



SELF MANAGED SUPER FUND SPECIALISTS

## **CAM SUPERANNUATION FUND**

**ABN:**

**Caminiti Investment Company Pty Ltd  
(ACN 641 813 676)  
(Trustee)**

## **SELF MANAGED SUPERANNUATION FUND TRUST DEED**

SMSF Works Pty Ltd ABN 62 606 479 903  
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CLAUSE	TABLE OF CONTENTS	PAGE
<b>1. DEFINITIONS.....</b>		<b>1</b>
1.1	Defined Terms in this Deed .....	1
1.2	Defined Terms in the Act .....	11
<b>2. INTERPRETATION.....</b>		<b>11</b>
<b>3. FUND IS SUBJECT TO REQUIREMENTS OF THE ACT .....</b>		<b>12</b>
3.1	Deemed Inclusion of Relevant Requirements and Powers of the Act .....	12
3.2	Trustee's Compliance with Act .....	12
3.3	Inconsistency between Deed and Act .....	13
<b>4. GOVERNING LAW .....</b>		<b>13</b>
<b>5. TRUSTEE HOLDS FUND ON TRUST .....</b>		<b>13</b>
<b>6. COMPOSITION OF THE FUND .....</b>		<b>13</b>
<b>7. ELECTION TO BE AUSTRALIAN COMPLYING REGULATED SELF MANAGED     SUPERANNUATION FUND.....</b>		<b>13</b>
7.1	Pension Fund and/or Corporate Trustee .....	13
7.2	No Amendment to Change Purpose .....	14
7.3	Fund to be Australian Complying Regulated Self Managed Superannuation Fund - Trustee's Obligation.....	14
7.4	Notice of Election, Tax File Number, Australian Business Number and Goods & Services Tax .....	14
<b>8. APPOINTMENT AND REMOVAL OF TRUSTEE.....</b>		<b>14</b>
8.1	Structure of the Office of Trustee .....	14
8.2	Compliance with the Act .....	15
8.3	Members to Appoint and Remove Trustee .....	15
8.4	Cessation from Office of Individual Trustees or Responsible Officers of Corporate Trustee.....	15
8.5	Cessation from Office of Corporate Trustee .....	16
8.6	Trustee may be a Member .....	16
8.7	Consent to Appointment .....	16
8.8	Trustee Declaration of Obligations and Responsibilities .....	16
8.9	Legal Personal Representative of Deceased Member .....	17
8.10	Continuity of Office.....	18
8.11	Legal Personal Representative with Enduring Power of Attorney .....	18
8.12	Legal Personal Representative of Member with a Legal Disability .....	18
<b>9. PROCEEDINGS OF TRUSTEE .....</b>		<b>19</b>
9.1	Meetings.....	19
9.2	Quorum for Meeting of Trustee .....	19
9.3	Passing of Resolutions at Meetings .....	19
9.4	Attendances at Meeting when not present in Person .....	20
9.5	Circular Resolutions.....	20



9.6	Appointment of Chairperson .....	20
9.7	Chairperson's Duty .....	20
9.8	Voting Entitlement.....	20
9.9	Minutes of Meeting .....	21
9.10	Items for Consideration .....	22
9.11	Constitution of Corporate Trustee .....	22
<b>10.</b>	<b>TRUSTEE'S DISCRETION .....</b>	<b>22</b>
10.1	No Requirement to Give Reasons .....	22
10.2	Unfettered Discretion .....	22
10.3	Trustee's Decision Final .....	22
10.4	Exercise of Discretion by Person Other than Trustee .....	23
<b>11.</b>	<b>PROTECTION AND INDEMNITY OF THE TRUSTEE .....</b>	<b>23</b>
11.1	Limitation of Liability - General .....	23
11.2	Liability for Certain Conduct .....	23
11.3	Indemnity of Trustee .....	23
11.4	Indemnity of Director .....	23
11.5	Lien on Fund to Satisfy Indemnity .....	23
<b>12.</b>	<b>COVENANTS BY TRUSTEE .....</b>	<b>24</b>
<b>13.</b>	<b>COVENANTS BY DIRECTORS OF A CORPORATE TRUSTEE .....</b>	<b>25</b>
<b>14.</b>	<b>RECORDS OF CHANGES OF TRUSTEE ETC. / REPORTS TO MEMBERS .....</b>	<b>25</b>
14.1	Changes of Trustee and Trustee Consents and Declarations .....	25
14.2	Reports to Members .....	25
<b>15.</b>	<b>ADMISSION OF MEMBERS .....</b>	<b>25</b>
15.1	Eligible Person may Apply .....	25
15.2	Application Form .....	25
15.3	Acceptance of Membership Application .....	26
15.4	Deemed Acceptance of Application .....	26
15.5	Members Bound by Deed .....	26
15.6	Trustee to Notify Members of their Rights .....	26
15.7	Trustee May Impose Conditions on Members .....	26
15.8	Classification of Different Classes of Members .....	26
<b>16.</b>	<b>MEETINGS OF MEMBERS.....</b>	<b>27</b>
16.1	Members may Convene Meeting .....	27
16.2	Trustee Convening Meeting .....	27
16.3	Notice of Meeting .....	27
16.4	Service of Notice.....	27
16.5	Chairperson .....	27
16.6	Voting Entitlement.....	27
16.7	Trustee to Oversee Meeting .....	28
<b>17.</b>	<b>CESSATION OF MEMBERSHIP .....</b>	<b>28</b>
17.1	How Occurs – Triggering Event .....	28



17.2	When Occurs .....	28
17.3	Member's Rights not Affected .....	28
<b>18.</b>	<b>MEMBERS PROVIDING INFORMATION TO TRUSTEE .....</b>	<b>29</b>
18.1	Upon Request by Trustee .....	29
18.2	Members' Failure to Comply .....	29
18.3	Information Incorrect or Misleading .....	29
18.4	Tax File Numbers of Members .....	29
18.5	Members Updated Information to Trustee .....	29
<b>19.</b>	<b>DISCLOSURE AND REPORTING TO MEMBERS .....</b>	<b>29</b>
19.1	General Requirement .....	29
19.2	Specific Requirements .....	30
19.3	Limitation on Disclosure .....	30
19.4	What, When and How Information is Provided .....	31
19.5	Product Disclosure Statements – Information Knowledge of Members ....	31
<b>20.</b>	<b>GENERAL POWERS OF THE TRUSTEE .....</b>	<b>31</b>
20.1	Trustee has Complete Management and Control .....	31
20.2	Trustee May do all Acts in Exercise of Powers/Obligations .....	31
20.3	Powers Additional to Powers Given under Act .....	31
20.4	Conflicts of Interest .....	31
<b>21.</b>	<b>SPECIFIC MANAGEMENT POWERS OF THE TRUSTEE .....</b>	<b>32</b>
21.1	Appoint and Pay Managers and Others .....	32
21.2	Legal Proceedings .....	32
21.3	Compound Debts .....	32
21.4	Arbitration .....	32
21.5	Receipts and Discharges .....	32
21.6	Bank Accounts .....	32
21.7	Seek Advice .....	32
21.8	Borrow or Raise Money, Give Indemnity and Security and Negotiable Instruments .....	33
21.9	Receive Distributions, Dividends & Gifts .....	33
21.10	Maintain Property .....	33
21.11	To Pay Rates and Taxes .....	33
21.12	Lease Property .....	33
21.13	Sell Property .....	33
21.14	Undertaking and Contracts .....	33
21.15	Insurance and Premiums .....	33
21.16	Proxies and Powers of Attorney .....	34
21.17	Purchase Annuity .....	34
21.18	Insurance of Property .....	34
21.19	Insurance of Trustee and Directors .....	34
21.20	Delegate .....	34

<b>22. INVESTMENT OF THE FUND .....</b>	<b>34</b>
22.1 General Investment Powers of the Trustee .....	34
22.2 Specific Investment Powers of the Trustee .....	34
22.3 Dealing with Investments as Beneficial Owner .....	35
22.4 The Trustee may have Interest in Investments .....	35
22.5 Policies of Insurance .....	35
22.6 Prudent Investment Rules .....	36
<b>23. COMPLIANCE WITH THE ACT - INVESTMENTS .....</b>	<b>37</b>
23.1 General Requirement .....	37
23.2 Borrowing by the Trustee .....	37
23.3 Lending to Members .....	37
23.4 Acquisition of Certain Assets from Members or a Related Party .....	37
23.5 Investments to be made at Arm's Length .....	38
23.6 Statement of Investment Strategy .....	38
23.7 Member Investment Choice .....	38
23.8 Derivative Transactions .....	39
23.9 Investments Involving "In-house Assets" or a Related Party .....	39
<b>24. SPECIFIC INVESTMENTS OF A MEMBER .....</b>	<b>39</b>
24.1 Separate Investment for a Specific Member .....	39
24.2 Trustee to Record and Account Separately .....	40
24.3 Variation to the Investment .....	40
<b>25. VALUATION OF FUND .....</b>	<b>40</b>
<b>26. DELEGATION BY TRUSTEE .....</b>	<b>40</b>
26.1 Trustee's Right to Delegate .....	40
26.2 Variation or Revocation to Delegation .....	40
26.3 Delegation Subject to Act .....	40
26.4 Scope of Delegation .....	40
<b>27. APPOINTMENT OF ACTUARY, AUDITOR, CUSTODIAN, INVESTMENT MANAGERS AND QUALIFIED ADVISORS .....</b>	<b>40</b>
27.1 Actuary .....	40
27.2 Auditor .....	41
27.3 Custodian .....	41
27.4 Investment Managers .....	41
27.5 Qualified Advisors .....	42
27.6 Revocation of Appointment .....	42
<b>28. REMUNERATION OF TRUSTEE AND REIMBURSEMENT FOR ADMINISTRATION EXPENSES .....</b>	<b>42</b>
28.1 No Right to Charge Fees .....	42
28.2 Indemnity and Reimbursement .....	42
<b>29. ACCOUNTING RECORDS .....</b>	<b>43</b>
29.1 Form of Accounting Records .....	43
29.2 Retention of Accounting Records .....	43



<b>30. ACCOUNTING STATEMENTS .....</b>	<b>43</b>
30.1 Preparation.....	43
30.2 Signature.....	43
30.3 Retention.....	43
<b>31. AUDIT OF THE FUND .....</b>	<b>43</b>
31.1 Audit to be Conducted each Financial Year.....	43
31.2 Auditor to be Given Access to Documents/Information .....	44
<b>32. ANNUAL RETURNS ETC TO RESPONSIBLE AUTHORITY .....</b>	<b>44</b>
32.1 Annual Return .....	44
32.2 Trustee Certificate.....	44
32.3 Audit Certificate.....	44
32.4 Contribution Statement .....	44
32.5 Other Documents or Information .....	44
<b>33. COMPLAINTS PROCEDURE .....</b>	<b>44</b>
33.1 If Required by the Act .....	44
33.2 Rights of Beneficiaries .....	44
33.3 Trustee to Deal within 90 Days.....	44
<b>34. NOTICE TO RESPONSIBLE AUTHORITY .....</b>	<b>45</b>
34.1 Trustee's Responsibility to Notify of Significant Adverse Events .....	45
34.2 Meaning of Significant Adverse Event.....	45
34.3 Change of Fund Details .....	45
34.4 Material Changes and Omissions in Information Previously Given .....	45
<b>35. ACCOUNTS .....</b>	<b>45</b>
35.1 Separate Accounts.....	45
35.2 Types of Accounts .....	46
<b>36. ACCUMULATION ACCOUNTS .....</b>	<b>46</b>
36.1 Credits to Accumulation Accounts.....	46
36.2 Debits to Accumulation Accounts .....	46
<b>37. INCOME ACCOUNT .....</b>	<b>47</b>
37.1 Credits .....	47
37.2 Debits .....	47
<b>38. RESERVE ACCOUNT .....</b>	<b>48</b>
38.1 Credits .....	48
38.2 Investment Return on Reserve Account.....	48
38.3 Purpose and Use .....	48
<b>39. PENSION ACCOUNT .....</b>	<b>49</b>
<b>40. TRANSFER BALANCE ACCOUNT.....</b>	<b>49</b>



<b>41. CALCULATION OF INVESTMENT RETURN AND EARNINGS.....</b>	<b>49</b>
<b>42. PARTICIPATION OF PERSONS AS EMPLOYERS.....</b>	<b>50</b>
42.1 Application to Participate .....	50
42.2 Approval by Trustee .....	50
42.3 Execution of Participating Employer Admission Form .....	50
42.4 Employer May Contribute .....	50
42.5 Deemed Admission .....	50
42.6 Reconstruction or Amalgamation of an Employer .....	50
<b>43. INSOLVENCY OF TRUSTEE .....</b>	<b>50</b>
<b>44. CONTRIBUTIONS .....</b>	<b>51</b>
44.1 Member Contributions .....	51
44.2 Employer may Contribute Employer Contributions .....	51
44.3 Employer Contributions Pursuant to Agreement with Trustee .....	51
44.4 Other Contributions .....	51
44.5 No Obligation to Contribute .....	51
44.6 Contributions may be made in Cash or by Transfer of Assets In Specie ...	51
44.7 Limitation on Accepting Contributions .....	52
44.8 Refund of Ineligible Contributions .....	52
44.9 Employer to remit Contributions Promptly .....	53
44.10 Allocation of Contributions.....	53
44.11 Contribution Splitting .....	53
44.12 Contributions or Other Transfers that involve NSW Dutiable Property .....	53
<b>45. FUND TO PROVIDE BENEFITS UNDER ACT .....</b>	<b>54</b>
45.1 Purpose.....	54
45.2 Compliance with the Act when paying Benefits .....	54
<b>46. ENTITLEMENT TO PAYMENT OF BENEFITS.....</b>	<b>55</b>
46.1 Generally on satisfying Prescribed Event .....	55
46.2 Retirement Benefit.....	55
46.3 Preservation Age Benefit.....	55
46.4 Death Benefit .....	55
46.5 Permanent Incapacity Benefit .....	56
46.6 Temporary Incapacity Benefit.....	56
46.7 Temporary Resident Permanently Departing Australia .....	56
46.8 Severe Financial Hardship or Compassionate Grounds .....	56
46.9 Terminal Medical Condition .....	56
46.10 Release Authority .....	56
<b>47. AMOUNT OF BENEFIT .....</b>	<b>56</b>
47.1 Member's Accumulation Account Balance .....	56
47.2 Insured Component on Death and Incapacity Benefits .....	56
<b>48. MANNER OF PAYMENT OF BENEFITS .....</b>	<b>57</b>
48.1 Lump Sum, Pension, or Annuity .....	57
48.2 Preservation Age Benefit.....	57

48.3	Death Benefits and Beneficiary Nominations .....	57
48.4	Death Benefits and Pensions .....	60
48.5	Permanent Incapacity Benefit - Lump Sum or Pension .....	61
48.6	Temporary Incapacity Benefit - Non-commutable Income Stream .....	61
48.7	Other Benefit Payments .....	61
<b>49.</b>	<b>BENEFITS PAYABLE AS A PENSION .....</b>	<b>61</b>
49.1	Type of Agreed Pension and Pension Agreement .....	61
49.2	Amount of Pension .....	62
49.3	Segregation of Pension Assets .....	62
49.4	Conditions Applicable to All Pensions .....	62
49.5	Variation to Pension Amount .....	62
49.6	Limitation on Pension Amount .....	63
49.7	Death of Pensioner .....	63
49.8	Application to Convert Lump Sum Benefit to Pension .....	63
49.9	Commutation of Pension to a Lump Sum .....	63
49.10	Purchase of Pension or Annuity from Third Party .....	64
49.11	Allocated Pension .....	64
49.12	Account Based Pension .....	64
49.13	Lifetime Pension .....	64
49.14	Fixed Term Pension .....	64
49.15	Market Linked Pension .....	64
49.16	Flexi Pension .....	65
49.17	Transition to Retirement Income Stream .....	65
49.18	Non-commutable Allocated Pension .....	65
49.19	Non-commutable Pension .....	65
49.20	Non-commutable Income Stream .....	65
49.21	Actuarial Certificates .....	65
<b>50.</b>	<b>PAYMENT OF BENEFIT BY TRANSFER IN SPECIE .....</b>	<b>66</b>
50.1	Transfer of Assets .....	66
50.2	Transfer of Policy of Insurance .....	66
<b>51.</b>	<b>POSTPONEMENT OF BENEFIT PAYMENTS .....</b>	<b>66</b>
51.1	To Facilitate Administration .....	66
51.2	At Request of Beneficiary .....	66
<b>52.</b>	<b>TRANSFERS FROM APPROVED SUPERANNUATION ENTITIES .....</b>	<b>67</b>
52.1	Trustee May Take Superannuation Interest .....	67
52.2	Trustee To Hold Subject to this Deed .....	67
52.3	Payment of Special Unpreserved Benefits .....	67
52.4	Member Subject to Fund .....	67
52.5	Trustee to assist Transfer .....	67
52.6	Transfers from UK Pension Schemes .....	67
<b>53.</b>	<b>TRANSFERS TO APPROVED SUPERANNUATION ENTITIES .....</b>	<b>68</b>
53.1	Trustee May Transfer with Member's Consent .....	68
53.2	Trustee May Transfer without Member's Consent .....	69
53.3	Trustee must Transfer upon Member's Request .....	69
53.4	Transfer to Member's New SMSF .....	69



53.5	Receipt of Transferred Amount .....	69
53.6	Power of Attorney .....	69
53.7	Extinguishment of Rights.....	70
53.8	Adjustment of Other Benefits upon Transfer.....	70
53.9	Compliance with the Act.....	70
<b>54.</b>	<b>MEMBER MAY REQUEST ROLLOVER PAYMENT .....</b>	<b>70</b>
<b>55.</b>	<b>TERMINATION OF THE FUND .....</b>	<b>70</b>
55.1	Grounds for Termination.....	70
55.2	Notice of Termination .....	70
55.3	Winding up of the Fund .....	70
<b>56.</b>	<b>DISSOLUTION OF THE FUND .....</b>	<b>71</b>
<b>57.</b>	<b>AVAILABILITY OF DEED .....</b>	<b>71</b>
<b>58.</b>	<b>AMENDMENT OF DEED .....</b>	<b>71</b>
58.1	Who may Amend .....	71
58.2	How Amendment Effected.....	72
58.3	Effective Date of Amendment.....	72
58.4	Consent by Beneficiary.....	72
58.5	Notice to Members.....	72
58.6	Notice to Responsible Authority .....	72
58.7	Amendments concerning Compliance with the Act .....	72
58.8	Restriction on Amendments .....	72
58.9	No impact on Beneficiary Nomination .....	73
<b>59.</b>	<b>TAXATION .....</b>	<b>73</b>
59.1	Taxation of Benefits .....	73
59.2	Taxation on Contributions .....	73
59.3	Taxation on Income .....	73
<b>60.</b>	<b>PROOF OF ENTITLEMENT BY BENEFICIARIES .....</b>	<b>73</b>
<b>61.</b>	<b>NO PERSONAL CLAIM OF MEMBERS OR DEPENDANTS FOR INTEREST .....</b>	<b>73</b>
<b>62.</b>	<b>COMPENSATION RIGHTS OF MEMBERS NOT LIMITED .....</b>	<b>73</b>
<b>63.</b>	<b>FAMILY LAW PROCEEDINGS .....</b>	<b>74</b>
63.1	Operation of this Clause .....	74
63.2	Superannuation Agreement .....	74
63.3	Court Order .....	74
63.4	Request for Information .....	74
<b>64.</b>	<b>PRIVACY .....</b>	<b>74</b>



## **SMSF TRUST DEED PRECEDENT - SIS ACT COMPLIANCE STATEMENT**

SMSF Trust Deed Precedent (Version 04/17)

Compliance under *Superannuation Industry (Supervision) Act 1993 (Cth)* (**SIS Act**)

Madgwicks has prepared this SMSF Trust Deed Precedent (Version 04/17) document (comprising Index and Clauses 1 to 64 inclusive on pages 1 to 74) (**SMSF Trust Deed Precedent**) as a pro forma precedent for use with regulated self managed superannuation funds.

Madgwicks has authorised your SMSF administrator to use the SMSF Trust Deed Precedent and to complete a Schedule and Signing Pages prepared by your SMSF administrator that contain the particular details of your SMSF, so that the combined SMSF Trust Deed Precedent, Schedule and Signing Pages comprise your SMSF's complete SMSF Trust Deed.

Madgwicks does **not** prepare, check, nor take responsibility for, the Schedule or Signing Pages of your complete SMSF Trust Deed, or for the identity of the parties or other details of your SMSF identified in the Schedule, or for checking the signing of the Signing Pages. Madgwicks provides no advice to the parties involved with the SMSF that uses this SMSF Trust Deed Precedent unless Madgwicks is requested to do so in writing. Other than directly relating to the content of this SMSF Trust Deed Precedent, Madgwicks disclaims all and any liability which arises without Madgwicks involvement.

Subject to the foregoing, Madgwicks confirms that as at 18 April 2017:

- (a) Clauses 1-64 (inclusive) of the SMSF Trust Deed Precedent satisfy the requirements for matters to be included in the governing rules of a regulated self managed superannuation fund under the SIS Act and the regulations made under the SIS Act; and
- (b) the SMSF Trust Deed Precedent does not contain clauses that cause a regulated self managed superannuation fund governed by the SMSF Trust Deed Precedent to be in breach of or not comply with the SIS Act or the regulations made under the SIS Act.

### **Madgwicks**

Lawyers  
Level 6, 140 William Street  
Melbourne Vic 3000  
Australia

**THIS TRUST DEED** is made as a deed poll on the Date of this Deed specified in Item 1 of the Schedule by

**TRUSTEE:**

The person named as the Trustee in Item 2 of the Schedule  
**("the Trustee")**

**RECITALS:**

- A. This Deed contains the governing rules of a trust that is an indefinitely continuing superannuation fund ("the Fund") known by the name specified in Item 3 of the Schedule.
- B. This Deed requires that:
  - (i) the Fund must have the sole or primary purpose of providing Old-Age Pensions and may also have the ancillary purpose of providing other Benefits described in this Deed; **AND, OR IN THE ALTERNATIVE,**
  - (ii) the Fund must have a Corporate Trustee as the Trustee of the Fund.
- C. The Trustee has consented to act as the Trustee of the Fund under this Deed.
- D. The Trustee intends that the Fund operate as an Australian complying regulated self-managed superannuation fund and be eligible for Concessional Taxation Treatment.

**THIS DEED WITNESSES:**

1. **DEFINITIONS**

1.1 **Defined Terms in this Deed**

In this Deed, unless the context otherwise requires:

**"Account"** means any account established and maintained by the Trustee under this Deed or by the ATO for administering the Fund on behalf of Members, and includes any Accumulation Account, Reserve Account, Income Account, or Pension Account, as described in this Deed, or any other account that the Trustee determines to operate subject to the requirements of the Act and includes a Transfer Balance Account.

**"Account-based Pension"** means a pension that meets the definition, description and standards of an account-based pension under the SIS Regulations, and specifically Regulations 1.03(1) and 1.06(9A).

**"Act"** means:

- (a) Co-contribution Act;
- (b) Corporations Act;
- (c) Family Law Act



- (d) Income Tax Act;
- (e) Privacy Act;
- (f) RSA Act;
- (g) SGA Act
- (h) SIS Act;
- (i) Social Security Act;
- (j) SSA Act;
- (k) Super Excess Balance Act;
- (l) Trustee Act;
- (m) Unclaimed Money Act;
- (n) all amendments, other legislation relating to, and regulations made under, the abovementioned Acts including the SIS Regulations; and
- (o) 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 or a Member must comply in order to obtain and maintain Concessional Taxation Treatment.

**"Allocated Pension"** means a pension that meets the definition, description 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 a Member's Superannuation Interest can be transferred, rolled over or allocated into or from the Fund, without contravening the Act or losing Concessional Taxation Treatment.

**"ATO"** means the Australian Taxation Office and includes the Commissioner of Taxation or any other delegated officer with authority for administering the Income Tax 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 for accounting purposes to be the balance date for the end of a 12 month financial year of the Fund.

**"Beneficiary"** means a Member, a Dependant, a trustee for a Dependant, the Member's Legal Personal Representative, a Reversionary Beneficiary, or any other person who is entitled to be paid a Benefit in respect of the Member's Superannuation Interest in the Fund.

**"Beneficiary Nomination"** means a Three Year Binding Nomination; a Non-lapsing Binding Nomination; or any other form of written nomination given by a Member to the Trustee stating how the Member directs or wishes the Trustee to pay all or part of a Benefit in respect of the Member on the death of the Member to one or more nominated recipients and, subject to the requirements of this Deed, may include a direction by the Member to the Trustee to pay or apply all or part of the Death Benefit:

- (a) as to any specific amounts or proportions of the Death Benefit; or
- (b) as to the order of priority or cascading as between nominated recipients; or
- (c) as to any specific Fund assets by transfer in-specie subject to clause 50; or
- (d) as to any type of Pension or Superannuation Lump Sum; or
- (e) as to any combination of (a) to (d) inclusive.

**"Benefit"** means any payment which is, or may become payable, by the Trustee to a Beneficiary as a Superannuation Benefit from the Fund under this Deed, subject to the Trustee being satisfied of the Beneficiary's entitlement to receive the payment under the Act, and includes a Superannuation Member Benefit, a Superannuation Death Benefit, a Contributions Splitting Superannuation Benefit, a Family Law Superannuation Payment, or any other Superannuation Benefit that the Act permits to be paid from the Fund.

**"Child Contribution"** means a payment to the Fund made as a contribution on behalf of a Member by a parent, grandparent or other relative of that Member, and permitted by the Act.

**"Co-contribution Act"** means the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.

**"Commencement Date"** means the date of commencement of the Fund specified in Item 4 of the Schedule.

**"Concessional Taxation Treatment"** means any and all of the concessions that are available under the Tax Act relating to superannuation and in respect of:

- (a) Contributions accepted by the Fund;
- (b) income and earnings derived from the investments of the Fund;
- (c) Benefits paid out of the Fund; and
- (d) any other matter concerning the Fund, Trustee or Beneficiaries as governed under this Deed.

**"Condition of Release"** means a condition of release as defined in regulation 6.01(2) of the SIS Regulations.

**"Contribution"** means a gross payment to the Fund (prior to deduction of any Taxation payable in respect of the payment) made as a contribution by or on behalf of a Member in accordance with this Deed, including any Child Contribution, Employer Contribution, Government Contribution, Member Contribution, or Spouse Contribution or payment that is otherwise permitted as, or deemed to be, a contribution by the Act, and includes a Rollover Payment or any other amounts which are transferred or rolled over to the Fund from an Approved Superannuation Entity.

**"Contributions Splitting Superannuation Benefit"** means a contributions splitting superannuation benefit as defined in s. 995-1(1) of the Tax Act.

**"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).

**"Death Benefits Dependant"** in relation to a Member who has died has the meaning in Section 302-195 of the Income Tax Act.

**"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 that person's 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 within the meaning of section 302-200 of the Income Tax Act ; and
- (e) includes a Death Benefits Dependant; and

**PROVIDED THAT:**

- (f) the person is a dependant as defined by or within the meaning of the SIS 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 by or 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 Tax Act who is accepted by the Trustee to participate as an employer-sponsor of the Fund or from whom the Trustee accepts an Employer Contribution.

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

**"Excess Transfer Balance"** means an excess transfer balance as defined in s. 294-30 of the Income Tax Act.

**"Excess Transfer Balance Tax"** means any excess transfer balance tax as defined in s. 294-230 of the Income Tax Act and imposed under the Income Tax Act and Super Excess Balance Act.

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

**"Family Law Superannuation Payment"** means a family law superannuation payment as defined in s. 307-5 of the Income Tax Act.

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

**"Fixed Term Pension"** means a pension (also known as a "life expectancy pension") payable for a fixed term based on the life expectancy of the primary Pensioner or his or her Spouse that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(7) and 1.07B.



**"Flexi Pension"** means a pension (also known as a "commutable lifetime pension") that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(6) and 1.07B.

**"Gainfully Employed"** means in respect of a person, employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment, and includes:

- (a) for a person who has reached age 65, if the person is at a relevant time in a Financial Year so employed or self employed on at least a part time basis during that Financial Year by being gainfully employed at least 40 hours in a period of not more than 30 consecutive days prior to the relevant time in that Financial Year;
- (b) a person who is an Employee; and
- (c) any other meaning of "gainfully employed" given by the Act.

**"Government Contribution"** means a co-contribution made by the Commonwealth of Australia on behalf of a Member under the Co-contribution Act.

**"Income Tax Act"** means the *Income Tax Assessment Act 1936* (Cth) and *Income Tax Assessment Act 1997* (Cth).

**"Individual Trustee"** means a Trustee who is an individual, and if more than one, each of them.

**"Insured Component"** means the amount (if any) paid to or received by the Trustee under a Policy of Insurance to provide for funding the payment of a Member's Benefit or for any other purpose in relation to a Member less any part of that amount that the Trustee determines in its discretion to credit to a Reserve Account or to any other Account in respect of the Member in accordance with clause 22.5(e).

**"Insurer"** means any insurer or assurer selected by the Trustee to provide a Policy of Insurance under this Deed.

**"Investment Strategy"** means an investment strategy as required by the SIS Act.

**"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.

**"Lifetime Pension"** means a pension (also known as a "non-commutable complying pension") payable for the lifetime of the primary Pensioner that meets the standards prescribed by the SIS Regulations, and specifically Regulations 1.06(2) and 1.07B.

**"Market-Linked Pension"** means a market linked pension (also known as a "Term Allocated Pension" or "Growth Pension") as defined in, and that meets the standards prescribed by, the SIS Regulations, and specifically Regulations 1.06(8) and 1.07C.

**"Member"** means a person admitted to membership of the Fund under this Deed and

**"Membership"** means membership of the Fund.

**"Member Contribution"** means a gross payment to the Fund made by a Member as a contribution.

**"Nominated Beneficiary"** means a person, including Legal Personal Representative, nominated in writing by a Member under a Beneficiary Nomination as the desired recipient of a Benefit that is or becomes payable following the death of that Member.

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

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

**"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 a Benefit in respect of the Member on the death of the Member, 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 or superannuation income stream, and payable by instalments out of a Pension Account maintained for and on behalf of a Pensioner, and includes any of the following pensions as described in this Deed:

- (a) Account Based Pension;
- (b) Allocated Pension;
- (c) Fixed Term Pension;
- (d) Flexi Pension;
- (e) Lifetime Pension;
- (f) Market-Linked Pension;
- (g) Non-commutable Allocated Pension;
- (h) Non-commutable Income Stream;



- (i) Non-commutable Pension;
- (j) Old-Age Pension;
- (k) Transition to Retirement Income Stream; or

any other commutable or non-commutable pension or other income stream that the Act permits the Trustee to pay from the Fund.

**"Pensioner"** means a Member who is in receipt of a Pension including a primary pensioner and, following the death of the primary pensioner, any Reversionary Pensioner, and **primary beneficiary** and **reversionary beneficiary** have corresponding meanings.

**"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 that insures the Member for that contingency; or
- (c) means permanent incapacity as defined in regulation 6.01(2) of the SIS Regulations;

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

**"Policy of Insurance"** means any policy of insurance or assurance obtained by the Trustee on behalf of a Member for the life, endowment, term, disablement, accident or sickness of a Member, including an individual policy, a group policy, and a policy under which the proceeds will be payable to the Trustee on the occurrence of an insured event in respect of the Member.

**"Prescribed Event"** means a Condition of Release or other event being satisfied in relation to a Member that entitles the Trustee to pay all or part of a Benefit to or in respect of the Member without contravening the Act.

**"Preservation Age"** has the same meaning as given by Part 6 of the SIS Regulations.

**"Privacy Act"** means the *Privacy Act* 1988 (Cth).

**"Qualified Advisor"** means an accountant, auditor, barrister, solicitor, actuary, medical practitioner or other professional person who the Trustee considers is capable of giving advice in relation to any matter that concerns the Fund or this Deed.

**"Release Authority"** means a proper and valid release authority issued under the Income Tax Act and given by a Member to the Trustee in accordance with the Income Tax Act.

**"Relative"** has the same meaning as in the SIS Act.

**"Responsible Authority"** means the ATO, Australian Prudential Regulation Authority ("APRA"), Australian Securities and Investment Commission ("ASIC"), the Department of Family and Community Services (Centrelink), and any other government or statutory authority or office which is responsible for administering or regulating all or any part of the Act.

**"Responsible Officer"** means a director, secretary or other executive officer as defined by the Corporations Act of a Corporate Trustee.

**"Reversionary Beneficiary"** means a Beneficiary who is nominated by a primary pensioner to succeed the primary pensioner in receiving the pension as a reversionary pensioner, following the death of the primary pensioner, and **reversionary pensioner** has a corresponding meaning.

**"Rollover Payment"** means any payment of a Member's Benefit rolled over by the Trustee within the Fund or to any other Approved Superannuation Entity or payment rolled over to the Trustee on behalf of a Member from any Approved Superannuation Entity and includes any roll-over superannuation benefit within the meaning given by section 306-10 of the Income Tax Act.

**"RSA Act"** means the *Retirement Savings Accounts Act 1997* (Cth).

**"SGA Act"** means the *Superannuation Guarantee (Administration) Act 1992* (Cth).

**"SIS Act"** means the *Superannuation Industry (Supervision) Act 1993* (Cth.).

**"SIS Regulations"** means the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**"Social Security Act"** means the *Social Security Act 1991* (Cth).

**"Spouse"** of a person means:

- (a) another person (whether of the same sex or a different sex) with whom the person is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 22B of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section; or
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple; or
- (c) any other person who is recognised by the Act as a spouse of the first-mentioned person.

**"Spouse Contribution"** means a gross payment made to the Fund as an eligible spouse contribution on behalf of a Member by a Spouse of that Member as permitted by the Act.

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

**"Super Excess Balance Act"** means the *Super (Excess Transfer Balance Tax) Imposition Act 2016* (Cth).



**"Superannuation Benefit"** means a superannuation fund payment made from the Fund as described in Item 1 of the Table in section 307-5(1) of the Income Tax Act and includes any Superannuation Death Benefit or any Superannuation Member Benefit.

**"Superannuation Death Benefit"** means a superannuation death benefit as described in section 307-5 of the Income Tax Act and includes any payment to a Beneficiary from the Fund after another person's death, because the other person was a Member of the Fund.

**"Superannuation Income Stream Benefit"** means a superannuation income stream benefit that is paid from a superannuation income stream within the meaning of section 307-70 of the Income Tax Act to a Beneficiary from the Fund because the Beneficiary is a Member of the Fund.

**"Superannuation Interest"** means a superannuation interest as defined in section 995 - 1(1) of the Income Tax Act.

**"Superannuation Lump Sum"** means a Superannuation Benefit that is not a Superannuation Income Stream Benefit.

**"Superannuation Member Benefit"** means a superannuation member benefit as described in section 307-5 of the Income Tax Act and includes any payment to a Beneficiary from the Fund because the Beneficiary is a Member of the Fund.

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

**"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, tax on eligible termination payments, surcharge pursuant to the Surcharge Acts, Excess Transfer Balance Tax, goods and services tax and stamp duty.

**"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 that insures the Member for that contingency; or
- (c) means temporary incapacity as defined in regulation 6.01(2) of the SIS Regulations;

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 Benefit in

respect of the Member on the death of the Member, and which expressly indicates that the nomination will lapse, expire, or terminate automatically on a date or upon expiration of a period which is three years from the date of the nomination.

**"Transfer Balance Account"** means a transfer balance account as defined in s. 294-15 of the Income Tax Act.

**"Transfer Balance Cap"** means a transfer balance cap as defined in sections 294-35 and 294-185 of the Income Tax Act.

**"Transition to Retirement Income Stream"** means a pension that meets the definition, description and standards of a transition to retirement income stream under 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 but is not otherwise defined in this Deed, is deemed to have the same meaning in this Deed as it has in the Act unless the context otherwise requires.

## 2. INTERPRETATION

In this Deed, unless the context otherwise requires:

- (a) Headings and underlinings are for convenience only and do not affect the interpretation of this Deed;
- (b) A reference to the singular include the plural and vice versa;
- (c) A reference to a gender includes any gender;
- (d) A reference to a natural person includes any company, partnership, joint venture, association, trust or other body corporate;
- (e) A reference to any thing includes a part of that thing;
- (f) A reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed;
- (g) A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;



- (h) A reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (i) A reference to a party to any document includes that party's successors and permitted assigns;
- (j) A covenant or agreement on the part of two or more persons binds them jointly and individually;
- (k) A reference to "\$" or "Dollars" means the lawful currency of the Commonwealth of Australia;

### 3. **FUND IS SUBJECT TO REQUIREMENTS OF THE ACT**

#### 3.1 **Deemed Inclusion of Relevant Requirements and Powers of the Act**

This Deed must be read and construed as if this Deed is deemed to also include in addition to the clauses in this Deed:

- (a) all relevant imposed prohibitions, requirements of, and standards prescribed in, the Act with which the Fund or the Trustee must comply; and
- (b) all relevant discretions, powers, and authority conferred by the Act on the Trustee under which the Trustee may act;

in order for the Fund:

- (c) to obtain or maintain the status of an Australian complying regulated self managed superannuation fund; or
- (d) to qualify for Concessional Taxation Treatment or any other relevant benefit or concession; or
- (e) to ensure that neither the Fund nor the Trustee becomes liable for any penalty or obligation under the Act for which they would not otherwise be liable.

#### 3.2 **Trustee's Compliance with Act**

Without limitation to the operation of clause 3.1, 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**

Despite anything to the contrary in this Deed, if there is any inconsistency or conflict between a provision of this Deed and a relevant provision of the Act, the latter will prevail over the former to the extent of that inconsistency or conflict.

## 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
- (g) any other monies property or investments which are or become held by or on account of the Trustee on the trusts of this Deed.

## 7. **ELECTION TO BE AUSTRALIAN COMPLYING REGULATED SELF MANAGED SUPERANNUATION FUND**

### 7.1 **Pension Fund and/or Corporate Trustee**

At all times the Fund must have:

- (a) the sole or primary purpose of providing Old-Age Pensions (notwithstanding that the Fund may also provide other ancillary Benefits described in this Deed); **AND, OR IN THE ALTERNATIVE,**
- (b) a Corporate Trustee as the Trustee of the Fund.



## 7.2 No Amendment to Change Purpose

Notwithstanding any other provision in this Deed to the contrary, the Trustee must not make or allow to be made any amendment to this Deed which would have the effect, expressly or implicitly, that the Fund no longer has or will not continue to have:

- (a) the sole or primary purpose of providing Old-Age Pensions; **AND, OR IN THE ALTERNATIVE,**
- (b) a Corporate Trustee.

## 7.3 Fund to be Australian Complying Regulated Self Managed Superannuation Fund - Trustee's Obligation

- (a) The Trustee intends that the Fund is and will at all relevant times operate as an Australian complying regulated self managed superannuation fund.
- (b) The Trustee must procure and ensure that any relevant requirements of the Act for an Australian complying regulated self managed superannuation fund are satisfied and complied with, including any requirement as to:
  - (i) the composition or structure of the Trustee, the Members or the relationship between them;
  - (ii) the acceptance of Contributions by or on behalf of Members; and
  - (iii) the ordinary location of the management and control of the Fund.

## 7.4 Notice of Election, 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 in the form prescribed by the Act;

- (a) irrevocably electing that the SIS Act is to apply to the Fund;
- (b) for a Taxation File Number (TFN);
- (c) for an Australian Business Number (ABN); and
- (d) 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) one or more Individual Trustees; or
- (b) a Corporate Trustee.

## 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 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 and to the existing Trustee (if any), provided that the person or company has consented in writing to the appointment under clause 8.7 and is not disqualified from so acting;
- (b) may 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 and to the existing Trustee (if any);
- (c) 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;
- (d) 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
- (e) must ensure that any vacancy in the office of the Trustee is filled in a manner and within the time required by the Act.

An Individual Trustee or any Corporate Trustee or any Director of any Corporate Trustee must do all things necessary to implement and act in accordance with a notice of a Members' resolution that it or he receives under this clause.

## 8.4 **Cessation from Office of Individual Trustees or Responsible Officers of Corporate Trustee**

A person ceases to hold the office of an Individual Trustee or to hold the office of a Responsible Officer of a Corporate Trustee:

- (a) upon the resignation of that person by notice in writing given to all other Individual Trustees or Directors of a Corporate Trustee, as the case may be;
- (b) upon the removal of that person under clause 8.3 by notice in writing given to that person;
- (c) upon that person becoming a disqualified person within the meaning of Section 120 of the SIS Act;
- (d) upon the death of that person, subject to clause 8.9;



- (e) upon that person being replaced by his attorney holding an enduring power of attorney granted by that person, subject to clause 8.11;
- (f) upon the person suffering a legal disability, subject to clause 8.12;
- (g) upon that person committing an act of bankruptcy or being declared a bankrupt or entering into any arrangement or composition with that person's creditors or becoming an insolvent under administration under or pursuant to the *Bankruptcy Act 1966* (Cth) or any other law of the Commonwealth of Australia relating to insolvency;
- (h) upon that person being convicted of a criminal offence in respect of dishonest conduct; or
- (i) where a civil penalty order as defined by the Act is made in relation to the person.

#### 8.5 Cessation from Office of Corporate Trustee

A company ceases to hold the office of a Corporate Trustee:

- (a) upon the resignation of the company as Corporate Trustee by notice in writing given to the Members;
- (b) upon the removal of that company as Corporate Trustee under clause 8.3 by notice in writing given to the company;
- (c) upon the company becoming a disqualified person within the meaning of Section 120 of the SIS Act;
- (d) upon the appointment of a receiver, receiver and manager, official manager, administrator, agent for a mortgagee, provisional liquidator or liquidator in respect of its property or the approval by a court of a scheme of arrangement providing for its dissolution, or it entering into any other form of insolvency administration; or
- (e) where a Responsible Officer of the company has been disqualified from holding office 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 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.

- (b) A person who is an Individual Trustee or Director of a Corporate Trustee must ensure that, within 21 days after another person ("other person") is appointed as an Individual Trustee or Director of a Corporate Trustee, the other person signs a declaration in the approved form under section 104A of the SIS Act that the other person understands his or her duties as an Individual Trustee or Director of a Corporate Trustee.
- (c) The person and the other person referred to in paragraphs (a) and (b) must ensure that the declarations made under this clause by the person or other person are:
  - (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.

#### 8.9 Legal Personal Representative of Deceased Member

- (a) If a Member who is an Individual Trustee or Director of a Corporate Trustee dies, the Trustee:
  - (i) may appoint the Legal Personal Representative of the deceased Member; and
  - (ii) must on written request by that Legal Personal Representative to the Trustee,
 

appoint that Legal Personal Representative to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be, in place of that deceased Member during the period commencing on or after the date of death and ending on the date on which a Death Benefit commences to be payable from the Fund in respect of that Member.
- (b) At the end of that period, the Legal Personal Representative will cease to hold office as an Individual Trustee or Director of a Corporate Trustee, as the case may be.
- (c) The appointment is subject to the Legal Personal Representative consenting to act under clause 8.7 and not being disqualified within the meaning of the Act.
- (d) If the deceased Member was the sole Director and sole shareholder of a Corporate Trustee, the Legal Personal Representative of the deceased Member may self-appoint the Legal Personal Representative to be a Director of the Corporate Trustee in accordance with this clause 8.9 and section 201F(2) of the Corporations Act.
- (e) Without limiting the way in which a Legal Personal Representative may be identified, the Legal Personal Representative for the purposes of this clause, will be as named in the last will and testament of the deceased Member, unless the operation of law or an order of a court expressly requires or provides to the contrary.



- (f) If the Legal Personal Representative is a company, the company may appoint either:

- (i) one individual; or
- (ii) two individuals acting jointly;

to act as the representative of the company in its capacity as the Legal Personal Representative for the purpose of attending meetings of the Trustee and voting on a proposed Trustee resolution.

- (g) If the Legal Personal Representative is a group of two or more individuals, those individuals may appoint either:

- (i) one of them; or
- (ii) two of them acting jointly;

to act as the representative of the Legal Personal Representative for the purpose of attending meetings of the Trustee and voting on a proposed Trustee resolution.

#### 8.10 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.

#### 8.11 Legal Personal Representative with 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.

#### 8.12 Legal Personal Representative of Member with a Legal Disability

- (a) If a Member is under a legal disability, the Legal Personal Representative of that Member may be appointed and on written request by that Legal Personal Representative to the Trustee, must be appointed, to hold office as an Individual Trustee or Director of a Corporate Trustee, in place of that Member during the period of the Member's legal disability. At the end of that period, a Legal Personal Representative so appointed will cease to hold office as an Individual Trustee or Director of a Corporate Trustee.
- (b) If a Member is under a legal disability because of age, and does not have a Legal Personal Representative, a parent or guardian of that Member may be appointed and hold office as an Individual Trustee or Director of a Corporate Trustee in place of that Member during the period of the Member's legal disability because of age. At the end of that period, the parent or guardian so appointed will cease to hold

office as an Individual Trustee or Director of a Corporate Trustee.

- (c) If the Member is the sole Director and sole shareholder of a Corporate Trustee, and the Member cannot manage the Corporate Trustee because of the Member's mental incapacity, the Legal Personal Representative of the Member may self-appoint the Legal Personal Representative to be a Director of the Corporate Trustee in accordance with this clause 8.12 and section 201F(2) of the Corporations Act.

## 9. PROCEEDINGS OF TRUSTEE

### 9.1 Meetings

- (a) Subject to the terms of this Deed, and in the case of a Corporate Trustee, the terms of its Constitution, 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 requires that 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 requiring a decision of the Trustee must be determined by resolution.



- (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.

#### 9.4 Attendances at Meeting when not present in Person

An Individual Trustee or a Director of a Corporate Trustee may participate in a meeting of the Trustee without attending the meeting in person by means of any suitable and appropriate communications equipment provided that all persons participating in the meeting can hear each other. Participation in this way will be deemed to constitute presence in person at the meeting.

#### 9.5 Circular Resolutions

A written resolution signed by all Individual Trustees or by all Directors of a Corporate Trustee will be deemed to be a resolution duly made by the Trustee on the date that the resolution is signed by the last of the Individual Trustees or the last of the Directors of the Corporate Trustee, as the case may be.

#### 9.6 Appointment of Chairperson

- (a) The Trustee may by resolution appoint a person holding office as an Individual Trustee or as a Director of a Corporate Trustee, as the case may be, to be the Chairperson of the Trustee.
- (b) The Chairperson will hold office as Chairperson until:
  - (i) he retires as Chairperson by written notice given to the Trustee;
  - (ii) he ceases to be an Individual Trustee or a Director of a Corporate Trustee; or
  - (iii) he is removed as Chairperson by a written notice given to him pursuant to a resolution passed by the Trustee.

#### 9.7 Chairperson's Duty

The Chairperson may act as Chairperson of each meeting of the Trustee at which the Chairperson is present. If the Chairperson is not present in person at a meeting or if at the time of a meeting there is no Chairperson a person shall be appointed by a resolution of the Trustee to act as Chairperson of that meeting.

#### 9.8 Voting Entitlement

- (a) Subject to clause (c), each person holding office as an Individual Trustee or as a Director of a Corporate Trustee has one vote on any resolution.
- (b) The Chairperson does not have a casting vote on any resolution.

- (c) Any Individual Trustee or Director of a Corporate Trustee 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 Individual Trustee or Director of a Corporate Trustee having such number of votes corresponding to the amount of the Benefit in the Fund that the person holds in their capacity as a Member at the time of the vote, where each dollar of the withdrawal benefit equates to one vote. In the case of a Legal Personal Representative representing a Member, the Legal Personal Representative shall have the number of votes corresponding to the amount of the withdrawal Benefit of that Member.
- (d) Subject to clause (e), no resolution will be effective unless carried by a simple majority, or if the Act requires a particular majority, by that majority.
- (e) Subject to clause 48.3(h)(vi), if a resolution concerns the exercise of discretion by the Trustee concerning the payment of a Death Benefit under clause 46.4 following the death of Member, either:
  - (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 that are entered in a minute 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 meeting 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
- (g) that the Trustee and the Fund are complying with the Act.

### 9.11 Constitution of Corporate Trustee

If the Trustee is a Corporate Trustee and any part of this Deed is inconsistent with the Constitution of the Trustee, the Trustee's Directors agree that, and will use reasonable endeavours to procure the agreement of the shareholders of the Trustee that, the inconsistent part of this Deed prevails over the Constitution, unless giving effect to the inconsistent part of this Deed would be contrary to the Corporations Act.

## 10. TRUSTEE'S DISCRETION

### 10.1 No Requirement to Give Reasons

The Trustee is not bound to give to any person any reason for or explanation of the Trustee's exercise, non-exercise or partial exercise of any power or discretion by the Trustee.

### 10.2 Unfettered Discretion

The Trustee has an absolute and unfettered discretion and is not bound to act subject to the direction of any other person (unless otherwise expressly required by the Act) in the exercise or non-exercise or partial exercise of any power or discretion by the Trustee.

### 10.3 Trustee's Decision Final

The decision of the Trustee in relation to any dispute on the interpretation of this Deed or the rights or obligations of a Member or the Trustee or any other person under this Deed will be final and binding on all interested persons.

#### 10.4 **Exercise of Discretion by Person Other than Trustee**

Unless permitted by the Act, a discretion given to the Trustee must not be exercised by any other person without the consent of the Trustee.

### 11. **PROTECTION AND INDEMNITY OF THE TRUSTEE**

#### 11.1 **Limitation of Liability - General**

Subject to clause 11.2, the Trustee will not personally be liable for any claim, liability, cost, loss, damage or expense incurred by or arising out of any act or omission in connection with this Deed or the Fund or the exercise or performance of the Trustee's powers, discretions and duties.

#### 11.2 **Liability for Certain Conduct**

Clause 11.1 does not exempt the Trustee from, and the Trustee will be liable for, any claim, liability, cost, loss, damage or expense which is a direct result of an act or omission by the Trustee involving:

- (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.