



A WEALTH OF ADVICE

# RULE DOCUMENT

**SMSF Name**

GRAZIANO SUPER FUND

and

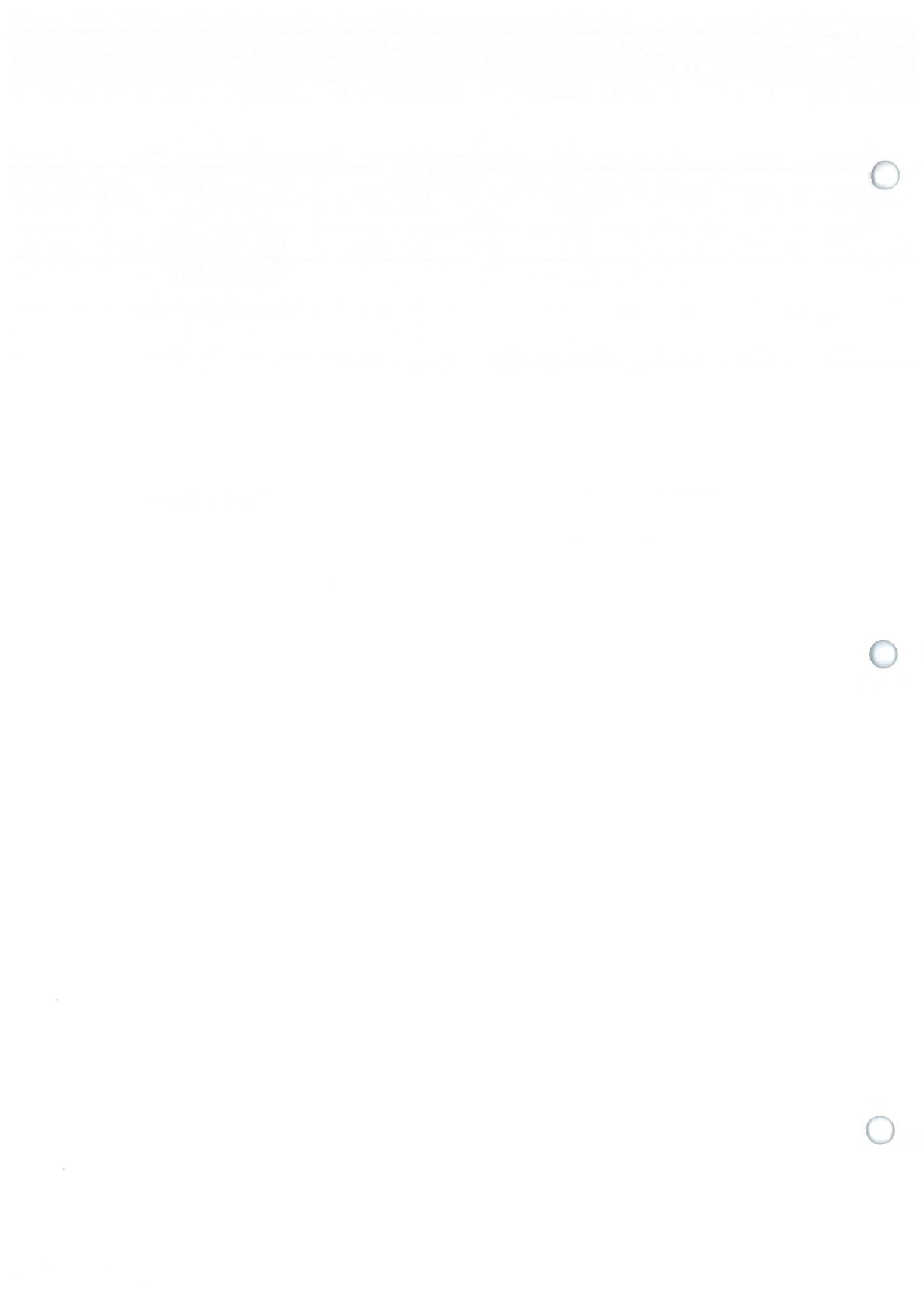
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# CONTENTS

<b>RULE DOCUMENT</b> .....	<b>i</b>
<b>PROVISIONS</b> .....	<b>1</b>
<b>1 INTERPRETATION</b> .....	<b>1</b>
1.1 Capitalised Definitions .....	1
1.2 Dictionary Definitions .....	4
1.3 Superannuation Legislation Definitions .....	4
1.4 Rule Document Reference .....	4
1.5 Interpretational Rules.....	4
1.6 Discretionary Decisions .....	5
1.7 Legal Compliance .....	6
1.8 Perpetuity Compliance.....	6
1.9 Statutory Powers.....	6
<b>2 FUND STATUTORY PURPOSES</b> .....	<b>6</b>
2.1 Statutory Purpose Tests .....	6
2.2 Statutory Pension Test .....	6
2.3 Self Managed Superannuation Fund Status.....	6
2.4 Statutory Regulatory Compliance .....	7
2.5 SMSF Compliance .....	7
2.6 SMSF Non-Compliance .....	7
2.7 Specialist Advice.....	7
<b>3 TRUSTEE QUALIFICATION</b> .....	<b>8</b>
3.1 Trustee Eligibility .....	8
3.2 Single Membership .....	8
3.3 Trustee Ineligibility .....	9
3.4 Company Ineligibility .....	9
3.5 Trustee Appointment Consent .....	10
<b>4 TRUSTEE APPOINTMENT</b> .....	<b>10</b>
4.1 Initial Individual Trustee Appointment.....	10
4.2 Initial Company Trustee Appointment.....	10
4.3 Accepted Member Trustee Appointment .....	11
4.4 Substituted Trustee Appointment .....	11
4.5 Trustee Compliance Declaration .....	12
<b>5 TRUSTEE CESSATION</b> .....	<b>12</b>
5.1 Trustee Retirement .....	12
5.2 Trustee Removal.....	13
<b>6 TRUSTEE INDEMNITY</b> .....	<b>13</b>

6.1	Remuneration Exclusion .....	13
6.2	Cost Indemnity .....	13
<b>7</b>	<b>TRUSTEE ACTION .....</b>	<b>14</b>
7.1	Trustee Meetings .....	14
7.2	Trustee Written Decisions.....	15
7.3	Trustee Records .....	15
<b>8</b>	<b>TRUSTEE LIABILITY .....</b>	<b>16</b>
8.1	Trustee Duties.....	16
8.2	Investment Strategy.....	17
8.3	Investment Strategy Performance .....	17
8.4	Fund Asset Investment .....	18
8.5	Fund Asset Title .....	18
8.6	Fund Member Asset Acquisition .....	18
8.7	Fund Borrowing Restriction .....	18
8.8	Temporary Borrowing Permission .....	18
8.9	Acquisition Asset Limited Recourse Borrowing Arrangement .....	18
8.10	Replacement Asset Limited Recourse Borrowing Arrangement .....	19
8.11	Asset Collection Acquisition.....	21
<b>9</b>	<b>FUND MEMBERSHIP .....</b>	<b>21</b>
9.1	Member General Eligibility .....	21
9.2	Member Pension Eligibility.....	21
9.3	Membership Exclusivity .....	22
9.4	Fund Document Acknowledgment.....	22
9.5	Membership Application .....	22
9.6	Membership Admission .....	23
9.7	Pension Funds Transfer .....	24
9.8	Member Expulsion .....	24
9.9	Membership Cessation .....	24
<b>10</b>	<b>MEMBERSHIP INTEREST .....</b>	<b>25</b>
10.1	Member Accounts .....	25
10.2	Member Account Addition.....	25
10.3	Member Account Deduction .....	25
10.4	Fund Contributions.....	26
10.5	Excess Contributions .....	26
10.6	Superannuation Transfers .....	27
10.7	Benefit Rollover.....	27
10.8	Trust Asset Benefit.....	27



<b>11</b>	<b>MEMBER BENEFITS</b> .....	<b>28</b>
11.1	Fund Benefits.....	28
11.2	Benefit Payment.....	28
11.3	Lump Sum Benefit .....	29
11.4	Pension Benefit.....	29
11.5	Incapacity Event.....	30
11.6	Temporary Incapacity Benefit .....	30
11.7	Permanent Incapacity Benefit.....	31
11.8	Lump Sum Conversion .....	31
11.9	Pension Commutation.....	31
<b>12</b>	<b>MEMBER DEATH BENEFITS</b> .....	<b>32</b>
12.1	Non-Binding Death Benefit Nomination.....	32
12.2	Binding Death Benefit Nomination.....	32
12.3	Death Benefit Rule Creation .....	34
12.4	Legal Representative Arrangements .....	34
12.5	Death Benefit .....	35
<b>13</b>	<b>TRUST MONEY ALLOCATION</b> .....	<b>35</b>
13.1	Trust Earnings.....	35
13.2	Trust Reserves.....	36
13.3	Trust Taxation .....	36
13.4	Trust Distribution Receipts.....	37
<b>14</b>	<b>TRUSTEE POWERS</b> .....	<b>37</b>
14.1	General Powers .....	37
14.2	Specific Powers .....	37
14.3	Decision Powers .....	38
14.4	Investment Powers .....	38
14.5	Contractual Powers.....	41
14.6	Administrative Powers .....	41
14.7	Tax Powers .....	43
14.8	Trustee Self-Dealing .....	44
<b>15</b>	<b>TRUSTEE PLANS</b> .....	<b>44</b>
15.1	Insurance Plan .....	44
15.2	Trustee Self-Insurance .....	45
15.3	Insurance Proceeds .....	45
15.4	Compliance Plan.....	45
15.5	Solvency Plan .....	45
<b>16</b>	<b>TRUSTEE ACCOUNTING</b> .....	<b>46</b>

16.1	Trust Accounting Records .....	46
16.2	Trust Financial Accounts .....	46
16.3	Record Retention .....	46
16.4	Trust Audit.....	47
16.5	Accountancy Agents .....	47
<b>17</b>	<b>TRUST TERMINATION .....</b>	<b>47</b>
17.1	Termination Events .....	47
17.2	Fund Liquidation .....	47
17.3	Residual Distribution.....	48
<b>18</b>	<b>TRUST VARIATION.....</b>	<b>48</b>
<b>19</b>	<b>MEMBER LIABILITY EXCLUSION .....</b>	<b>48</b>
<b>20</b>	<b>GOVERNING LAW .....</b>	<b>49</b>
<b>21</b>	<b>DICTIONARY .....</b>	<b>49</b>
	<b>TRUST DEED ATTACHMENT .....</b>	<b>58</b>
	<b>TRUST DEED .....</b>	<b>58</b>
	<b>PROVISIONS .....</b>	<b>58</b>
<b>1</b>	<b>INTERPRETATION.....</b>	<b>58</b>
1.1	Capitalised Definitions .....	58
1.2	Statutory Definitions.....	59
1.3	Interpretational Rules.....	59
<b>2</b>	<b>TRUST CREATION.....</b>	<b>59</b>
2.1	Trustee Declaration.....	59
2.2	Fund Name .....	60
<b>3</b>	<b>TRUSTEE DUTIES .....</b>	<b>60</b>
3.1	Fund Purposes.....	60
3.2	Fund Compliance.....	60
<b>4</b>	<b>STAMP DUTY .....</b>	<b>60</b>
<b>5</b>	<b>GOVERNING LAW .....</b>	<b>60</b>
	<b>SCHEDULE .....</b>	<b>61</b>
	<b>EXECUTION .....</b>	<b>62</b>

# SELF MANAGED SUPERANNUATION FUND

as specified in the Trust Deed Attachment

## RULE DOCUMENT

# SELF MANAGED SUPERANNUATION TRUST FUND RULES

## PROVISIONS

### 1 INTERPRETATION

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#### 1.1 Capitalised Definitions

Meanings apply to capitalised terms used in this Rule Document as specified in this provision, unless the context otherwise requires:

“**Binding Death Benefit Nomination**” means any nomination relative to any Death Benefit made by any Fund Member in compliance with **rule 12.2** (Binding Death Benefit Nomination), which the Trustee is compelled under that provision to follow in the event of the death of that Fund Member;

“**Compliant SMSF**” means a self managed superannuation fund that is a complying superannuation fund as defined in, and for the purposes of, SISA;

“**Death Benefit**” means any Member Benefit payable under **rule 12** (Member Death Benefits);

“**Death Benefit Rule**” means any additional rule created under and for the purposes of **rule 12.3** (Death Benefit Rule Creation);

“**Financial Year**” in relation to the Trust Fund, means each period of 12 months commencing on 1 July in any year and ending on 30 June in the following year or any other period as the Trustee may decide at any time;

“**Fund Auditor**” means any auditor of the Trust Fund, being an approved auditor as defined in SISA;

“**Fund Contribution**” means any moneys paid, or property transferred, to the Trustee for application to or towards any Member Benefit relative to any Fund Member;

“**Fund Document**” means:



(a) the Trust Deed; and

(b) this Rule Document;

**“Fund Earnings”** means earnings of the Trust Fund decided in compliance with **rule 13.1** (Trust Earnings);

**“Fund Member”** means any person approved or accepted by the Trustee as a member of the Trust Fund;

**“Fund Reserve”** means any reserve or amount decided by the Trustee in compliance with **rule 13.2** (Trust Reserves);

**“ITAA”** means ITAA36 and ITAA97, separately and collectively;

**“ITAA36”** means the *Income Tax Assessment Act 1936*, as affected or interpreted by any other applicable legislation and any public or private ruling of the Commissioner of Taxation;

**“ITAA97”** means the *Income Tax Assessment Act 1997*, as affected or interpreted by any other applicable legislation and any public or private ruling of the Commissioner of Taxation;

**“Lump Sum Benefit”** means any Member Benefit payable to any Fund Member under **rule 11.3** (Lump Sum Benefit), whether in cash or in specie;

**“Member Account”** means any account created by the Trustee on behalf of or for the benefit of any Fund Member, including any:

(a) Member Accumulation Account; and

(b) Member Pension Account;

**“Member Accumulation Account”** means any Member Account created by the Trustee where the balance of that Member Account is an amount that can be paid to or for the benefit of any Fund Member, or associate beneficiary of that Fund Member, as a Lump Sum Benefit or Pension Benefit;

**“Member Benefit”** means the amount of any benefit payable to or for the benefit of any Fund Member, or associate beneficiary of that Fund Member, by the Trustee from the Trust Fund, including Pension Benefit, upon and subject to the provisions of this Rule Document;

**“Member Pension Account”** means any Member Account created by the Trustee from which the payment of any Pension Benefit will be debited;

**“Member Percentage”** in relation to any Fund Member at any date, means the proportion that the total amount of all the Member Accounts of that Fund Member bears to the aggregate of the total amount of all the Member Accounts of all Fund Members, converted to a percentage;

**“Membership Application”** has the meaning defined in **rule 9.5** (Membership Application);

**“Minimum Benefit”** means any amount decided by the Trustee as a minimum benefit of any Fund Member under SISA Regulations;

**“Non-Binding Death Benefit Nomination”** in relation to any Fund Member, means any death benefit nomination made by that Fund Member in compliance with **rule 12.1** (Non-Binding Death Benefit Nomination) to be applied by the Trustee following the death of that Fund Member;

**“Non-Compliant SMSF”** means a self managed superannuation fund that is not a Compliant SMSF;

**“Pension Benefit”** means any pension payable by the Trust Fund;

**“Pension Benefit Rule”** means any additional rule created under and for the purposes of **rule 11.4** (Pension Benefit);

**“Permanent Incapacity Benefit”** means any Member Benefit payable under **rule 11.7** (Permanent Incapacity Benefit);

**“Perpetuity Period”** means the period of 80 years following the date of the Trust Deed;

**“SISA”** means the *Superannuation Industry (Supervision) Act 1993*;

**“SISA Regulations”** means the *Superannuation Industry (Supervision) Regulations 1994*;

**“SMSF”** means the self managed superannuation fund specified in the Trust Deed Attachment;

**“Superannuation Entity”** means any superannuation entity as defined in SISA and also includes any:

- (a) regulated superannuation fund;
- (b) approved deposit fund;
- (c) pooled superannuation trust; or
- (d) life insurance company or similar entity,

whether that entity is a resident or non-resident of Australia;

**“Superannuation Interest”** in relation to any Fund Member, means any interest in the Trust Fund or any other interest as defined in ITAA97 (section 995-1(1)), as decided by the Trustee with reference to ITAA97 (section 307-200) and relevant regulations made under that provision;

**“Superannuation Legislation”** means:

- (a) SISA;
- (b) SISA Regulations;
- (c) ITAA;
- (d) the *Family Law Act 1975 (Part VII B)*; and
- (e) the *Corporations Act 2001*;



**“Superannuation Regulator”** means the Commissioner of Taxation or, as applicable, any other governmental agency appointed to regulate any self managed superannuation fund;

**“Temporary Incapacity Benefit”** means any non-commutable income stream payable under **rule 11.6** (Temporary Incapacity Benefit);

**“Termination Date”** means the date of termination of the Trust Fund as specified in this Rule Document;

**“Trust Deed”** means the Trust Deed executed as a deed poll by the Trustee and dated as specified in the schedule to the Trust Deed Attachment creating the SMSF;

**“Trust Deed Attachment”** means the trust deed executed by the initial Trustee attached to this Rule Document;

**“Trust Fund”** means the SMSF and all the property and assets of the SMSF held by the Trustee at any time; and

**“Trustee”** at any time, means any person appointed as a trustee of the Trust Fund under **rule 4** (Trustee Appointment) and acting at that time.

## **1.2 Dictionary Definitions**

Meanings apply to words and expressions used in this Rule Document as specified in **rule 21** (Dictionary), unless the context otherwise requires.

## **1.3 Superannuation Legislation Definitions**

Words and expressions used in this Rule Document, whether capitalised definitions or otherwise, which are defined in the Superannuation Legislation but which are not expressly and separately defined in this Rule Document have the same meaning as defined in the Superannuation Legislation when used in this Rule Document.

## **1.4 Rule Document Reference**

This document specifies the rules applicable to the SMSF and the Trust Fund and any reference to this Rule Document includes a reference to each rule as a provision of this Rule Document, except where this Rule Document specifies otherwise.

## **1.5 Interpretational Rules**

Rules of interpretation apply to this Rule Document as specified in this provision, unless the context otherwise requires:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;

- (d) (**variants**): a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) (**parties**): any reference to a person or a party in or to any agreement, deed or document, including this Rule Document, includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) (**amendments**): any reference to any agreement, deed or document, including this Rule Document, includes that agreement, deed or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) (**provisions**): any reference to a provision comprises a rule, clause, recital, schedule, annexure, exhibit, appendix or attachment, and is a reference to a provision of this Rule Document including each rule, subrule, clause, subclause, paragraph and subparagraph of that provision;
- (h) (**legislation**): any reference to any legislation includes a reference to that legislation as amended, re-enacted, consolidated or replaced at any time;
- (i) (**components**): any reference to any whole or collective item includes any part of that item;
- (j) (**inclusions**): the words “**include**”, “**including**” “**for example**”, and similar expressions are used without limitation; and
- (k) (**time**): the expression “**at any time**” includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period.

## 1.6 Discretionary Decisions

Any provision in this Rule Document that any person, including any group of persons acting collectively, is entitled to exercise any power or make any decision for any purpose means that that power or decision may be made or exercised by that person:

- (a) (**absolute discretion**): at any time in the absolute and uncontrolled discretion of that person, without necessity for the consent of any other person or court of competent jurisdiction and without that person being under any liability, or being legally required or compelled by any other person, to consider any particular facts or to exercise that power or make that decision; and
- (b) (**subjective exercise**): without that person being legally required or compelled to provide or communicate any reason to any other person for exercising that power or making that decision,

except where there is an express provision of this Rule Document or any mandatory provision of the Superannuation Legislation to contrary effect.

## 1.7 Legal Compliance

- (a) **(Compliance)**: The rules of the Trust Fund specified in the provisions of this Rule Document apply subject to and in compliance with any mandatory provision of the Superannuation Legislation.
- (b) **(Conflict)**: Any mandatory provision of the Superannuation Legislation is incorporated into, and applies instead of any provision of, this Rule Document in the event of any conflict.

## 1.8 Perpetuity Compliance

The Trustee must comply with any applicable law relating to perpetuities, remoteness of vesting of accumulation of trust income or income generally in the exercise of any power in relation to the Trust Fund.

## 1.9 Statutory Powers

The Trustee, or the Trust Fund as an entity, has power under this provision to perform any action in any case where the Superannuation Legislation confers that power on any trustee of any self managed superannuation fund, if that power is comprised in the governing rules of that self managed superannuation fund, despite any other provision of this Rule Document.

## 2 FUND STATUTORY PURPOSES

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### 2.1 Statutory Purpose Tests

Any Trustee, being a constitutional corporation, must at any time ensure that the Trust Fund is held, maintained, administered and operated by the Trustee for any purpose comprising:

- (a) **(core purposes)**: any 1 or more core purpose; or
- (b) **(additional ancillary purposes)**: any 1 or more core purpose and any 1 or more ancillary purpose,  
and for no other purpose.

### 2.2 Statutory Pension Test

Any Trustee, not being a constitutional corporation, must at any time ensure that the Trust Fund is held, maintained, administered and operated by the Trustee for the sole or primary purpose of the provision of old age pensions.

### 2.3 Self Managed Superannuation Fund Status

The Trustee must at any time ensure that the Trust Fund is, and cause the Trust Fund to be, a self managed superannuation fund and procure and cause that:

- (a) **(membership number)**: if the Trust Fund is not at any time a Trust Fund with only 1 Fund Member, the Trust Fund has no more than 4 Trust Members at that time; and



- (b) **(trustee number)**: if the Trust Fund has at any time more than 1 Fund Member, there are no more than 2 individual Trustees or 2 directors of a company Trustee at that time.

#### **2.4 Statutory Regulatory Compliance**

The Trustee must at any time ensure that the Trust Fund is, and cause the Trust Fund to be, a regulated superannuation fund.

#### **2.5 SMSF Compliance**

The Trustee must at any time decide whether or not the execution of any document or exercise of any power or performance or omission of any action in connection with the Trust Fund or this Rule Document would cause the Trust Fund to be a Compliant SMSF, without regard to any discretion capable of exercise by the Superannuation Regulator.

#### **2.6 SMSF Non-Compliance**

The Trustee must not at any time execute any document or perform or omit any action where that execution, performance or omission would cause the Trust Fund to become a Non-Compliant SMSF or any default under any Superannuation Legislation, including any document, performance or omission relating to or connected with:

- (a) **(powers)**: exercise of any right or power;
- (b) **(decisions)**: making any decision;
- (c) **(receipts)**: receipt of any moneys, payment or assets;
- (d) **(payments)**: payment or provision of any Member Benefit, or payment of any cost or tax, to any applicable person;
- (e) **(allocations)**: allocation or application of any moneys or assets as an addition to, or deduction from, any account, including any Member Account or Fund Reserve; or
- (f) **(accounts)**: keeping or preparation of any accounting records, financial statement or report,

despite any other provision of this Rule Document.

#### **2.7 Specialist Advice**

The Trustee must at any time following creation of the Trust Fund under the Trust Documents engage any adviser who, as applicable, is duly and properly qualified and has specialist expertise appropriate for the purpose of, and in the context of, that engagement as may be necessary or desirable for the assistance and information of the Trustee in relation to:

- (a) **(compliance)**: ensuring that at any time the Trust Fund is and continues as a Compliant SMSF; and

- (b) **(management)**: the management and administration of the Trust Fund and the performance of the SMSF.

### **3 TRUSTEE QUALIFICATION**

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#### **3.1 Trustee Eligibility**

- (a) **(Application)**: This provision applies subject to **rule 3.2** (Single Membership) and **rule 12.4** (Legal Representative Arrangements).
- (b) **(Individual)**: Any individual person may be a Trustee at any time only if that individual:
  - (i) is a Fund Member at that time or a legal representative of a Fund Member; and
  - (ii) is not an employee of any other Fund Member at that time or, if an employee of any other Fund Member, that individual is a relative of any other Fund Member.
- (c) **(Company)**: Any company, being a constitutional corporation, may be a Trustee at any time only if:
  - (i) each director of that company is a Fund Member or legal representative of a Fund Member at that time;
  - (ii) each Fund Member or legal representative of each Fund Member is a director of that company at that time; and
  - (iii) no Fund Member is an employee of any other Fund Member at that time or, if any Fund Member is an employee or any Fund Member, that Fund Member is a relative of any other Fund Member.
- (d) **(Individual exclusion)**: Any individual cannot at any time be a Trustee if a company is also a Trustee at that time.

#### **3.2 Single Membership**

- (a) **(Application)**: This provision applies at any time when there is only 1 Fund Member.
- (b) **(Individual)**: A person may be a Trustee if that person is:
  - (i) the single Fund Member;
  - (ii) a legal representative of that single Fund Member;
  - (iii) 1 other individual being a relative of that single Fund Member; or
  - (iv) any 1 other person, not being an employer of that single Fund Member.
- (c) **(Company)**: A company may be a Trustee if:



- (i) there is a sole director of that company, who is the single Fund Member, or a legal representative of the single Fund Member; or
  - (ii) there are 2 directors of that company, where 1 director is the single Fund Member, or a legal representative of the single Fund Member, and the other director is a relative, or any person not being an employer, of the single Fund Member.
- (d) **(Legal incapacity):** A legal representative of any legally incapacitated Fund Member must be or become a Trustee or a director of a company Trustee, instead of that Fund Member.

### 3.3 Trustee Ineligibility

Any person must not at any time be or become a Trustee if at that time that person:

- (a) **(criminal dishonesty):** is or has been convicted of any offence against or arising out of any law of the Commonwealth, or any State or Territory, of Australia or any foreign country or jurisdiction in relation to dishonest conduct;
- (b) **(civil penalty):** is subject to any civil penalty order within the meaning of the *Corporations Act 2001*;
- (c) **(insolvency):** is an insolvent under administration within the meaning of the *Corporations Act 2001*; or
- (d) **(regulatory disqualification):** has been disqualified by the Superannuation Regulator under SISA or other legislation, without any waiver of the status of that person as a disqualified person.

### 3.4 Company Ineligibility

Any company must not at any time be or become a Trustee following or during the continuance at that time of any event comprising:

- (a) **(officer disqualification):** the fact that that company knows, or has reasonable grounds to suspect, that any authorised officer, or person acting as an authorised officer, of that company has been disqualified by the Superannuation Regulator under SISA or other legislation, without any waiver of the status of that person as a disqualified person;
- (b) **(receivership):** the appointment of any receiver, manager or receiver or manager over, or possession taken by any secured party of, any asset of that company;
- (c) **(administration):** the appointment of any administrator of that company;
- (d) **(liquidation):** any legal action or proceeding being commenced, judicial order made or resolution passed for the liquidation of that company, including appointment of any provisional liquidator; or

- (e) **(debt arrangement)**: the creation by that company of any debt arrangement with its creditors generally or any class of creditors.

### 3.5 Trustee Appointment Consent

- (a) **(Individual consent)**: Any person must not at any time be appointed as a Trustee, despite any provision of this Rule Document, except where that person has previously provided to the Trustee a written instrument which:
  - (i) consents to that appointment; and
  - (ii) acknowledges that that person has read and agrees to be bound by the provisions of this Rule Document and has read the Fund Documents.
- (b) **(Corporate director consent)**: Any company must not at any time be appointed as a Trustee, despite any provision of this Rule Document, except where each director of that company has previously provided to that company a written instrument which:
  - (i) consents to that appointment of that company; and
  - (ii) acknowledges that that director has read and agrees to be bound by the provisions of this Rule Document and has read the Fund Documents.

## 4 TRUSTEE APPOINTMENT

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### 4.1 Initial Individual Trustee Appointment

Any person, not being a company, who executes the Trust Deed in the capacity of a Trustee, is appointed a Trustee if that person:

- (a) **(trustee consent)**: consents to appointment as a Trustee under the provisions of the Trust Deed;
- (b) **(member eligibility)**: is also a person who:
  - (i) has provided written consent to becoming a Fund Member or is the legal representative of that person; or
  - (ii) in relation to any Trust Fund which has only 1 Fund Member, is a relative of any Fund Member or is any person not being any employer of any Fund Member;
- (c) **(trustee eligibility)**: is eligible for appointment as a Trustee; and
- (d) **(document compliance)**: has complied with **rule 3.5** (Trustee Appointment Consent).

### 4.2 Initial Company Trustee Appointment

Any company, which executes the Trust Deed in the capacity of a Trustee, is appointed a Trustee if that company:

- (a) **(trustee consent)**: consents to appointment as a Trustee under the provisions of the Trust Deed;
- (b) **(member eligibility)**: is also a company where:
  - (i) each director of that company has provided written consent to becoming a Fund Member or is the legal representative of any person and that legal representative has provided written consent to becoming a Fund Member; or
  - (ii) in relation to any Trust Fund which has only 1 Fund Member and that company has 2 directors, any director not being a Fund Member is a relative of that Fund Member or is any person not being any employer of that Fund Member;
- (c) **(trustee eligibility)**: is eligible for appointment as a Trustee; and
- (d) **(document compliance)**: has through required action of its directors complied with **rule 3.5** (Trustee Appointment Consent).

#### 4.3 Accepted Member Trustee Appointment

- (a) **(Application)**: This provision applies where the Trustee accepts any person as a Fund Member ("**accepted member**").
- (b) **(Trustee appointment)**: The accepted member, or a legal representative of the accepted member, is appointed a Trustee if, as applicable, the accepted member or legal representative:
  - (i) consents to appointment as a Trustee under the provisions of this Rule Document;
  - (ii) consents to acceptance as a Fund Member;
  - (iii) where the Trust Fund has only 1 Fund Member, the legal representative is a relative of the Fund Member or any person not being an employer of the Fund Member;
  - (iv) is eligible for appointment as a Trustee; and
  - (v) has complied with **rule 3.5** (Trustee Appointment Consent).

#### 4.4 Substituted Trustee Appointment

- (a) **(Application)**: This provision applies in relation to any Trustee in the event of:
  - (i) the retirement or removal of that Trustee; or
  - (ii) the inability of that Trustee to act as trustee, including the legal incapacity or death of that Trustee,
 (in each case, "**replaced trustee**").



- (b) **(Substitution):** A person or company becomes appointed as a Trustee (“**substituted trustee**”) in substitution for and instead of the replaced trustee, subject to this provision, where:
  - (i) in relation to any replaced trustee not being a company, that person is a Fund Member, or a legal representative of a Fund Member, or a company of which a Fund Member, or the legal representative of a Fund Member, is a director; or
  - (ii) in relation to any replaced trustee being a company, that company is a company where all the directors of that company are Fund Members or legal representatives of Fund Members.
- (c) **(Existing trustee):** A substituted trustee, being already a Trustee, accepts appointment as an additional Trustee in the capacity of an accepted member.

#### 4.5 Trustee Compliance Declaration

- (a) **(Declaration compliance):** Any Trustee, or each director of a company that is a Trustee, must immediately, and in any event within 21 days, following appointment of that Trustee execute a written instrument of declaration in any form specified or prescribed by, or approved under, the Superannuation Legislation which certifies that, as applicable, that Trustee or director understands the duties of that Trustee or director as a trustee, or director of a company that is trustee, of a self managed superannuation fund.
- (b) **(Trustee procurement):** Any Trustee, or each director of a company that is a Trustee, must upon appointment of any new or additional Trustee procure that that new or additional Trustee, or that each director of any company as a new or additional Trustee, complies with this provision.
- (c) **(Declaration retention):** The Trustee must retain in its possession or control any declaration executed under this provision for a period of at least 10 years or any longer relevant period and make that declaration available for inspection upon request by the Superannuation Regulator.

## 5 TRUSTEE CESSATION

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### 5.1 Trustee Retirement

- (a) **(Member retirement):** Any Fund Member may retire as a Trustee if:
  - (i) any company of which that Fund Member is a director or any legal representative of that Fund Member; or
  - (ii) where the Trust Fund has only 1 Fund Member, any relative of that Fund Member or any person not being an employer of that Fund Member,is appointed as a Trustee.

- (b) **(Company retirement):** Any company may retire as a Trustee if:
  - (i) all directors of that company are appointed as Trustees; or
  - (ii) any other company where the directors of that other company are also directors of the retiring company is appointed as a Trustee.

## 5.2 Trustee Removal

Any person being a Trustee is automatically removed from that capacity, subject to this Rule Document and the Superannuation Legislation:

- (a) **(member cessation):** in relation to any Fund Member as a Trustee, upon cessation of that person as a Fund Member;
- (b) **(member incapacity):** in relation to any Fund Member as a Trustee, upon that Fund Member becoming incapable of acting as a Trustee, except where any legal representative of that Fund Member is appointed as a Trustee instead of that Fund Member;
- (c) **(company directorship):** in relation to any company as a Trustee, if any director of that company ceases to be a Fund Member or the legal representative of a Fund Member, as at the date being 4 months following that cessation;
- (d) **(ineligibility):** if that person becomes ineligible to be appointed or act as a Trustee under this Rule Document; or
- (e) **(non-compliance):** if the continued appointment of that person as a Trustee would cause the Trust Fund to be a Non-Compliant SMSF, as from the day immediately before the day when the Trust Fund would otherwise become a Non-Compliant SMSF.

## 6 TRUSTEE INDEMNITY

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### 6.1 Remuneration Exclusion

- (a) **(Individual trustee):** A Trustee is not entitled to receive any remuneration for being appointed or acting as a Trustee.
- (b) **(Corporate trustee):** A director of a company Trustee is not entitled to receive any remuneration for being appointed or acting as a director of that company Trustee.

### 6.2 Cost Indemnity

A Trustee may apply the assets of the Trust Fund to reimburse or indemnify that Trustee, or any former Trustee, for any cost incurred in the management or administration of the Trust Fund, except where that Trustee, or former Trustee, in relation to that cost failed to act honestly or intentionally or recklessly failed to exercise any required degree of care and diligence.



## 7 TRUSTEE ACTION

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### 7.1 Trustee Meetings

- (a) **(Application)**: This rule applies at any time when there is more than 1 Trustee.
- (b) **(Meeting call)**: Any manager of the Trust Fund, or any 1 or more Fund Members whose aggregate Member Percentages is equal to more than 50% of the aggregate Member Percentage of all Fund Members, may by notice to the Trustee call a meeting of Trustees to require the Trustees to make any decision in relation to the Trust Fund.
- (c) **(Meeting notice period)**: The meeting notice must provide a reasonable period of notice for the meeting, except where each Trustee approves a shorter period.
- (d) **(Meeting notice form)**: The meeting notice must be in written or electronic form, including facsimile transmission, and sent to the address most recently notified by the relevant Trustee.
- (e) **(Meeting notice contents)**: The meeting notice must specify:
  - (i) the date, time of, and a convenient venue for, the meeting;
  - (ii) the proposed technology for the meeting, if the meeting is to be held at more than 1 place; and
  - (iii) the general nature of business of the meeting.
- (f) **(Meeting technology)**: Any meeting of Trustees may be held by means of a physical meeting or through use of technology comprising:
  - (i) video;
  - (ii) telephone;
  - (iii) email or electronic mail;
  - (iv) any other technology which enables each Trustee to communicate with each other Trustee; or
  - (v) any combination of any previously specified method.
- (g) **(Technology effectiveness)**: Any meeting of Trustees held by use of technology, where the Trustees are not all in attendance at 1 place but where each Trustee can communicate with each other Trustee, whether simultaneously or at different times, must be treated:
  - (i) as if the participating Trustees for the purpose of this Rule Document were assembled together and present at that meeting; and
  - (ii) so that any action performed by those Trustees in that manner is valid, as if performed at a meeting at which those Trustees were present.

- (h) **(Meeting compliance):** The Trustees must hold any meeting called by notice in compliance with this provision.
- (i) **(Quorum):** The quorum of a meeting of Trustees is equal to the number of Fund Members, or their legal representatives, whose aggregate Member Percentages are equal to more than 50% of the aggregate of all Member Percentages.
- (j) **(Proxy):** Any Trustee may by written instrument appoint any person to be the proxy of that Trustee at any meeting of Trustees.
- (k) **(Voting):** Any Trustee is entitled at any meeting of Trustees to cast the number of votes equal to the Member Percentage of that Trustee.
- (l) **(Majority resolution):** A resolution of Trustees at any meeting of Trustees is passed and effective only if a majority of votes of Trustees entitled to vote and present at the meeting are cast in favour of that resolution.

## 7.2 Trustee Written Decisions

- (a) **(Application):** This rule applies at any time when there is more than 1 Trustee.
- (b) **(Resolution document):** Any resolution of Trustees may be passed on the day on which, and at the time at which, any document is signed by all Trustees, where that document:
  - (i) is sent to each Trustee entitled to receive notice of a meeting at which a resolution could be proposed;
  - (ii) specifies the provisions of the resolution and that each signatory is in favour of that resolution; and
  - (iii) has been signed by each Trustee entitled to vote on that resolution.
- (c) **(Minute record):** The resolution document takes effect as a minute of the resolution.
- (d) **(Procedure):** For the purposes of this provision:
  - (i) 2 or more separate documents containing identical statements each being signed by 1 or more Trustees, may be treated as together constituting 1 document containing that statement signed by those Trustees at the time of signature of the document signed last in time; and
  - (ii) any fax in legible form received by or on behalf of any Trustee and sent by any other Trustee must be treated as signed by that other Trustee not later than the time of that receipt.

## 7.3 Trustee Records

- (a) **(Single trustee):** Any Trustee must make a written record of any decision made by that Trustee, if at any time there is only 1 Trustee.

- (b) **(Multiple trustees)**: At least 1 Trustee must keep minutes of any meeting of Trustees, if at any time there are more than 1 Trustees.
- (c) **(Company trustee)**: The minutes of director meetings of any corporate Trustee must be treated as the records of the Trustee for the purposes of this rule.
- (d) **(Retention)**: A Trustee must keep any record or minute required to be made or kept under this rule for a period of at least 10 years from the date, as applicable, of the relevant decision or meeting.

## 8 TRUSTEE LIABILITY

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### 8.1 Trustee Duties

A Trustee must at any time:

- (a) **(honesty)**: act honestly in any matter connected with the Trust Fund;
- (b) **(diligence)**: exercise in relation to any matter connected with the Trust Fund the same degree of care, skill and diligence that an ordinary person would exercise in dealing with any property of any other person for whom that person was morally bound to provide, in the assessment of that person;
- (c) **(beneficiary best interest)**: ensure that the Trustee performs any liability or exercises any power in the best interests of Fund Members;
- (d) **(asset segregation)**: keep any moneys or other assets of the Trust Fund separate from any moneys or other assets:
  - (i) held by the Trustee personally; or
  - (ii) owned, as applicable, by any standard employer sponsor or associate of any standard employer sponsor of the Trust Fund;
- (e) **(prejudicial action)**: not create any agreement or perform any other action that would prevent or hinder the Trustee from or in the proper performance or exercise of the functions or powers of the Trustee;
- (f) **(investment strategy)**: formulate and implement a written investment strategy in compliance with the provisions of the Superannuation Legislation and **rule 8.2** (Investment Strategy);
- (g) **(fund reserves)**: formulate and implement a written strategy for the prudential management of any applicable Fund Reserves consistent with the investment strategy of the Trust Fund and the capability of the Trust Fund to pay or perform any liability of the Trust Fund when due; and
- (h) **(member access)**: permit any Fund Member access to any prescribed information or prescribed document.



## 8.2 Investment Strategy

The Trustee must at any time formulate and implement an investment strategy that assesses all the circumstances of the Trust Fund, including:

- (a) **(investment risk)**: any risk involved or arising in the making, holding or realisation of, and the likely return from, any investment of the Trust Fund, considering the objectives and the expected cash flow requirements of the Trust Fund;
- (b) **(diversification risk)**: the composition of all or any part of the investments of the Trust Fund, taken as a whole, including the extent to which those investments are diverse or involve the Trust Fund in risk exposure through inadequate diversification;
- (c) **(liquidity risk)**: the liquidity of the investments of the Trust Fund, considering the expected cash flow requirements of the Trust Fund; and
- (d) **(payment risk)**: the ability of the Trust Fund to pay or perform any liability.

## 8.3 Investment Strategy Performance

- (a) **(Strategy document)**: The Trustee must at any time document the investment strategy by means of written instrument signed or executed by the Trustee.
- (b) **(Separate strategies)**: The Trustee may formulate 1 investment strategy for the whole of the Trust Fund or separate investment strategies for differential parts of the Trust Fund.
- (c) **(Strategy review)**: The Trustee must review any investment strategy of the Trust Fund at least annually and may amend that investment strategy after that review or at any time assessed by the Trustee as appropriate.
- (d) **(Review notification)**: The Trustee must notify in writing full details of any amendment to any investment strategy to any Fund Member affected by that amendment.
- (e) **(Member inspection)**: The Trustee must at any reasonable time produce the investment strategy of the Trust Fund to any Fund Member upon request by that Fund Member.
- (f) **(Reserves strategy)**: The Trustee must at any time formulate and implement an investment strategy for any 1 or more Fund Reserves based upon the prudential management of assets comprised in that Fund Reserve and any requirements of the Superannuation Legislation.
- (g) **(Investment advice)**: The Trustee may at any time in the formulation and implementation of the investment strategy of the Trust Fund obtain and act in reliance upon the advice of any investment adviser where the Trustee reasonably believes that that investment adviser is qualified and has the necessary skills to provide that investment advice to the Trustee.

#### 8.4 Fund Asset Investment

The Trustee must at any time invest and hold the assets of the Trust Fund in compliance with the investment strategy of the Trust Fund applicable at that time.

#### 8.5 Fund Asset Title

The Trustee must at any time hold the assets of the Trust Fund:

- (a) **(title)**: in the name and title of the Trustee; and
- (b) **(separation)**: separately from any assets held by the Trustee in its personal capacity or by any Fund Member or employer of any Fund Member,  
except where permitted or required otherwise by SISA.

#### 8.6 Fund Member Asset Acquisition

The Trustee must not at any time purchase any asset from any Fund Member, or associate of any Fund Member, or related party of the Trust Fund, except where that asset is an allowable or permitted acquisition under the Superannuation Legislation and purchased at market value.

#### 8.7 Fund Borrowing Restriction

The Trustee must not at any time:

- (a) **(borrowing)**: borrow any credit;
- (b) **(funding rollover)**: maintain or continue any borrowing under any existing credit advance;
- (c) **(benefit security interest)**: recognise, approve or facilitate any security interest over or in relation to any Member Benefit; or
- (d) **(fund security interest)**: create any security interest over, or in relation to, any asset of the Trust Fund,

except where permitted by or under the Superannuation Legislation.

#### 8.8 Temporary Borrowing Permission

The Trustee may at any time borrow credit for temporary purposes as permitted by, and in compliance with, SISA.

#### 8.9 Acquisition Asset Limited Recourse Borrowing Arrangement

The Trustee may at any time borrow credit, or maintain a credit borrowing, under a limited recourse borrowing arrangement as permitted by, and in compliance with, SISA under which:

- (a) **(credit proceeds application)**: the credit proceeds are or have been applied for the acquisition of a single acquirable asset ("**acquisition asset**"), including:



- (i) costs incurred in connection with that borrowing or acquisition, or in maintaining or repairing the acquisition asset, excluding costs incurred in improving the acquisition asset;
  - (ii) moneys applied to refinance any borrowing, including any accrued interest on that borrowing, to which this provision has applied, including any application under **rule 8.10** (Replacement Asset Limited Recourse Borrowing Arrangement) in relation to that acquisition asset, and no other acquisition asset;
- (b) **(asset trust)**: that acquisition asset is held upon trust, so that the Trustee acquires a beneficial interest in that acquisition asset;
- (c) **(ownership payments)**: the Trustee has a right to acquire legal ownership of the acquisition asset by making 1 or more payments after acquiring that beneficial interest;
- (d) **(asset limited recourse)**: the rights of any lender or other person against the Trustee for, in connection with, or as result of, whether directly or indirectly, default on:
- (i) that borrowing; or
  - (ii) the sum of that borrowing and charges related to that borrowing,
- are limited to rights relating to that acquisition asset;
- (e) **(trustee rights limited recourse)**: if, under that arrangement, the Trustee has a right relating to the acquisition asset, excluding any right specified in paragraph (c), the rights of any lender or other person against the Trustee for, in connection with or as a result of, whether directly or indirectly, the exercise by the Trustee of any right of the Trustee are limited to rights relating to the acquisition asset;
- (f) **(security interest limited recourse)**: that acquisition asset is not subject to any security interest, except as specified in paragraph (d) or paragraph (e);
- (g) **(damages exclusion)**: the provisions of paragraph (d) and paragraph (e) do not apply to any right of any Fund Member or other Trustee to damages against the Trustee for any default by the Trustee under any liability of the Trustee as trustee; and
- (h) **(trustee separate capacity)**: any reference in paragraph (d) or paragraph (e), but not in paragraph (g), to any right of any person against the Trustee may include a reference to a right of a person who is the Trustee, if that person holds that right in another capacity.

#### **8.10 Replacement Asset Limited Recourse Borrowing Arrangement**

- (a) **(Replacement asset acquisition)**: The Trustee may at any time borrow credit, or maintain a credit borrowing, under a limited recourse borrowing arrangement as

permitted by, and in compliance with, SISA under which the Trustee acquires another single acquirable asset as a replacement asset instead of an original asset (“**asset acquisition**”) if:

- (i) the replacement asset replaces the original asset; and
  - (ii) that asset acquisition complies with any application of this provision, as specified in this provision.
- (b) **(Marketable securities application):** This provision applies if:
- (i) the original asset consists of a share in a company, or a collection of shares in a company, or a unit in a unit trust, or a collection of units in a unit trust;
  - (ii) the replacement asset consists of a share in that company, or a collection of shares in that company, or a unit in that unit trust, or a collection of units in that unit trust; and
  - (iii) at the time that the replacement occurs, the original asset and the replacement asset have the same market value.
- (c) **(Share instalment receipt application):** This provision applies if:
- (i) the original asset consists of an instalment receipt that confers a beneficial interest in a share in a company, or a collection of shares in a company; and
  - (ii) the replacement asset consists of that share or collection.
- (d) **(Securities takeover application):** This provision applies if:
- (i) the original asset consists of a share in a company, or a collection of shares in a company, or a unit in a unit trust, or a collection of units in a unit trust;
  - (ii) the replacement asset consists of a share in another company, or a collection of shares in another company, or a unit in another unit trust, or a collection of units in another unit trust; and
  - (iii) the replacement occurs as a result of a takeover, merger, demerger or restructure of that company or unit trust in which the original asset was held.
- (e) **(Scheme stapled securities application):** This provision applies if:
- (i) the original asset consists of a share in a company, or a collection of shares in a company;
  - (ii) the replacement asset consists of a stapled security, or a collection of stapled securities;
  - (iii) each of those stapled securities consists of a single share, or a single collection of shares of the same class, stapled together with a single unit, or a single collection of units of the same class, in a unit trust; and



- (iv) the replacement occurs under a scheme of arrangement of the company.
- (f) **(Trust discretion application):** This provision applies if:
  - (i) the original asset consists of a unit in a unit trust, or a collection of units in a unit trust;
  - (ii) the replacement asset consists of a unit in that unit trust, or a collection of units in that unit trust; and
  - (iii) the replacement occurs as a result of an exercise of a discretion granted under the trust deed of that unit trust to the trustee of that unit trust.
- (g) **(Residual application):** This provision applies in the circumstances, if any, prescribed as applicable by the SISA Regulations.

#### 8.11 Asset Collection Acquisition

The provisions of **rule 8.9** (Acquisition Asset Limited Recourse Borrowing Arrangement) and **rule 8.10** (Replacement Asset Limited Recourse Borrowing Arrangement) apply to a collection of assets in the same manner as those rules apply to a single asset, if:

- (a) **(market value equality):** the assets in the collection have the same market value as each other; and
- (b) **(asset nature identity):** the assets in the collection are identical to each other.

### 9 FUND MEMBERSHIP

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#### 9.1 Member General Eligibility

The Trustee may decide at any time to admit any person as a Fund Member if:

- (a) **(application):** that person, or the legal representative of that person, has delivered a Membership Application to the Trustee and consents to be bound by this Rule Document;
- (b) **(compliance):** admission of that person as a Fund Member would not cause the Trust Fund to become a Non-Compliant SMSF; and
- (c) **(trusteeship):** that person, or the legal representative of that person, is eligible and willing to accept appointment and act as a Trustee or a director of a company which is eligible and willing to accept appointment and act as a Trustee.

#### 9.2 Member Pension Eligibility

The Trustee must admit any person as a Fund Member if that person will be paid a Pension Benefit from the Trust Fund, subject to this Rule Document and the Superannuation Legislation.



### 9.3 Membership Exclusivity

- (a) (**Exclusion notice**): Any Fund Member who is a sole Fund Member may by written notice (“**exclusion notice**”) to the Trustee require the Trustee not to admit any other Fund Member.
- (b) (**Admission exclusion**): The Trustee must not admit any further Fund Member while any exclusion notice under this provision remains effective.
- (c) (**Dedication notice**): Any Fund Member may by written notice (“**dedication notice**”) to the Trustee require the Trustee to hold any property of the Trust Fund paid or transferred to the Trust Fund by that Fund Member specifically for the benefit of that Fund Member, despite any other provision of this Rule Document.
- (d) (**Dedicated holding**): The Trustee must following receipt of any dedication notice hold the dedicated property specifically for the benefit of the Fund Member giving the dedication notice, so that:
  - (i) the dedicated property must not be pooled with the Fund Contributions or other assets of the Trust Fund of other Fund Members; and
  - (ii) no other Fund Member obtains or retains any right, title or interest to or in the dedicated property.

### 9.4 Fund Document Acknowledgment

- (a) (**Rule consent**): Any person wishing to apply to become a Fund Member must provide to the Trustee a written instrument, together with the Membership Application, by means of which that person:
  - (i) agrees that that person has read and understood the Fund Documents; and
  - (ii) consents to become bound by the provisions of the Fund Documents.
- (b) (**Membership exclusion**): The Trustee may exclude any person from becoming a Fund Member if the Trustee decides that that person has not read and understood the Fund Documents, subject to **rule 9.2** (Member Pension Eligibility).

### 9.5 Membership Application

The Trustee may admit any person (“**member applicant**”) as a Fund Member if and only if that person has completed and delivered to the Trustee:

- (a) (**application**): a written membership application (“**Membership Application**”) in any form decided by the Trustee; and
- (b) (**consent**): the written instrument specified in **rule 9.4** (Fund Document Acknowledgment).

## 9.6 Membership Admission

- (a) **(Additional information):** The Trustee may, following receipt of any Membership Application from any person, request that person to provide any further document or other evidence, including any medical advice or certificate, as reasonably and lawfully decided by the Trustee.
- (b) **(Membership admission):** The Trustee may, following receipt of any Membership Application and any further document or evidence requested under this provision from any person, decide to accept that person for admission as a Fund Member.
- (c) **(Membership conditions):** The Trustee may decide to accept any person for admission as a Fund Member under this provision unconditionally or may decide to specify any condition in relation to that acceptance.
- (d) **(Notification):** The Trustee must with all reasonable expedition following receipt of any Membership Application, and any further document or evidence requested under this provision, from any member applicant notify that member applicant by written instrument ("**acceptance decision**") which specifies:
  - (i) whether the Trustee has decided to accept that member applicant, or to decline acceptance of that member applicant for admission as a Fund Member; and
  - (ii) any applicable condition in relation to that acceptance.
- (e) **(Applicant acceptance):** Any member applicant may, within 6 weeks following receipt of any acceptance decision from the Trustee, notify the Trustee in writing whether that member applicant accepts or rejects any decision of the Trustee to accept that member applicant for admission as a Fund Member, including any condition specified in that acceptance decision.
- (f) **(Application completion):** Any member applicant becomes a Fund Member on the date being the earlier to occur of:
  - (i) receipt by the Trustee of the notice of acceptance by that member applicant under this provision; and
  - (ii) 6 weeks following the date that the Trustee sends any acceptance decision to that member applicant specifying acceptance of that member applicant for admission as a Fund Member, if during that period the Trustee does not receive any notice from that member applicant of either acceptance or rejection by that member applicant of the decision of the Trustee to accept that member applicant for admission as a Fund Member.

## 9.7 Pension Funds Transfer

- (a) **(Application)**: This provision applies where any person becomes entitled to be paid a Pension Benefit following the date of death of any Fund Member and:
  - (i) that person does not wish to become a Fund Member; or
  - (ii) the Trustee decides to exclude that person from admission as a Fund Member.
- (b) **(Funds transfer)**: The Trustee must within 3 months following that person becoming entitled to payment of a Pension Benefit transfer to any regulated superannuation fund that amount of moneys which would have been added to a Member Pension Account in order to fund that payment of that Pension Benefit.

## 9.8 Member Expulsion

- (a) **(Expulsion)**: The Trustee may at any time by written notice expel any Fund Member from membership of the SMSF and participation as a beneficiary under the Trust Fund for any reason as decided by the Trustee.
- (b) **(Trustee retirement)**: Any expelled Fund Member must retire as a Trustee as from the time of expulsion.
- (c) **(Funds transfer)**: The Trustee must transfer the balance of any Member Account of the expelled Fund Member as directed by the expelled Fund Member by written notice to the Trustee received within 60 days following receipt of the expulsion notice from the Trustee.
- (d) **(Discretionary transfer)**: The Trustee may transfer the balance of any Member Account of the expelled Fund Member to any regulated superannuation fund, in the absence of any transfer direction from the expelled Fund Member as specified in this provision.

## 9.9 Membership Cessation

A Fund Member must be treated as having ceased to be a Fund Member, except where prohibited by the Superannuation Legislation, if:

- (a) **(benefit ineligibility)**: that Fund Member is no longer entitled to receive Member Benefits from the Trust Fund;
- (b) **(membership exclusion)**: the Trustee decides to exclude that Fund Member as a Fund Member;
- (c) **(death)**: the Trustee decides to exclude that Fund Member from membership of the Trust Fund following the death of that Fund Member or any legal representative of that Fund Member ceases to be or act as a Trustee or a director of any company Trustee; or



- (d) **(trustee ineligibility)**: that Fund Member becomes ineligible to be or act as a Trustee, or a director of a company Trustee, except where a legal representative of that Fund Member is appointed a Trustee.

## 10 MEMBERSHIP INTEREST

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### 10.1 Member Accounts

- (a) **(Account record)**: The Trustee must in relation to each Fund Member keep a Member Account for that Fund Member and record in that Member Account:
  - (i) receipt of any Fund Contribution, Fund Earnings or any amount allocated from Fund Reserves;
  - (ii) payment of any Fund Benefit; and
  - (iii) any other amount decided by the Trustee to be added to or deducted from that Member Account.
- (b) **(Positive balance)**: The balance of any Member Account at any time must be a positive amount.
- (c) **(Multiple accounts)**: The Trustee may keep more than 1 Member Account in relation to any Fund Member.
- (d) **(Tax elements)**: The Trustee must keep a record of the tax free component or the taxable component of any Member Benefit in any Member Account.

### 10.2 Member Account Addition

The Trustee must add to any Member Account as at the last day of each month or at any other time as decided by the Trustee or compelled by the Superannuation Legislation:

- (a) **(contributions)**: the amount of any Fund Contributions received by the Trustee for the benefit of the applicable Fund Member;
- (b) **(earnings)**: any amount derived from Fund Earnings as decided by the Trustee;
- (c) **(splittable contributions)**: any amount of splittable contributions which the Trustee decides should be added to that Member Account;
- (d) **(payment splits)**: any amount to which the applicable Fund Member is entitled under any payment split; and
- (e) **(reserves)**: any other amount, including any allocation from Fund Reserves decided by the Trustee.

### 10.3 Member Account Deduction

The Trustee must deduct from any Member Account as at the last day of each month or at any other time as decided by the Trustee or compelled by the Superannuation Legislation:

- (a) **(costs)**: any part of the cost of the Trust Fund which the Trustee decides should be deducted from that Member Account;
- (b) **(losses)**: any part of any loss of the Trust Fund which the Trustee decides should be deducted from that Member Account;
- (c) **(benefits)**: any amount of any Member Benefit paid to the applicable Fund Member or any other person from that Member Account;
- (d) **(taxes)**: any amount of any tax which the Trustee decides should be deducted from that Member Account;
- (e) **(excess contributions tax)**: any amount of any liability for excess contributions tax which must be deducted from that Member Account in compliance with **rule 10.5** (Excess Contributions);
- (f) **(splittable contributions)**: any splittable contributions which the Trustee has decided to deduct from that Member Account;
- (g) **(payment splits)**: any amount which must be deducted from that Member Account under any payment split; and
- (h) **(transfers)**: any other amount which the Trustee decides to deduct from that Member Account, including any transfer to a Fund Reserve or any other Member Account,

except where any deduction would cause the balance of that Member Account to be less than the Minimum Benefits of the applicable Fund Member, unless permitted by the Superannuation Legislation.

#### **10.4 Fund Contributions**

Any person may pay any Fund Contribution to the Trust Fund for the benefit of any Fund Member.

#### **10.5 Excess Contributions**

- (a) **(Application)**: This provision applies where any Fund Member requests the Trustee to pay or provide moneys for payment of any liability of that Fund Member for excess contributions tax ("**release request**") and has lodged with the Trustee a written notice provided by the Commissioner of Taxation authorising that Fund Member to withdraw moneys from the Trust Fund to pay any excess contributions tax ("**release notice**").
- (b) **(Tax payment)**: The Trustee must within 30 days following receipt of that release request pay to the applicable Fund Member, or at the request of the applicable Fund Member to the Australian Taxation Office, an amount being the lesser of:
  - (i) any amount which the release notice attached to that release request authorises the Trustee to pay to that Fund Member or the Australian Taxation Office;

- (ii) the amount of excess contributions tax specified in that release request; and
- (iii) the total amount of the Superannuation Interest of that Fund Member in the Trust Fund.

#### 10.6 Superannuation Transfers

- (a) **(Transfer request):** Any Fund Member, or any legal representative of any Fund Member, may request the Trustee to accept a transfer of any amount from any other Superannuation Entity.
- (b) **(Acceptance):** The Trustee may decide whether or not:
  - (i) to accept that transfer, whether in whole or in part; and
  - (ii) to specify any condition applicable to acceptance of that transfer.

#### 10.7 Benefit Rollover

- (a) **(Application):** This provision applies if:
  - (i) any Fund Member, or any legal representative of any Fund Member, requests the Trustee to allot, transfer or roll over all or any part of the Member Account of that Fund Member to any other Superannuation Entity or any other Member Account; or
  - (ii) the Trustee is compelled by any provision of any law or agreement for the purposes of the *Family Law Act 1975*.
- (b) **(Rollover):** The Trustee must promptly, and in compliance with the Superannuation Legislation and any other applicable law, allot, transfer or roll over the Member Account, or any applicable part of the Member Account, to that other Superannuation Entity or other Member Account.
- (c) **(Transferee fund):** The Trustee may decide to transfer the balance of any Member Account to any other Compliant SMSF or any other Member Account, except where that transfer would cause any default under any provision of the Superannuation Legislation relating to Minimum Benefits.
- (d) **(Transfer method):** The Trustee may effect the allotment, transfer or rollover in any manner or form or by any method as decided by the Trustee, including any transfer of cash or other assets or specification of any condition.

#### 10.8 Trust Asset Benefit

- (a) **(Application):** This provision applies if any Fund Member, or any legal representative of any Fund Member, makes any request ("**investment benefit request**") to the Trustee to:
  - (i) invest any Fund Contribution, or transfer or rollover to the Trust Fund, for the benefit of that Fund Member; and



- (ii) separate income from that investment from any other investment of the Trust Fund.
- (b) **(Investment decision)**: The Trustee may decide whether or not to accept any investment benefit request from any Fund Member.
- (c) **(Irrevocable benefit)**: The Trustee must following acceptance of any irrevocable investment benefit request from any Fund Member hold any asset transferred by that Fund Member to the Trust Fund following acceptance of that transfer by the Trustee solely:
  - (i) for the benefit of that Fund Member; and
  - (ii) for the purpose of providing a retirement benefit to that Fund Member,
 so that:
  - (iii) that asset or its proceeds of sale must not be pooled with any asset held for the benefit of any other Fund Member; and
  - (iv) no other Fund Member may obtain or acquire any right, title or interest to or in that asset or its proceeds.
- (d) **(Variation exclusion)**: This provision must not be varied under, or omitted from, this Rule Document, despite any other provision of this Rule Document.

## 11 MEMBER BENEFITS

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### 11.1 Fund Benefits

Any Fund Member, or any dependant or legal representative of any Fund Member, may at any time be or become entitled under this Rule Document to receive any 1 or more Member Benefits, including:

- (a) **(lump sum)**: any Lump Sum Benefit;
- (b) **(pension)**: any Pension Benefit;
- (c) **(temporary incapacity)**: any Temporary Incapacity Benefit;
- (d) **(permanent incapacity)**: any Permanent Incapacity Benefit;
- (e) **(death)**: any Death Benefit; and
- (f) **(residual)**: any other Member Benefit decided by the Trustee.

### 11.2 Benefit Payment

The Trustee must pay any Member Benefit to any Fund Member, or any dependant or legal representative of any Fund Member, or to any other person, in compliance with the Superannuation Legislation and this Rule Document.

### 11.3 Lump Sum Benefit

- (a) **(Payment):** The Trustee may decide, at the request of any Fund Member or any legal representative of any Fund Member, to pay a Lump Sum Benefit to or on account of that Fund Member upon and subject to this Rule Document.
- (b) **(Payment restriction):** Payment of a Lump Sum Benefit under this provision must not at any time exceed the balance of the Member Accumulation Account of the applicable Fund Member.
- (c) **(Reserves allocation):** The Trustee may decide to pay or apply all or any part of Fund Reserves to or for the benefit of any Fund Member in addition to any other payment under this provision.

### 11.4 Pension Benefit

- (a) **(Payment):** The Trustee may decide, at the request of any Fund Member, or any legal representative of any Fund Member, to pay any Pension Benefit that is treated as a Pension Benefit for the purpose of SISA to that Fund Member, or any dependant or legal representative of that Fund Member.
- (b) **(Legal compliance):** The provisions of the SISA Regulations which specify standards for the payment of any Pension Benefit are incorporated into, and form part of, this Rule Document and any payment of any Pension Benefit must comply with those provisions.
- (c) **(Capital support restriction):** Any capital supporting any Pension Benefit may not be added by way of contribution or rollover to existing capital after commencement of payment of that Pension Benefit.
- (d) **(Pension documentation):** The Trustee must prepare a written instrument which specifies the provisions of, and terms and conditions applicable to, any Pension Benefit and provide a copy of that written instrument to the applicable Fund Member or legal representative of the Fund Member.
- (e) **(Account application):** The Trustee may decide to pay or apply any amount standing to the credit of any Member Accumulation Account or Member Pension Account or allocated from Fund Reserves for the payment of any Pension Benefit to any applicable Fund Member, or dependant or legal representative of any applicable Fund Member.
- (f) **(Pension rule creation):** Any Fund Member, or legal representative of any Fund Member, may, by means of written instrument notify the Trustee that the provisions or terms of any Pension Benefit are accepted by or on behalf of that Fund Member as an additional rule, creating a Pension Benefit Rule, for the purposes of this Rule Document.

- (g) **(Rule effect):** The provisions of any applicable Pension Benefit Rule created under this provision operate as a rule of the Trust Fund as if a rule specified in this Rule Document.

#### 11.5 Incapacity Event

- (a) **(Incapacity notification):** Any Fund Member, or legal representative of any Fund Member, may notify the Trustee that that Fund Member is suffering a temporary incapacity or a permanent incapacity.
- (b) **(Incapacity verification):** The Trustee following receipt of that notice may require the applicable Fund Member to undergo any medical examination which the Trustee decides is reasonably necessary for the Trustee to decide whether the applicable Fund Member is suffering a temporary incapacity or permanent incapacity.
- (c) **(Incapacity decision):** The Trustee may and, if applicable, following receipt of any required medical certificate or report, decide whether or not any applicable Fund Member has suffered a temporary incapacity or a permanent incapacity.

#### 11.6 Temporary Incapacity Benefit

- (a) **(Application):** This provision applies if the Trustee has decided under this provision that any Fund Member has suffered any temporary incapacity.
- (b) **(Payment):** The Trustee may pay any Temporary Incapacity Benefit to any applicable Fund Member for any period commencing from the date of commencement of that temporary incapacity until the earlier to occur of:
  - (i) the date of re-engagement of that Fund Member in the kind of employment or business in which that Fund Member was engaged immediately before suffering the temporary incapacity;
  - (ii) the date on which the Trustee decides that that Fund Member has suffered a permanent incapacity;
  - (iii) the date of death of that Fund Member; and
  - (iv) any other date or time permitted under the Superannuation Legislation.
- (c) **(Gainful employment restriction):** The payment of any Temporary Incapacity Benefit must not exceed the amount that the applicable Fund Member was receiving from gainful employment immediately before suffering the temporary incapacity, subject to the Superannuation Legislation.
- (d) **(Reserves application):** The Trustee may pay or apply all or any part of any Fund Reserves or any amount credited to any Member Account of the applicable Fund Member, or any other account, in or towards payment of the Temporary Incapacity Benefit, as decided by the Trustee.



### 11.7 Permanent Incapacity Benefit

- (a) **(Application):** This provision applies if the Trustee has decided under this provision that any Fund Member has suffered a permanent incapacity.
- (b) **(Payment):** The Trustee may decide to pay to the applicable Fund Member, or any dependant or legal representative of any applicable Fund Member all or any part of any current balance of any Member Accumulation Account or Pension Account of the applicable Fund Member as:
  - (i) a Lump Sum Benefit;
  - (ii) a Pension Benefit; or
  - (iii) as a Lump Sum Benefit and any balance of any Member Account, as increased at any time, as a Pension Benefit.
- (c) **(Reserves allocation):** The Trustee may pay or apply all or any part of any Fund Reserves in or toward payment of any Permanent Incapacity Benefit under this provision.

### 11.8 Lump Sum Conversion

- (a) **(Conversion request):** Any Fund Member, or dependant or legal representative of any Fund Member, may convert any Lump Sum Benefit into a Pension Benefit by written notice which:
  - (i) requests the Trustee to convert all or any part of any Lump Sum Benefit of the applicable Fund Member into a Pension Benefit; and
  - (ii) specifies the nature or kind of requested Pension Benefit as specified under **rule 11.4** (Pension Benefit).
- (b) **(Payment):** The Trustee may decide to pay any converted Pension Benefit requested under this provision to the applicable Fund Member, or as applicable any dependant or legal representative of the applicable Fund Member, in compliance with the Superannuation Legislation and this Rule Document.

### 11.9 Pension Commutation

- (a) **(Commutation request):** Any Fund Member, or dependant or legal representative of any Fund Member, may by written notice request the Trustee to commute all or any part of any Pension Benefit payable to the Fund Member.
- (b) **(Taxation advice):** The Trustee must following any commutation request decide the possible taxation effect or commutation limit arising from any commutation of any Pension Benefit and notify the applicable Fund Member, or dependant or legal representative, of that decision.

- (c) **(Payment):** The Trustee may decide, following any commutation request and taxation advice under this provision, to pay or apply any proceeds amount resulting from commutation of the Pension Benefit by:
  - (i) payment as a Lump Sum Benefit or any other kind of Pension Benefit to the applicable Fund Member, dependant or legal representative; or
  - (ii) allocation to the Member Accumulation Account of the applicable Fund Member.

## 12 MEMBER DEATH BENEFITS

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### 12.1 Non-Binding Death Benefit Nomination

- (a) **(Nomination):** Any Fund Member, or legal representative of any Fund Member, may provide the Trustee with a written Non-Binding Death Benefit Nomination which requests the Trustee, in the decision of the Trustee, to pay or provide any Member Benefit following the death of that Fund Member to any person specified in that Non-Binding Death Benefit Nomination.
- (b) **(Acceptance):** The Trustee must accept any Non-Binding Death Benefit Nomination received under this provision, in compliance with the Superannuation Legislation.
- (c) **(Non-binding effect):** Any Non-Binding Death Benefit Nomination has no binding effect upon the Trustee.
- (d) **(Amendment):** Any Fund Member, or legal representative of any Fund Member, may before the death of that Fund Member confirm, amend or revoke any current Non-Binding Death Benefit Nomination previously provided to the Trustee by or on behalf of that Fund Member.
- (e) **(Direction):** Any Fund Member, or legal representative of any Fund Member, may direct the Trustee in writing to perform any action upon the death of that Fund Member, or that Fund Member becoming an incapacitated person, except that that direction has no binding effect upon the Trustee.

### 12.2 Binding Death Benefit Nomination

- (a) **(Nomination):** Any Fund Member, or legal representative of any Fund Member, may provide the Trustee with a written Binding Death Benefit Nomination, which will apply in substitution for any previous Binding Death Benefit Nomination provided to the Trustee.
- (b) **(Information):** The Trustee must, in compliance with the Superannuation Legislation, provide any Fund Member with any information that the Trustee reasonably considers to be necessary for the purposes of that Fund Member in providing any Binding Death Benefit Nomination.



- (c) **(Acceptance):** The Trustee must in compliance with the Superannuation Legislation accept any Binding Death Benefit Nomination received under this provision and is bound to act in compliance with that Binding Death Benefit Nomination.
- (d) **(Contents):** Any Binding Death Benefit Nomination must:
  - (i) be effected by means of written instrument;
  - (ii) require the Trustee to provide any Death Benefit in relation to the applicable Fund Member, following the death of that Fund Member, to the legal representative or dependant of that Fund Member;
  - (iii) be signed and dated by the applicable Fund Member in the presence of 2 witnesses, each of whom is at least 18 years of age and neither of whom is a person specified in the written instrument; and
  - (iv) contain a signed and dated written declaration by each witness specifying that the written instrument was signed by the applicable Fund Member, or legal representative of that Fund Member, in the presence of that witness.
- (e) **(Amendment):** Any Fund Member, or legal representative of any Fund Member, may before the death of that Fund Member confirm, amend or revoke any Binding Death Benefit Nomination.
- (f) **(Amendment form):** Any confirmation, amendment or revocation of any Binding Death Benefit Nomination must be effected by written instrument and dated and signed by the applicable Fund Member, or legal representative of that Fund Member, in the presence of 2 witnesses, each of whom is at least 18 years of age and neither of whom is a person specified in the written instrument, and contain an equivalent declaration by each witness as for an original Binding Death Benefit Nomination.
- (g) **(Amendment acceptance):** The Trustee must accept any confirmation, amendment or revocation of any Binding Death Benefit Nomination under this provision.
- (h) **(Divorce revocation):** Any Binding Death Benefit Revocation which requires any Death Benefit to be paid to the spouse of any Fund Member must be treated as revoked in the event of initiation of any legal action or proceeding under the *Family Law Act 1975* or equivalent legislation in any country or jurisdiction outside Australia, which seeks to apply for the divorce or dissolution of the marriage of that Fund Member and spouse.
- (i) **(Continuance):** Any Binding Death Benefit Nomination under this provision must be treated as continuing for an indefinite period of time, except where the applicable Fund Member or legal representative of that Fund Member:
  - (i) specifies otherwise in the applicable written instrument; or
  - (ii) revokes the applicable written instrument under this provision.



### 12.3 Death Benefit Rule Creation

- (a) **(Death benefit rule):** Any Fund Member, or legal representative of any Fund Member, may by means of written instrument request the Trustee to create an additional rule, as a Death Benefit Rule, for the purposes of this Rule Document which requires the Trustee in the event of death of that Fund Member to pay any Death Benefit in any manner or form as specified by or on behalf of that Fund Member, including any Lump Sum Benefit or Pension Benefit or combination of any previous Fund Benefit.
- (b) **(Acceptance):** The Trustee may decide to accept any request under this provision and is bound to comply with the additional rule in the event of acceptance.
- (c) **(Rejection):** The Trustee may decide to reject any request under this provision and must reject that request if the Trustee has previously received a Binding Death Benefit Nomination from that Fund Member which continues in effect.
- (d) **(Amendment):** Any Fund Member, or any legal representative of any Fund Member, may by means of written instrument request the Trustee to amend or revoke any additional Death Benefit Rule created under this provision and the Trustee must, in the event of any amendment request, act in compliance with that Death Benefit Rule as amended.

### 12.4 Legal Representative Arrangements

- (a) **(Application):** This provision applies in the event of death of any Fund Member.
- (b) **(Individual trustee):** The legal representative of any deceased Fund Member who was a Trustee is appointed as a Trustee for the period from the date of death of that Fund Member until the date of payment of any Member Benefit payable in result of the death of that Fund Member, in compliance with the provisions of this Rule Document relating to the appointment of a Trustee.
- (c) **(Trustee director):** Any company Trustee of which any deceased Fund Member was a director may continue as a Trustee for the period from the date of death of that deceased Fund Member until the date of payment of any Member Benefit payable in result of the death of that Fund Member, and the legal representative of that deceased Fund Member becomes appointed as a director of the company Trustee for that period, in compliance with the provisions of this Rule Document relating to the appointment of a director of a company Trustee.
- (d) **(Pension continuance):** The Trustee may continue to pay any Pension Benefit previously payable to any deceased Fund Member to the legal representative of that Fund Member in compliance with **rule 11.4** (Pension Benefit).

## 12.5 Death Benefit

- (a) **(Payment):** The Trustee must pay or distribute the balance of any deceased Fund Member, following the death of that Fund Member, as a Member Benefit comprising a Death Benefit in compliance with this provision to:
  - (i) any 1 or more dependant of that deceased Fund Member;
  - (ii) the legal representative of that deceased Fund Member;
  - (iii) any other account of the Trust Fund, including any Member Account of that deceased Fund Member; or
  - (iv) any Fund Reserve.
- (b) **(Non-binding nomination):** The Trustee may decide to pay any Death Benefit to any nominated person specified in any currently effective Non-Binding Death Benefit Nomination previously received by the Trustee.
- (c) **(Binding nomination):** The Trustee must pay any Death Benefit to any nominated person, or in any manner and form, as specified in any currently effective Binding Death Benefit Nomination previously received by the Trustee.
- (d) **(Death benefit rule):** The Trustee must pay any Death Benefit in compliance with any currently effective additional rule relating to payment of any Death Benefit created at the request of the deceased Fund Member.
- (e) **(Pension benefit rule):** The Trustee must following the death of any Fund Member pay any Pension Benefit in compliance with any currently effective additional Pension Benefit Rule relating to payment of any Pension Benefit to or on account of that Fund Member.
- (f) **(Member account balance):** The Trustee must pay, distribute or transfer any balance of any Member Account of any deceased Fund Member as decided by the Trustee, except where this provision specifies otherwise.
- (g) **(Additional payments):** The Trustee may despite anything contained in this provision decide to pay any additional amount decided by the Trustee, including any amount from any Fund Reserves, to any dependant or legal representative of any deceased Fund Member, separate and exclusive from and additional to any amount payable under any Member Benefit of that deceased Fund Member.

## 13 TRUST MONEY ALLOCATION

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### 13.1 Trust Earnings

- (a) **(Earnings decision):** The Trustee may decide the Fund Earnings for any applicable Financial Year, including:
  - (i) any income received or accrued;

- (ii) any realised or unrealised gain; and
  - (iii) any other amount decided by the Trustee as forming part of Fund Earnings.
- (b) **(Earnings allocation):** The Trustee may decide any allocation or application of Fund Earnings, including any allocation or application:
- (i) to any Member Accumulation Account;
  - (ii) to any Member Pension Account;
  - (iii) to any Fund Reserve;
  - (iv) in payment of any Member Benefit; and
  - (v) in payment of any cost, tax or other liability of the Trust Fund.

### 13.2 Trust Reserves

- (a) **(Reserve creation):** The Trustee may at any time decide:
- (i) to create any Fund Reserve;
  - (ii) to add or deduct any amount to or from any Fund Reserve; and
  - (iii) to allocate or apply any amount comprised in any Fund Reserve.
- (b) **(Reserve investment strategy):** The Trustee must formulate and implement a separate investment strategy relative to any Fund Reserve consistent with:
- (i) the investment strategy of the Trust Fund; and
  - (ii) the ability of the Trustee to pay any liability of the Trust Fund as and when that liability falls due for payment.
- (c) **(Member interest exclusion):** Any Fund Member or other person has no entitlement to any amount comprised in a Fund Reserve.

### 13.3 Trust Taxation

- (a) **(Tax payment):** The Trustee must pay any liability on account of tax properly incurred by or assessed to the Trustee.
- (b) **(Member account deduction):** The Trustee may decide to deduct from any Member Account any tax paid or payable by the Trustee:
- (i) resulting from the receipt by the Trustee of any Fund Contribution for the benefit of any Fund Member;
  - (ii) payable on any income added to any Member Account; and
  - (iii) any tax which the Trustee reasonably decides may be payable as a result of any payment to any Fund Member.



- (c) **(Reserve account deduction):** The Trustee may decide to deduct from any account of the Trust Fund, including any Fund Reserve, any tax paid or payable by the Trustee.
- (d) **(Refund credit):** The Trustee may decide to credit any refund received on account of tax to any Member Account, Fund Reserve or other account of the Trust Fund.

#### 13.4 Trust Distribution Receipts

- (a) **(Acceptance):** The Trustee may decide to receive or accept any distribution or gift of moneys or other assets.
- (b) **(Allocation):** The Trustee may decide to allocate or apply any distribution or gift received and accepted under this provision to or for:
  - (i) Fund Earnings;
  - (ii) Fund Reserves;
  - (iii) any Member Account; or
  - (iv) any other purpose, including payment of any Pension Benefit to any Fund Member, or following the death of any Fund Member, any dependant or legal representative of any Fund Member.

### 14 TRUSTEE POWERS

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#### 14.1 General Powers

The Trustee at any time has under this Rule Document all the general powers in relation to the Trust Fund that a natural person has as a sole, absolute and beneficial owner in relation to property of any nature or description, despite the fact that the Trust Fund is trust property, subject to the provisions of the Superannuation Legislation.

#### 14.2 Specific Powers

- (a) **(Additional powers):** The Trustee has under this Rule Document the express powers in relation to the Trust Fund conferred by any provision of this Rule Document in addition to:
  - (i) the general absolute powers conferred under this provision; and
  - (ii) any express and implied powers conferred upon a trustee by any legislation or other law,
 subject to the provisions of the Superannuation Legislation.
- (b) **(Cumulative powers):** An express power conferred upon the Trustee under any provision of this Rule Document does not limit:
  - (i) the general absolute powers conferred by this provision; or

- (ii) any other express or implied power conferred by any provision of this Rule Document or by any legislation or other law,  
subject to the provisions of the Superannuation Legislation.

### 14.3 Decision Powers

Express powers of decision conferred by this Rule Document on the Trustee in relation to the Trust Fund comprise:

- (a) **(capital or income)**: any decision under this provision or any other provision of this Rule Document whether:
  - (i) any property;
  - (ii) any increase or decrease in amount, number or value of any property or holding of property;
  - (iii) any receipt or payment from, for or in connection with any property;
  - (iv) any income or loss amount;
  - (v) any amount derived, accrued or incurred or deemed to have been derived, accrued or incurred under any income tax law for any accounting period; or
  - (vi) any amount being under any income tax law a capital gain or a capital loss or assessable income or allowable deduction in relation to net income for any accounting period,  
is treated as and credited or debited to capital or income account or partly to capital or to income account and the relevant proportions;
- (b) **(questions)**: resolution of any dispute arising under or in relation to the performance of the trusts and powers in this Rule Document;
- (c) **(appropriation)**: application of any part of the Trust Fund in its actual condition or state of investment in or towards the payment of any Member Benefit and for that purpose:
  - (i) to estimate the value of the component parts of the Trust Fund; and
  - (ii) to engage any agent to make that valuation; and
- (d) **(power restriction)**: release or disclaimer at any time before the Termination Date of any power, or restriction on any power, conferred upon the Trustee under this Rule Document, whether wholly or partially and whether revocably or irrevocably.

### 14.4 Investment Powers

Express powers of investment, payment or application conferred by this Rule Document on the Trustee in relation to the Trust Fund comprise:



- (a) **(general investment)**: investment of any asset of the Trust Fund in any form of investment, including any investment authorised by any law in any State or Territory of Australia for the investment of trust moneys;
- (b) **(investment transfer)**: transfer, variation, termination, release or renewal of any investment comprised in the Trust Fund;
- (c) **(property purchase)**: purchase of any property, despite the fact that that property does not produce income or is of a wasting, hazardous or speculative nature;
- (d) **(property dealings)**: possession, purchase, transfer, lease, including any finance, leveraged or operating lease, bailment, hiring or hire purchase of, creation or acceptance of options or pre-emption or other rights in, or creation or release of any security interest over, any property;
- (e) **(property maintenance)**: keeping any property in a good substantial and satisfactory state of repair, condition and working order, or performance of any necessary or recommended or property maintenance activity, including maintenance, repair, upkeep, reinstatement, replacement, renewal, renovation or improvement;
- (f) **(property development)**: performance of any construction activity, including demolition, pulling down, removal, alteration, extension, improvement, addition, construction, rebuilding or reconstruction, relating to any property comprising real property or personal property or any existing or new building on any real property;
- (g) **(marketable securities)**: purchase, subscription for or acceptance of any marketable securities issued by any company or governmental agency by any means, including any electronic method of quotation, issue, transfer, dealing, payment, confirmation or settlement, with consequential powers, including:
  - (i) exercise of any voting or other right and performance of any liability relating or incidental to the marketable securities;
  - (ii) creation of any agreement modifying any right or liability;
  - (iii) creation of any agreement relating to any debt arrangement, or increase or reduction of the capital or share buyback of or by any company;
  - (iv) creation of any agreement relating to, or in the course of, the liquidation of any company;
  - (v) deposit, transfer or release of the marketable securities, or the legal or equitable right, title or transfer to or in the marketable securities, for any purpose; and
  - (vi) payment of any call, contribution or other cost in relation to the marketable securities, or legal or equitable right, title or interest to or in the marketable securities;



- (h) **(debt instruments)**: purchase or acceptance of or subscription for any debt instrument or security, holding any commercial paper, bill of exchange, promissory note, debenture, bond, annuity, convertible note, bond or warrant or subordinated debt security, by any means, including any electronic method of quotation, issue, transfer, dealing, payment, confirmation or settlement;
- (i) **(bank deposits)**: deposit or credit with any bank or other financial institution, whether at call or for a fixed term and whether deriving interest or otherwise;
- (j) **(credit)**: advancing credit to any person for any purpose, whether at all or for a fixed term and whether or not deriving interest or secured by any security interest or guarantee;
- (k) **(business assets)**: purchase of any assets or share or interest in any business or company;
- (l) **(business activities)**: performance or termination of any business or business activity of any nature or description, including primary production;
- (m) **(precious tangibles)**: purchase of any gold, silver or other precious or semi-precious metal, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery, antiques or other collectibles of any nature or description;
- (n) **(reversions)**: purchase of any reversionary or deferred property or right of any nature or description;
- (o) **(insurances)**: procurement or termination of any life, life endowment, sinking fund, term, sickness, disability, accident or other insurance of any nature or description and at or subject to any premium, whether single or payable periodically, and with or subject to any rights or terms or provisions of any nature or description, or exercise of any right relating to any insurance;
- (p) **(asset retention)**: retention of any property comprised in the Trust Fund, without sale, conversion or alteration, for any period; and
- (q) **(investment provisions)**: purchase of any investment:
  - (i) whether or not incurring any personal liability in its capacity as trustee;
  - (ii) for cash;
  - (iii) in consideration of any annuity or otherwise;
  - (iv) upon any terms or provisions;
  - (v) for a sum greater than the amount of the Trust Fund at the time of purchase;
  - (vi) by payment wholly or partly from any future moneys receivable by the Trustee, including dividends, distributions, profits, interest or other income paid or payable in relation to or derived from the investment;

- (vii) despite the fact that the investment is not authorised under any law for the investment of trust assets; or
- (viii) despite the fact that the investment is of a wasting, hazardous or speculative nature, does not produce income or is subject to any liability or prejudicial effect or is without security.

#### 14.5 Contractual Powers

Express powers of creation, execution or performance of any agreement or document conferred by this Rule Document on the Trustee in relation to the Trust Fund comprise:

- (a) **(contractual dealings)**: transfer, purchase or lease;
- (b) **(borrowing)**: borrowing credit from, and securing by any security interest the payment of moneys to, any person, whether alone or severally, jointly, or jointly and severally with any other person;
- (c) **(guarantees)**: creation of any guarantee for or relating to the payment of money or performance of any agreement or document by any person and securing that liability by way of guarantee by any security interest over or affecting any asset comprised in the Trust Fund;
- (d) **(negotiable instruments)**: purchase, drawing, making acceptance, endorsement, discount, execution, issue, transfer or conversion of any negotiable instrument, including any cheque, promissory note, bill of exchange, bill of lading, debenture or other negotiable warrant or instrument, whether negotiable or transferable by delivery, endorsement and delivery or otherwise;
- (e) **(options)**: creation of any option over or relating to any asset comprised in the Trust Fund to any person;
- (f) **(derivatives contracts)**: creation of any financial, currency, metal or commodity agreement, including any currency or principal or interest rate swap or futures agreement or hedging transaction of any nature of description; and
- (g) **(business contracts)**: creation of any agreement or document of any nature or description in connection with the performance of any business or business activity.

#### 14.6 Administrative Powers

Express powers of administration conferred by this Rule Document on the Trustee in relation to the Trust Fund comprise:

- (a) **(additional trust property)**: receipt of property by gift inter vivos or under the provisions of any other trust or otherwise, from any person, as an addition to the Trust Fund and holding and administering that additional property upon and for the purposes of the SMSF;



- (b) **(conversion proceeds)**: transfer and application of the proceeds of any investment comprised in the Trust Fund into or for any other investment or property of any nature or description;
- (c) **(rights)**: exercise of any right and performance of any liability attaching to, arising out of or relating to any asset comprised in the Trust Fund;
- (d) **(partition)**: creation of any agreement or performance of any action relating to the partition, subdivision or conversion to strata or any other title of any property at any time comprised in the Trust Fund and payment of any money by way of equality of partition, subdivision or conversion;
- (e) **(company promotion)**: incorporation, registration, establishment, promotion or purchase of any company or other entity or participation with any other person for that purpose;
- (f) **(directorships)**: acceptance of engagement as, or engagement of any person to act as, a director or other officer of any company or other entity where marketable securities of that company or other entity are comprised in the Trust Fund and receipt of the remuneration derived from that office;
- (g) **(nominee holdings)**: consent to the legal right, title or interest to or in any asset comprised in the Trust Fund to be held or registered in the name of any nominee of the Trustee;
- (h) **(bank accounts)**: creation and operation in any usual manner of any account with any bank or other financial institution;
- (i) **(receipts)**: creation of effectual receipts and releases for any money or property received by or on behalf of the Trustee or otherwise relating to any action relating to this Rule Document;
- (j) **(employees)**: employment or engagement of any employee, agent, manager or other person, including any trustee and any director or a corporate trustee, in connection with any business or business activity performed by the Trustee, or any action necessary or desirable by the Trustee, under this Rule Document, including the receipt and payment of any money, with consequential power of creation of any agreement relating to the remuneration and costs payable to any employee, agent or other person;
- (k) **(agents)**: engagement, appointment or replacement of any agent, subagent, attorney, subattorney, delegate, custodian, consultant, adviser, legal, accountancy, financial, property, valuation or investment adviser, agent or representative, contractor or other person, whether alone, severally, jointly or jointly and severally, by deed or other document or otherwise, with consequential power of creation of any agreement for the remuneration and costs payable in relation to that engagement, appointment or replacement;



- (l) **(engagements)**: acceptance and performance of any engagement or appointment as agent, subagent, attorney, subattorney, delegate, custodian or other contractor for or on behalf of any other person, whether alone, severally, jointly or jointly and severally, under any deed or document or otherwise;
- (m) **(costs)**: payment out of the Trust Fund of any cost which the Trustee may at any time incur relating to:
  - (i) management of the Trust Fund;
  - (ii) exercise of any power conferred by this Rule Document;
  - (iii) performance of any provision of this Rule Document;
  - (iv) any tax payable in relation to this Rule Document, the Trust Fund, the Trustee or any payment to any Fund Member or other person following any decision by the Trustee; and
  - (v) cost in any way connected with the preparation, execution, registration or stamping of any Fund Document;
- (n) **(protection)**: performance of any action necessary or desirable for the protection of the Trust Fund;
- (o) **(legal opinion)**: taking and acting upon the written decision of a solicitor or barrister in relation to:
  - (i) the interpretation or effect of any Fund Document; or
  - (ii) any other document or legislation or other law or as to the administration of the Trust Fund,

without liability to any person beneficially interested in relation to any action performed by the Trustee in compliance with that decision, except that nothing in this provision prohibits or impedes the Trustee from engagement in any legal action or proceeding;
- (p) **(legal action)**: initiation, defence, conduct, discontinuance, compromise or settlement of any claim, or any legal action or proceeding, affecting or relating to the SMSF, the Trust Fund and the Trustee; and
- (q) **(incidental)**: performance of any other action incidental or ancillary to the exercise of any power conferred on the Trustee under this Rule Document.

#### 14.7 Tax Powers

Express powers conferred by this Rule Document on the Trustee relating to tax in connection with the SMSF, the Trust Fund or any provision of this Rule Document comprise:

- (a) **(election)**: election, giving notice or creating any agreement under or in connection with any income tax law;

- (b) **(franking)**: maintenance of a franking account and franking of any dividend or other distribution or deemed dividend or distribution, in compliance with any income tax law; and
- (c) **(payment)**: payment of any tax, liability or cost incurred by the Trustee or the SMSF as an entity, including:
  - (i) the preparation or execution of any Trust Document; or
  - (ii) GST, relative to any supply or acquisition by the Trustee or the SMSF as an entity.

#### 14.8 Trustee Self-Dealing

- (a) **(Trust dispositions)**: The Trustee may exercise any power of transfer or lease conferred under this provision by transfer or lease of any property of the Trust Fund to the Trustee in its personal capacity or other capacity in relation to any other trust or company, in which the Trustee is involved in any business capacity, or to any spouse or relative of the Trustee ("**related person**").
- (b) **(Trust acquisitions)**: The Trustee may exercise any power of purchase or lease conferred under this provision by purchase or lease of any property of the Trust Fund from the Trustee in its personal capacity or any related person.
- (c) **(Arm's length basis)**: Any transfer, purchase or lease by the Trustee under this provision must be effected on an arm's length basis.
- (d) **(Fair value basis)**: Any transfer or lease by the Trustee under this provision must be effected for a consideration at least equal to fair market value.
- (e) **(Personal interest)**: The Trustee may exercise any power conferred under this provision, despite the fact that:
  - (i) the Trustee, or any person as a director or shareholder of the Trustee, or any other related person, may have a direct or indirect personal interest in the manner or result of the exercise of that power; or
  - (ii) the Trustee at any time is the sole Trustee.

### 15 TRUSTEE PLANS

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#### 15.1 Insurance Plan

The Trustee may create any insurance plan for the benefit of the Trust Fund to enable the Trustee to make any payment, including payment of any Death Benefit, Temporary Incapacity Benefit or Permanent Incapacity Benefit, to or for the benefit of any Fund Member in the event of the death of that Fund Member or that Fund Member becoming an incapacitated person.

## 15.2 Trustee Self-Insurance

The Trustee may decide to adopt any insurance plan upon a self-insurance basis and create any Fund Reserve:

- (a) **(credits)**: to which any payment or credit of any amount as decided by the Trustee may be added for the purpose of self-insurance;
- (b) **(payments)**: from which any amount decided by the Trustee may be paid or deducted in result of the Trustee deciding to adopt self-insurance against the occurrence of any fact or event; and
- (c) **(transfers)**: from which the Trustee may pay or deduct any amount decided by the Trustee to be surplus or no longer required for the purpose of self-insurance to any other Fund Reserve or Member Account.

## 15.3 Insurance Proceeds

- (a) **(Application)**: The Trustee may decide upon the allocation or application of any insurance proceeds received by the Trustee on account of the Trust Fund to any Member Account or Fund Reserve.
- (b) **(Member interest exclusion)**: Any Fund Member or any other person is not entitled to any interest in any insurance proceeds received by the Trustee.

## 15.4 Compliance Plan

The Trustee must at any time when the Trustee receives actual knowledge, or notification from the Fund Auditor, any adviser to the Trust Fund or the Superannuation Regulator, that the Trust Fund may cease to be a Compliant SMSF:

- (a) **(consultation)**: promptly consult with, as applicable, the Trust Auditor, adviser or Superannuation Regulator to decide upon a compliance plan to ensure the maintenance or continuation of the Trust Fund as a Compliant SMSF;
- (b) **(notification)**: notify Fund Members of any action required under the compliance plan; and
- (c) **(action)**: perform any action required under the compliance plan within a reasonable time and before lodgement of the next ensuing regulatory return relative to the Trust Fund.

## 15.5 Solvency Plan

The Trustee must at any time when the Trustee receives actual knowledge, or notification from the Fund Auditor, or any actuary who is an adviser to the Trust Fund, that the SMSF or Trust Fund as an entity is or may become insolvent:



- (a) **(consultation)**: consult with the Trust Auditor or actuarial adviser to decide upon a solvency plan to ensure the solvency of the Trust Fund, including reduction of any Member Account or Member Benefit;
- (b) **(notification)**: notify Fund Members of any action required under the solvency plan; and
- (c) **(action)**: perform any action required under the solvency plan and before lodgement of the next ensuing regulatory return relative to the Trust Fund.

## **16 TRUSTEE ACCOUNTING**

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### **16.1 Trust Accounting Records**

- (a) **(Records)**: The Trustee must keep complete and accurate accounting records of all receipts and payments or outgoings on account of, and assets comprising, the Trust Fund in compliance with general accounting standards and the Superannuation Legislation.
- (b) **(Form)**: The Trustee must keep the accounting records specified in this provision in a form, and supported by documentation, so that the accounting records may be properly audited

### **16.2 Trust Financial Accounts**

The Trustee must, promptly and as soon as practical following the completion of any Financial Year:

- (a) **(balance sheet)**: prepare a statement of financial position recording the assets and liabilities of the Trust Fund as at the end of the immediately preceding Financial Year;
- (b) **(operating statement)**: prepare an operating statement specifying the profit derived or loss incurred by the Trust Fund for the immediately preceding Financial Year;
- (c) **(audit)**: procure that the accounting records and financial statements kept or prepared under this provision are audited by the Fund Auditor;
- (d) **(tax returns)**: procure the prompt preparation of any tax return or other statement and lodgement of that tax return or other statement by due date; and
- (e) **(member statement)**: prepare for any Fund Member any statement or report required under and in compliance with the Superannuation Legislation.

### **16.3 Record Retention**

The Trustee must keep and retain any accounting record, statement, return or other report required to be kept or prepared under this provision for a period of 5 years after the end of the applicable Financial Year.

## 16.4 Trust Audit

The Trustee must promptly following the creation of the Trust Fund and in each Financial Year:

- (a) **(auditor appointment)**: appoint a Fund Auditor; and
- (b) **(audit form)**: procure an audit by the Fund Auditor of the accounting records, and any financial statement or report, required to be kept or prepared by the Trustee under this provision in the manner and form specified by the Superannuation Legislation.

## 16.5 Accountancy Agents

The Trustee may comply with any liability of the Trustee to prepare financial accounts under this provision by engagement of any accountant duly qualified to practise in the place of the governing law of the Trust Fund.

## 17 TRUST TERMINATION

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### 17.1 Termination Events

The Trust Fund and the SMSF terminates on the first occurring date specified in this provision, being the Termination Date, including any date when:

- (a) **(resolution)**: the Trustee decides to resolve that the Trust Fund should be terminated and placed into liquidation;
- (b) **(statutory requirement)**: the Trust Fund must be placed into liquidation for the purposes of and as compelled by the Superannuation Legislation;
- (c) **(membership cessation)**: the Trust Fund ceases to have any Fund Member;
- (d) **(regulatory requirement)**: the Superannuation Regulator requires or directs the liquidation of the Trust Fund; or
- (e) **(perpetuity expiry)**: the Perpetuity Period expires.

### 17.2 Fund Liquidation

The Trustee must on and after the Termination Date:

- (a) **(asset realisation)**: decide upon the transfer of any asset of the Trust Fund for the purpose of asset realisation to provide sufficient cash assets to pay any outstanding liability of the Trust Fund;
- (b) **(liability payment)**: pay any outstanding liability of the Trust Fund;
- (c) **(beneficiary entitlement)**: decide upon any person to whom any Member Benefit or other benefit might be paid, including any previous Fund Member, any trust under which any previous Fund Member is a beneficiary, or the legal representative of any previous Fund Member, whether by cash payment or in specie asset transfer; and

- (d) **(member entitlement)**: pay any Member Benefit due from the Trust Fund to any Member Beneficiary, whether by cash payment or in specie asset transfer.

### 17.3 Residual Distribution

The Trustee may decide to pay or distribute any residual assets of the Trust Fund remaining after any payment under this provision which the Trustee is legally compelled or has decided to pay to any charity or public benevolent institution decided by the Trustee.

## 18 TRUST VARIATION

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- (a) **(Trust variation)**: The Trustee may at any time by written instrument decide, upon and subject to this Rule Document and the Superannuation Legislation:
  - (i) to revoke, add to or vary any trust or provision of this Rule Document or any previous revocation, addition or variation; or
  - (ii) to declare any new or other additional trust or provision concerning the Trust Fund or for application in or under this Rule Document.
- (b) **(Variation restrictions)**: The revocation, addition or variation of any trust or power under this provision must not:
  - (i) prejudicially affect or reduce the amount of any Member Benefit accrued or accruing to any Fund Member as at the effective date of that revocation, addition or variation, except where that Fund Member or legal representative of that Fund Member has consented to that revocation, addition or variation;
  - (ii) vary any provision or term of any Pension Benefit or Death Benefit which has been incorporated as an additional rule into this Rule Document upon and subject to the provisions of this Rule Document, except where the Fund Member or legal representative of the Fund Member requesting or accepting that additional rule has consented to that revocation, addition or variation; or
  - (iii) permit any person, not being a constitutional corporation, to be eligible to be or become appointed as a Trustee, except where this Rule Document specifies otherwise and the sole or primary purpose of the SMSF is the provision of old age pensions.

## 19 MEMBER LIABILITY EXCLUSION

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Any person who is a Fund Member, or a dependant or legal representative of a Fund Member, is not at any time personally liable in that capacity to indemnify the Trustee, or any creditor of the Trustee, in any manner in connection with any liability resulting directly or indirectly from the execution of any document or the performance or omission of any action by the Trustee, despite any other provision of any Fund Document or, to the fullest extent permitted by law, any term or provision implied or deemed to be included in any Fund Document.



## 20 GOVERNING LAW

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This Rule Document, and the validity and performance of the Trust Fund created under the Fund Documents, is governed by and must be construed under the law of the State or Territory of Australia in which the Trustee is resident, and, if at any time there is more than 1 Trustee, under the law of the State or Territory of Australia of the residence of the Trustee who has been appointed as a Trustee for the longest period of time, as the proper law of the Trust Fund.

## 21 DICTIONARY

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Specified words and expressions for the purposes of this Rule Document comprise:

**“acquirable asset”** means any acquirable asset within the meaning of, and as defined in, SISA;

**“advance”** in relation to any credit, means the making or extension, or borrowing, of that credit in any manner or by any means;

**“agreement”** means any contract, deed, covenant, undertaking, commitment, promise, understanding, acknowledgement, confirmation, term, condition, representation, warranty, assurance, provision, security interest, guarantee, waiver or legally enforceable agreement, arrangement or course of dealing, whether or not in writing and whether present or future, and the benefit of any agreement within any previous meaning;

**“amendment”** in relation to any agreement or document, means amendment, variation, modification, alteration, novation, assumption, supplement, renewal, replacement, substitution, exchange or waiver of that agreement or document;

**“ancillary purpose”** means any ancillary purpose as defined in SISA, including the purpose of provision of any benefit approved in writing by the Superannuation Regulator;

**“associate”** in relation to any person, means an associate of that person as defined in SISA;

**“authorised officer”** in relation to any company, means any director, secretary or executive officer of that company;

**“benefit”** means:

- (a) any benefit, interest, provision, credit, right, entitlement, possibility or expectancy of any nature or description; and
- (b) any contingent benefit within any previous meaning, whether or not liable to be defeated or diminished by the exercise of any power or by reason of any other fact;

**“borrowing”** in relation to any credit, means the borrowing of or raising moneys or incurring financial liability under or in relation to that credit in any manner or by any means;

**“charity”** means any incorporated or unincorporated person, or any trustee of any trust, created wholly for charitable purposes;

“**child**” in relation to any person, means any child as defined in SISA, including:

- (a) any adopted child, stepchild or ex-nuptial child of that person;
- (b) any child of the spouse of that person; and
- (c) any person who is a child of that person within the meaning of the Family Law Act 1975;

“**company**” includes any company, body corporate, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, association, society, organisation or entity;

“**constitutional corporation**” means any body corporate which is:

- (a) a trading corporation; or
- (b) a financial corporation,

formed within the limits of the Commonwealth of Australia, within the meaning of paragraph 51(xx) of the *Constitution of the Commonwealth of Australia*;

“**core purpose**” means any core purpose as defined in SISA;

“**cost**” means:

- (a) any cost, charge, expense, disbursement, fee, commission, payment, outgoing, insurance premium payment, levy, tax, duty, impost, fine or penalty, whether legally due or otherwise, incurred at any time, directly or indirectly; and
- (b) in relation to legal cost, cost on a full solicitor and own client basis;

“**credit**” means any present or future loan, advance, credit facility or other financial accommodation;

“**debt arrangement**” in relation to any person, means any compromise, composition, moratorium, scheme of arrangement or reconstruction, suspension of any payment or right, restriction on any right or enforcement of any right, property transfer for the benefit of creditors, management, administration, voluntary administration, company arrangement or deed of company arrangement agreed or effected by or in connection with that person, or any creditor, asset, debt or other liability of that person;

“**decision**” means any decision, determination, appointment, declaration, resolution, discretion, opinion, consideration, assessment, appraisal, computation, calculation, valuation, certificate, certification or notice;

“**default**” by any person under any law, agreement or trust, means:

- (a) any default under, breach of, non-performance of or non-compliance with that law, agreement or trust or any provision of that law, agreement or trust by that person;



- (b) the occurrence of any event specified or defined in that law, agreement or trust to be a default under or breach of that law, agreement or trust by that person, whether or not within the power or control of that person;
- (c) any fraud, action, neglect, delay, breach of duty, omission or other prejudicial conduct under or relevant in relation to that law, agreement or trust; and
- (d) the occurrence of any fact which with the giving of notice, expiry of any period of time, fulfilment of any condition or occurrence of any other fact would constitute any default within any previous meaning or any default, termination, cancellation, prepayment or similar event of any nature or description under that law, agreement or trust;

**“dependant”** in relation to any person, means any dependant of that person for the purposes of, and as defined in, SISA;

**“distribution”** means appointment, payment or transfer, or any interest in or entitlement to any distribution within any previous meaning;

**“employee”** means any employee as defined in SISA;

**“employer”** in relation to any other person, means any person of whom that other person is treated or defined as an employee for the purposes of SISA;

**“entity”** means any company, trust, fund, authority, institution, partnership, society, association or other incorporated or unincorporated body or trustee of any trust in that capacity for the beneficiaries or purposes of the trust;

**“excess contributions tax”** means any tax assessed or imposed under the *Superannuation (Excess Concessional Contributions Tax) Act 2007* or the *Superannuation (Excess Non-Concessional Contributions Tax) Act 2006*;

**“exercise”** means:

- (a) in relation to any right, any exercise or enforcement of or obtaining or taking or discretionary determination to refrain from the exercise or enforcement of, that right, whether actual, attempted or contemplated; and
- (b) in relation to any power, any exercise of that power or making of any decision or appointment;

**“fact”** means any fact, matter, thing, event, circumstance, cause, consequence, action or omission, and the occurrence or existence of, or any change in, any fact within any previous meaning;

**“fair market value”** in relation to any asset, means the purchase price that a willing purchaser could be reasonably expected to pay to purchase that asset from a willing seller upon the assumption that:

- (a) the seller and the purchaser deal with each other on an arm’s length basis in relation to the transaction of sale and purchase;



- (b) the sale occurs after proper marketing of that asset; and
- (c) the seller and the purchaser act knowledgeably and prudently in relation to the transaction of sale and purchase;

**“gainful employment”** means any activity in which any person is engaged for gain or reward in any business, trade, profession, vocation, calling or occupation;

**“general accounting standards”** means:

- (a) in relation to a body corporate, the accounting standards within the meaning of the Corporations Act 2001 and, where not inconsistent with those accounting standards and the Corporations Act 2001, generally accepted accounting principles and practices in Australia consistently applied by a body corporate or as between bodies corporate; and
- (b) in relation to any other person or entity, accounting standards issued by the Australian Accounting Research Foundation on behalf of CPA Australia and the Institute of Chartered Accountants in Australia which are applicable to persons or entities other than bodies corporate and, where not inconsistent with those accounting standards, generally accepted accounting principles and practices in Australia consistently applied;

**“governmental agency”** means any governmental, semi-governmental, administrative, fiscal, municipal, local, judicial, or regulatory agency, department, instrumentality, body, utility, authority, commission, court or tribunal;

**“GST”** means any tax imposed on the supply of any goods, services, real or personal property or other things or similar tax under any GST law;

**“GST law”** at any present or future time means any GST law as defined in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*, as affected or interpreted by any other applicable legislation and any public or private ruling of the Commissioner of Taxation, as at that time;

**“guarantee”** in relation to any person, means any guarantee, indemnity, undertaking, covenant, letter of credit, legally binding letter of comfort, suretyship document, irrevocable offer, put option or other legal liability of any nature or description:

- (a) to pay or purchase;
- (b) to provide moneys or credit, whether by the advance of money, purchase of or subscription for marketable securities, purchase of assets, rights or services, or otherwise, for the payment or discharge of;
- (c) to indemnify against the consequences of default in the payment of; or
- (d) to be responsible for,  
any liability or the financial condition or solvency or insolvency of any other person;

**“incapacitated person”** means any individual person who becomes incapable or protected under or within the meaning of any legislation or other law relating to physical or mental health or welfare;

**“income tax law”** means as applicable:

- (a) the *Income Tax Assessment Act 1936*;
- (b) the *Income Tax Assessment Act 1997*;
- (c) the *Taxation Administration Act 1953*; and
- (d) any other imposition, collection or subordinate legislation connected with any previously specified legislation;

**“insolvent person”** means any individual bankrupt or company in liquidation;

**“interest”** in relation to any trust, means any beneficial interest or benefit, whether vested, contingent or discretionary;

**“invalidity”** means invalidity, nullity, voidability, avoidance, setting aside, unenforceability, illegality, irrecoverability, incapacity, impropriety, irregularity, deficiency, impairment, prohibition, postponement, suspension, extinguishment, frustration, failure, ineffectiveness, or limitation of or being of partial force and effect, whether total or partial, or liability to invalidity or invalidation within any previous meaning;

**“law”** means any legislation, rule of the general law, including common law, equity and bankruptcy, judicial order, governmental consent and governmental requisition;

**“lease”** means any lease, sublease, licence, sublicense, letting, hiring or hire purchase;

**“legal representative”** means any legal personal representative as defined in SISA in relation to any person including, to the extent not inconsistent with that definition, any person being:

- (a) dead or deceased, a person named as the executor of the will of the deceased, whether or not that person has been granted probate of the will, or the administrator of the estate of the deceased;
  - (b) a person who has granted an enduring power of attorney, the person appointed as attorney under, and holding, that enduring power of attorney;
  - (c) a minor, the parent or guardian of the minor;
  - (d) an incapacitated person, any trustee, guardian, manager, committee or other person appointed under any legislation or other law relating to physical or mental health or welfare, whether by judicial order or otherwise, to control, manage or protect the incapacitated person or the property, affairs or business of the incapacitated person;
- or



- (e) an insolvent person, the trustee in bankruptcy, receiver, manager, administrator, administrator of a deed of company arrangement or trustee of any voluntary arrangement or composition, or liquidator of or in relation to the insolvent person;

**“legislation”** including as applicable any reference to the specific name of any legislation, means:

- (a) any statute, enactment, ordinance, code or other legislation;
- (b) any section or provision of that legislation;
- (c) any order, regulation, rule, bylaw, proclamation, or statutory instrument made or issued under that legislation; and
- (d) any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, any legislation within any previous meaning at any time;

**“limited recourse borrowing arrangement”** means any limited recourse borrowing arrangement within the meaning of, and as defined, specified or described in, SISA;

**“liability”** in relation to any person, means any liability, debt, indebtedness, moneys, payment, cost, loss, damages, compensation, expenditure, obligation, duty, function, responsibility, accountability, answerability or agreement of, due from or payable by or to be performed by that person at any time, whether present or future, actual or contingent, alone, severally, jointly or jointly and severally and whether as principal or vicariously by or through any action performed or omitted by any employee or agent of that person;

**“liquidation”** as applicable to any person, means receivership, debt arrangement, merger, amalgamation, reconstruction, winding up, dissolution, bankruptcy, death or administration under any law relating to individual health or welfare;

**“loss”** means any loss, liability, damage, injury, accident, claim or cost, incurred at any time, and any fact causing or giving rise to any loss within any previous meaning, whether directly or indirectly, actually or potentially;

**“marketable security”** means:

- (a) any debenture, stock, share, option, warrant, bond or promissory note created or issued by any company or governmental agency;
- (b) any interest in a managed investment scheme as defined in the *Corporations Act 2001*, including any interest in a unit trust;
- (c) any interest or share in a partnership or joint venture;
- (d) any right or option in relation to any of the foregoing;
- (e) any marketable security within any previous meaning with special, qualified, restricted or deferred rights attaching to that marketable security,

but excludes any cheque, payment order and bill of exchange, other than a promissory note;



“**minor**” means an individual person under the age of 18 years;

“**original asset**” in relation to any acquirable asset, means an original asset within the meaning of, and as defined, specified or described in, SISA;

“**payment split**” means any payment split as defined in the *Family Law Act 1975*;

“**permanent incapacity**” in relation to any individual natural person, means the cessation of gainful employment of that person because of mental ill-health or physical injury or condition who in consequence on reasonable assessment is unlikely to achieve gainful employment at any future time which that person is reasonably qualified to perform by reason of education, training or experience;

“**person**” means any individual natural person, the estate of any individual natural person, company, trust, governmental agency or other entity;

“**power**” includes any right, power or decision;

“**prescribed document**” means any document that is a prescribed document for the purposes of the Superannuation Legislation;

“**prescribed information**” means any information that is prescribed information for the purposes of the Superannuation Legislation;

“**property**” includes any money, goods, things in action, right, land, business undertaking and any other real or personal property, including any intellectual property or intangible asset, of any nature of description, whether present or future, tangible or intangible, vested or contingent and any legal, equitable or statutory right, title, estate, tenure, interest, income, revenue or benefit in, under, derived from or incidental to that property;

“**purchase**” means purchase, acquisition, hire purchase, leasing, acceptance, or making or effecting any purchase within any previous meaning;

“**purchaser**” includes any purchaser, transferee, lessee or secured party;

“**real property**” includes any freehold, leasehold, strata title or strata leasehold estate or interest in, or licence, right or easement or mining leasehold, tenement, licence, claim or authority relating to, any real property;

“**regulated superannuation fund**” means a regulated superannuation fund as defined in and within the meaning of SISA;

“**related party**” means any related party as defined in SISA;

“**relative**” in relation to any person, means any relative of that person:

- (a) for the purposes of the definition of self managed superannuation fund, as defined in SISA (section 17); and
- (b) for any other purpose, as defined in SISA (section 10);

“**replacement asset**” in relation to any acquirable asset, means any replacement asset within the meaning of, and as defined, specified or described in, SISA;

“**report**” includes report, review, audit, assessment, advice, opinion, inquiry, inspection, investigation, valuation or survey;

“**right**” includes any right, equity, interest, entitlement, privilege, remedy, benefit, advantage, entitlement, bonus, claim, power, authority, function, discretion, option or right to make or give any notice, claim, request or requisition;

“**secured party**” means any person holding or entitled to any security interest, or right under any security interest;

“**security interest**” means any security interest in connection with any asset which in substance, whether or not in form, is a security for the payment or performance of any liability, including:

- (a) any security interest within the meaning of, and as defined in, the *Personal Property Securities Act 2009*;
- (b) any mortgage, charge, pledge, lien, trust or power created or conferred in relation to any asset;
- (c) any title retention interest or other legal or proprietary title or interest retained or reserved in any asset, including any credit or conditional sale agreement, hire purchase agreement, finance lease or bailment; or
- (d) any other right conferred on, or agreement with, any creditor to be paid in priority or preference to other creditors by recourse to any asset or its proceeds;

“**self managed superannuation fund**” means any self managed superannuation fund as defined in SISA;

“**splittable contribution**” means any amount being a splittable contribution as defined in the SISA Regulations;

“**spouse**” in relation to any person, means any spouse of that person as defined in SISA;

“**standard employer sponsor**” means any standard employer sponsor as defined in SISA;

“**tax**” means any tax, duty, charge or rate levied, imposed, assessed or collected by or under any legislation or governmental agency, including GST, together with any associated interest, penalty, fine, charge and fee or other amount;

“**tax free component**” has the meaning defined in ITAA97 (section 995-1(1));

“**taxable component**” has the meaning defined in ITAA97 (section 995-1(1));

“**temporary incapacity**” in relation to any individual natural person, means the cessation of gainful employment of that person, including temporary cessation of receipt of any gain, reward or remuneration by that person under any continuing arrangement for the gainful



employment of that person, because of mental ill-health or physical injury or condition, excluding any cessation due to the permanent incapacity of that person;

**“termination”** in relation to any right, consent, agreement or document means any termination, rescission, cancellation, discharge, determination, release, avoidance, setting aside, invalidity, invalidation, surrender, repudiation, disclaimer, abandonment, forfeiture, loss, writing off, redemption, forgoing, expiry, extinguishment, lapse, repeal, discontinuance, cessation, revocation or withholding of that right, consent, agreement or document or acceptance of any termination within any previous meaning;

**“transfer”** in relation to any asset, means any conveyance, transfer, assignment, assurance, alienation, disposition, factoring, discounting, bailment, delivery of possession, payment, sale, realisation, exchange, conversion, variation, disposal or vesting of, or dealing with, that asset;

**“trust”** includes trust, settlement and will;

**“validity”** in relation to any agreement, document, right or consent includes the validity, subsistence, enforceability, legality, recoverability, propriety, regularity and maintenance in full force and effect of that agreement, document, right or consent;

**“waiver”** in relation to any agreement or document, includes any waiver of or consent to departure from any provision of, or grant to any person of any indulgence, forbearance, concession, extension of time for payment or performance of any liability, or agreement to restrict or restrain any right of enforcement or legal action or proceeding or other right under, that agreement or document; and

**“writing”** includes facsimile transmission and any other means of communication or reproduction of words in a tangible and permanently visible form.



# TRUST DEED ATTACHMENT

## TRUST DEED

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**DEED POLL** dated on the date specified under the caption  
**SMSF Trust Deed Date** in the schedule to this Deed.

### PARTY

The person specified under the **caption SMSF Trustee** in the **schedule** to this Deed as Trustee (“Trustee”).

### RECITALS

- A The Trustee wishes to create the self managed superannuation fund specified under the **caption SMSF Name** in the **schedule** to this Deed (“**SMSF Fund**”).
- B The Trustee proposes that the SMSF Fund will be a complying superannuation fund.
- C The Trustee by execution of this Deed consents to appointment as the initial trustee of the SMSF Fund and confirms that the Trustee has read and agrees to be bound by the governing rules of the SMSF Fund as specified in this Deed.

### PROVISIONS

#### THIS DEED WITNESSES:

##### 1 INTERPRETATION

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##### 1.1 Capitalised Definitions

Meanings apply to capitalised terms used in this Deed as specified in this provision, unless the context otherwise requires:

“**Compliant SMSF**” has the meaning defined in the Rule Document;

“**Fund Contribution**” has the meaning defined in the Rule Document;

“**Fund Member**” has the meaning defined in the Rule Document; and

“**Rule Document**” means the document to which this Deed is an attachment, specifying the governing rules applicable to the SMSF Fund.

## 1.2 Statutory Definitions

Words and expressions used in this Deed, whether capitalised definitions or otherwise, which are defined in the *Superannuation Industry (Supervision) Act 1993* but which are not expressly and

separately defined in this Deed have the same meaning as defined in the *Superannuation Industry (Supervision) Act 1993* when used in this Deed.

## 1.3 Interpretational Rules

Rules of interpretation apply to this Deed as specified in this provision, unless the context otherwise requires:

- (a) **(headings)**: headings and subheadings are for convenience only and do not affect interpretation;
- (b) **(plurality)**: words denoting the singular number include the plural, and the converse also applies;
- (c) **(gender)**: words denoting any gender include all genders;
- (d) **(variants)**: a defined word or expression has corresponding effect in relation to its other grammatical forms;
- (e) **(parties)**: any reference to a party to any agreement, deed or document includes its executors, administrators, legal personal representatives, successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments)**: any reference to any agreement, deed or document includes that agreement, deed or document as amended, ratified, supplemented, novated or replaced at any time;
- (g) **(legislation)**: any reference to any legislation includes a reference to that legislation as amended, re-enacted, consolidated or replaced at any time; and
- (h) **(time)**: the expression “**at any time**” includes reference to past, present or future time and the performance of any action from time to time and any liability at all times during any specified or other period.

## 2 TRUST CREATION

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### 2.1 Trustee Declaration

The Trustee declares that the Trustee will receive and hold all future Fund Contributions and other moneys and assets, whether capital or income, to be comprised within the SMSF Fund upon trust for Fund Members upon and subject to, and in compliance with, the provisions of this Deed and the Rule Document.

## **2.2 Fund Name**

The name and title of the SMSF Fund created by this provision is the name specified under the **caption SMSF Name** in the **schedule** to this Deed or any other substituted name or title at time decided by the Trustee and specified by means of written instrument.

## **3 TRUSTEE DUTIES**

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### **3.1 Fund Purposes**

The Trustee must at any time ensure that the SMSF Fund is maintained solely for 1 or more core purposes or 1 or more core purposes and 1 or more ancillary purposes, for the purposes of and as defined in the Rule Document.

### **3.2 Fund Compliance**

The Trustee must at any time execute any document or perform any action necessary to maintain the SMSF Fund as a Compliant SMSF and must not execute any document or perform or omit any action which would or might cause the SMSF Fund to cease to be a Compliant SMSF.

## **4 STAMP DUTY**

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The Trustee must promptly within the initial applicable period prescribed by law pay any stamp or transaction or similar or other duty or tax payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.

## **5 GOVERNING LAW**

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This Deed, and the validity and performance of the trust created under this Deed, is governed by and construed under the law of the State or Territory of Australia of the residence of the Trustee or, if at any time there is more than 1 Trustee, the State or Territory of Australia of the residence of the Trustee appointed for the longest period of time, as the proper law of the SMSF Fund.



## SCHEDULE

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1: **SMSF Name**

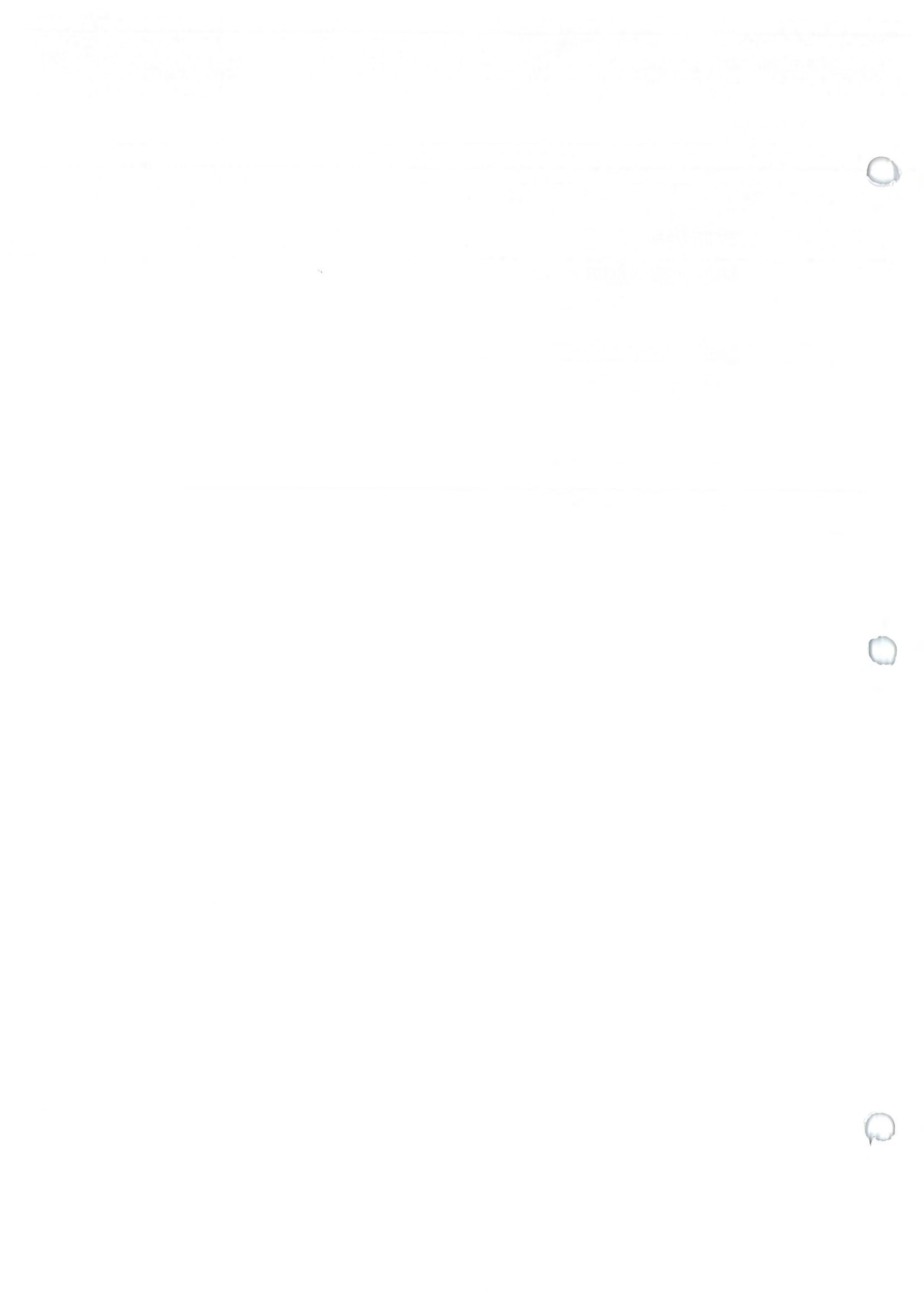
GRAZIANO SUPER FUND

2: **SMSF Trustee Name**

GRAZIANO SUPER PTY LTD ACN 611 519 343

3: **SMSF Trust Deed Date**

31 / 3 / 2016



Executed as a Deed

**EXECUTED AS A DEED** by GRAZIANO )  
SUPER PTY LTD ACN 611 519 343 as Trustee. )



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PETER GRAZIANO  
Director



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JESSICA GETTAR  
Director



