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COMMERCIAL LAWYERS

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## Deed Ricklea Superannuation Fund

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Made by

Ricklea Investments Pty Ltd  
ACN 659 916 579  
("Trustee")

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THIS TRUST DEED made the

3<sup>rd</sup>

day of

June

2022

BY **RICKLEA INVESTMENTS PTY LTD** ACN 659 916 579 c/- Northern Accounting Services Pty Ltd of Shop 1-3, 245 Milne Road, Modbury North SA 5042 ("**Trustee**")

## RECITALS

- A. The Trustee desires to establish a superannuation fund for the provision of superannuation benefits to members and, in the event of death of a member, for the member's dependants and for ancillary purposes as may be authorised by the Relevant Law.
- B. The name of the fund will be the **Ricklea Superannuation Fund** ("**Fund**").
- C. The Trustee agrees to act as the initial Trustee of the Fund and wishes to declare a trust on the terms set out in this deed.

THIS DEED WITNESSES as follows:

### 1. Interpretation and definitions

#### 1.1 Interpretation

Unless qualified by or inconsistent with the context:

- 1.1.1 for convenience, some but not all words and phrases defined in this deed are indicated by capital letters, but the absence of a capital letter will not alone imply that the word or phrase is used with a meaning different from that given by a definition;
- 1.1.2 if any provision of this deed or any part of this deed is void or invalid under the Relevant Law then that provision or part must be read down and severed accordingly;
- 1.1.3 each provision of this deed must be construed as a separate and severable provision so that if the provision is severed in accordance with this clause 1.1 the remainder of the deed must be read and construed as if the severed provision had not been contained in the deed despite any consequential alteration to the meaning or construction of that provision that may result from the severance; and
- 1.1.4 a reference to an Act of Parliament or to any regulations issued under an Act of Parliament includes a reference to the statute or regulations (or any provision therein) as amended or substituted.

#### 1.2 Definitions

- 1.2.1 "**Actuary**" means a person who is a Fellow, Associate or an Accredited Member of the Actuaries Institute of Level 7, 4 Martin Place, Sydney NSW 2000 or another suitably qualified person recognised as an actuary pursuant to the Relevant Law or a firm of persons which may be appointed by the Trustee to advise in relation to the Fund;
- 1.2.2 "**Administrator**" means any entity or person which may be appointed by the Trustee to provide administration services to the Fund;
- 1.2.3 "**annuity**" means an annuity within the meaning of the Relevant Law;

- 1.2.4 **"Auditor"** means an approved auditor within the meaning of the Relevant Law being the auditor for the time being appointed by the Trustee;
- 1.2.5 **"Benefit"** means any amount paid or payable by the Trustee to a Member, Dependant or other beneficiary or any amount to which a Member, Dependant or other beneficiary may be presumptively entitled under this deed;
- 1.2.6 **"CGT Cap"** means the amount as defined in section 292-105 of the *Income Tax Assessment Act 1997* (Cth);
- 1.2.7 **"Commencement Day"** means the first day of the period to which the first payment of the pension or annuity relates in accordance with regulation 1.03(1) of the *Superannuation Industry (Supervision) Regulations 1994* (Cth);
- 1.2.8 **"Condition of Release"** means in relation to a Member any condition of release within the meaning of the Relevant Law as it applies to Regulated Superannuation Funds;
- 1.2.9 **"Contributions"** means contributions to the Fund by or in respect of a Member in accordance with clause 5.1 and includes in respect of a Member:
- 1.2.9.1 a transfer of an asset or assets by way of contribution in specie to the Fund;
  - 1.2.9.2 contributions arising from structured settlements and orders for personal injuries in accordance with the Relevant Law;
  - 1.2.9.3 amounts relating to certain non-assessable capital gains in accordance with the CGT Cap;
  - 1.2.9.4 co-contributions made by the Government in accordance with the *Superannuation (Government Co-Contribution For Low Income Earners) Act 2003* (Cth); and
  - 1.2.9.5 any other contribution authorised by the Relevant Law;
- 1.2.10 **"Current Pension Liabilities"** means current pension liabilities within the meaning of the Income Tax Legislation and is a reference to the liabilities that have been assumed by the Trustee to pay pensions;
- 1.2.11 **"this deed"** means these presents and any authorised alterations amendments and modifications to it;
- 1.2.12 **"Dependant"** in relation to a Member means a dependant within the meaning of the Relevant Law and where there are multiple definitions of dependant, the definition most suited to the context in which the term is used will apply;
- 1.2.13 **"Eligible Contributor"** means any company firm or person who is eligible to make superannuation contributions for a Member in accordance with the Relevant Law;

- 1.2.14 **"Eligible Person"** means any person who is eligible to become a member of a Regulated Superannuation Fund under the Relevant Law and includes a non-member spouse;
- 1.2.15 **"Eligible Spouse"** means, in relation to a Member, the legally married spouse of the Member and includes any other person who is eligible to make eligible spouse contributions for the Member within the meaning of the Income Tax Legislation;
- 1.2.16 **"Encumbrance"** includes a Security Interest, charge, lien, mortgage, preferential right, trust arrangement, agreement or other arrangement given or created as security or creating rights in favour of another person to secure the performance of any obligations;
- 1.2.17 **"Foregone Benefits Account"** means the Fund account established and maintained pursuant to clause 6.3;
- 1.2.18 **"Fund"** means the Fund constituted by this deed;
- 1.2.19 **"Fund Year"** means the period of 12 months ending on the 30<sup>th</sup> day of June in each year or other period as the Trustee may determine to be applicable;
- 1.2.20 **"Income Tax Legislation"** means the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax Assessment Regulations 1997* (Cth) and any other statute or regulation relating to income tax;
- 1.2.21 **"legal personal representative"** means the executor of the will or administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by a person;
- 1.2.22 **"Member"** means a person who has been admitted to membership pursuant to clause 4 and who is entitled, or is anticipated to be entitled, to a Benefit from the Fund;
- 1.2.23 **"Member Account"** means in respect of a Member the account established and maintained pursuant to clause 6.1;
- 1.2.24 **"non-member spouse"** means the spouse in relation to a Member who has become subject to a payment split. A non-member spouse may or may not be a Member but for the purposes of a payment split the non-member spouse will be deemed not to be a Member and the interest of the non-member spouse in the payment split and that Member's Benefit will be determined in accordance with this deed subject at all times to the Relevant Law;
- 1.2.25 **"NSW Duties Act"** means the *Duties Act 1997* (NSW);
- 1.2.26 **"payment split"** means a payment split within the meaning of the Relevant Law;
- 1.2.27 **"pension"** is a reference to a contractual obligation on the part of the Trustee to make regular payments to a pensioner that is deemed by the Relevant Law to be a pension;

- 1.2.28 "**pensioner**" means a primary pensioner or reversionary pensioner who is currently entitled to a pension;
- 1.2.29 "**person**" includes any natural person, Trustee, partnership or company;
- 1.2.30 "**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as amended;
- 1.2.31 "**primary pensioner**" means the person first becoming entitled to be paid a pension in accordance with clause 10.7 whether or not the person has previously been a Member;
- 1.2.32 "**Regulated Superannuation Fund**" means a superannuation fund which is a regulated superannuation fund within the meaning of the Relevant Law;
- 1.2.33 "**Relevant Law**" means the *Superannuation Industry (Supervision) Act 1993* (Cth), the *Superannuation Industry (Supervision) Regulations 1994* (Cth), the Income Tax Legislation and any other statute or regulation relating or applicable to Regulated Superannuation Funds or relating to income tax;
- 1.2.34 "**residual capital value**" in relation to a pension means a capital amount payable on the termination of the pension as a term and condition attaching to the pension contract as between the Trustee and the pensioner;
- 1.2.35 "**Responsible Authority**" means any one or more of the Australian Taxation Office, Australian Prudential Regulation Authority or any other governmental authority responsible for administering the laws regulations or any other rules governing the operation of superannuation funds;
- 1.2.36 "**reversionary pensioner**" means a Dependant in relation to a primary pensioner who becomes entitled to a pension under the Fund in succession to the primary pensioner;
- 1.2.37 "**Security Interest**" has the same meaning as defined in the PPSA;
- 1.2.38 "**Self-Managed Superannuation Fund**" means a self-managed superannuation fund within the meaning of the Relevant Law or other term as may apply to like style superannuation funds;
- 1.2.39 "**Superannuation Entity**" means any regulated superannuation fund, approved deposit fund, exempt public sector superannuation scheme or retirement savings account within the meaning of the Relevant Law;
- 1.2.40 "**Tax**" includes income tax, land tax, stamp duty, and any other tax impost or duty;
- 1.2.41 "**Transfer Balance Account**" means an account that arises under section 294-15 of the *Income Tax Assessment Act 1997* (Cth);
- 1.2.42 "**Transfer Balance Cap**" means the transfer balance cap of a person as determined under section 294-35 of the *Income Tax Assessment Act 1997* (Cth);

1.2.43 "Trustee" means the Trustee for the time being of the Fund whether original or substituted and whether one or more Trustees; and

1.2.44 "WA Duties Act" means the *Duties Act 2008* (WA).

## 2. Purpose of Fund

### 2.1 Establishment

2.1.1 The Trustee by this deed declares a trust comprising of the Fund on the terms of the deed.

2.1.2 The Fund will be established as and from the date of this deed and the Fund must be managed, administered and applied in accordance with this deed.

### 2.2 Old age pensions/constitutional corporation

Either:

2.2.1 the Trustee will be a sole Trustee which is a constitutional corporation within the meaning of the Relevant Law; or

2.2.2 the primary purpose of the Fund will be to provide old age pensions for the Members of the Fund upon their retirement and for any other purposes which may be permitted under the Relevant Law.

### 2.3 Self-managed superannuation fund

The Trustee must do all things as may be necessary to establish and maintain the Fund as a Self-Managed Superannuation Fund that is not a public offer fund (within the meaning of the Relevant Law).

## 3. Trustee of Fund

### 3.1 Number of Trustees

3.1.1 Subject to clause 3.2.5, where the Trustees are natural persons there may be any number of Trustees subject at all times to any standard to the contrary prescribed by the Relevant Law.

3.1.2 Where the Trustee is a corporation the Trustee will be a sole Trustee which is a constitutional corporation within the meaning of the Relevant Law.

### 3.2 Appointment and removal of Trustee

3.2.1 The Members will, by unanimous agreement, have the right to appoint and remove the Trustee by deed subject at all times to the Relevant Law.

3.2.2 Each Trustee and all directors of the Trustee, in the event the Trustee is a company, must prior to or upon becoming appointed to that office consent in writing to the appointment.



- 3.2.3 A Trustee must cease to be a Trustee if the Trustee:
- 3.2.3.1 resigns the office by notice in writing to the Members; or
  - 3.2.3.2 being a natural person, dies; or
  - 3.2.3.3 being a natural person, becomes incapable of performing his duties hereunder; or
  - 3.2.3.4 being a corporation enters into liquidation or a receiver or receiver and manager of the property of the Trustee is appointed; or
  - 3.2.3.5 is removed from office by the Members pursuant to the provisions of clause 3.2.1; or
  - 3.2.3.6 otherwise becomes a disqualified person within the meaning of the Relevant Law.
- 3.2.4 In the event of a vacancy in the office of Trustee a new Trustee may be appointed in accordance with clause 3.2.1 within the time as may be prescribed by the Relevant Law.
- 3.2.5 In the event the Relevant Law prescribes standards in relation to members of Self-Managed Superannuation Funds being required to be Trustees or directors of the Trustee, the Trustee must be constituted in accordance with those standards.
- 3.2.6 To the extent of any inconsistency between this deed and the standards referred to in clause 3.2.5, the standards will apply.
- 3.2.7 Subject to the Relevant Law:
- 3.2.7.1 if a Member dies then the legal personal representatives of the Member will take the place of the Member as the Trustee or director of the Trustee to the extent that is authorised by the Trustee's constitution (if applicable), during the period commencing on the Member's date of death and ending in accordance with the Relevant Law;
  - 3.2.7.2 the legal personal representatives of a Member may take the place of the Member as the Trustee or a director of the Trustee during any period when the legal personal representatives have an enduring power of attorney in respect of the Member;
  - 3.2.7.3 the legal personal representatives of a Member will be a Trustee or director of the Trustee to the extent authorised by the Trustee's constitution during any period when the Member is under a legal disability; and
  - 3.2.7.4 if the Member is under a legal disability because of age and does not have a legal personal representative then a parent or guardian of the Member may act as a Trustee or director of the Trustee.

### 3.3 **Fund vested in Trustee**

- 3.3.1 The Fund will be vested in the Trustee and managed by the Trustee upon the terms and conditions of this deed.
- 3.3.2 No Member will have a beneficial interest in any property of the Fund except that if clause 6.2.1.6 applies then the Member will have an interest in the Fund evidenced by the segregation of the asset or assets by the Trustee in favour of the Member.

### 3.4 **Powers of Trustee**

In addition to the powers which the Trustee has at law and which are otherwise granted to the Trustee by this deed the Trustee will have the following powers:

- 3.4.1 to enter into and execute all contracts, deeds and documents and do all acts, matters or things which the Trustee may deem expedient for the purpose of securing the benefits to be provided by or from the Fund and for otherwise giving effect to the authorities, powers and discretions conferred on the Trustee by this deed;
- 3.4.2 to purchase or otherwise acquire and to sell or otherwise dispose of property of the Fund and to take property on lease for the purposes of the Fund and to lease out any property of the Fund on the terms and conditions as the Trustee thinks fit;
- 3.4.3 to appoint and at the Trustees discretion remove or suspend the Actuary, Administrator, Auditor, any medical practitioner, investment managers, investment advisors, solicitors, custodian Trustees, secretaries, clerks, agents and other servants or appoint them for permanent, temporary or special services as the Trustee thinks fit;
- 3.4.4 to insure or reinsure any risks, contingencies or liabilities of the Fund, the Trustee and/or the Members and their Dependants;
- 3.4.5 to institute, conduct, defend, compound or abandon any legal proceedings concerning the affairs of the Fund and also to compound and allow time for payment or satisfaction of any debts due and of any claims or demands by or against the Fund;
- 3.4.6 to make and give receipts and releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- 3.4.7 to open bank accounts and to retain on current or deposit account at any bank the money as the Trustee considers proper, and to make regulations for the operation of the bank accounts including the signing and endorsing of cheques in connection with the bank accounts;
- 3.4.8 to determine who will be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- 3.4.9 to pay Benefits out of the Fund to entitled persons;
- 3.4.10 in the case of the mental or physical incapacity of a Member to pay or apply the Benefit or any part of the Benefit at the Trustee's discretion to or for the benefit of the Member, any legal personal representative of the Member or any Dependants of the Member in accordance with the provisions of this deed;

- 3.4.11 to take and act upon the advice and opinion of any legal practitioner, whether in relation to interpretation of this deed or any other document or statute or as to the administration of the trusts hereof, or upon the advice or opinion of any medical practitioner or any investment or financial adviser or any other professional person without being liable to any Member or Dependant in respect of any act done by them in accordance with the advice or opinion;
- 3.4.12 to make an election that the Fund be a Regulated Superannuation Fund;
- 3.4.13 to request provision of a Member's tax file number in accordance with the Relevant Law;
- 3.4.14 to determine not to accept Contributions in respect of a Member where, in the opinion of the Trustee, the receipt of the Contributions would be contrary to the Relevant Law or trigger excess contributions tax;
- 3.4.15 to refund any amount paid to the Trustee (including any amount purported to be a Contribution) in respect of a Member where the payment has been receipted in error or the Trustee has determined not to accept the payment under clause 3.4.14, and in each of those events the Trustee will be deemed to have only ever held the payment on constructive and separate trusts for the payer and not as an accretion to the Fund;
- 3.4.16 to do any act, matter or thing which the Trustee may deem expedient for the purpose of ensuring that a Member does not have an excess transfer balance as defined by section 294-30 of the *Income Tax Assessment Act 1997* (Cth);
- 3.4.17 to commute any pension or other income stream payable under this deed subject to clause 10.7.10 in particular and clause 10.7 generally, and also to commute any income stream as may be required by any commutation authority issued by the Commissioner of Taxation under Subdivision 136-B of the *Taxation Administration Act 1953* (Cth);
- 3.4.18 to maintain a Transfer Balance Account for each Member and to debit and credit amounts to a Member's Transfer Balance Account in accordance with the Relevant Law;
- 3.4.19 to make any choice or election available to the Trustee under the Income Tax Legislation; and
- 3.4.20 do any act, matter or thing that the Relevant Law authorises or permits the Trustee to do despite any inconsistent provision or the absence of a specific power in this deed,

provided however that the Trustee in the exercise of any powers granted under this deed will have regard to and conform with any standard prescribed by the Relevant Law.

### 3.5 **Custodian Trustee/nominee**

The Trustee will have power to, in its absolute discretion:

- 3.5.1 appoint one or more persons, firms or companies as the Trustee may think fit to act as a custodian Trustee or nominee subject to conditions as the Trustee may determine;

3.5.2 delegate to and confer upon each custodian Trustee or nominee powers, discretions and authorities relating to the custody, investment revaluation of that part of the Fund entrusted to it or custody as the Trustee may think fit;

3.5.3 as an expense of the Fund, pay the custodian Trustee or nominee remuneration for services as the Trustee considers appropriate and having regard to the requirements of the Relevant Law; and

3.5.4 remove any custodian Trustee or nominee so appointed under this clause 3.5 at any time.

### 3.6 **Delegation**

3.6.1 The Trustee may delegate to any person, including any individual Trustee or director of the Trustee as the case may be, powers, discretions and authorities relating to the management and administration of the Fund as the Trustee may think fit.

3.6.2 The Trustee will have the power to remove any delegate appointed in accordance with this clause 3.6 at any time.

### 3.7 **Liability of trustee**

3.7.1 Subject to clause 3.7.3 a Trustee will not incur any personal liability for anything done or omitted to be done by the Trustee as a Trustee except in respect of any fraud or wilful misconduct on the part of the Trustee.

3.7.2 A Trustee will not in any circumstance be entitled to indemnity, reimbursement or recompense from any Member and no Member will be liable for the debts or other obligations of the Fund.

3.7.3 The Trustee may not be exempted from liability under clause 3.7.1 if to be so exempted would be contrary to the Relevant Law.

### 3.8 **Indemnity**

3.8.1 The Trustee will be entitled to be indemnified out of the assets comprising the Fund against liabilities incurred by the Trustee in consequence of the exercise by the Trustee of its powers, authorities and discretions under this deed and at law generally, provided however, that the Trustee may not be indemnified where to be indemnified would be contrary to the Relevant Law.

3.8.2 A reference to the Trustee in clause 3.8.1 must be interpreted as including a reference to any person who may be a director of the Trustee.

## 4. **Membership of Fund**

### 4.1 **Eligibility**

Membership of the Fund is confined to Eligible Persons in the discretion of the Trustee.

### 4.2 **Admission of members**

4.2.1 The Trustee may determine the basis on which an Eligible Person is to be admitted to membership of the Fund.

- 4.2.2 The Trustee may require an Eligible Person to complete an application for membership in a form as the Trustee may determine and the Eligible Person will become a Member upon being admitted to membership by the Trustee.
- 4.2.3 The Trustee may require the Member to complete a nomination of beneficiary form or some other like nomination which requires the Member to nominate the person or persons who may benefit in the event of the Member's death.
- 4.2.4 The Trustee may require the Eligible Person to provide their tax file number as a precondition to being admitted as a Member.

#### 4.3 **Transfer from another fund**

- 4.3.1 The Trustee may make arrangements with the Trustee of any Superannuation Entity of which the Member is a member for the transfer of any assets or monies to the Fund in respect of the Member which assets or monies will be credited to the Member's Member Account.
- 4.3.2 If any of the assets or monies transferred under clause 4.3.1 have been required to be preserved in accordance with the requirements of the Relevant Law the Trustee must preserve those assets or monies in a like manner.

#### 4.4 **Members to provide information**

- 4.4.1 Each Member must:
  - 4.4.1.1 comply with all reasonable requests made by the Trustee and when requested by the Trustee a Member must furnish any information the Trustee may deem necessary for the purposes of any investigation or otherwise in connection with the Fund; and
  - 4.4.1.2 submit to medical examinations as required by the Trustee by a registered medical practitioner nominated by the Trustee.
- 4.4.2 If a Member fails to comply with the provisions of this clause the Trustee may suspend the payment of any Benefit until the Member has so complied.
- 4.4.3 Where the information furnished by or in respect of a Member in any statement submitted to the Trustee is incorrect in any material particular the Benefit paid to, or in respect of that person may be adjusted to correct the error.

#### 4.5 **Member bound by deed**

Despite that a Member may have failed to make any declaration upon or in conjunction with becoming a Member, a Member will by virtue of becoming a Member be deemed to have agreed to be bound by this deed.

#### 4.6 **Member Representative**

- 4.6.1 A Member may in writing appoint one or more natural persons who have attained 18 years of age as the Member's Member Representative.

- 4.6.2 An appointment of a Member Representative made under clause 4.6.1:
  - 4.6.2.1 may be subject to such terms, conditions or limitations as may be imposed by the Member; and
  - 4.6.2.2 will not be effective unless the natural person or persons being appointed as Member Representative accept that appointment in writing.
- 4.6.3 If more than one person is appointed as a member Representative, the persons so appointed must act jointly unless the Member in respect of whom the Member Representative is appointed specifies otherwise in writing.
- 4.6.4 Subject to the express provisions of an enduring power of attorney granted by the Member and any terms, conditions or limitations imposed by the Member pursuant to this clause 4.6, a Member Representative appointed pursuant to this clause 4.6 may exercise on behalf of the Member that appointed the Member Representative any of the rights or powers that the Member is able to exercise under this deed, whether or not the Member is under a legal disability.
- 4.6.5 The appointment of a Member Representative may be revoked at any time by the Member who appointed the Member Representative, whether in writing or otherwise.
- 4.6.6 The rights and powers of a Member Representative arising under this clause 4.6 will cease upon the death of the Member that appointed the Member Representative.

## 5. **Contributions and expenses**

### 5.1 **Contributions**

- 5.1.1 The Trustee may accept Contributions by an Eligible Contributor in respect of a Member at times and a manner as the Trustee deems appropriate.
- 5.1.2 The Trustee may accept Contributions by an Eligible Spouse in respect of a Member at times and in a manner as the Trustee determines.
- 5.1.3 The Trustee may accept a payment in respect of a Member which is the whole or any part of a shortfall component within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth) and must credit the payment to that Member's Member Account.
- 5.1.4 The Trustee may accept Contributions in respect of a Member from the Government whether by way of Government co-contributions or otherwise.
- 5.1.5 The Trustee may accept by way of Contribution in respect of the Member any other amount or amounts authorised by the Relevant Law including Contributions in connection with structured settlements and orders for personal injuries and in connection with certain non-assessable capital gains.

5.1.6 The Trustee may in its absolute discretion accept any Contribution in respect of a Member by way of a transfer of an asset in specie which Contribution must be credited to the Member's Member Account in accordance with clauses 6.1 and 6.2.

5.1.7 Despite any other provision of this deed the Trustee must not accept Contributions by or in respect of a Member unless the Contributions are authorised by the Relevant Law.

## 5.2 **Fund expenses**

5.2.1 All costs, charges and expenses incurred in connection with the establishment, maintenance, administration and operation of the Fund will be borne by the Fund and be deducted from the Fund on a basis as the Trustee considers fair and reasonable.

5.2.2 Subject to the Relevant Law the Trustee may charge expenses of the Fund against a Member's Member Account or certain Members' Member Accounts without charging all Members' Member Accounts on a pro rata basis provided that the Trustee considers that charging on this basis is fair and equitable as between the Members.

## 5.3 **Contribution splitting**

5.3.1 The Trustee may effect the splitting of Contributions made by or in respect of a Member by way of rollover, transfer or allotment in favour of the Member's spouse upon application in the prescribed form from that Member.

5.3.2 The Trustee's power exercisable under clause 5.3.1 is subject to, where required by the Relevant Law, receipt by the Trustee from that Member's spouse of a statement confirming that a relevant Condition of Release has not occurred and subject further to any other requirements of the Relevant Law.

5.3.3 Where a Contribution split is effected by way of rollover or transfer the amount subject of the split must be applied in accordance with clause 11.2.

5.3.4 Where a Contribution split is effected by way of allotment the amount subject of the split must be debited as against the Member's Member Account and must be credited to the Member Account of that Member's spouse in accordance with clause 6.1.12.

## 5.4 **Contributions of New South Wales dutiable property**

5.4.1 This clause 5.4 applies where:

5.4.1.1 a Member has transferred, or has agreed to transfer, property to the Trustee or a custodian of the Trustee that is dutiable property under the NSW Duties Act; and

5.4.1.2 the Member and the Trustee intend that the transfer of the property is assessed for nominal duty under section 62A of the NSW Duties Act.

- 5.4.2 Notwithstanding any other provision of this deed, and subject to the Relevant Law, where this clause 5.4 applies the Trustee may in its discretion hold the property on the conditions in section 62A of the NSW Duties Act and may in its discretion hold the property solely for the benefit of the Member transferring the property.
- 5.4.3 If the Trustee exercises its discretion under clause 5.4.2 to hold the property on the conditions in section 62A of the NSW Duties Act and/or to hold the property solely for the benefit of the Member transferring the property then:
- 5.4.3.1 the property will be held in accordance with clause 5.4 and specifically for the Member transferring the property; and
- 5.4.3.2 the property will be held in accordance with section 62A of the NSW Duties Act.
- 5.4.4 Any property held by the Trustee subject to clause 5.4.2 and clause 5.4.3 is held as an asset of the Fund, and the Member's rights are as a Member of the Fund. Without limiting the generality of the foregoing, the property is not held on a separate trust for the Member and nothing in clauses 5.4.2, 5.4.3 and this clause 5.4.4 or any resolutions pursuant to or in relation to the powers contained in those clauses or the passing of any resolutions will constitute a declaration of trust (as defined in section 8(3) of the NSW Duties Act or otherwise). To the extent that clause 5.4.2, clause 5.4.3, this clause 5.4.4 or any resolutions in relation to or pursuant to those causes are a declaration of trust, clause 5.4.2, clause 5.4.3 and/or this clause 5.4.4 and/or those resolutions will be void.
- 5.4.5 For the avoidance of doubt, to the extent that any part of clause 5.4.2, clause 5.4.3 or clause 5.4.4 or any resolution adopted in accordance with those clauses is void then the property shall remain an asset of the Fund subject to this deed and the governing rules of the Fund.

5.5 **Contributions of Western Australian dutiable property**

- 5.5.1 This clause 5.5 applies where:
- 5.5.1.1 a Member has transferred, or has agreed to transfer, property to the Trustee or a custodian of the Trustee that is dutiable property under the WA Duties Act;
- 5.5.1.2 there is, or will be, consideration for the transaction; and
- 5.5.1.3 the Member and the Trustee intend that the transfer of the property is assessed for nominal duty under section 122 of the WA Duties Act.



5.5.2 Notwithstanding any other provision of this deed, and subject to the Relevant Law, where this clause 5.5 applies the Trustee may in its discretion:

5.5.2.1 hold the property specifically for the Member and without pooling the property with the Contributions or other assets of another Member and also without another Member obtaining an interest in the property; and

5.5.2.2 hold the property solely to be provided to the Member as a retirement benefit.

## 6. **Member Accounts**

### 6.1 **Member Account**

The Trustee must establish and maintain a Member Account in respect of each Member to which the following amounts must be debited or credited as appropriate:

6.1.1 contributions to the Fund by or in respect of the Member in accordance with clause 5.1 which may be credited net of provision for Tax;

6.1.2 amounts transferred to or from any other Superannuation Entity in respect of the Member pursuant to clauses 11 or 4.3;

6.1.3 amounts paid by way of a Benefit or applied to the purchase of an annuity in respect of the Member;

6.1.4 amounts transferred to or from the Foregone Benefits Account in accordance with clause 6.3;

6.1.5 amounts appropriated in accordance with clause 6.4 by way of investment earnings;

6.1.6 premiums in respect of any policy of life insurance, temporary incapacity insurance or other like insurance (whether trauma, disability, death or accident or otherwise) effected to provide benefits in the event of the death, disability or other like event occurring in relation to the Member;

6.1.7 amounts arising from the proceeds of any insurance policy referred to in clause 6.1.6;

6.1.8 any Tax, duty or impost paid out of the Fund including Tax payable in accordance with clause 6.7;

6.1.9 amounts paid to satisfy the expenses of the Fund pursuant to clause 5.2;

6.1.10 a payment split amount to be debited as against the Member in accordance with clause 6.8.2;

6.1.11 a payment split amount to be credited in respect of a non-member spouse where the Trustee in its discretion has determined to apply the payment split amount in respect of the non-member spouse as a Member in accordance with clauses 6.8.4 and 6.8.5 whether on account of the non-member spouse otherwise being a Member or being admitted as a Member in accordance with clauses 4.1 and 6.8.4;

- 6.1.12 any Contributions the subject of a split in accordance with clause 5.3;
- 6.1.13 an amount paid in respect of an excess contributions tax liability of the Member in accordance with clause 10.10;
- 6.1.14 any amount payable by way of temporary incapacity in respect of a Member in accordance with clause 10.11 where the Fund whether funded out of insurance proceeds or otherwise; and
- 6.1.15 any other amount authorised by the Relevant Law which the Trustee determines in its discretion to debit or credit to a Member Account.

## 6.2 **Sub accounts and segregation**

- 6.2.1 The Trustee may maintain sub accounts within each Member's Member Account on a basis as the Trustee may consider appropriate including for the purposes of:
  - 6.2.1.1 differentiating between benefits funded by the Member and an Eligible Contributor;
  - 6.2.1.2 differentiating between preserved, restricted non-preserved and unrestricted non-preserved benefits within the meaning of the Relevant Law;
  - 6.2.1.3 identifying minimum benefits within the meaning of the Relevant Law;
  - 6.2.1.4 identifying those assets or amounts in respect of the Member which are funding Current Pension Liabilities (namely, a Member's pension account) and those assets or amounts that are supporting accumulation phase interests (namely, a Member's accumulation account);
  - 6.2.1.5 enabling more than one pension to be arranged in respect of a Member; and
  - 6.2.1.6 creating an interest in the Fund in favour of the Member which may be evidenced by the Trustee setting aside assets or fractions of assets as being referable to any one or more Members or any one or more sub accounts of a Member and so as to evidence the interest of the Member or Members in the Fund.
- 6.2.2 If the Trustee commences to pay a pension, the Trustee may, subject to the Relevant Law, segregate the assets of the Fund as between those assets that are set aside to fund the Fund's Current Pension Liabilities and those assets that have not been set aside for that purpose.
- 6.2.3 Upon assuming a liability to pay a pension and determining to segregate assets for that purpose, the Trustee must ensure that the amount applied to fund the pension is equivalent to the value of the assets which are segregated.
- 6.2.4 The Trustee may determine to desegregate assets which have been segregated subject to segregating non-segregated assets of equivalent value.

- 6.2.5 Where the Trustee has already commenced to pay a pension, the Trustee may determine in its discretion to commence or cease (as the case may be) the segregation of assets provided that this action is authorised by the Relevant Law and the Income Tax Legislation.
- 6.2.6 If the Trustee is in receipt of a contribution in specie in respect of a Member in accordance with clause 5.1.6 then the asset or assets contributed to create an interest in the Fund in favour of the Member may be segregated in favour of the Member.
- 6.2.7 The Trustee's power to maintain sub accounts under this clause 6.2 applies notwithstanding that certain assets of the Fund may not be treated as segregated current pension assets within the meaning of the Income Tax Legislation (such as disregarded small fund assets as is defined in the Income Tax Legislation).

### 6.3 **Foregone benefits account**

The Trustee may maintain an account to be known as the Foregone Benefits Account to which any amount forfeited pursuant to clause 10.5 must be credited. The amount standing to the credit of the Foregone Benefits Account must be applied by the Trustee within the period prescribed by the Relevant Law (if any) or otherwise as and when the Trustee may determine, for:

- 6.3.1 the provision of benefits for other Members or their Dependants; or
- 6.3.2 the provision for other Members or their Dependants who have rights to receive benefits from the Fund of additional benefits on a basis that the Trustee is satisfied is reasonable having regard to all the circumstances subject to any requirements of a Responsible Authority; or
- 6.3.3 any other purpose that may be permitted by the Relevant Law or by the Responsible Authority.

### 6.4 **Other accounts or reserves**

- 6.4.1 The Trustee may establish or maintain any other account or reserve of the Fund that the Trustee considers necessary or desirable or that is required or permitted by Relevant Law.
- 6.4.2 The Trustee may use such accounts or reserves for any purpose permitted by Relevant Law and may credit or debit amounts from such accounts or reserves as the Trustee sees fit.

### 6.5 **Application of income/loss and unrealised gains/losses**

- 6.5.1 In the event that a Benefit becomes payable to a Member the Trustee must determine, after account has been taken of any Tax paid or payable:
  - 6.5.1.1 an amount comprising income or losses of the Fund; and
  - 6.5.1.2 an amount representing unrealised profits or losses in the event of a revaluation pursuant to clause 6.6 in respect of the period since the end of the most recent Fund Year.

The Trustee must determine the Member's share of the amounts determined pursuant to clauses 6.5.1.1 and 6.5.1.2 and credit or debit those amounts (as appropriate) to the Member's Member Account (which may include a credit or debit to any sub account of the Member's Member Account).

- 6.5.2 As at the end of each Fund Year, the Trustee must appropriate, after account has been taken of all Fund expenses, Tax paid or provision for Tax.
- 6.5.3 After account has been taken of the balance of the income or losses of the Fund, including unrealised profits or losses determined following a revaluation in accordance with clause 6.6, the Trustee must apportion an amount of the balance amongst the Fund accounts.
- 6.5.4 The method of apportionment will be determined by the Trustee so as to be convenient of application and so as to be fair and reasonable as between all Members, subject to the Trustee's discretion to determine, with the consent of all Members, an alternative method of apportionment provided that that alternative method of apportionment complies with the Relevant Law.
- 6.5.5 Where the Trustee has segregated assets in accordance with clauses 6.2.2 or 6.2.6 the Trustee will apportion according to the earnings and changes in asset values as if each portfolio of segregated assets constituted a separate fund.

## 6.6 **Revaluations/solvency**

- 6.6.1 The property of the Fund must be revalued by the Trustee at the end of each Fund Year or at other times as the Trustee may consider appropriate and on a basis as the Trustee determines provided that the timing and basis of the revaluation is in accordance with the Relevant Law.
- 6.6.2 If the Trustee undertakes any revaluations, amounts are debited or credited to the Members' Member Accounts and the Foregone Benefits Account as may be required, to ensure the maintenance of the solvency of the Fund in accordance with the Relevant Law.

## 6.7 **Tax**

- 6.7.1 If the Trustee becomes liable for Tax in respect of Contributions, any earnings of the Fund or otherwise, the Trustee may deduct the amount of Tax assessed out of the income of the Fund.
- 6.7.2 If the income of the Fund is insufficient to make payment of the amount of Tax assessed, the Trustee may debit the Members' Member Accounts on whatever basis the Trustee considers to be fair and reasonable so as to satisfy the Tax liability, subject to the Trustee's discretion to determine, with the consent of all Members, an alternative basis for debiting the Members' Member Accounts provided that that alternative basis complies with the Relevant Law.

## 6.8 **Payment split**

If a Member (including a Member in receipt of a pension) becomes subject to a payment split then:

- 6.8.1 the Trustee must issue a notice about the payment split to the Member and the non-member spouse in accordance with the requirements of the Relevant Law;
- 6.8.2 the Trustee must determine an amount (**the payment split amount**) being the amount determined by reference to the relevant superannuation agreement or splitting order (and having regard to the requirements of the Relevant Law) which is to be debited against the Member's Member Account in accordance with clause 6.1.10 and credited in respect of the non-member spouse;
- 6.8.3 in the first instance the payment split amount must not be credited in respect of the non-member spouse as a Member despite that the non-member spouse may be a Member;
- 6.8.4 as regards the payment split amount the non-member spouse may request that:
  - 6.8.4.1 the Trustee credit that amount to the non-member spouse's Member Account in accordance with clause 6.1.11 (where the non-member spouse is otherwise already a Member); or
  - 6.8.4.2 the Trustee admit the non-member spouse as a Member in accordance with clause 4.1 and in turn may request that the Trustee credit the payment split amount to the Member Account being created in respect of the non-member spouse (as a Member) in accordance with clause 6.1.11;
- 6.8.5 if a non-member spouse makes a request under clause 6.8.4 the Trustee will not be bound by the request and the Trustee in its absolute discretion may determine to transfer the payment split amount to another Superannuation Entity in accordance with a nomination given by the non-member spouse in accordance with the Relevant Law but otherwise, the Trustee must transfer the payment split amount to an eligible rollover fund within the meaning of the Relevant Law;
- 6.8.6 the non-member spouse and/or the Member may request that the Trustee transfer the payment split amount to another Superannuation Entity and the Trustee will be bound by and must act upon the request in accordance with the requirements of the Relevant Law. If both the non-member spouse and the Member make a request in accordance with this clause 6.8.6 then the Trustee will only be bound by the request of the non-member spouse;
- 6.8.7 despite clauses 6.8.1 to 6.8.6 above, the non-member spouse may not be admitted as a Member if:
  - 6.8.7.1 the non-member spouse satisfies a Condition of Release; or

- 7.3.3 on termination of a Member's membership of the Fund;
- 7.3.4 relating to the Fund generally in respect of each Fund Year; and
- 7.3.5 to Members relating to each Member's benefits and entitlements and the Fund generally in respect of each Fund Year.

## 8. Fund investments

### 8.1 The assets

The following property and the property for the time being representing it and the income from it will constitute the assets of the Fund, namely:

- 8.1.1 Contributions;
- 8.1.2 any property transferred to the Fund in respect of a Member in accordance with clause 4.3; and
- 8.1.3 any other monies received or receivable by the Trustee for the purposes of the Fund.

### 8.2 Investment strategy

- 8.2.1 Subject to the Relevant Law the Trustee must formulate and give effect to one or more written investment strategies having regard to the whole of the circumstances of the Fund and the circumstances of particular members including but not limited to:
  - 8.2.1.1 the risk involved in making, holding and realising and the likely returns of the Fund's investments having regard to its objectives and expected cash flow requirements;
  - 8.2.1.2 the composition of the Fund's investments including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - 8.2.1.3 the liquidity of the Fund's investments having regard to its expected cash flow requirements; and
  - 8.2.1.4 the ability of the Fund to discharge its existing and prospective liabilities.
- 8.2.2 The investment strategies of the Fund may provide for directions to be given to the Trustee about the strategy to be followed in regard to the investment of a particular asset or assets of the Fund, or the investment of the assets comprising the Member Account of a particular Member or Members, or a class of Members, of the Fund, provided the directions are given in circumstances covered by the Relevant Law.
- 8.2.3 The Trustee must formulate and give effect to a strategy for the prudential management of any reserves of the Fund including the credit in the Foregone Benefits Account. The strategy must be consistent with the Fund's investment strategy, the maintenance of the Fund's solvency within the meaning of the Relevant Law and the Fund's capacity to discharge its liabilities as and when they fall due.

- 8.2.4 If the Trustee invests in what is known as derivative investments the Trustee must:
- 8.2.4.1 regularly review the Fund's investment strategy and risk management policies; and
  - 8.2.4.2 implement satisfactory risk management practices by way of a risk management statement prepared in accordance with the Relevant Law and any guidelines issued by the Responsible Authority.

### 8.3 **Investments authorised**

So much of the monies forming part of the Fund as will not be required immediately for the payment of Benefits or other amounts authorised by this deed, must be invested as soon as practicable by and under the control and in the name of the Trustee or any duly authorised delegate of the Trustee in accordance with clause 3.6, in any of the following investments:

- 8.3.1 any investment for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory of it for the investment of trust funds;
- 8.3.2 on deposit with any company, building society, trust, fund, person or partnership with or without security and at the rate of interest and upon terms which the Trustee may deem expedient provided however that any deposit made with an Eligible Contributor must only be made in accordance with the Relevant Law;
- 8.3.3 the purchase or acquisition of any shares, any interest in shares such as instalment receipts and endowment warrants, any stock rights and options for shares or stock of any class or description and of all or any type of bonds, encumbrances or debentures in or of any building society, trust or fund or any company incorporated in any part of the world and whether or not carrying on business in Australia and whether the shares or stock be fully or partly paid up and of any notes, options or other like securities issued by any of those companies or societies and whether secured or unsecured, registered or unregistered provided however that any investment capable of being interpreted as an investment in an Eligible Contributor will only be made in accordance with the Relevant Law;
- 8.3.4 any units of any common fund, property trust or unit trust including a pooled superannuation trust within the meaning of the Relevant Law;
- 8.3.5 any policy of insurance whether for life or any form of disability or any annuity contract whether by proposal, purchase or otherwise, and any choses in action, interest for life or any lesser term or in reversion and howsoever arising, provided that a policy of insurance for life or any form of disability provides a type of cover that, in the event of a claim by the Trustee, the benefit will be able to be paid to a Member under a Condition of Release;
- 8.3.6 the purchase or acquisition of any real or personal property or a share or interest therein, and in effecting repairs maintenance or improvements to the property;

- 8.3.7 any securities or bonds of any government semi-governmental body or public authority;
- 8.3.8 any bill of exchange, promissory note or other negotiable instrument;
- 8.3.9 the purchase or acquisition of any interest either jointly or in partnership or in any unit of interest;
- 8.3.10 any option, hedging contract, futures contract, interest swap, instalment warrant, contract for difference or other financial contract that may be made available;
- 8.3.11 any other investments which the Trustee could make if acting personally and not as the Trustee,

provided that no monies or assets of the Fund will be invested contrary to the Relevant Law.

#### 8.4 **Power to sell and vary investments**

The Trustee will have power as the Trustee deems fit to vary replace encumber or otherwise deal with the investments as fully and effectively as a person absolutely and beneficially entitled dealing with a person's own property may do provided that:

- 8.4.1 the Trustee will not invest in loans to Members; and
- 8.4.2 no investment will be encumbered other than in accordance with clause 8.5.

#### 8.5 **Borrowing**

The Trustee may borrow or raise money up to an amount as the Trustee thinks proper and may secure the payment or repayment by granting an Encumbrance over all or any of the assets of the Fund or as the Trustee may think fit but only if the Relevant Law permits.

### 9. **Auditor, Actuaries and Administrator**

#### 9.1 **Auditor/Actuary/Administrator**

The Trustee will have the power to appoint an Auditor, an Administrator and an Actuary as required, each of whom must have the qualifications as may be prescribed by the Relevant Law and the Trustee may remove any Auditor, Actuary or Administrator as the Trustee sees fit.

#### 9.2 **Financial accounts and audit**

- 9.2.1 The Trustee must, in each Fund Year, cause to be prepared an income and expenditure account and statement of assets of the Fund in accordance with standard accounting practice and subject to the requirements of any applicable accounting standards.
- 9.2.2 The accounts prepared under clause 9.2.1 will be audited by the Auditor within a time as may be prescribed by the Relevant Law.



9.2.3 The Auditor will have access to all papers accounts and documents connected with the Fund and must report in writing to the Trustee the result of the audit.

9.3 **Lodgement of returns**

The Trustee must lodge with the Responsible Authority all returns, certificates, audit reports and other information which may be required under the Relevant Law or otherwise.

10. **Fund benefits**

10.1 **Occurrence of condition of release**

10.1.1 Upon the occurrence of a Condition of Release in relation to a Member, the Member's Benefit may become payable in whole or in part (subject to limitations as may be prescribed by the Relevant Law). The amount of the Member's Benefit must be calculated as an amount not exceeding the amount standing to the credit of the Member's Member Account at the time the Benefit is paid or applied for the Member's benefit and the Trustee may:

10.1.1.1 pay the Benefit to the Member in a lump sum; or

10.1.1.2 apply the Benefit to the acquisition of an annuity; or

10.1.1.3 apply the Benefit, or segregate assets equivalent in value to the Member's Benefit in accordance with clause 6.2.2, for the purposes of paying a pension for the benefit of the Member in accordance with clause 10.7,

except that the Trustee may only apply the Member's Benefit in one or more of the ways mentioned in sub-clauses 10.1.1.1, 10.1.1.2 and 10.1.1.3 if that does not breach the requirements of the Relevant Law.

10.1.2 If a Member's Benefit is or has become subject to a payment flag within the meaning of the *Family Law Act 1975* (Cth), the Member's Benefit will only become payable subject to the terms and conditions of the flag and then will only become payable subject to the Relevant Law.

10.2 **Voluntary and compulsory payment of benefits**

10.2.1 In the event that a Member becomes entitled to be paid a Benefit, the Member may advise the Trustee of the Member's preference that a Benefit not be paid.

10.2.2 The Trustee may then, in its absolute discretion, apply the Member's Benefit, either in whole or in part, to or for the benefit of the Member at that or any later time in any of the ways specified in clause 10.1 subject to any proposed payment or application of the Member's Benefit not breaching the Relevant Law.

10.2.3 The Member's Benefit must be paid or applied for the Member's benefit in accordance with this deed as soon as practicable following the death of the Member.

10.3 **Payment of death benefits**

- 10.3.1 If a Member dies then a Benefit calculated in accordance with clause 10.1 will be payable as a lump sum, annuity and/or pension as the Trustee sees fit.
- 10.3.2 A Member may make a binding or non-binding death benefit nomination in accordance with this clause 10.3.
- 10.3.3 A nomination made pursuant to clause 10.3.2:
  - 10.3.3.1 will be a binding or non-binding nomination according to its terms;
  - 10.3.3.2 must be made by the Member in writing and acknowledged in writing by the Trustee;
  - 10.3.3.3 will not lapse until such time that it is revoked by the Member; and
  - 10.3.3.4 must comply at all relevant times with the requirements of the Relevant Law insofar as the Relevant Law applies to Self-Managed Superannuation Funds.
- 10.3.4 If a Member makes a binding nomination to take effect on the Member's death in accordance with clause 10.3.3, the Trustee must pay the Benefit in accordance with the nomination.
- 10.3.5 If a Member makes a non-binding nomination to take effect on the Member's death in accordance with clause 10.3.3, the Trustee may take the Member's nomination into account in the determination to pay or apply the Member's benefit but the Trustee will not be bound by the nomination and may pay the Member's benefit in accordance with clause 10.3.6.
- 10.3.6 In the event that the Member has not made a nomination or the nomination is invalid, then the Trustee may, subject to clause 10.3.7, pay or apply the Benefit to the Member's Dependants or legal personal representative/s provided that:
  - 10.3.6.1 if the deceased Member has more than one Dependant, the Trustee may pay the Benefit to the Dependants or any one or more of them exclusive of the other or others in proportions as the Trustee may determine;
  - 10.3.6.2 the Trustee may in its absolute discretion determine to pay the whole or any remaining portion of the Benefit to the legal personal representative/s of the deceased Member; and

- 10.3.6.3 the Trustee may in its absolute discretion increase the Benefit payable (whether or not a nomination has been made) to either the Dependants or legal personal representative/s of the deceased Member by an amount equivalent to an amount (if any) which must not exceed the amount determined by the Trustee as the benefit accruing to the Fund in consequence of a taxation deduction (if any) which has become available by virtue of the Benefit being grossed up in connection with the benefit arising from the tax deduction.
- 10.3.7 Subject to the Relevant Law, a death benefit may be paid in the Trustee's discretion to an individual or individuals not being a Dependant (subject to payment as a lump sum) where there is no legal personal representative appointed within 12 months of the date of death (or earlier as appropriate) and where there are no Dependants.
- 10.3.8 A Member's Benefit payable on the Member's death in accordance with this clause 10.3 may be paid in any one or more of the following ways subject at all times to the terms and conditions of a pension contract or death benefit nomination as follows:
- 10.3.8.1 to the extent the Member's Benefit is represented by one or more Current Pension Liabilities, the relevant pension or pensions will be applied in accordance with the terms of the pension contract as a reversionary pension to one or more Dependants of the deceased or as a lump sum superannuation death benefit;
- 10.3.8.2 to the extent the Member's Benefit is not represented by Current Pension Liabilities the Member's Benefit may be applied subject to any nomination made in accordance with clause 10.3.2 as a pension for one or more Dependants of the deceased and/or as a lump sum superannuation death benefit;
- 10.3.8.3 if a pension becomes payable in respect of a minor Dependant of a deceased Member, the pension may only continue to be paid until attainment of age 25 by the minor, or on a basis or for a period as may be authorised by the Relevant Law at the time.
- 10.3.9 For the avoidance of doubt, the Trustee's obligations to make a payment to a Dependant under the terms and conditions of a pension contract take priority over any obligation of the Trustee to make a payment of a Member's Benefit pursuant to a binding death benefit nomination made by the Member in accordance with this clause 10.3 to the extent that the terms and conditions of the pension contract and the terms of the binding death benefit nomination are inconsistent.

#### 10.4 **Unrestricted non-preserved benefits**

In the event that any unrestricted non-preserved benefits (within the meaning of the Relevant Law) are held in the Fund in respect of a Member, being benefits transferred to the Fund in accordance with clause 4.3 or otherwise, those benefits may be paid to the Member in accordance with clause 10.1.

## 10.5 **Forfeiture of Benefits**

10.5.1 Any Member or Dependant:

10.5.1.1 who assigns or encumbers or attempts to encumber any Benefit; or

10.5.1.2 whose Benefit whether by voluntary act, operation of law including pursuant to the provisions of the *Bankruptcy Act* 1966 (Cth) or otherwise becomes payable to or vested in any other person, company, government or other public authority,

will forfeit the Benefit provided that this clause 10.5.1 will not have the effect of forfeiting any Benefit or entitlement where the Member has already become entitled to that Benefit as against the Trustee in accordance with clause 10.1.

10.5.2 The Trustee must credit all Benefits forfeited pursuant to clause 10.5.1 to the Foregone Benefits Account and those Benefits will be applied in accordance with clause 6.2.7.

10.5.3 The Trustee must only forfeit a Member's entitlement or Benefit in accordance with this clause 10.5 where the forfeiture does not breach the Relevant Law and the Trustee in giving effect to the forfeiture must do all things as may be required by the Relevant Law.

## 10.6 **Deduction of tax from benefit**

The Trustee may deduct from any Benefit or payment under this deed any Tax or duty payable from or in respect of it whether by the Member, the Fund or the Trustee in its capacity under this deed, and may pay this Tax or duty to the Relevant Authority. The Member will be entitled to receive only the net Benefit or payment after the deduction has been made.

## 10.7 **Benefits payable by pension**

The payment of a Benefit as a pension pursuant to clauses 10.1.1.3 and 10.3 may be paid in accordance with this clause 10.7 or as otherwise authorised by the Relevant Law as follows:

### 10.7.1 **Account based pension**

A pension may be arranged as an account based pension which must have the following features:

10.7.1.1 the pension may be payable monthly in arrears or on a basis as agreed between the Trustee and the pensioner provided that the pension payments are made at least annually except that where the date of commencement of the pension is on or after 1 June in a Fund Year the Trustee will not be required to make any pension payments in respect of that Fund Year;

- 10.7.1.2 the total of pension payments in any Fund Year (including under a payment split) must be at least the amount calculated in accordance with Schedule 7 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth) or other provision which may apply;
- 10.7.1.3 there will be no maximum pension payable subject to clause 10.7.8;
- 10.7.1.4 the pension will only be transferable on the death of the pensioner to a reversionary pensioner or pensioners who are Dependant/s of the pensioner at the time of death subject at all times to the terms of the pension contract;
- 10.7.1.5 the capital value of the pension and the income from it cannot be used as security for a borrowing;
- 10.7.1.6 the pension may be commuted in whole or in part by one or more lump sum payments, (which may be applied by way of payment to the pensioner or by being credited to the pensioner's Member Account as an accumulation), or by the purchase of any other style of pension where purchase of that pension by way of commutation is authorised by the Relevant Law, except that if clause 10.7.8 applies commutation will be subject to the occurrence of a later Condition of Release; and
- 10.7.1.7 a residual capital value by way of a lump sum superannuation death benefit may be payable by the Trustee in accordance with the terms of the pension contract subject at all times to the requirements of the Relevant Law.

10.7.2 **Annuity or other style of pension**

- 10.7.2.1 Where the Relevant Law authorises an annuity or a style of pension other than an account based pension to be paid, then the Trustee will have the power to pay or purchase any style of pension or annuity the terms and conditions of which must be determined in accordance with the pension contract.
- 10.7.2.2 The pension contract may include terms in relation to matters such as commutation, minimum and maximum pension payments, whether the pension may be paid as a reversionary pension and the ability to pay a residual capital value in respect of the pension.

10.7.3 **Conversion of allocated pension to account based pension**

If the Trustee is or has been paying an allocated pension then subject to the terms of the pension contract the Trustee may determine to continue paying that pension as an account based pension in accordance with clause 10.7.1 without effecting a commutation of the allocated pension.

#### 10.7.4 **Commutation of other styles of pension**

If the Trustee has been paying a pension other than an account based pension then subject to the terms of the pension contract and the Relevant Law the Trustee may commute the pension in whole or in part to another style of pension, whether an account based pension or any other style of pension subject at all times to the requirements of the Relevant Law as they apply to Self-Managed Superannuation Funds.

#### 10.7.5 **Pension contract**

Upon the commencement of any pension in accordance with this clause 10.7 the Trustee must enter into a pension contract (pension contract) in writing with the Member which contract will record the terms and conditions applicable to the pension.

#### 10.7.6 **One or more pensions**

The Trustee may commence more than one pension in respect of a Member whether at the same time or different times and each pension must be arranged and paid just as if it were the only pension to be paid from the Fund in respect of the Member.

#### 10.7.7 **Pensions payable to minors**

A minor may be a Member of the Fund as permitted by the Relevant Law and may become entitled to a pension or otherwise be admitted as a Member subject to the requirements of the Relevant Law and to the provisions of this deed.

#### 10.7.8 **Pension on attainment of preservation age**

10.7.8.1 Where a Member attains his or her preservation age within the meaning of the Relevant Law the Member may request that the Trustee commence a pension and despite that no other Condition of Release has occurred in relation to the Member the Trustee may determine to commence the pension.

10.7.8.2 The terms of the pension must limit the total payments made in a financial year to no more than 10% of the pension account balance as at 1 July in the financial year in which the payment is made or if the pension commenced in that financial year to no more than 10% of the pension account balance as at the Commencement Day.

10.7.8.3 Any external commutation of the pension in whole or in part will be subject to the occurrence of a Condition of Release with no cashing restrictions in relation to the Member.

#### 10.7.9 **Pension reserve**

10.7.9.1 If the Fund pays a defined benefit pension and the pension terminates (whether on account of the death of the pensioner or otherwise) the Trustee must retain within the Member's Member Account (despite actuarial practice) the full balance and related assets corresponding to the Current Pension Liability; and

10.7.9.2 any residual assets on the termination of the pension must be applied, to the maximum extent possible, as an inter vivos or death benefit commutation in favour of the Member, the Member's Dependants and/or legal personal representative/s as the case may be subject at all times to the pension contract and the Relevant Law.

**10.7.10 Commutation procedure**

Subject to the provisions of this deed and the Relevant Law, a commutation may be effected by the Trustee, having received a request for commutation by the Member or a Dependant, by issuing a notice to the Member/Dependant which shall include:

10.7.10.1 the amount commuted;

10.7.10.2 the taxable and tax-free component of the amount commuted;

10.7.10.3 where assets have been segregated in accordance with clause 6.2.2, the assets subject to the commutation; and

10.7.10.4 the date at which the commutation is to, or has, taken effect,

however the failure to include all of the information set out in clauses 10.7.10.1 to 10.7.10.4 in the notice will not necessarily cause the commutation to be invalid or ineffective.

**10.7.11 Amendment to pension contract**

Any Member taking a pension in accordance with this deed may vary the terms and conditions of the pension by agreement with the Trustee, which agreement will be evidenced in writing and will amount to a pension contract for the purposes of clause 10.7.5.

**10.7.12 Commutation and conversion of transition to retirement income streams**

10.7.12.1 Despite any other provisions of this deed, but subject to clause 10.7.12.2, a Member in receipt of a pension commenced pursuant to clause 10.7.8 and which pension remains subject to the restrictions set out in clause 10.7.8 will be taken to have requested, and the Trustee will be taken to have accepted and effected, a commutation of that pension immediately before that Member attains 65 years of age.

10.7.12.2 A commutation effected pursuant to clause 10.7.12.1 is only effected to the extent that the Member would, but for the commutation, have had a Transfer Balance Account in excess of the Member's Transfer Balance Cap upon attaining age 65.

10.7.12.3 Subject at all times to the Relevant Law, a pension commenced pursuant to clause 10.7.8 will commence to be a superannuation income stream that is in the retirement phase (within the meaning of the Income Tax Legislation) if the Member in receipt of the pension satisfies any of the following conditions of release from Schedule 1 to the *Superannuation Industry (Supervision) Regulations 1994* (Cth), namely:

- (a) 101 (retirement);
- (b) 102A (terminal medical condition); or
- (c) 103 (permanent incapacity),

and notifies the Trustee of that fact.

#### 10.8 **Benefits payable by lump sum**

The payment of a Benefit as a lump sum pursuant to clauses 10.1.1.1 and 10.3 must be made by the Trustee as soon as reasonably practicable after the Benefit has become payable.

#### 10.9 **Benefits other than in cash**

10.9.1 The Trustee may vest in a Member or a Dependant to whom a Benefit is payable any of the property of the Fund by way of in specie distribution where the property is equivalent in value to the Benefit payable.

10.9.2 The Trustee in determining the value to be attributed to the property under clause 10.9.1 may take whatever steps may be necessary to determine the true, fair and reasonable market value for that property at the time of distribution provided that the payment of a Benefit by way of transfer is authorised by the Relevant Law.

10.9.3 The payment of a Benefit may be effected by the Trustee executing a declaration of trust to vest the beneficial ownership of the property of the Fund specified in the declaration of trust in the Member or Dependant and upon the execution of such declaration of trust the Member or Dependant will be treated as having received the Benefit.

#### 10.10 **Release authority**

Upon receipt of a release authority in respect of a Member and in accordance with the Relevant Law the Trustee must, where requested by the Member, or where required under the Relevant Law debit the Member's Member Account within 30 days or within a period as may be required by making a payment to the Member or the Commissioner of Taxation, as required, in a sum equivalent to the amount of excess contributions tax which has been assessed to the Member.

#### 10.11 **Temporary incapacity/salary continuance**

10.11.1 If a Member suffers from temporary incapacity within the meaning of the Relevant Law then the Trustee may pay a non-commutable income stream in respect of the Member for the purpose of continuing, in whole or in part, the gain or reward from employment which the Member was receiving before the temporary incapacity which payment will only be paid in respect of the period of temporary incapacity.



- 10.11.2 The Trustee will have the power to effect the policy of temporary incapacity insurance (or other like policy) for the purpose of funding payments under clause 10.11.1 but otherwise may fund payments under clause 10.11.1 out of the Member's Member Account.
- 10.11.3 If the Trustee holds a policy of temporary incapacity insurance (or other like insurance) for a Member then the Trustee may assign the legal and beneficial interest in the policy to the Member subject to the assignment being authorised by the Relevant Law.

## 11. **Transfer of benefits**

### 11.1 **General**

- 11.1.1 If a Member becomes eligible to join another Regulated Superannuation Fund the Trustee may, if requested by the Member in lieu of part or all of any Benefit to which the Member may become entitled under this deed, transfer to the Trustees of the Regulated Superannuation Fund the portion of the property or monies of the Fund as the Trustee in its discretion determines.
- 11.1.2 In the event of a transfer of the whole entitlement of the Member, the amount of the transfer must be an amount in value not less than the amount determined in accordance with clause 10.1 as if a Benefit was payable to the Member.

### 11.2 **Contribution splits**

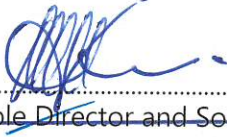
The Trustee may in its absolute discretion transfer or rollover an amount subject of a split of Contributions in accordance with clause 5.3 to another Regulated Superannuation Fund.

## 12. **Termination of Fund**

- 12.1 If at any time there are no Members or no Dependants of Members then the Fund may be wound up by the Trustee transferring the balance of investments ("**Balance**") remaining (if any) after allowance for any expenses expected to be incurred in winding up the Fund to the last person who was a Member or to the Dependants or estate of that Member in proportion as the Trustee may in the absolute discretion of the Trustee determine.
- 12.2 Upon completion of the transfer of the Balance, and payment of all final expenses the Fund will cease, provided that, if any payment of Benefits provided for by this clause is otherwise required by the Relevant Law or by this deed to be deferred until the occurrence of a Condition of Release, then the Member will not be entitled to receive that part of the Benefit and the Trustee must transfer the Benefit to another superannuation entity nominated by the Member, provided that the entity does not permit the payment of the Benefit prior to the occurrence of a Condition of Release.

**EXECUTED** as a Deed.

**EXECUTED** by **RICKLEA INVESTMENTS PTY** )  
**LTD** in accordance with Section 127(1) of the )  
*Corporations Act 2001*(Cth): )



.....  
\*Director/\*Sole Director and Sole Secretary

Print Full Name: **RICHARD KINGSLEY FULLER**



.....  
\*Director/\*Secretary

Print Full Name: **LEANNE WENDY**  
**JOY FULLER**

(\*please delete the inapplicable title)

(Note: please affix common seal if required by the  
Company's Constitution)