, the Trustee must give proper consideration to:
 - (i) all matters contained in the Trustee's covenant in clause 12(f); and
 - (ii) the circumstances of the Fund as a whole in making the Member Investment Choice available as part of the Fund's Investment Strategy; and

capital market transaction, securities buy-back transaction or sell-back transaction;

- (ii) other product traded, or transaction undertaken, on financial markets (whether on an exchange or not) from time to time and at any future time;
- (iii) synthesis or derivative of any of them; and
- (iv) option on any transaction or product referred to in paragraphs (i) - (iii) above.

“Master agreement” means any agreement (however described) that sets out the terms of, or otherwise relates to, any Derivative Transaction, and which is published or prepared by any bank, financial institution, domestic or international financial industry body or association, and any schedule, annexure, annex, supplement, addendum (however described) to, or of, that agreement.

22.3 Dealing with Investments as Beneficial Owner

The Trustee may deal with any investment of the Fund as authorised by this Deed as fully and effectively as a person absolutely and beneficially entitled to and dealing with his own property may do.

22.4 The Trustee may have Interest in Investments

- (a) The Trustee may make or vary any of the investments authorised under this Deed even if the Trustee (including an Individual Trustee or Director of a Corporate Trustee) may directly or indirectly have an interest in or may benefit from the investment.
- (b) The Trustee and any Directors must disclose details of their interest in any investment in any manner required by the Act.

22.5 Policies of Insurance

- (a) The Trustee may obtain Policies of Insurance on behalf of a Member to secure the Benefit of that Member or any other Member.
- (b) A Member may request the Trustee to obtain a Policy of Insurance and may specify the type of Policy of Insurance to be obtained. The Trustee has no responsibility to the Member or the Dependants of the Member to obtain that Policy of Insurance.
- (c) The Trustee may debit the premiums for any Policy of Insurance to:
 - (i) the Income Account; or
 - (ii) the Account of any Member for whom a Policy of Insurance is obtained; or
 - (iii) the Reserve Account;in such proportions and manner as the Trustee may determine from time to time.
- (d) The Trustee and the Fund are not liable for any loss suffered by the Fund or any Member or Beneficiary as a result of:

may consider desirable and to accept surrenders of or otherwise determine such leases or sub-leases;

21.13 Sell Property

To sell or otherwise dispose of any property forming part of the Fund at such price and upon such terms and conditions and in such manner as the Trustee may consider desirable;

21.14 Undertaking and Contracts

To give undertakings and enter into contracts and incur obligations relating to the Fund as the Trustee thinks fit;

21.15 Insurance and Premiums

To effect Policies of Insurance to provide for all or any part of the Benefits which may become payable from the Fund and to pay out of the Fund all premiums under such policies and to surrender vary or assign or otherwise deal with any Policy of Insurance as the Trustee thinks fit;

21.16 Proxies and Powers of Attorney

To give proxies and powers of attorney (with or without powers of substitution) and appoint representatives for voting or acting on behalf of the Trustee in relation to any property comprising part of the Fund;

21.17 Purchase Annuity

To purchase an Annuity to provide all or a part of the Pension payable in respect of a Member;

21.18 Insurance of Property

To insure and keep insured any property real or personal and whether freehold or leasehold for the time being comprising part of the Fund;

21.19 Insurance of Trustee and Directors

To insure and keep insured any liability of the Trustee or any Directors of a Corporate Trustee or the liability of the Fund to indemnify or reimburse the Trustee or Directors, as the case may be.

21.20 Delegate

To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred on the Trustee under this Deed and execute any powers of attorney or other instruments necessary to effectuate such purpose.

20.2 Trustee May do all Acts in Exercise of Powers/Obligations

The Trustee may do all acts and things which the Trustee considers necessary, desirable or expedient for the proper administration, maintenance and preservation of the Fund and in the exercise and performance of the Trustee's discretions, powers and obligations under the Deed.

20.3 Powers Additional to Powers Given under the Act

The Trustee's powers and discretions under this Deed are additional to, and not in substitution for, the powers and discretions exercisable by the Trustee under the Act.

20.4 Conflicts of Interest

The Trustee may exercise or concur in exercising all the powers and discretions contained in this Deed or otherwise conferred by law notwithstanding that any person being an Individual Trustee or Director or shareholder of a Corporate Trustee has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or as a shareholder or director or member or partner of any company or partnership or as a unit holder in any unit trust or beneficiary of any discretionary trust or otherwise 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.

21. SPECIFIC MANAGEMENT POWERS OF THE TRUSTEE

Subject to clause 23, the Trustee has the following powers:

21.1 Appoint and Pay Managers and Others

To appoint remove or suspend custodians, investment managers, administrators, clerks, agents, representatives, nominees and other servants and delegates, whether they be appointed for permanent, temporary or special services, and to determine their powers and duties and fix and pay from the Fund their salaries, emoluments and charges;

21.2 Legal Proceedings

To institute, conduct, defend, compound, settle or abandon any legal proceedings by or against the Fund or otherwise concerning the Fund, the Members or the Deed;

21.3 Compound Debts

To compound and allow time for payment or satisfaction of any debt due to the Fund and of any claim or demand by or against the Fund;

21.4 Arbitration

To refer any claim or demand by or against the Trustee to arbitration and observe and perform the award of the arbitrator;

19. DISCLOSURE AND REPORTING TO MEMBERS

19.1 General Requirement

The Trustee must provide each Member with information in writing in relation to the main features, benefits, risks and conduct of the Fund, the financial condition and investment performance of the Fund, the Benefit of the Member, Contributions to the Fund, and any other matters that the Trustee determines is required by the Act.

19.2 Specific Requirements

If required by the Act, the information that the Trustee is to provide may include:

(a) **New Members**

information to a person on becoming a Member;

(b) **For each Financial Year**

information to each Member in respect of each Financial Year of their membership;

(c) **Significant Events and Material Changes**

information to each Member in respect of any significant event and material changes in relation to the Fund;

(d) **Information on Request**

information to a Beneficiary (including a Member) on request by the Beneficiary if the Beneficiary reasonably requires the information for the purposes of:

- (i) understanding any Benefit that the Beneficiary may have, has or used to have;
- (ii) understanding the main features of the Fund;
- (iii) making an informed judgment about the management and financial condition of the Fund;
- (iv) making an informed judgment about the investment performance of the Fund; or
- (v) understanding the particular investments of the Fund;

(e) **Cessation of Membership**

information to a Member, or if the Member has died, to each Beneficiary receiving a Benefit as a result of the death of the Member, in respect of the Member's cessation of membership;

(f) **Rollover Payment Statement**

- (c) that a proxy may be appointed to vote on behalf of the Member at the meeting provided that the Member lodges the form of proxy with the Trustee not later than 24 hours before the scheduled starting time of the meeting.

The notice must be accompanied by a form of proxy approved by the Trustee.

16.4 **Service of Notice**

The Trustee must cause the notice of meeting to be served on each Member at least ten days before the date of the meeting. Service may be effected personally or by prepaid ordinary mail, and if by mail, notice will be deemed to have been given 3 days after the date of posting.

16.5 **Chairperson**

The Members may at the commencement of the meeting appoint a Chairperson of the meeting.

16.6 **Voting Entitlement**

- (a) Subject to clause 16.6(b), each Member is entitled to one vote, and the Chairperson does not have a casting vote in addition to the vote of the Chairperson as a Member.
- (b) Any Member may require, either prior to or immediately following the vote on any resolution, that the vote be cast or recast, as the case may be, with each Member having such number of votes corresponding to the amount of the Benefit in the Fund that the Member holds at the time of the vote, where each dollar of the withdrawal benefit equates to one vote.

16.7 **Trustee to Oversee Meeting**

The Trustee may oversee the conduct of the meeting of Members and must keep minutes of the meeting of Members.

17. **CESSATION OF MEMBERSHIP**

17.1 **Triggering Events**

A person ceases to be a Member of the Fund on the first to occur of the following:

- (a) the date on which payment of all the Member's Benefits is made or dealt with by the Trustee to or on behalf of the Member;
- (b) the date that the Trustee reasonably determines in accordance with any relevant requirement of the Act.

17.2 **Member's Rights not Affected**

A Member's cessation of Membership or death will not affect or exclude:

14.2 Reports to Members

The Trustee must keep and retain, for as long as relevant and for at least the minimum period required by the Act, copies of reports that were given to all Members if the reports were given under the Act or under this Deed. The Trustee must, if requested, make those copies available for inspection by the Responsible Authority.

15. ADMISSION OF MEMBERS

15.1 Eligible Person to Apply

An Eligible Person may apply to the Trustee to become a Member of the Fund or the Trustee may invite an Eligible Person to become a Member of the Fund. The Trustee has discretion in deciding whether or not to accept an Eligible Person as a Member.

15.2 Application Form

The Trustee may require as a condition of accepting an Eligible Person as a Member that the Eligible Person completes a written application in the form that the Trustee determines. The application form may make provision for:

- (a) all information which is required by the Act to be provided by the Trustee to the applicant and to be provided by the applicant to the Trustee;
- (b) the applicant providing (if the applicant chooses to do so) the Tax File Number of the applicant and an acknowledgement by the Trustee and/or Employer; and
- (c) the applicant providing the nomination of a Nominated Beneficiary.

15.3 Acceptance of Membership Application

- (a) If the Trustee accepts an application for membership, the applicant becomes a Member of the Fund on a date determined by the Trustee or, if the Trustee does not make a determination, on the date the application for membership is accepted by the Trustee.
- (b) The Trustee may accept an application for membership notwithstanding that the Member has at that time a nil balance in the Fund if the Trustee is reasonably satisfied that the Member has or will have any beneficial interest in the Fund, including if the Trustee expects to receive Contributions made by or on behalf of the Member or a Rollover Payment on behalf of the Member from another Approved Superannuation Entity or the Member may become entitled to receive a Benefit including a Benefit payable on the death of another Member.

15.4 Deemed Acceptance of Application

Notwithstanding clause 15.2, even if a completed written application for membership is not provided by an applicant, the payment of a Contribution by or on behalf of an applicant and the acceptance by the Trustee of that Contribution will be deemed to be acceptance of that applicant as a Member on the date that the Contribution is accepted by the Trustee.

- (a) the Trustee failing to act honestly in any matter concerning the Fund;
- (b) the Trustee intentionally or recklessly failing to exercise, in relation to any matter affecting the Fund, the degree of care and diligence that the Trustee was required to exercise; or
- (c) the Trustee incurring liability for a monetary penalty under a civil penalty order or administrative penalty within the meaning of the Act.

11.3 Indemnity of Trustee

- (a) The Trustee must be indemnified out of the Fund for all liabilities incurred by the Trustee in the exercise or purported exercise or attempted exercise of the trusts, powers, authorities and discretions given to the Trustee in this Deed or by the Act.
- (b) This indemnity does not extend to any liability of the Trustee arising in circumstances described in clause 11.2.

11.4 Indemnity of Director

If a Director incurs a liability in acting as a Director of a Corporate Trustee in respect of conduct or circumstances for which the Trustee is or would be entitled to be indemnified out of the Fund, the Director must also be indemnified out of the Fund in respect of that liability.

11.5 Lien on Fund to Satisfy Indemnity

The Trustee may exercise a lien on and use any assets of the Fund for the purposes of satisfying the indemnity given to the Trustee provided that the existence or exercise of the lien does not contravene the Act.

12. COVENANTS BY TRUSTEE

The Trustee covenants:

- (a) to act honestly in all matters concerning the Fund;
- (b) to exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) to perform the Trustee's duties and exercise the Trustee's powers in the best interest of the Beneficiaries;
- (d) to keep the money and other assets of the Fund separate from any money and assets, respectively:
 - (i) that are held by the Trustee personally; or
 - (ii) that are money or assets, as the case may be, of a standard employer-sponsor or an associate of a standard employer-sponsor of the Fund;

- (i) the resolution requires a unanimous decision of all Individual Trustees or Directors of a Corporate Trustee; or
- (ii) in the absence of a unanimous decision, the resolution of the Trustee:
 - (A) shall be to pay the Death Benefit to the Legal Personal Representative of the deceased Member; or
 - (B) requires the prior written consent of the Legal Personal Representative of the deceased Member.

9.9 Minutes of Meeting

- (a) The Trustee must keep or cause to be kept proper minutes of meetings of the Trustee which are entered in a book maintained for that purpose.
- (b) The Trustee must endeavour to ensure that all minutes of meetings of the Trustee:
 - (i) are dated;
 - (ii) are sufficiently detailed and accurate to record the nature of business discussed, the decisions of the Trustee and the reasons for those decisions;
 - (iii) identify any documents that have been presented to the Trustee and considered by the Trustee before the making of any decision; and
 - (iv) record attendance, non-attendance and voting at meetings, particularly in relation to any decision which needs a voting requirement other than a simple majority.
- (c) The minutes of any meeting once signed by the Chairperson of the meeting or by the Chairperson of the next succeeding meeting will be *prima facie* evidence of the matters stated in those minutes.
- (d) The Trustee must retain the minutes of meetings for at least the minimum period required by the Act.

9.10 Items for Consideration

Subject to clause 9.1, the Trustee must endeavour to ensure that meetings regularly consider, amongst other things and so far as relevant, the following:

- (a) that Individual Trustees or Directors of a Corporate Trustee are not, or have not become, disqualified persons as defined in the Act;
- (b) that the Fund assets are reconciled to the accrued liabilities of the Fund;
- (c) the investment performance of the Fund, including the performance of any service providers to the Fund;
- (d) any claim for Benefits;
- (e) any complaints or enquiries made by Members;
- (f) any conflicts of interest; and

9. PROCEEDINGS OF TRUSTEE

9.1 Meetings

- (a) The Trustee may meet, adjourn and regulate its meetings as the Trustee sees fit.
- (b) In the case of a Corporate Trustee, if the terms of its Constitution are inconsistent with the terms of this Deed, the terms of this Deed will prevail to the extent of the inconsistency.
- (c) Without limiting the foregoing, any Individual Trustee or Director of a Corporate Trustee may call a meeting by giving at least 14 days notice in writing to each other Individual Trustee or Director of a Corporate Trustee specifying:
 - (i) the date, time and place for the meeting;
 - (ii) the agenda and proposed resolutions for the meeting.

9.2 Quorum for Meeting of Trustee

- (a) A meeting of the Trustee must only exercise any powers or discretions exercisable by the Trustee under this Deed if a Quorum is present.
- (b) The Quorum is the number of persons representing:
 - (i) at least 66% in number of:
 - (A) in the case of a Corporate Trustee, the total number of Directors of the Corporate Trustee; and
 - (B) in the case of Individual Trustees, the total number of Individual Trustees; and
 - (ii) at least a majority in value of the aggregate of all Member account balances in the Fund.

9.3 Passing of Resolutions at Meetings

- (a) All matters affecting the Fund arising at a meeting of the Trustee must be determined by resolution. Subject to clause 9.8(c), no resolution will be effective unless carried by a simple majority, or if the Act requires a particular majority, by that majority.
- (b) A written resolution signed by a Chairperson of the Trustee will be prima facie evidence of an effective resolution passed at a meeting of the Trustee duly convened and held.
- (c) A copy of that written resolution must be given to each Individual Trustee or Director of a Corporate Trustee, as the case may be, who was not present at the meeting at which that resolution was passed as soon as reasonably practicable after that resolution is made.

- (e) where a Responsible Officer of the company has been disqualified from holding office pursuant to clause 8.4 or pursuant to any requirement of the Act at all times during the immediately preceding period of 28 days.

8.6 Trustee may be a Member

An Individual Trustee or Responsible Officer of a Corporate Trustee is not disqualified from also being a Member or from exercising rights or deriving any Benefit as a Member.

8.7 Consent to Appointment

A person must not be appointed as an Individual Trustee or Director of a Corporate Trustee unless the person has consented in writing to the appointment.

8.8 Continuity of Office

A person who ceases to be an Individual Trustee or who is a Director of a company that ceases to be a Corporate Trustee must do everything reasonably necessary or required of that person to vest the Fund in the new or remaining Trustee and to deliver all records and other books in that person's possession or control to the new or remaining Trustee.

8.9 Trustee Declaration of Obligations and Responsibilities

- (a) A person must within 21 days after being appointed as an Individual Trustee or Director of a Corporate Trustee sign a declaration in the approved form under section 104A of the SIS Act that the person understands his or her duties as an Individual Trustee or Director of a Corporate Trustee ("Declaration").
- (b) A person who is an Individual Trustee or Director of a Corporate Trustee must ensure that any person subsequently appointed as an Individual Trustee or Director of a Corporate Trustee signs a Declaration
- (c) Declarations made under this clause are to be:
 - (i) retained for so long as is relevant and in any case for at least 10 years; and
 - (ii) available for inspection by the relevant Responsible Authority upon request.

8.10 Legal Personal Representative of Member under Enduring Power of Attorney

If a person is a Legal Personal Representative of a Member because the person holds an enduring power of attorney granted by the Member, then the Trustee may appoint that person, and the Trustee must on written request by the person to the Trustee, appoint that person, to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be, in place of that Member during the period that the person holds the enduring power of attorney granted by the Member. The appointment is subject to the person consenting to act under clause 8.7 and not being disqualified within the meaning of the Act.

7.5 Tax File Number, Australian Business Number and Goods & Services Tax

If required by the Act, the Trustee must, as soon as practicable after the Commencement Date (and within any prescribed period required by the Act), make application on behalf of the Fund to the relevant Responsible Authority:

- (a) for a Taxation File Number (TFN);
- (b) for an Australian Business Number (ABN); and
- (c) if applicable, for registration for Goods & Services Tax (GST).

8. APPOINTMENT AND REMOVAL OF TRUSTEE

8.1 Structure of the Office of Trustee

Subject to clause 7, the office of the Trustee must be held by:

- (a) Individual Trustees; or
- (b) a Corporate Trustee;

with the composition and structure of the Trustee satisfying the definition of a self managed superannuation fund under the Act.

8.2 Compliance with the Act

The appointment or removal of any person to or from the office of the Trustee and the composition of persons holding the office of Trustee must comply with the Act.

8.3 Members to Appoint and Remove Trustee

The Members by resolution:

- (a) may appoint or remove any person as an Individual Trustee or any company as a Corporate Trustee or any person as a Director of any Corporate Trustee by notice in writing given to that person or company provided that:
 - (i) in the case of an appointment, the person or company has consented in writing to the appointment and is not disqualified from so acting; and
 - (ii) in the case of a removal of a person who is an Individual Trustee or Director of a Corporate Trustee; that person does not vote on the proposed Members resolution for that person's removal; and
 - (iii) in the case of any resolution for an appointment or removal that is proposed to be made or made in the period after the death of a Member and prior to any Trustee resolution concerning the payment of the deceased Member's Death Benefit, the Legal Personal Representative of the deceased Member must have given prior written consent to the appointment or removal; and
- (b) must ensure that any vacancy in the office of the Trustee is filled in a manner and within the time required by the Act.

3.2 Trustee must Comply with Act

To the extent that any relevant requirements of the Act impose obligations upon the Trustee in carrying out the role of Trustee of the Fund, the Trustee must comply with those obligations. Without limitation to foregoing, in relation to the Trustee's exercise of its powers, discretions, authority and obligations relevant to the management, administration and control of the Fund under this Deed:

- (a) the Trustee may do anything that it is permitted to do or not restricted from doing under the Act;
- (b) the Trustee must do everything that it is required to do under the Act in order to satisfy a relevant requirement of the Act; and
- (c) the Trustee must refrain from doing anything that it is prohibited from doing under the Act, or which would cause a breach of, or non-compliance with, a relevant requirement of the Act.

3.3 Inconsistency between Deed and Act

If there is any inconsistency between a provision of this Deed and a relevant requirement of the Act, the latter will prevail over the former to the extent of that inconsistency.

4. GOVERNING LAW

This Deed is governed by the laws of the State or Territory of Australia in which this Deed is executed and all interested persons accept the jurisdiction of the Courts of that State or Territory.

5. TRUSTEE HOLDS FUND ON TRUST

The Trustee must hold the Fund upon trust for the Beneficiaries subject to the trusts, powers, authorities, discretions and obligations contained in this Deed.

6. COMPOSITION OF THE FUND

The Fund consists of all cash, monies, investments and other property held by or on account of the Trustee under this Deed including:

- (a) Contributions made to the Fund under this Deed;
- (b) any other monies or assets (including Rollover Payments) paid or transferred to the Trustee under this Deed;
- (c) income arising from investments of the Fund;
- (d) any accretions to or profits arising from investments of the Fund;
- (e) any other distribution (from a family trust or otherwise), dividend or gift paid to and accepted by the Trustee as an accretion to the Fund;
- (f) the proceeds (including bonuses) of any Policy of Insurance received by the Fund; and

"SSA Act" means the Small Superannuation Accounts Act 1995 (Cth).

"Superannuation Lump Sum" means a Benefit that is not a superannuation income stream within the meaning of the Income Tax Act.

"Taxation" means any tax, surcharge, levy, impost or duty, that is paid or payable by, or allowable taxation deduction to, the Trustee on behalf of the Fund or any Member or any Beneficiary in respect of any Benefit, or any person in respect of any Contribution, including income tax, capital gains tax, payroll tax, land tax, goods and services tax and stamp duty.

"Tax Saving Amount" has the same meaning as in section 295-485 of the Income Tax Assessment Act 1997 (Cth).

"Temporary Incapacity" in relation to a Member:

- (a) who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental), that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Temporary Incapacity" (or the term "Temporary Disability" or any other equivalent term) in that Policy of Insurance; or
- (c) means temporary incapacity as defined in the Act;

and **"Temporarily Incapacitated"** has a corresponding meaning.

"Three Year Binding Nomination" means any written nomination howsoever called given by a Member to the Trustee directing how the Trustee is to pay all or part of a Member's Benefit on the Member's death, and which expressly indicates that the nomination will lapse, expire, or terminate automatically on or before the expiration of a period which is three years from the date of the nomination.

"Transition to Retirement Income Stream" means a pension that meets the definition and standards of a transition to retirement income stream prescribed by the SIS Regulations, and specifically Regulations 1.06(9A) and 6.01(2).

"Trustee" means the party named as the Trustee in this Deed or any person who subsequently assumes the role of the trustee of the Fund under this Deed.

"Trustee Act" means the Trustee Act 1958 (Vic) or the equivalent legislation of any other State or Territory of Australia relating to trustees and which is applicable to the Trustee.

"Unclaimed Money Act" means the Superannuation (Unclaimed Money and Lost Members) Act 1999 (Cth).

1.2 Defined Terms in the Act

An expression used in this Deed which is defined in the Act and is not otherwise defined in this Deed, has the same meaning in this Deed unless the context otherwise requires.

Member provided the nominated person is either a Dependant or Legal Personal Representative of the deceased Member at the time of death.

"Non-commutable Allocated Pension" means a non-commutable allocated pension that meets the definition and standards prescribed by the SIS Regulations, and specifically Regulation 6.01(2).

"Non-commutable Income Stream" means a non-commutable income stream that meets the definition and standards prescribed by the SIS Regulations, and specifically Regulation 6.01(2).

"Non-commutable Pension" means a non-commutable pension (including pensions known as a "Non-commutable Market-Linked Pension" or a "Non-commutable Term Allocated Pension") that meets the definition and standards prescribed by the SIS Regulations, and specifically Regulation 6.01(2).

"Non-concessional Contributions Cap" has the meaning given by section 292-85 of the Income Tax Act.

"Non-lapsing Binding Nomination" means a written nomination howsoever called given by a Member to the Trustee directing how the Trustee is to pay all or part of the Member's Benefit on the Member's death, and which:

- (a) expressly indicates that the nomination does not lapse, expire or terminate merely by expiration of time; or
- (b) does not indicate that the nomination will lapse, expire, or terminate automatically on a specified date or upon expiration of a specified period from the date of the nomination.

"Old-Age Pension" means an old-age pension as defined by the Act and paragraph 51(xxiii) of the Constitution of the Commonwealth of Australia.

"Pension" means a Benefit that is provided by the Fund as a pension, reversionary pension, or superannuation income stream in accordance with the Act, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner.

"Pensioner" means a Member who is in receipt of a Pension.

"Permanent Incapacity" in relation to a Member:

- (a) who has ceased to be Gainfully Employed, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience; or
- (b) if there is any applicable Policy of Insurance, has the meaning assigned to the term "Permanent Incapacity" (or the term "Total and Permanent Disability" or any other equivalent term) in that Policy of Insurance; or
- (c) means permanent incapacity as defined in the Act;

and **"Permanently Incapacitated"** has a corresponding meaning.

be, a contribution by the Act, and includes amounts which are transferred or rolled over to the Fund from an Approved Superannuation Entity.

"Corporate Trustee" means a Trustee that is a company incorporated under the Corporations Act and which company complies with any relevant requirement of the Act.

"Corporations Act" means the Corporations Act 2001 (Cth).

"Deed" means this Trust Deed as amended from time to time and includes any schedule, annexure or appendix to this Trust Deed.

"Dependant" means in relation to a Member (whether living or deceased) any of the following persons:

- (a) the spouse, widow or widower of the Member;
- (b) a child of the Member including a child of the Member born after the death of the Member;
- (c) a person who in the opinion of the Trustee is at the relevant time (or in the case of a deceased Member, was at the time of death of that Member) wholly or partially dependent on the Member for maintenance and support or who has or had at the relevant time a legal right to maintenance and support from that Member; or
- (d) a person who is, or was at the time of death of the Member, in an interdependency relationship with the Member as defined in the Act ; and

PROVIDED THAT:

- (e) the person is a dependant as defined by the Act.

"Directors" means the directors of any Corporate Trustee or of any Employer, as the case requires, and **"Director"** means one of them.

"Eligible Person" means any individual who is:

- (a) Gainfully Employed;
- (b) a spouse, child, grandchild or relative of a Member; or
- (c) permitted to be a member of an Australian complying regulated self managed superannuation fund or to have Contributions made on behalf of that person without contravening the Act.

"Employee" means a person who is an employee within the meaning of section 12 of the SGA Act.

"Employer" means any employer or its associates as defined in the Income Tax Act of a Member.

"Employer Contribution" means a gross payment to the Fund made as an employer contribution on behalf of a Member by the Member's Employer.

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

"Financial Year" means a period of twelve months ending on the Balance Date.

- (g) SGA Act;
- (h) SIS Act;
- (i) Social Security Act;
- (j) SSA Act;
- (k) Trustee Act;
- (l) Unclaimed Money Act;
- (m) all amendments, other legislation relating to, and regulations made under, the abovementioned Acts; and
- (n) any other law of the Commonwealth of Australia or State or Territory of Australia (including, where applicable, any declaration, determination, ruling or guideline made by any Responsible Authority) with which the Fund or the Trustee must comply in order to obtain and maintain Concessional Taxation Treatment or any other concession in respect of the Fund or that relates to superannuation or any Benefit provided under this Deed.

"Allocated Pension" means a pension that meets the definition and standards of an allocated pension under the SIS Regulations, and specifically Regulations 1.06(4) and 1.07A.

"Approved Superannuation Entity" means any superannuation entity, annuity, RSA, eligible rollover fund, eligible non-resident non-complying superannuation fund, or any other superannuation fund or benefit arrangement, into which or from which assets can be transferred into or from the Fund, without contravening the Act.

"Auditor" means a person who is an approved auditor, and appointed by the Trustee to be the auditor of the Fund.

"Australian complying regulated self managed superannuation fund" means a trust or fund that is a:

- (a) superannuation fund within the meaning of section 10 of the SIS Act;
- (b) regulated superannuation fund within the meaning of section 19 of the SIS Act;
- (c) self managed superannuation fund within the meaning of section 17A of the SIS Act;
- (d) complying superannuation fund within the meaning of section 45 of the SIS Act; and
- (e) Australian superannuation fund within the meaning given by section 295-95 of the Income Tax Act.

"Balance Date" means 30 June in each year or any other date that the Trustee determines to be the balance date of the Fund for accounting purposes in any year.

"Beneficiary" means a Member, Dependant or any other person who is entitled to be paid a Benefit from the Fund.

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Schedule 1

- Item 1 **Date of this Deed:** 28th October 2015,
- Item 2 **Trustee:** Brown SMSF Holdings Pty Ltd ACN 161 671 647
11 Station Street, CONCORD NSW 2137
- Item 3 **Members:** Loredana Maria Brown
11 Station Street, CONCORD NSW 2137
Peter Thomas Brown
11 Station Street, CONCORD NSW 2137
- Item 4 **Principal (if applicable):
(Principal Employer, Founder
etc)**
- Item 5 **Name of the Fund:** BROWN INVESTMENT SUPERANNUATION FUND
- Item 6 **Commencement Date of the
Fund:** 22 June 2012
- Item 7 **Existing Trust Deed:** 22 June 2010
- Item 8 **Amendment Clause:** 8
- Item 9 **Effective Date:**
- Item 10 **Governing State:** New South Wales

This Deed witnesses:

1. Replacement of Existing Trust Deed

1.1 Amendment

In accordance with the Amendment Clause, the governing rules of the Fund are amended by repealing and replacing all of the provisions of the Existing Trust Deed inclusive and adopting the new provisions of the New Trust Deed with effect from the Effective Date. On and from the Effective Date, the New Trust Deed will operate as the governing rules of the Fund.

1.2 Members Consent

The Members consent to the adoption of the New Trust Deed.

1.3 Principal Consent

The Principal consents to the adoption of the New Trust Deed including, if applicable, the removal of the role of any Founder that may have existed under the Existing Trust Deed.

1.4 No Resettlement

For the avoidance of doubt, the Trustee, the Principal and the Members intend and agree that nothing in the New Trust Deed, or in the Trustee's act of replacing the Existing Trust Deed with the New Trust Deed by this Deed, shall operate as or establish, or be deemed to operate as or establish, a new superannuation fund or trust or a resettlement of the Fund.

2. Governing Law and Jurisdiction

This Deed is governed by the laws of the State or Territory identified in **Item 10** of the Schedule (**Governing State**) and the parties submit to the jurisdiction of the Courts of that Governing State and the Courts of the Commonwealth of Australia.

3. Definitions and Interpretation

- (a) In this Deed, an expression that appears in its context to define a fact, person or thing immediately preceding that expression, will mean that fact, person or thing.
- (b) In this Deed, the singular includes the plural and vice versa.
- (c) Notwithstanding anything to the contrary in the Existing Trust Deed, to the extent that there is any inconsistency between this Deed and any part of the Existing Trust Deed, this Deed shall take priority and shall prevail over that inconsistent part of the Existing Trust Deed, and this Deed shall be interpreted accordingly.
- (d) A reference to a Schedule or Annexure means the Schedule or Annexure to this Deed.

Deed of Replacement of Governing Rules (Trust Deed)

BROWN INVESTMENT SUPERANNUATION FUND

Brown SMSF Holdings Pty Ltd (ACN 161 671 647)
(Trustee)

Loredana Maria Brown
(Members)

Peter Thomas Brown

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