

Deed of Variation Samyusra Superannuation Fund

Samyusra Pty Limited
ACN 609 944 381

This deed poll is dated 10th October 2020

Party: Samyusra Pty Limited ACN 609 944 381 of 47 Mullens Street, Balmain
New South Wales

Recitals:

- A. The Trustee is the trustee of the Fund which was established by deed dated 26 December 2015.
- B. Samir Ali has been a member of the Fund since the Fund was established on 26 December 2015.
- C. Dr Michele Macnamara was admitted as a member of the Fund on 22 September 2020.
- D. Pursuant to Rule 28 of the Original Deed, the Trustee is empowered to amend all or any of the provisions of the Original Deed.
- E. The Trustee wishes to revoke, add to or vary the provisions of the Original Deed to ensure that the Fund:
 - (a) complies with the provisions of the *Superannuation Industry (Supervision) Act 1993* (Cth) and other legislative provisions regulating the conduct of superannuation funds; and
 - (b) is maintained as a complying superannuation fund under the *Income Tax Assessment Act 1997* (Cth).

This deed witnesses:

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

In this deed including the recitals, unless the context indicates otherwise:

Fund means the Samyusra Superannuation Fund as constituted by the Original Deed.

New Provisions means the Rules and Schedules attached to and forming part of this deed.

Original Deed means the deed dated 26 December 2015 that established the Fund.

Trustee means Samyusra Pty Limited ACN 609 944 381.

1.2 Interpretation

In this deed unless the context otherwise indicates:

- (a) a reference to a party to an agreement or document includes that party's executors, administrators, successors and permitted assigns;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to this deed;
- (c) a reference to an agreement or document (including to this agreement) is to the agreement or document as amended, supplemented, novated or replaced;

- (d) a reference to legislation or to a provision of legislation includes a consolidation, amendment, re-enactment or replacement of it and a regulation or other instrument issued under it;
- (e) the singular includes the plural and vice versa;
- (f) a gender includes all genders;
- (g) a reference to a person includes a firm, body corporate, association, trust, partnership, government or governmental body or other legal entity;
- (h) where a word or phrase is defined in this deed, other grammatical forms of that word or phrase have a corresponding meaning;
- (i) headings in this deed are for convenience only and do not affect its interpretation;
- (j) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (k) a reference to time is to Sydney time;
- (l) a reference to a body, whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body is a reference to the body that replaces it or that substantially succeeds that body;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any right, entitlement, benefit, agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a reference to dollars or \$ is to an amount in Australian currency unless denominated otherwise;
- (p) a reference after the words "include" or "for example" or similar expressions does not limit what else is included;
- (q) if the day on which an action must be done under this deed is not a business day, it must be done on or by the next business day.

2. Amendment of Original Deed

The Original Deed is amended by:

- (a) deleting all the provisions of the Original Deed as amended by the First Variation, except for the provisions of the Original Deed that constituted the Fund; and
- (b) substituting the New Provisions,

with the intent that the Fund will be governed by the New Provisions from the date of this deed.

3. Governing Law and Jurisdiction

This deed is governed by the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the New South Wales

courts and courts of appeal from them and waives any right to object to those courts or courts of appeal.

4. Variation of Rights and Obligations by Legislation

Present or future legislation which operates to vary an obligation or right, power or remedy of a person in connection with this deed is excluded except to the extent that its exclusion is prohibited or rendered ineffective or void.

5. Severability

Part or all of a clause of this deed that is illegal or unenforceable will be severed from this deed and will not affect the continued operation of the remaining provisions of this deed.

Executed as a deed poll:

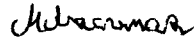
Executed as a deed poll in accordance
with section 127 of the *Corporations Act*
2001 (Cth) by **Samyusra Pty Limited**
ACN 609 944 381:



Director/Secretary Signature



Print name



Director Signature



Print name

Annexure

Rules

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THE RULES

1. Definitions and Interpretation

1.1 Definitions

Accounts means the accounts of a Member referred to in Rule 5.3.

Actuary means a Fellow of the Institute of Actuaries of Australia or other suitably qualified person, or a firm of such person, who may, for the time being, be appointed by the Trustee to advise in relation to the Fund.

Allocated Investment means investments made pursuant to Rule 4.4 and held in respect of individual Members.

Ancillary Purposes means any purpose described as one of the ancillary purposes in sub-section 62(1) of the SIS Act, and in particular:

- (a) the provision of benefits for each Member of the Fund on or after the termination of the Member's employment with an employer who had, or any of whose associates had, at any time, contributed to the Fund in relation to the Member;
- (b) the provision of benefits for each Member of the Fund on or after the Member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged and the cessation is on account of ill-health (whether physical or mental);
- (c) the provision of benefits in respect of each Member of the Fund on or after the Member's death, if:
 - (i) the death occurred after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before, or occurred after, the Member joined the Fund); and
 - (ii) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (d) the provision of benefits in respect of each Member of the Fund on or after the Member's death, if:
 - (i) the death occurred after the Member attained the age prescribed for the purposes of the SIS Act; and
 - (ii) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (e) the provision of such other benefits as the Regulator approves in writing.

Approved Superannuation Entity means a self-managed superannuation fund, a Registrable Superannuation Entity under the SIS Act or any other form of retirement savings account, approved deposit fund, eligible rollover fund, superannuation annuity and My Super product or similar product which satisfies the Relevant Requirements to which preserved superannuation can be transferred from the Fund or transferred to the Fund from the entity;

Approved Superannuation Fund means a superannuation fund which satisfies all Relevant Requirements.

Assets means the assets of the Fund set out in Rule 4.1;

Auditor means the Auditor for the time being appointed by the Trustee.

Benefit means any benefit payable pursuant to these Rules in respect of a Member's Membership and includes any amount standing to the credit of a Member in any Account which is capable of being the subject of a Splittable Contribution.

Binding Nomination means a nomination governing the distribution of a death benefit made under Rule 13.4.

Commencement Date means the date of commencement of the Fund.

Compassionate Ground has the meaning attributed to that term in the SIS Act.

Core Purposes means any purpose described as one of the core purposes in sub-section 62(1) of the SIS Act and in particular:

- (a) the provision of benefits for each Member of the Fund on or after the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged (whether the Member's retirement occurred before, or occurred after, the member joined the Fund);
- (b) the provision of benefits for each Member of the Fund on or after the Member's attainment of an age not less than the Normal Retirement Age;
- (c) the provision of benefits for each Member of the Fund on or after whichever is the earlier of:
 - (i) the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; or
 - (ii) the Member's attainment of the Normal Retirement Age;
- (d) the provision of benefits in respect of each Member of the Fund on or after the member's death, if:
 - (i) the death occurred before the Member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the Member was engaged; and
 - (ii) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both;
- (e) the provision of benefits in respect of each Member of the Fund on or after the Member's death, if
 - (i) the death occurred before the Member attained the Normal Retirement Age; and
 - (ii) the benefits are provided to the Member's legal personal representative, to any or all of the Member's dependants, or to both.

Dependant has the meaning attributed to that term in the SIS Act.

Disqualified Person has the meaning attributed to that term in the SIS Act.

Distribution Date means a date determined by the Trustee for the crediting and debiting of Earnings.

Distribution Period means any period between Distribution Dates and includes the period between the Commencement Date and the first Distribution Date.

Early Retirement Date means in relation to a Member, the date the Member attains the Preservation Age.

Earnings means the positive or negative amount which the Trustee determines to be the income of the Fund less disbursements (or any part thereof) either:

- (a) for a Financial Year; or
- (b) for any other period for which the Trustee determines,

which may exclude amounts (**Excluded Amounts**) determined by the Trustee to be treated as capital and not income and include amounts (**Included Amounts**) which the Trustee has determined to be income (including any profit or gain) which but for that determination would not be included in Earnings where Excluded Amounts and Included Amounts may be ordinary income, statutory income, assessable income, non-assessable income, exempt income or non-assessable non-exempt income or have other taxation attributes and may be positive or negative and may be due to timing or permanent differences or other adjustments and Earnings may also reflect unrealised gains or losses and notional amounts or assets including any franking credit, foreign tax credit, tax offset, rebate or similar advantage or disadvantage.

Employer means a Member's Employer who makes contributions to the Fund:

- (a) where an Employer is not a standard employer sponsor under the SIS Act unless the Trustee and the Employer enter into an arrangement to make contributions for an employee of the Employer; and
- (b) in relation to a particular Member means the Employer of that person at the relevant time.

Employment means, in respect of a Member, service with an Employer which pursuant to the SIS Act the Fund may receive contributions on behalf of the Member.

Financial Year means a period of twelve (12) calendar months ending on the last day of June, or any part of such a period that may occur at the commencement or termination of the Fund.

Fund means the entire superannuation plan known as Samyusra Superannuation Fund as constituted by the deed and the Rules.

Fund Credit means in relation to a Member, the credit standing to his or her Account in the Fund.

ITAA means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* (as the case may be).

Member means a person who has met all of the requirements of this Fund and has been admitted to membership of the Fund as provided in Rule 10 and includes a person deemed to be a member of the Fund by operation of the SIS Act and **Membership** has a corresponding meaning.

Member Contribution Account means the Account kept in accordance with Rule 5.3.

Nominated Beneficiary means the legal personal representative of the Member or any Dependant or Dependents last nominated in writing by a Member to the Trustee under a Binding Nomination.

Non-Member Spouse has the meaning attributed to that term in the SIS Act.

Normal Retirement Age means the age of sixty-five (65) or such other age as may be specified in the Relevant Requirements.

Payment Split has the meaning attributed to that term in the SIS Act.

Permanent Incapacity means, in relation to a Member who has ceased to be gainfully employed, ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

Preservation Age has the meaning attributed to that term in the SIS Act.

Regulator has the meaning attributed to that term in the SIS Act.

Relevant Requirements mean the requirements imposed under any law or by any Responsible Authority which must be satisfied by the Fund in order to:

- (a) remain a complying fund under the SIS Act; and
- (b) qualify for income tax concessions.

Responsible Authority means, as the case may require, any one or more of the Regulator, the Australian Prudential Regulation Authority, the Commissioner of Taxation or any other governmental authority responsible for administering the laws, regulations or any other rules governing the operation or the availability of income tax concessions to superannuation funds and approved deposit funds.

RSE Licensee means a RSE licensee within the meaning of the SIS Act.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* and includes the regulations prescribed thereunder.

Splittable Contribution has the meaning attributed to that term in SIS Act.

Splittable Contribution Application means an application made under Rule 12.5.

Spouse has the meaning ascribed to that term in the SIS Act.

Temporary Incapacity means, in relation to a Member 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.

Trustee means the person named as the Trustee or otherwise the trustee or trustees for the time being of the Fund.

1.2 Interpretation

In these Rules unless the context otherwise indicates:

- (a) any term which is not defined in these Rules but has a defined meaning in the SIS Act has the same meaning in these Rules as is attributed to that term in the SIS Act;
- (b) references to the deed, this deed, the Rules or these Rules or any Rule or Schedule include the deed establishing the Fund and the Rules and the relevant Rule or Schedule (as the case may be) as amended from time to time;
- (c) references to any applicant, Member, Beneficiary or Trustee in this Rules include the executors administrators successors and permitted assigns of that applicant, Member, Beneficiary or Trustee;
- (d) references to a Rule are construed as references to a Rule, clause of or schedule or annexure to the deed and references to these Rules and the deed include their schedules and any annexures;

- (e) references to (or to any specified provision of) these Rules or another deed or document are construed as references to these Rules or that other deed or document as amended or substituted with the deed of the relevant parties and in force at any relevant time;
- (f) references to any statute, ordinance or other law include all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it;
- (g) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person are construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
- (h) where any word or phrase is given a defined meaning in these Rules, any other part of speech or other grammatical form in respect of the word or phrase has a corresponding meaning; and
- (i) headings included in are for convenience only and shall not affect the interpretation of the Rules.

2. The Fund

- 2.1 The Fund is known as the Samyusra Superannuation Fund.
- 2.2 The Fund is vested in the Trustee and the Trustee shall hold the property of the Fund subject to the provisions of this deed.
- 2.3 The property of the Fund is described in Rule 4.1.
- 2.4 The Trustee must ensure that the Fund is maintained solely:
 - (a) for one or more of the Core Purposes; or
 - (b) for one or more of the Core Purposes and for one or more of the Ancillary Purposes;

and while the Trustee is not a company these purposes shall be consistent with provision of old-age pension benefits.

3. Trustee

- 3.1 Appointment, removal and number
 - (a) Where the Trustee:
 - (i) comprises natural persons, they must in relation to their number and identity and otherwise comply with the Relevant Requirements;
 - (ii) is a company it shall in relation to the composition of its directors and otherwise comply with the Relevant Requirements.
 - (b) Unless the SIS Act permits otherwise, a person other than a constitutional corporation is not eligible to be appointed as trustee of the Fund unless the Rules provide that the sole or primary purpose of the Fund is the provision of old-age pensions.
 - (c) A company must not act as a Trustee or must cease to be a Trustee:
 - (i) if the company is or becomes a Disqualified Person;

- (ii) if the company does not, or ceases to, comply with Rule 3.1(a).
- (d) A natural person must not act as a Trustee or must cease to be a Trustee:
 - (i) if the person is or becomes a Disqualified Person;
 - (ii) if the person would by acting or continuing to act as a Trustee cause the Trustee to cease to comply with Rule 3.1(a).
- (e) If a Member is under a legal disability or a legal personal representative of a Member has an enduring power of attorney in respect of the Member then that legal personal representative may act as a Trustee or as a director of a company which is the Trustee.
- (f) Any natural person or company appointed by the Regulator to act as Trustee may act as Trustee.
- (g) Where a person or a company is a RSE Licensee, that person or company may act as Trustee.
- (h) A Trustee may retire so long as, if it is necessary under the Relevant Requirements, a new trustee is appointed to act in lieu of the retiring trustee.
- (i) The Trustee may admit or recognise the admission of a Member even though there has been delay or defect in the completion of an application for membership of the Fund so long as the requirements of the SIS Act regarding the composition and identity of the Trustee or the directors of the Trustee are satisfied.
- (j) Any natural person who is appointed as a Trustee or as a director of a Trustee must complete any trustee declaration required under the Relevant Requirements.

3.2 Transfer of assets

Upon a change of Trustee the retiring Trustee shall execute all transfers, deeds or other documents necessary to transfer assets investments of moneys into the name of the new Trustee.

3.3 Other Powers

Without limiting the powers vested in the Trustee by law or elsewhere or in the Rules or otherwise, the Trustee shall have power:

- (a) to purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised to acquire or dispose of on such terms and conditions as it shall think fit;
- (b) to appoint and at its discretion remove or suspend the Actuary, Auditor, investment managers, administration managers, secretaries, clerks, agents and other servants, appoint them for permanent, temporary or special services as it from time to time thinks fit, determine the powers and duties to be delegated to them and fix their salaries or emoluments and require security in such instances and to such amount as it may think fit and any person so employed or engaged shall be treated under the deed and the Rules as employed or engaged by the Trustee;
- (c) to institute, conduct, defend, compound or abandon any legal proceedings by or against the Fund or its officers or otherwise concerning the affairs of the Fund and also to compound and allow time for payments or satisfaction of any debts due and of any claims or demands by or against the Fund;

- (d) to refer any claims or demands by or against the Fund to arbitration and observe and perform the awards;
- (e) to make and give receipts, releases and other discharges for money payable to the Fund and for the claims and demands of the Fund;
- (f) to deal with the Regulator including:
 - (i) to respond to any requirement of the Regulator in any manner the Trustee may think fit;
 - (ii) to progress, settle or compromise any dispute with the Regulator;
 - (iii) to comply with any direction from the Regulator in accordance with the Relevant Requirements; and
 - (iv) to lodge any document with the Regulator, including the annual return of the Fund required by the Regulator;
- (g) to open bank accounts and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts including the signing and endorsing of cheques in connection with them;
- (h) to determine who shall be entitled to sign on the Fund's behalf receipts, acceptances, endorsements, releases, contracts and documents;
- (i) to pay Benefits out of the Fund to persons entitled so long as there has been satisfaction of a condition of release under Rule 5.6(b) and/or the payment is to meet the Core Purposes or Ancillary Purposes;
- (j) to decide who are Dependants for the purposes of the Rules as and when the need shall arise;
- (k) subject to the SIS Act, in the case of Permanent Incapacity or Temporary Incapacity, to pay or apply such Benefits or any part of them at its discretion to or for the benefit of such person and the Dependants of such person or any of them as the case may be without being responsible for seeing to the application of payments under this paragraph or payments made in the exercise of any other power vested in the Trustee by the Rules;
- (l) to take and act upon the opinion of any legal practitioner whether in relation to the interpretation of the Rules or any other document or statute or as to the administration of the Fund without being liable to any Members or their Dependants in respect of any act done by it in accordance with such opinion;
- (m) subject to the SIS Act, to pay such amounts as may be necessary pursuant to any transitional release authority or similar document;
- (n) to sell, transfer, hire, lease or dispose of any real or personal property of the Fund, whether at a profit or not;
- (o) to grant or take any put or call option for the purchase of any real or personal property of the Fund, whether the sale occurring on exercise of such option will be at a profit or not;
- (p) to buy, transfer, acquire, hire or lease any property;
- (q) to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this Rule, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises;

- (r) to borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any Asset of the Fund but only to the extent permitted by the Relevant Requirements;
- (s) to invest in its name or under its control the Fund in any one or more of the investments authorised by this document with power in its absolute discretion either to retain the investments authorised by this document with power in its absolute discretion either to retain the investment in that form or to sell or convert into money any of those investments for cash or on terms (so as to allow a purchaser any time for payment of the whole or part of the purchase price with or without interest and with or without security) and power in its absolute discretion from time to time to vary or transpose any investments into others authorised by this document;
- (t) to guarantee the payment of money and the performance of obligations and to give indemnities to or on behalf of any person the Trustee thinks fit. This power may be exercised even though there may be no contractual, legal or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the Trustee proposes to give the guarantees or indemnities;
- (u) to appoint any person as custodian to hold legal title for any asset acquired or to be acquired by the Trustee on such terms as the Trustee thinks fit; and
- (v) to do anything incidental to the exercise of any other power;

and for the avoidance of doubt the Trustee may do anything or exercise any power that is contemplated or implied to trustees of self managed superannuation funds by the SIS Act.

3.4 Indemnity

Subject to Rule 3.8, every Trustee shall be indemnified against all liabilities incurred by it through any act or omission in the exercise of the powers, duties and discretions under the deed or the Rules or in the bona fide intended or purported exercise of its duties under the deed and the Rules and shall have a lien on the Fund for such indemnity.

3.5 Proceedings

- (a) Where the Trustee consists of more than one person, the trustees:
 - (i) may meet together for the dispatch of business;
 - (ii) may adjourn and otherwise regulate their meetings as they think fit.
 - (iii) may determine the quorum necessary for the transaction of business;
 - (iv) shall appoint a chairman:
 - A. for the time being;
 - B. from time to time; or
 - C. for each meeting; and
 - (v) may act on any resolution approved by two-thirds of the trustees for the time being:
 - A. in office;
 - B. voting in person; or
 - C. by proxy;
 at the meeting at which the resolution is proposed;

and any trustee may appoint another trustee to be his or her proxy at a meeting or meetings of the trustees.

- (b) Even though the trustees are not present together in one place at the time a meeting of trustees is convened using available technology, a resolution passed at such meeting shall be valid and deemed passed at a meeting of the trustees at that time.
- (c) Where there is more than one Trustee, a resolution in writing, signed by all the trustees for the time being, shall be as valid and effectual as if it had been duly passed at a meeting of the trustees duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more trustees.
- (d) Where there is more than one Trustee, the trustees may from time to time delegate to any one or more of their number the right and power on behalf of the trustee to sign, draw, accept, make, endorse, issue, discount or otherwise execute, as the case may be, all or any cheques, promissory notes, drafts, bills of exchange, bills of lading and other negotiable or transferable instruments, all or any receipts for money paid to the Trustee and all or any other documents connected with the due administration of the Fund or with these Rules, and may similarly delegate such rights and powers to any secretary of the Fund or to any custodian, administrator or investment manager appointed by them.
- (e) Any records made in accordance with this Rule shall be evidence that the decision was made and, until the contrary is proved, a meeting where a decision was made shall be deemed to have been duly held and convened.

3.6 Discretions

- (a) Any individual Trustee (and where the Trustee is a company, any director or other officer of the Trustee) may exercise or concur in exercising all powers, authorities and discretions conferred on the Trustee by the deed or by these Rules or by law given to the Trustee even though the individual may have a direct or other personal interest in the mode or result of exercising any such power, authority or discretion but any Trustee or director or officer may nevertheless abstain from acting except as a merely formal party in any matter in which he or she may be so personally interested.
- (b) The Trustee, in the exercise of the powers, authorities and discretions vested in the Trustee by the deed and these Rules shall have an absolute and uncontrolled discretion and may exercise or enforce all or any of those powers, authorities and discretions at any time and from time to time or may refrain from exercising all or any of them from time to time or at all.

3.7 Remuneration

A Trustee or a director of a Trustee shall be entitled to charge remuneration for acting as trustee or as a director of a Trustee, as the case may be, of the Fund, unless the SIS Act prohibits the charging of such remuneration.

3.8 Liability

Subject to the SIS Act, the Trustee shall not be responsible for:

- (a) any loss or damage occasioned to the Fund or any part of it or to any person by the exercise of any discretion or power or by law conferred on the Trustee or by any alleged failure to exercise any such discretion or power; or
- (b) any breach of duty or trust;

unless the same shall be proved to have been committed, made or omitted in personal conscious and fraudulent bad faith by the Trustee charged to be so liable and all persons claiming any interest in the income or capital of the Fund shall be deemed to take with notice of and subject to the protection conferred on the Trustee.

3.9 Conflict of Interest

- (a) Without limiting the provisions of any other Rule but subject to the SIS Act, and in addition to the powers otherwise conferred upon the Trustee, the Trustee is expressly authorised to exercise all or any of the powers and discretions conferred upon the Trustee in such manner as if the Trustee were not a trustee and under no fiduciary obligation in exercising such powers and discretions (and even though the Trustee for the time being and/or from time to time shall be a sole Trustee) and the Trustee shall not be obliged to do or omit to do any act which the Trustee might otherwise be obliged to do or omit to do by reason only, or for reasons including the reason that the Trustee is the trustee or one of the trustees of this Fund and notwithstanding any matter or thing no trustee or trustees (or former trustee or trustees) of this Fund shall be obliged to account to the Fund or any successor trustee or trustees of the Fund or any Member or former Members for any benefit that such trustee or trustees (or former trustee or trustees) may obtain or have obtained either directly or indirectly as a result of the exercise of any power or discretion conferred upon the Trustee.
- (b) The Trustee shall have the power generally to exercise or concur in exercising all the powers and discretions conferred on the Trustee even though the Trustee or any person being a Trustee or any person being a director or shareholder of a Trustee has or may have a direct or personal interest (whether as trustee of any other trust or in his or her personal capacity or as a shareholder or director or member or partner of any company or partnership or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and even though the trustee for the time being is the sole trustee.
- (f) Any natural person who is a Trustee or a director of a Trustee may become a director of any company in which a part of the Fund is invested and may, subject to the SIS Act, receive remuneration for holding such office without being liable to account to the Fund for such remuneration.

4. Assets, Expenses and Investments

4.1 The Assets

The following property of the Fund shall constitute the Assets namely:

- (a) contributions;
- (b) any assets transferred to or rolled over to the Trustee pursuant to any arrangements made by the Trustee under these Rules;
- (c) any accumulations or earnings on assets; and
- (d) any other money received or receivable by the Trustee for the purposes of the Fund.

4.2 Expenses of the Fund

All the expenses of operation of the Fund incurred from time to time shall be paid out of the Fund.

4.3 Investments and Life Assurances

All money received by the Trustee but not required to meet current payments may in the absolute discretion of the Trustee either be and remain on deposit in the name of the Trustee or be reinvested either directly or indirectly in any manner in which the Trustee, if it were personally entitled to such assets, could invest, and without restricting the generality of the foregoing may be invested:

- (a) in any one or more of the modes of investment authorised by law for the investment of trust funds;
- (b) on deposit with any bank, company or financial institution;
- (c) in the purchase or acquisition of or at interest upon the security of such real or personal property of nature and wheresoever situate and whether or not subject to encumbrances or involving liabilities of any kind as they shall think fit;
- (d) in the shares, notes, options, debentures or other securities of any company or the securities of any government, semi-government body or public authority;
- (e) in units of any common fund, property trust or unit trust, or
- (f) in any policies of life insurance, assurance or endowment including policies providing a sum or sums on the death or disablement of a Member,

with full power to vary, replace, encumber and otherwise deal with such investments as fully and effectively as a person, absolutely and beneficially entitled dealing with his own property may do so, subject to the Relevant Requirements.

4.4 Allocated Investments

If a Member requests that all or part of the amount standing to the credit of one or more of the Accounts in the Fund of that Member be invested separately from the other investments or Assets, then the Trustee may do so, so long as:

- (a) the Trustee provides to the Member such information as is prescribed under the Relevant Requirements; and
- (b) any earnings on such allocated investments (after subtraction of losses and expenses attributable to them):
 - (i) may be applied to a Reserve in accordance with the Relevant Requirements; and
 - (ii) must otherwise be attributed to the Accounts of the Member for the purpose of calculating the Benefits of the Member.

4.5 Nominees

Any investments may be held in such names including the name of a nominee, whether an individual or a corporation, as the Trustee shall determine from time to time.

4.6 Borrowing

The Trustee may borrow or raise money up to such amount as it thinks proper and may secure the payment or repayment of it by charge or mortgage over the Assets or in such other manner as it shall think fit, as the Relevant Requirements permit. The Trustee shall only borrow or raise money if so permitted by the Relevant Requirements. Any borrowing which is not permitted by the Relevant Requirements shall be immediately repaid.

4.7 Acquisition of assets and Relevant Requirements

The Trustee shall use the best endeavours of the Trustee to ensure that the acquisition of all Assets and all investments of the Fund comply with the Relevant Requirements.

4.8 Additional investment powers

- (a) The Trustee may invest the Assets in any investment that the Trustee in its absolute discretion considers appropriate, as if it were the absolute and beneficial owner of the Assets, subject to the Relevant Requirements.
- (b) Without limiting the other parts of this Rule 4, the Trustee has the following powers, which may be exercised or not by the Trustee in the absolute discretion of the Trustee in relation to any assets for the time being forming part of the Assets whether acquired by way of investment of the Assets or otherwise and such powers may be exercised together or separately and from time to time and at any time or times:
 - (i) the power to allow all or any assets at any time forming part of the Assets to remain in their actual state so long as the Trustee may think fit and at any time or times to sell, call in or convert into money the Assets or any part of them;
 - (ii) the power to change and vary any Assets for other Assets which the Trustee is by the Rules or by law authorised to acquire;
 - (iii) the power to hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, transfer, convey, surrender, let, lease, exchange, take and grant options over or rights in, alienate, mortgage charge pledge reconvey release or discharge or otherwise deal with any moveable or immoveable property;
 - (iv) the power to partition or agree to the partition of or to subdivide or agree to subdivision of any moveable or immoveable property which or any interest in which may for the time form part of the Assets and to pay any moneys by way of equality or partition;
 - (v) the power to exercise all rights and privileges and perform all duties and do all such acts, matters and things appertaining to any shares, stock or debentures in any corporation for the time being form part of the Assets as the Trustee could so if the Trustee was the beneficial owner of the shares, stock or debentures or was personally interested or concerned in the corporation and without diminishing the generality of the foregoing with power to promote and to assent to any arrangements modifying such rights privileges or duties and to promote and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation and to make any agreement in respect of or in the course of the winding up of any corporation and for any such purpose to deposit surrender or exchange any of such shares, stock or debentures or the title to them and to pay any calls or contributions or other necessary expenses in connection with any such shares stock or debentures or any title to them;
 - (vi) the power to pay calls on shares, accept transfers of shares and concur in any arrangement for the modification of the rights of holders of any debentures or of any of the stocks, securities or shares in which the Assets or any part of them may from time to time be invested, attend all meetings of stockholders, shareholders or otherwise and vote at the

Trustee's discretion at any such meeting at which the Trustee is entitled to vote with power to execute any proxy in favour of any person;

- (vii) the power to vary or amend or consent to or not object to the variation or amendment of the constitution, objects, powers, rules, articles and regulations of any corporations in which the Trustee has at any time any interest or in which the Assets or any part of them is for the time being invested or to which the Assets or any part of them has been lent;
- (viii) the power to wind up or dissolve or join in winding up or dissolving or to cause or consent to or not object to the winding up or dissolution of any corporation in which at any time the Assets or any part of them has been invested or to which the Assets or any part of them has been lent or in which the Trustee has any interest or against which the Trustee has any rights;
- (ix) the power to vote upon or in respect of any shares, securities, bonds, notes or other evidence of interest in or obligations of any corporation whether or not affecting the security of the apparent security of the Assets or any property contained in it or the purchase or sale or lease of the assets of any corporation;
- (x) the power at any time or times to accept or reject any offer of and take up any bonus shares or other securities proposed to be issued or offered for issue to the Trustee whether fully paid up or not and any rights to the allotment or issue of any securities offered to the Trustee as the holder of any securities with full power to subscribe for and pay up all securities pursuant to them and to sell or retain the rights to allotment or issue of such other securities;
- (xi) unless expressly prohibited by the SIS Act, the power to permit any Assets to be held or registered in the name of any nominee of the Trustee and to deposit securities deeds and other documents belonging or related to any of the Assets with any bank or other depository;
- (xii) the power to pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any property whether moveable or immovable forming part of the Assets and to manage the property and effect such improvements and repairs to it as the Trustee may consider necessary or advisable;
- (xiii) the power to acquire any intangible property including intellectual property rights such as trade marks, copyrights, patents, designs and the power to licence or sell such intangible property upon such terms as the Trustee may think fit;
- (xiv) the power to make loans and take such security, if any, as the Trustee may think fit so long as the making of a loan does not contravene the Relevant Requirements;
- (xv) the power to acquire such valuables as the Trustee may think fit including, without limitation, jewellery, gold, silver, stamps, coins, paintings and other art works and antiques and includes the power to license such valuables;
- (xvi) the power to acquire and sell options rights and futures contracts; and
- (xvii) the power to acquire debts or any other choses in action; and

(xviii) the power to do any other thing or things which may be necessary or incidental to the exercise of the powers conferred on the Trustee pursuant to this Rule.

4.9 Powers as to land

Where the Assets include any real or immoveable property or any interest in it (in this Rule referred to as **the Land**) the Trustee shall have the following power in addition to, and not in derogation from, any other powers the Trustee has by law or conferred on the Trustee by other provisions of the Rules applying to property other than or including real or immoveable property and such powers may be exercised together or separately and from time to time and at any time or times:

- (a) the Trustee may lease the Land or any part of them for any purpose and whether involving waste or not and for any term and either wholly or partly in consideration of a rent (whether fixed or variable) or fine or premium or the erection or improvement or repair or an agreement to erect or repair buildings on the Land and may accept (with or without consideration) a surrender of any lease of the Land or any part of them;
- (b) the Trustee may in exercising any trust or power of sale, sell the Land or any part of the Land either wholly or partly in consideration of an annual sum payable either in perpetuity or for any term (whether definite or indefinite including for the term of any life or lives) and being either reserved out of the Land sold or secured in such other manner as the Trustee shall in the absolute discretion of the Trustee think fit;
- (c) the Trustee may in executing any trust or power of sale or leasing:
 - (i) sell or lease any part of the Land whether the division is horizontal or vertical or made in any other way;
 - (ii) sell or lease or reserve any easement or right or privilege over the Land or any part of them;
 - (iii) sell or lease or except or reserve any timber or mines or minerals on or in or under the Land or any part of them together with any easements rights or privileges of cutting or working (as the case may be) and carrying away the same respectively or otherwise incident to or connected with forestry or mining purposes (as the case may be);
 - (iv) impose and make binding for the benefit of any part of the same Land sold or leased any restrictions or stipulations as to user or otherwise affecting any part of the Land retained;
 - (v) enter into any contract or grant any option for the sale or leasing of the Land or any part of them or otherwise for the exercise by the Trustee of any of the foregoing powers of this Rule;
- (d) the Trustee may transfer or agree to transfer the Land or any part of it or lease the Land or any part of it in exchange for the transfer to the Trustee or the lease to the Trustee of any other Land or the transfer to the Trustee of any other property of any nature or any interest in it or any right or the creation in favour of the Trustee of any rights or interests with or without any money paid or other consideration for the equality of exchange;
- (e) the Trustee shall be entitled to convert the interest in the Land or any part of it to a title of a different nature and without limiting the generality of the foregoing they shall be entitled to convert the interest in the Land to strata title and the

Trustee shall have the like powers in relation to any unit in the strata title as the Trustee has in relation to the Land;

- (f) the Trustee shall not be bound to see to or be liable or accountable for omitting or neglecting to see to the repair or insurance of any building on the Land or the payment of any outgoings in respect of it but may repair and insure any such buildings in such manner and to such extent as the Trustee shall think fit and pay out of the income of the Fund or provide from it a reserve or sinking fund for the costs of all such repairs and of effecting and keeping up such insurance and pay or make such provision for such outgoings in priority to any other trusts affecting the same income; and
- (g) the Trustee may from time to time expend capital money comprised in the Assets or any part of the income of the Fund in or charge the same for erecting, demolishing and rebuilding and making alterations and improvements to any building on the Land or any part of it to such extent and in such manner as they shall think fit.

5. Records and Accounts

5.1 Records

The Trustee must keep or cause to be kept a complete record of:

- (a) all persons who become Members of the Fund;
- (b) the income and expenditure of the Fund; and
- (c) all other matters essential for the working of the Fund.

5.2 Annual audit

- (a) The Trustee:
 - (i) where necessary to comply with the Relevant Requirements, must appoint an Auditor to the Fund who shall comply with all Relevant Requirements, or a firm of such persons; and
 - (ii) may remove the Auditor.
- (b) In each Financial Year the Trustee:
 - (i) must cause to be prepared financial statements required to comply with the Relevant Requirements; and
 - (ii) may cause to be prepared any other financial statements that the Trustee considers appropriate,

and such financial statements shall, if the Trustee thinks fit or if necessary to comply with Relevant Requirements, be audited by the Auditor.
- (c) The Auditor shall:
 - (i) have access to all papers, documents and accounting information including the Accounts connected with the Fund; and
 - (ii) report the result of any audit in writing to the Trustee.
- (d) Every Member shall be entitled to inspect a copy of the financial statements of the Fund.

5.3 Member's Accounts

- (a) The Trustee shall establish for each Member a Member Contribution Account in which shall be recorded:
- (i) contributions to the Fund by the Member;
 - (ii) contributions to the Fund by an Employer in respect of a Member;
 - (iii) contributions to the Fund in respect of the Member or by any other person except an Employer on behalf of the Member, including without limitation contributions by the spouse of a Member;
 - (iv) proceeds of policies of insurance effected to provide benefits on the death or disability of the Member to the extent that the Trustee determines that they should be credited to the Member Contribution Account in respect of that Member;
 - (v) amounts transferred from another fund in respect of the Member pursuant to Rule 11.1 which the Trustee has determined shall be credited to the Member Contribution Account in respect of that Member;
 - (vi) amounts of Earnings credited or debited to the Member Contribution Account in respect of that Member;
 - (vii) amounts paid by way of benefits from the Member Contribution Account in respect of that Member or applied in the purchase of an annuity in respect of the Member, or transferred to another Approved Superannuation Entity in respect of the Member; and
 - (viii) amounts debited to the Member Contribution Account in respect of that Member in respect of any income or other tax to which the Trustee is or may become liable.
- (b) Where the Trustee has agreed to provide a Member with a pension in accordance with Rule 13.1, the Trustee must establish a Pension Account for the Member in which shall be recorded:
- (i) amounts which the Trustee has determined shall be debited to the Pension Account in respect of that Member to pay premiums on policies of insurance effected to provide benefits on the death or disability of the Member;
 - (ii) any part of an amount transferred from another fund in respect of the Member pursuant to Rule 11.1 which the Trustee has determined shall be credited to the Pension Account prior to the commencement of a pension in respect of that Member;
 - (iii) amounts of Earnings credited or debited to the Pension Account in relation to unsegregated assets in respect of a pension of a Member subject to adjustment on the advice of an Actuary;
 - (iv) amounts paid by way of Benefits from the Pension Account in respect of that Member or applied in the purchase of an annuity in respect of the Member, or transferred to an Approved Superannuation Entity in respect of him or her; and
 - (v) amounts debited to the Pension Account in respect of that Member in respect of any income or other tax to which the Trustee is or may become liable.

- (c) The extent to which any Allocated Investments of the Member are acquired pursuant to Rule 4.4 by application of amounts standing to each of the above Accounts shall be determined by the Trustee, and the Earnings in respect of such Allocated Investments shall be allocated among the Accounts accordingly.
- (d) The Trustee may otherwise maintain more than one Account in respect of each Member.
- (e) The Trustee may determine that any expenses incurred in relation to the Fund are to be partly or wholly charged against any one or more Accounts, including where an expense is charged to an Account to the exclusion of another Account or Accounts.
- (f) The Trustee may account for any applicable liability, provision, estimated cost of realisation or similar expense or contingency in valuing any Account or interest.

5.4 Earnings

- (a) Earnings may be credited or debited to any Account, unless supplemented by an allocation of an amount from a reserve Account or the Trustee determines otherwise, provided that:
 - (i) credits must not total an amount greater than Earnings in a period; and
 - (ii) debits must not total an amount greater than Earnings in a period.
- (b) Earnings may be debited or credited to the Accounts, as the case may require, in respect of each Financial Year or in respect of such other period as the Trustee determines.
- (c) The Trustee may make any assumption, determination or estimate or may rely on any general practice or advice in crediting or debiting any Earnings.
- (d) In the exercise of its discretion in determining allocations of Earnings to each Account under this rule, the Trustee should have regard to the Relevant Requirements and as many of the following as the Trustee determines is appropriate:
 - (i) the actual earnings of the Fund, including all income and realised and unrealised capital gains;
 - (ii) the losses and expenses of the Fund other than any expenses which the Trustee determines to be attributable to particular Members;
 - (iii) the past and likely future earnings and losses of the Fund and the desirability or otherwise of avoiding large fluctuations of Earnings from year to year;
 - (iv) the amount, if any, standing to the credit of the Reserves; and
 - (v) such other matters as it thinks fit,
 but shall not have regard to:
 - (vi) the actual earnings of the Allocated Investments in respect of a Member during that Distribution Period, including all income and realised and unrealised capital gains referable to the Allocated Investments and segregated pension assets, if any; and
 - (vii) losses and expenses referable to Allocated Investments and segregated pension assets, if any.

- (e) The Trustee shall on the Distribution Date, subject to Rule 4.4, credit or debit, as the case may be, the Earnings to the Account of each Member on the balance standing to the Account from time to time:
 - (i) since the preceding Distribution Date; or
 - (ii) in the case of the first Distribution Period, since the Commencement Date unless the Account contains Allocated Investments subject to Rule 4.4 or contains Investments in a Pension Account set aside for the payment of a pension.

5.5 Reserves

- (a) The Trustee may apply such part or parts of :
 - (i) the income of the Fund; or
 - (ii) other Assets
 as may be applied under the Relevant Requirements to Reserve Accounts.
- (b) Reserve Accounts may be established :
 - (i) to fund temporary and permanent incapacity payments to Members as well as death benefit payments to Dependents and/or to the legal estate of deceased Members;
 - (ii) to accumulate amounts from Earnings and other sources to manage investment fluctuations and to utilise such reserves to supplement Earnings or for any other purpose that the Trustee determines;
 - (iii) to fund general and specific expenses of the Fund;
 - (iv) to manage contributions to the Fund and assist in allocating such contributions to the relevant Member or class of Members and to the relevant period;
 - (v) for other purposes or as a general Reserve for allocation to other Reserve Accounts,
 provided always that the purpose and administration of the Reserve is in accordance with the Relevant Requirements.
- (c) For the avoidance of doubt, subject only to the Relevant Requirements, the Fund is authorised to accept contributions from any person, including without limitation, any Member, the spouse of any Member, any Employer, and any other person who wishes to make a contribution to the Fund.
- (d) Notwithstanding any other provision of these Rules, but subject always to the Relevant Requirements, the Trustee may in the discretion of the Trustee determine that any part or all of the actual earnings of the Fund, including all income and realised and unrealised capital gains, may be credited to the Reserves, in which case any amount so credited will be disregarded by the Trustee when determining the Earnings to be credited or debited to any Accounts for the purposes of Rule 5.4.

5.6 Preservation of benefits

- (a) The Trustee must also record in the Accounts of the Member, if applicable, details of all benefits which are non-preserved benefits including unrestricted and restricted non-preserved benefits under the SIS Act. The Trustee must not permit the cashing of restricted non-preserved benefits or preserved benefits unless permitted under the conditions of release in Rule 5.6(b).

- (b) The Trustee may release restricted non-preserved benefits or preserved benefits where permitted by the conditions of release of benefits in the Relevant Requirements.

6. Administration

6.1 Decisions binding

Except where otherwise expressly provided, if any question or dispute arises about the interpretation of the Rules or the incidence or application of any rights, benefits, duties or liabilities arising under these Rules, the decision of the Trustee shall be binding upon all Members and Employers unless and until proved to have been given in bad faith or to have been based on an error of fact or law.

6.2 Income tax

If the Trustee becomes liable for any income tax or other tax in respect of any payment out of the Fund, the Trustee may deduct an amount equal to such tax from such payment as the Trustee thinks proper. Nothing in this Rule shall prejudice any other rights which the Trustee may have to deduct income tax or other tax from any payment out of the Fund or to pay from the Fund any tax which the Trustee may incur.

6.3 Rights of members

No person, whether as a Member or otherwise, shall have any claim, right or interest to or in respect of the Fund or any contributions to it or any interest therein or any claim upon or against the Trustee or an Employer except under and in accordance with the provisions of these Rules and the SIS Act.

6.4 Members to give information

Every Member and every person claiming a Benefit shall from time to time give to the Trustee such information, and produce to it such documents, as the Trustee considers are required for the purpose of putting these Rules into effect and for arranging insurances for the purposes of the Fund.

6.5 Trustee to give information

The Trustee will give to each Member:

- (a) as soon as practicable after he becomes a Member;
 - (b) as soon as practicable after the end of each Financial Year;
 - (c) as soon as practicable after any amendment to the deed or Rules; and
 - (d) on such other occasions as the Relevant Requirements provide,
- such information as may be stipulated in the Relevant Requirements.

6.6 Power of attorney

- (a) Unless prohibited by the SIS Act, each Member irrevocably appoints the Trustee as the attorney of the Member to execute and sign and do all such deeds, instruments and things as the Trustee may consider necessary or desirable in order to carry out, exercise and give effect to the deed or these Rules or the powers, authorities and discretions vested in the Trustee by them.
- (b) Unless prohibited by the SIS Act, the Trustee shall be permitted to appoint one or more attorneys under power or powers of attorney to act jointly or severally as attorney of the Trustee to execute and sign and do all such deeds,

instruments and things as the Trustee may consider necessary or desirable in order to carry out, exercise and give effect to the deed or these Rules or the powers, authorities and discretions vested in the Trustee under them.

7. Amendment

- (a) The Trustee may vary the Rules either prospectively or retrospectively. The Trustee may do so by written resolution or by deed.
- (b) The Trustee does not have the power to vary the Rules to do either of the following:
 - (i) reduce or adversely affect the rights of a Member to entitlements accrued before the variation is effected; and
 - (ii) reduce the amount of any other entitlement of a Member that is or may become payable in relation to a time before the date of the variation.
- (c) The Rules must not be amended in such a way that:
 - (i) a person other than a constitutional corporation would be eligible to be appointed as trustee unless the Rules provide, and will continue to provide after the amendment is made that the Fund has, as its sole or primary purpose, the provision of old-age pensions; or
 - (ii) the sole or primary purpose of the Fund would be a purpose other than the provision of old-age pensions unless the Rules provide, and will continue to provide after the amendment is made, that the Trustee must be a constitutional corporation.
- (d) No amendment shall be made otherwise than in accordance with the Relevant Requirements.
- (e) If required by the Relevant Requirements, the Trustee must inform Members in writing of the nature and purpose of the variation and its effect on their entitlements or rights. The Trustee must provide any such notice in accordance with the Relevant Requirements.

8. Conversion of Fund

An amendment under Rule 7(a) can be to convert the Fund into a superannuation fund regulated by the Australian Prudential Regulation Authority so long as an RSE Licensee is concurrently appointed as the sole trustee of the Fund either in accordance with Rule 3.1(g) or otherwise in accordance with the Relevant Requirements.

9. Winding Up

9.1 Termination of fund

- (a) The Fund shall be wound up upon the happening of any one of the following events:
 - (i) if there are no Members in the Fund and the Trustee resolves to terminate the Fund; or
 - (ii) if the Fund must terminate under the SIS Act.

- (b) Upon termination of the Fund the Trustee shall give a notice in writing to each Member, if any, that the Fund shall be wound up on a specified date, such date not being later than any date on which the Fund is required by Rule 9.1(a) to be terminated (**the Closure Date**). As from the Closure Date the following shall apply:
 - (i) no further contributions shall be accepted other than arrears of contributions due to the Closure Date; and
 - (ii) arrears of contributions, if any, shall be called in immediately.

9.2 Benefits on winding up

- (a) Upon termination of the Fund the Trustee, subject to Rule 9.2(e), shall make such provision out of the Fund after meeting expenses and liabilities as is necessary to provide for the payment of the following Benefits in the following order of priority:
 - (i) payments which on or before the Closure Date have become payable to retired Members or Dependants.
 - (ii) payments in respect of each Member equal to the Fund Credit of the Member.
 - (iii) payments in respect of each Member of such amount of the Assets then remaining as the Trustee considers equitable after taking into account payments determined under paragraph (b) as can be paid without being regarded as excessive in amount, having regard to Relevant Requirements.
- (b) Where a Member dies before receiving a Benefit to which he has become entitled pursuant to Rule 9.2(a) such benefit shall be paid to the Member's legal personal representatives unless a Binding Nomination in force directs otherwise.
- (c) If after providing all vested minimum Benefits for Members and their Dependants in accordance with Rule 9.2(a) a surplus remains, such surplus shall be paid by the Trustee, subject to Rule 9.2(e), to or for the benefit of:
 - (i) any former Members;
 - (ii) any Dependants of any such former Members; the legal personal representatives (in their capacities as such) of any such former Members or Dependants, or
 - (iii) as the Trustee in its absolute discretion determines and, if provided to or for two (2) or more persons, in such proportions as the Trustee in its absolute discretion determines, subject to Rule 13.6.
- (d) Subject to Rule 13.7, the payments to be provided under Rules 9.2(a) and 9.2(c) shall be in cash, life insurance policies, participation in any other superannuation fund or otherwise as determined by the Trustee but shall not be payable to or for the benefit of a Member or a Dependant unless and until the Member or the Dependant, as the case may be, has satisfied a condition of release in accordance with Rule 5.6(b).
- (e) If any payment of benefits provided under Rules 9.2(a) and 9.2(c) are subject to conditions of release under Rule 5.6(b) or are otherwise required by the Relevant Requirements to be deferred until the attainment of a particular age or the occurrence of a specified event, then the Member shall not be entitled to receive from the Fund any part of the benefit which is required to be so

deferred and the Trustee shall make any of the following arrangements with respect to the benefits required to be deferred:

- (i) transfer the benefit to another Approved Superannuation Entity nominated by the Member if that fund does not permit the payment of the benefit prior to the attainment of the particular age or the specified event;
- (ii) purchase a deferred annuity nominated by the Member with benefits commencing no earlier than the particular age or the specified event or which otherwise satisfies the Relevant Requirements; or
- (iii) transfer the benefit to an Approved Superannuation Entity nominated by the Member.

10. Membership

10.1 Information to be supplied

Each applicant for membership and each Member must provide to the Trustee any information and evidence and sign any documents that the Trustee reasonably requires in the performance of its duties.

10.2 Applications

A person who is not a Disqualified Person may apply to become a Member of the Fund in the form of Schedule 1 or such other form as the Trustee may from time to time approve.

- (a) If the Trustee accepts the application, the Trustee may admit the applicant to Membership with or without conditions as the Trustee may impose.
- (b) A Member shall be taken to be a Member from the earlier of the date of acceptance of an application or when Benefits are first attributable to the Member.
- (c) The Trustee may refuse an application without giving reasons.
- (d) Each Member shall by virtue of their application be deemed to have consented to be bound by the provisions of the deed and these Rules.

10.3 Inferred membership

A person who is a Beneficiary solely due to accruing an interest in the Fund as a Spouse, child or Dependant of a Member need not apply to become a Member and can be admitted to Membership by the Trustee without making an application to become a Member.

10.4 Child memberships

- (a) A child may become a Member if:
 - (i) subject to Rule 10.4(b), until the child turns eighteen (18) years old, decisions in relation to the Account of the child are made by:
 - A. the legal personal representative of the child; or
 - B. if the child does not have a legal personal representative, a parent of the child or the child's guardian; and
 - (ii) the person who applied for Membership on behalf of the child is the child's legal personal representative, a parent of the child or the child's

guardian, or the application is made in a manner which is consistent with the Relevant Requirements.

- (b) A child may make decisions in relation to the Account of the child if:
 - (i) the child is at least sixteen (16) years old; and
 - (ii) the Fund has been notified that the child will be making decisions in relation to the Account by:
 - A. the child's personal legal representative; or
 - B. if the child does not have a legal personal representative, a parent of the child or the child's guardian.

10.5 Cessation of membership

- (a) A person ceases to be a Member on the happening of the first of the following:
 - (i) when the total amount of all amounts payable under the deed and the Rules in respect of his or her membership has been paid;
 - (ii) when under the deed and the Rules all Benefits payable to the Member cease to be payable; or
 - (iii) the date the Trustee makes a determination under Rule 10.5(b).
- (b) The Trustee may also determine that a person must cease to be a Member of the Fund:
 - (i) if the Member is or becomes a Disqualified Person;
 - (ii) the Member becomes bankrupt and the Trustee is not a RSE licensee; or
 - (iii) compliance with the Relevant Requirements by the Fund may be contravened if the Member remains a member of the Fund.

10.6 Disqualified applicants, members and beneficiaries

An applicant for membership, a Member or a Beneficiary must immediately notify the Trustee on becoming a Disqualified Person.

10.7 Withholding Benefits

The Trustee may withhold payment of a Benefit until a Member or affected Beneficiary complies with this Rule.

11. Transfers

11.1 Transfer from another fund

The Trustee may make such arrangements as it thinks proper with any Member or the trustees of any Approved Superannuation Entity of which the Member was or is a member of any of them for any transfer of assets to the Fund, and may make arrangements about any other matter which in the opinion of the Trustee is incidental to or consequent upon the admission of such Member to Membership so long as:

- (a) where the interest of the Member in the assets transferred of the Approved Superannuation Entity are subject to the conditions of release referred to in Rule 5.6(b), then the interest of the Member in the Assets when received into the Fund shall also be subject to the conditions of release referred to in Rule 5.6(b); and

- (b) the Trustee must not accept such transfer if such acceptance would contravene the Relevant Requirements.
- 11.2 Transfer to another fund
- (a) Should a Member become eligible to join another Approved Superannuation Entity the Trustee may, if requested by the Member, in lieu of part or all of any other Benefit to which the Member may be entitled under these Rules, transfer to the trustees of such fund such portion of the Assets as the Trustee in its discretion determines, not exceeding such amount as the Trustee considers equivalent in value to the Benefit entitlement of the Member, to the extent that it has accrued. Subject to the Relevant Requirements the Trustee and the Member may agree as to whether the transfer is to be effected by way of cash or in specie transfer of assets or both and, if there is no agreement, the transfer shall be by way of cash.
 - (b) If a Member is required to transfer all or part of any amount held for the benefit of a Member to another superannuation fund pursuant to Part VIII B of the *Family Law Act 1975*, the Trustee shall do all things necessary to facilitate such a transfer. If an interest in the Fund becomes subject to a Payment Split, the Trustee must give to the Non-member Spouse in relation to the interest such information as may be prescribed for that purpose under the SIS Act.
 - (c) The Trustee may do all such things as may be necessary or contemplated by the SIS Act in order to give effect to the requirements of the SIS Act to deal with any Payment Split or the interest of a Non-member Spouse in the Fund.

12. Contributions

- 12.1 The Trustee may accept contributions to the Fund from any person or any other entity so long as such acceptance does not contravene the Relevant Requirements.
- 12.2 The Trustee may accept contributions in specie into the Fund so long as the Trustee has taken advice on whether the contributions:
- (a) are excess contributions under the ITAA; and
 - (b) are acceptable under the Relevant Requirements.
- 12.3 The Trustee is authorised to reject any amount, in full or in part, tendered as a contribution to the Fund and to return it to the contributor, where any of the amount, in the Trustee's opinion, could prejudice the Fund's ability to comply with the Relevant Requirements relevant to a self-managed superannuation fund or could prejudice the contributor or the Member including:
- (a) where the amount exceeds the relevant limit applicable to the Member as prescribed in respect of the relevant Financial Year by the ITAA;
 - (b) where the amount is not clearly made in respect of a particular Member or Spouse.
- 12.4 Subject to the Relevant Requirements, but without limiting Rule 12.1, the Trustee may accept contributions from the Government including contributions made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003*.
- 12.5 Subject to the Relevant Requirements, a member may in a financial year apply to the Trustee to roll over, transfer or allot an amount of Benefits, for the benefit of a Member's spouse, that is equal to an amount of the Splittable Contributions made by, for, or on behalf of the Member in:

- (a) the last financial year that ended before the Splittable Contribution Application; or
 - (b) the financial year in which the Splittable Contribution Application is made – where a Benefit is to be rolled over or transferred in that year.
- 12.6 Subject to the Relevant Requirements, the Trustee may hold any amount tendered as a contribution, but which has been rejected by the Trustee in accordance with the deed and the Rules and which does not form part of the Fund, as a bare or resulting trustee for the contributor or the person otherwise entitled to it.

13. Benefits

13.1 Pension benefits

- (a) Where a pension which has either commenced in the Fund or which has been transferred into the Fund, which was commenced prior to 1 July 2007 as one of:
 - (i) a lifetime pension;
 - (ii) a fixed term pension;
 - (iii) an allocated pension;
 - (iv) a fixed benefit payment pension;
 - (v) a market linked pension; or
 - (vi) a defined benefit pension;

the Trustee may continue to pay the pension or to commute the residual capital value of the pension on the same terms as were applicable at the commencement of the pension or to pay the pension or to commute the pension on such other terms as are permissible under the Relevant Requirements.
- (b) Unless contrary to the Relevant Requirements, a pension may be arranged in accordance with an agreement between the Member and the Trustee as a transition to retirement pension having regard to the Relevant Requirements, including but not limited to:
 - (i) the pension may be payable monthly in arrears or on such other terms as determined by the Trustee provided the payment is made at least annually except that the Trustee shall not be required to make a pension payment prior to 30 June in a year if the date of commencement of the pension is on or after a date specified in the SIS Act as enabling the Trustee not to make such a pension payment;
 - (ii) the size of payments of the pensions in a year shall be determined by the Trustee and payments in respect of a year, except in the event of commutation, shall not be larger or smaller in total than respectively the maximum and minimum amounts calculated in accordance with the Relevant Requirements;
 - (iii) the pension may be payable to a reversionary beneficiary;
 - (iv) the pension may be commuted and a residual capital value may be payable by the Trustee subject at all times to the requirements of the Relevant Requirements;

- (v) the Member must have attained the Preservation Age (or such earlier age permitted under the Relevant Requirements);
 - (vi) the pension must be paid from:
 - A. unrestricted non-reserved Benefits;
 - B. restricted non-preserved Benefits; and
 - C. preserved Benefits;

in that order with no payment of the pension from the latter of these components to be made until the earlier components have been exhausted; and
 - (vii) at the option of the Relevant Member, but subject to the Relevant Requirements, the pension may be payable even if:
 - A. the Member remains in gainful employment; or
 - B. the Fund is permitted under the SIS Act to receive contributions from or on behalf of that Member.
- (c) Unless contrary to the Relevant Requirements, a pension may be arranged in accordance with an agreement between the Member and the Trustee as an account based pension having regard to the Relevant Requirements, including but not limited to:
- (i) the pension shall be payable at least annually;
 - (ii) the total amount of the payments made in a year must be more than the minimum amount specified by the Relevant Requirements;
 - (iii) the residual capital value, commutation value and withdrawal benefit must not be greater than one hundred per cent (100%) of the purchase price of the pension unless authorised by the Relevant Requirements;
 - (iv) if the pension is commuted, the commutation amount must not exceed the benefit that was payable immediately before the commutation unless authorised by the Relevant Requirements;
 - (v) the pension may be payable to a primary or reversionary beneficiary only on the death of the Relevant Member; and
 - (vi) the capital value of the pension and the income from it cannot be used as security for a borrowing unless authorised by the Relevant Requirements.
- (d) Any pension payable in accordance with this Rule shall be subject to the following:
- (i) the pension may not be transferred or assigned to another person unless such transfer or assignment is authorised by the Relevant Requirements;
 - (ii) the capital value of the pension and the income from it cannot be used as security for a borrowing unless authorised by the Relevant Requirements;
 - (iii) the Trustee may commence more than one pension in respect of a Member whether at the same time or at different times; and
 - (iv) the payment of a Benefit under the forms of pension in Rules 13.1(a), 13.1(b) and 13.1(c) may be paid in such other form of pension that may be authorised by the Relevant Requirements from time to time.
- (e) Subject to the requirements of Rules 13.1(a), 13.1(b), 13.1(c) and 13.1(d) and any agreement with a Member, a pension may be payable on such other basis,

or from such portion of the Member's Benefit or assets which have been segregated as representing the Member's Benefit as the Trustee may determine having regard to matters such as:

- (i) the level of Benefits;
- (ii) whether or not a residual capital value and commutation entitlement are to be paid or payable;
- (iii) whether there shall be a reversion of entitlement to a Dependant in the event of death of the Member; and
- (iv) upon commencing the pension in accordance with these Rules the Trustee may record in writing the terms and conditions applicable to the pension which it has determined to pay.

13.2 Design of pensions

Nothing in these Rules limits the design features of any pension that the Trustee may, in the discretion of the Trustee, wish to arrange for the benefit of a Member. The Trustee may arrange or provide for any pension with such design features so long as such features are not prohibited by the SIS Act or would otherwise breach the Relevant Requirements.

13.3 Death benefits

- (a) Unless Rule 13.4 applies, upon the death of a Member:
 - (i) the Trustee must pay or commence to pay the deceased Member's Benefits as soon as practicable in accordance with Rule 13.3(b); and
 - (ii) the Trustee may only transfer or roll-over the deceased Member's Benefits to an Approved Superannuation Entity for the purposes of payment if permitted by the Relevant Requirements.
- (b) In paying a Benefit under Rule 13.3(a), the Trustee's discretion is absolute and unfettered, and:
 - (i) should have regard to but is not bound by any non-binding nomination by the Member;
 - (ii) must pay a deceased Member's Benefits in favour of either or a combination of the following:
 - A. the deceased Member's legal personal representative; or
 - B. one or more of the deceased Member's Dependents;
 - (iii) must, if unable to find either an legal personal representative or a Dependant of the deceased Member, pay the Benefits to an individual selected by the Trustee;
 - (iv) may pay Benefits in favour of such other person (including any natural person, company, association or body) as the Relevant Requirements or the Regulator permits; and
 - (v) may require any release (including a deed of release that forever releases the Trustee or any director from liability) from any recipient before making any payment, without the Trustee providing any reasons.
- (c) The Trustee must determine whether a Benefit paid under Rule 13.3 should be any one or more of the following types:
 - (i) a single lump sum;

- (ii) an interim lump sum and a final lump sum, the total of which must not exceed the deceased Member's Fund Credit;
 - (iii) one or more pensions;
 - (iv) one or more annuities acquired from one or more Approved Superannuation Entities; or
 - (v) any other form permitted by the Relevant Requirements.
- (d) The Trustee may make any determination relating to the type, amount and the value of any particular assets or reserves in the Fund that will fund a Benefit paid under Rule 13.3.
- (e) If a Benefit is paid under Rule 13.3 as a pension, the Trustee may determine the type of pension, whether it is commutable or not, whether it is reversionary or not, and the Trustee may attach such other conditions and limitations to such Benefit as the Trustee determines.

13.4 Binding Nominations

- (a) Subject to the SIS Act, a Member may:
- (i) require the Trustee to provide Benefits upon the death of the Member to a Nominated Beneficiary in writing by a Binding Nomination in the form of Schedule 2 or in such other form as the Trustee may approve; or
 - (ii) request in writing that the Trustee provide Benefits upon the death of the Member to a Nominated Beneficiary in a manner which is not binding on the Trustee.
- (b) The Trustee must give to the Member information that the Trustee reasonably believes the Member reasonably needs for the purpose of understanding the right of that Member to require the Trustee to provide the benefits in accordance with any request made pursuant to Rule 13.4(a).
- (c) Subject to the SIS Act, if a Member makes a Binding Nomination, the Trustee must pay Benefits in respect of that Member, on or after the death of the Member, to the person or persons mentioned in the Binding Nomination if:
- (i) the person, or each of the persons, mentioned in the Binding Nomination is the legal personal representative or a Dependant of the Member;
 - (ii) the proportion of the benefit that will be paid to that person, or to each of those persons, is certain or readily ascertainable from the Binding Nomination;
 - (iii) the notice is in accordance with Rule 13.4(e) and not inconsistent with the requirements of the SIS Act; and
 - (iv) the Binding Nomination is in effect.
- (d) A Member who gives a Binding Nomination to the Trustee may:
- (i) confirm the Binding Nomination by giving to the Trustee a written notice, signed, and dated, by the Member to that effect; or
 - (ii) amend, or revoke, the Binding Nomination by giving to the Trustee notice, in accordance with Rule 13.4, of the amendment or revocation.

- (e) For the purposes of the deed and these Rules, a Binding Nomination (and any amendment or revocation) must comply with the requirements of the SIS Act and:
 - (i) must be in writing;
 - (ii) must be signed, and dated, by the Member in the presence of two witnesses, being persons:
 - (iii) each of whom has reached the age of eighteen years;
 - (iv) neither of whom is a person mentioned in the Binding Nomination; and
 - (v) must contain a declaration signed, and dated, by the witnesses stating that the Binding Nomination was signed by the Member in their presence.
- (f) Subject to any terms and conditions contained in the Binding Nomination which may otherwise render it void or inoperative and any express contrary provision in the SIS Act, a Binding Nomination shall continue in full force and effect until it is revoked in accordance with Rule 13.4(d), regardless of the time period that has elapsed since the execution date at that Binding Nomination and despite the maximum duration of three (3) years being specified in Regulation 6.17A(7) in the *Superannuation Industry (Supervision) Regulations 1994* (applicable to Binding Nominations in relation to superannuation funds that are not self managed superannuation funds).
- (g) Rules 13.3(c) to 13.3(d) (inclusive) apply to a Benefit paid in accordance with this Rule 13.4.

13.5 Anti-Detriment Payment

The Trustee may in its absolute discretion increase the Benefit payable to either the Dependants or legal personal representatives of the deceased Member by any amount equivalent to such amount (if any) which is a taxation deduction to the Fund by reason of the application of section 295-485 of the ITAA but only if the Benefit is paid before 1 July 2019.

13.6 Entitlement

- (a) All questions as to whether any person is entitled to a payment from the Fund and, if so, the amount of such payment shall be determined by the Trustee.
- (b) The payment or application of any moneys in pursuance of Rule 13 shall be a complete discharge for it.
- (c) No benefit shall be payable until the Trustee has ascertained that it may be paid in accordance with the provisions of these Rules.

13.7 Distribution in specie

The Trustee may, with the consent of the person entitled, in lieu of paying in cash the whole or part of any Benefit or other amount payable pursuant to the provisions of the deed or the Rules, transfer any of the Assets of equivalent value to the person so entitled provided that in the case of a transfer of an asset other than a life insurance policy the Trustee obtains any consent necessary for the Fund to remain an Approved Superannuation Entity.

13.8 Payment to Approved Superannuation Entity

Subject to Rule 14.5, the Trustee may at the request of the person entitled pay all or part of any lump sum Benefit payable pursuant to the provisions of the Rules to an Approved Superannuation Entity or for the purchase of such annuity or otherwise

from an Approved Superannuation Entity generally as the person so entitled may request.

13.9 Reduction of benefits

Where a Benefit is to be funded by insurance and:

- (a) the insurer does not:
 - (i) accept the Member on its standard terms; or
 - (ii) refuses to provide the required insurance on terms acceptable to the Trustee; or
- (b) by reason of a mis-statement as to the Member's health, age or otherwise, the insurer reduces the insurance cover of the Member;

the Trustee may reduce or adjust that Benefit to take account of such refusal, reduction, rejection or deferral.

13.10 Cashing Methods Not Exhaustive

The methods of cashing benefits expressed in the Rules are non-exhaustive. The Trustee may cash benefits or pay pensions in any such manner as the Trustee may in the absolute discretion of the Trustee think fit so long as the Trustee does not contravene the conditions of release under Rule 5.6(b) or the Relevant Requirements.

14. Calculation of Benefits

14.1 Lump sum benefit

A Member shall be entitled to receive a Benefit of a capital value equal to the Member's Fund Credit including any insurance proceeds and the Benefit shall be payable as a lump sum unless the Member requests a pension and the Trustee assents to that request.

14.2 Death

On the death of a Member a Benefit equal to the Member's Fund Credit in:

- (a) the Member Contribution Account; and
- (b) a Pension Account where the pension is not reversionary;

shall be payable as a lump sum to the recipient Beneficiary determined under Rule 13.3 or Rule 13.4 unless the Beneficiary requests a pension and the Trustee assents to that request.

14.3 Preserved benefits

Where payment of a Benefit is withheld due to Rule 5.6(b) or Rule 9.2(e) then the Benefit, or such part of it as the case may be, shall be retained in the Fund for so long as is necessary for such purpose unless otherwise transferred or dealt with in accordance with Rule 11.2 or Rule 9.2(e), so long as no such transfer shall be made unless the transferee is an Approved Superannuation Entity. A Benefit or part of it the payment or transfer of which remains in the Fund shall continue to participate in the earnings of the Fund as if it constituted a credit to the Account from which the Benefit was to be paid.

**Schedule 1
Samyusra Superannuation Fund**

Application for Membership

I, MICHELE MACNAMARA of 12 TASMAN ST, DEE WHY in the State of NSW (the **Applicant**), make application to Samyusra Pty Limited as trustee of the Samyusra Superannuation Fund (the **Fund**) to become a member of the Fund.

The Applicant acknowledges, warrants and declares that, should this application be accepted and should the Applicant become a member of the Fund, the Applicant:

1. has been provided with a copy of the operative trust deed of the Fund;
2. consents to be bound by the Superannuation Fund Trust Deed including the Rules (the **Rules**) contained in the Superannuation Fund Trust Deed;
3. has received, or has, and knows that the Applicant has access to, all of the information that a Product Disclosure Statement would be required to contain in connection with the Fund;
4. agrees to the investment strategy of the Fund and acknowledges that, in order to make a binding death benefit nomination, the Applicant needs to complete the binding death benefit nomination form, as set out in Schedule 2 to the Rules, to provide that nomination to the Trustee and to obtain a receipted copy of the nomination from the Trustee;
5. is not an employee of any member of the Fund unless that member is a relative of the Applicant;
6. cannot continue as a member of the Fund if the Applicant becomes a disqualified person under section 120 of the *Superannuation Industry (Supervision) Act 1993* including where the Applicant has become insolvent or is convicted of an offence in Australia involving dishonest conduct;
7. need not provide a tax file number to the Trustee and understands the implications to the Applicant of not providing a tax file number. If, on the other hand, the Applicant does provide a tax file number, the Applicant understands the purposes for which the Trustee will use the tax file number;
8. has provided and will provide all of the information reasonably necessary for the Trustee to determine the benefits of the Applicant in the Fund including with respect to any amount transferred or rolled over into the Fund:
 - 8-1 the taxed component and tax free component of the amount; and
 - 8-2 how any payment splits or payment flags apply to the amount under the *Family Law Act 1975*, if any; and
9. notifies the date of birth of the Applicant as 31 MARCH 1965

Dated this 10th day of October 2020

MICHELE MACNAMARA

MICHELE MACNAMARA - Applicant

14.4 Pension payments

The Trustee may, at the request of a Member pay a Benefit in any form or manner that the SIS Act permits or otherwise contemplates. Nothing in these Rules restricts the form or manner in which a pension may be paid if such form or manner is not prohibited or restricted by the SIS Act.

14.5 Member requests

The Trustee may refuse any request for a Benefit to be payable as a pension or any other request if assenting to such request:

- (a) would constitute a breach of an agreement with the Member entered into in accordance with the deed and the Rules;
- (b) would constitute a breach of the Relevant Requirements;
- (c) would constitute a breach of the SIS Act; or
- (d) would constitute a breach of the Rules.

14.6 Timing of payment of benefits

For the avoidance of doubt, nothing in these Rules compels the Trustee to pay a benefit at any time unless the Trustee is required to do so by the SIS Act or by the Member.

15. Compliance with the Relevant Requirements

- 15.1 The Trustee may, having regard to such advice as the Trustee considers necessary or appropriate, elect not to comply with the Relevant Requirements but otherwise shall comply with the Relevant Requirements.
- 15.2 If there is any inconsistency between the deed and Rules and the Relevant Requirements the Trustee shall act in accordance with the Relevant Requirements unless the Trustee elects not to do so pursuant to Rule 15.1.