

## **QROPS55+ SELF MANAGED SUPERANNUATION FUND TRUST DEED**

### **THIS DEED OF TRUST IS MADE BY:**

**TURBO TURNER SUPER FUND PTY LTD** (a Company registered in Australia as company number ACN **(660651490)** whose registered office at the time of execution of this deed is **15 KALLAMURRA STEET, HALLETT COVE, SA, 5158** (hereinafter called "the Trustee" and "corporate Trustee").

### **WHERE THE PROVISIONS OF THE DEED CAN BE FOUND:**

#### **Definitions**

- A. Establishment of Superannuation Fund
- B. Sole Purpose of Fund
- C. Declaration of Trust
- D. Members of the Fund, Representation and Trustee
- E. Contributions
- F. Investments and Powers
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### **DEFINITIONS:**

The **Fund** is the "**STEPHEN TURNER 67 SMSF**" and the word "Fund" in this deed means all the members' account balances, and all cash, assets, reserves, investments, bank balances and accounts held by the Fund.

The **SIS law** means the *Superannuation Industry Supervision Act 1993* and the *Superannuation Industry (Supervision) Regulations 1994* and any legislation which replaces them, any legislation whether primary or secondary which controls or affects self managed superannuation funds, any relevant tax law and regulations, any decisions of the Regulator tribunals and courts, and any relevant guidance issued by the Australian Government or one of its organs.

The **Regulator** has the same meaning as provided from time to time in the

SIS law. At the time of executing this deed the regulator is the Commissioner of Taxation, Australian Taxation Office ("ATO").

**Person** includes individuals, corporations, and any legal entity.

**Member's account balance** is the accumulated benefit in the Fund which is properly allocated to the member, and where the member has more than one account in the Fund it means each of those accounts as well as all those accounts taken together.

A member's account balance is:-

- (a) **cash** if it is paid by the Fund to the member or to another person in accordance with the SIS law: when this happens this is called a **release** or an **early release**;
- (b) **transferred** if it is paid to another superannuation fund or to a Retirement Savings Account where the member *has not yet* satisfied a condition of release or early release under the SIS law; or
- (c) **rolled over** if it is paid to another superannuation fund where the member *has* satisfied a condition of release or early release under the SIS law.

The **Representative** of a person means the executor of the will or administrator of the estate of that person after that person's death, the trustee of the estate of the person if the person is under a legal disability, the parent or guardian of a person who is a child under the age of majority, or the holder of an enduring power of attorney validly granted by that person.

All words and phrases used in this deed which are not defined shall bear the same meaning as they have in the SIS law.

## **A. ESTABLISHMENT OF SUPERANNUATION FUND**

- 1. By this deed, and on the date of its execution, the Fund is established as a self managed superannuation fund.
- 2. The Fund irrevocably elects to be a regulated superannuation fund subject to the SIS law.
- 3. The SIS law is deemed to be included within the terms of this trust deed to the extent necessary to ensure that the Fund at all times complies with the SIS law as a regulated superannuation fund. If there is any inconsistency between the terms of the trust deed and the SIS law, the SIS law shall prevail.
- 4. The Fund must be operated so that it qualifies for concessional tax treatment under the *Income Tax Assessment Act 1936* and *Income Tax Assessment Act 1997* or any law which replaces them.
- 5. The Trustee must promptly pay all fees and tax (including any excess contributions tax or surcharge), and penalties imposed upon the Fund and may make use of the Fund to make these payments.
- 6. The Trustee must be a corporate trustee.

## **B. SOLE PURPOSE OF FUND**

1. The sole purpose of the Fund (divided into "core purposes" and "ancillary purposes") is as described below.
2. The core purposes are:-
  - (i) the provision of benefits for each member of the Fund on or after the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the Fund);
  - (ii) the provision of benefits for each member of the Fund on or after the member's attainment of an age not less than the age specified in the SIS law;
  - (iii) the provision of benefits for each member of the Fund on or after whichever is the earlier of:
    - (A) the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; or
    - (B) the member's attainment of an age not less than the age prescribed for the purposes of subparagraph (ii) above;
  - (iv) the provision of benefits in respect of each member of the Fund on or after the member's death, if:
    - (A) the death occurred *before* the member's retirement from any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged; and
    - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
  - (v) the provision of benefits in respect of each member of the Fund on or after the member's death, if:
    - (A) the death occurred *before* the member attained the age prescribed for the purposes of subparagraph (ii) above; and
    - (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both.
3. In carrying out one or more of the core purposes, the Fund also has the ancillary purposes of:
  - (i) the provision of benefits for each member of the Fund on or after the termination of the member's employment with an employer who had, or whose associates had, at any time, contributed to the Fund in relation to the member;
  - (ii) the provision of benefits for each member of the Fund on or after the member's cessation of work, if the work was for gain or reward in any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged *and the cessation is on account of ill-health (whether physical or mental)*;
  - (iii) the provision of benefits in respect of each member of the Fund on or after the member's death, if:
    - (A) the death occurred *after* the member's retirement from any business, trade, profession, vocation, calling, occupation or

- employment in which the member was engaged (whether the member's retirement occurred before, or occurred after, the member joined the Fund); and
- (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
- (iv) the provision of benefits in respect of each member of the Fund on or after the member's death, if:
- (A) the death occurred *after* the member attained the age prescribed for the purposes of subparagraph (ii) of clause 2 above; and
- (B) the benefits are provided to the member's legal personal representative, to any or all of the member's dependants, or to both;
- (v) the provision of such other benefits as the Regulator approves in writing.
4. It is not implied by the core and ancillary purposes referred to above that the Trustee is required to maintain the fund so that the same kind of benefits will be provided to or in respect of each member of the fund.

### **C. DECLARATION OF TRUST**

The Trustee declares that as from the date of execution of this trust deed it holds and will hold all the assets in the Fund on trust for the Fund in the terms set out in this trust deed.

### **D. MEMBERS OF THE FUND, REPRESENTATION and TRUSTEE**

1. This section should be read subject to the QROPS clauses below.
2. The maximum number of members of the Fund at any time is that permitted by the SIS law for self managed superannuation funds.
3. No member of the Fund may be an employee of another member of the Fund unless the members concerned are relatives.
4. A member of the Fund may be represented in the Fund by a Representative.
5. Each member of the Fund must be a director of the corporate Trustee except that a member of the Fund may be represented in the Fund by a Representative who in so far as permitted by the SIS law may be a director of the corporate trustee in place of or in addition to the member.
6. The Fund shall remain properly established and held on trust under the terms of this deed notwithstanding any delay in the appointment of a director of the corporate trustee, and notwithstanding any failure to comply with the provisions in this deed for membership or trusteeship.
7. Members of the Fund or those representing them may delegate to one or more persons the central management and control of the Fund.
8. In any case where the Fund would otherwise lose its status as resident in Australia members of the Fund or those representing them

must ensure that the central management and control of the Fund is exercised in Australia. And if necessary to achieve this members of the Fund or those representing them must delegate to one or more persons the central management and control of the Fund.

9. The central management and control of the Fund includes the strategic and high level decision making processes and activities of the fund which:-
- (a) formulate the investment strategy for the Fund;
  - (b) review and update or vary the Fund's investment strategy as well as monitor and review the performance of the Fund's investments;
  - (c) if the Fund has reserves – formulate a strategy for their prudential management; and
  - (d) determine how the assets of the Fund are to be used to fund member benefits.

#### **Applications for membership**

10. The Trustee may admit a person to membership of the Fund:-
- (a) if the SIS law permits that person to become a member; and
  - (b) during the lifetime of the person; and
  - (c) if an application is made by or on behalf of that person in accordance with the following provisions.
11. An application for membership of the Fund must be made in writing and signed by a person who agrees to be bound by the terms of this trust deed.
12. The application may be signed:-
- (a) by the person applying for membership of the Fund, if that person is of full legal capacity and not under a legal disability; or
  - (b) by the Representative of the person applying for membership of the Fund on behalf of that person.

#### **More than one Representative**

13. There may be more than one Representative of a member and if this is the case, they are required to act and make decisions unanimously and all references in this deed to Representative should be read as being a reference to all such Representatives.

#### **Duties of Representative and of Trustee**

14. All Representatives owe a fiduciary duty to the member of the Fund whom they represent and this includes a duty
- (a) To act honestly in all matters concerning the member or the member's account.
  - (b) To exercise, in relation to all matters affecting the member, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide.
  - (c) To ensure that all decisions are made and the Fund is operated in the best interests of the member.
  - (d) Not to make any profit or benefit in any way from the member's account or by reason of the member being a member of the Fund.
  - (e) To use best endeavours to ensure that the Trustee formulates and give effect to an investment strategy that has regard to the

whole of the circumstances of the Fund including the interest of the member.

15. The Trustee shall owe the same duties as are set out below in the Covenants of the Trustee to a member who is represented as it owes to a member who is not represented. But the Trustee may refuse to comply with decisions reached and requests made by a Representative of a member if the Trustee reasonably considers that its duties or the Representative's duties would be breached by implementing the decision or carrying out the request.

**Transfer of representation**

16. If the Representative of a member changes in any lawful manner the Trustee shall regard the member as represented by the new Representative upon being reasonably satisfied of the validity of the change.

**Disclosures upon cessation of representation**

17. Within a reasonable time after the cessation of representation of a member the Trustee shall provide the member concerned (unless requested not to do so by the member) with all necessary documentation about the Fund including copies of the Fund's last financial statement, an up to date product disclosure statement, the latest investment strategy and a copy of this trust deed and the company constitution and all amendments to those documents.

**Cessation of membership**

18. A member shall automatically cease to be a member when the following have both occurred:-
- (a) The member is no longer able to make contributions to the Fund under the SIS law.
  - (b) The member has ceased to be eligible to receive benefits from the Fund under the SIS law.
19. A member may resign from membership at any time by giving the Trustee notice in writing.

**Change of Trustee**

20. The Trustee may, and must if the members of the Fund so resolve:-
- (a) appoint by deed a new trustee being another company, provided that the new trustee executes this deed or executes another deed suitable for use by a self managed superannuation fund with a corporate trustee; and
  - (b) resign as trustee by executing a deed of resignation.

**Transfer of assets on change of trustee**

21. Upon a change of trustee the outgoing and incoming trustees must ensure as soon as possible after the change that:-
- (a) the legal title of the assets of the Fund are held by the trustee of the Fund;
  - (b) all income, contributions, transfers, rollovers and payments to the Fund are made to that trustee;
  - (c) every other thing which is necessary or desirable is done for the continuation of the Fund.
22. Upon a change of trustee any part of the Fund which is held by the

outgoing trustee is held on trust for the trustee of the Fund.

23. After a change of trustees should the outgoing trustee receive any income, contribution, transfer, rollover or payment intended for the Fund it shall be held on trust for the trustee of the Fund and the outgoing trustee shall be obliged immediately to transfer it to the trustee of the Fund.
24. If at any time there is no trustee for the Fund and the outgoing trustee holds an asset of the Fund it shall be held on trust for the Fund.
25. Where the law which applies to this deed provides that the appointment of a new trustee automatically vests the Fund in the new trustee, nothing in this deed shall be taken to indicate a contrary intention.

#### **Change to individual trustees**

26. The Trustee may resign and appoint a new trustee being individuals provided that the company executes a trust deed appropriate for a self managed superannuation fund which has individual trustees.
27. The Trustee will cease to be trustee upon that appointment and upon executing a deed of resignation.

### **E. CONTRIBUTIONS**

1. Subject to the terms of this deed all contributions and transfers and rollovers into the Fund must be accepted into the Fund and allocated to the account balance of the member of the Fund for whom they were remitted or received.
2. Prior to making that allocation the Trustee may hold the contribution transfer or rollover in a reserve account or an unallocated contributions account, and may deduct any amount payable by the Fund in respect of taxes, costs and expenses which arise from the making of the contribution transfer or rollover.
3. Any contributions to the Fund may be accepted as permitted by the SIS law and by way of example only, the SIS law describes these as:-
  - (a) mandated employer contributions [those made by an employer (or an associate of an employer) of a member of the Fund under a law or an industrial agreement for the benefit of a fund member and include super guarantee contributions, super guarantee charge and award-related contributions];
  - (b) non-mandated contributions [any other type of contribution including contributions made by an employer (or an associate of an employer) of a member of the Fund over and above their super guarantee or award obligations and contributions made by or on behalf of, a member of the Fund (other than employer contributions)];
  - (c) money or assets rolled over or transferred within the superannuation system.
4. The Fund may accept any type of financial benefit including:
  - (a) a payment of money;
  - (b) receipt of an asset in specie of any type including a chose in action;

- (c) an exchange or debt release;
  - (d) the discharge of an expense or liability of the Fund including any costs of establishing the Fund or maintaining it;
  - (e) a financial benefit given to another person on behalf of the Fund;
  - (f) a legal contractual or beneficial interest or right of any type and whether vested immediately or in the future or actual or contingent and whether held singly or jointly.
5. A financial benefit may be accepted by the Fund from anyone permitted by the SIS law, including:
- (a) from an employer of a member or an associate of the employer, a member's relative or spouse, or the government or a government agency (for example by way of super co-contributions or any other contributions for any eligible member);
  - (b) from another Australian superannuation fund;
  - (c) subject to the law of any other relevant jurisdiction, from a foreign superannuation fund or foreign pension scheme;
  - (d) from another account of the Fund;
  - (e) from an insurer;
  - (f) from anyone else and whether made on behalf of a member or not.
6. A financial benefit received by the fund and which is not remitted or received on behalf of a particular member of the Fund may be applied in the Fund in any way the Trustee sees fit.
7. In so far as permitted by the SIS law and strictly in accordance with the Trustee's duties to the members or to comply with an order of the court or an agreement between members, contributions accepted into the Fund may be split between members and transfers and rollovers may be carried out within the Fund so as to enhance the value of the account balance of one member and diminish the account balance of another member by an equal amount.
8. Dependent upon the source and type of contribution the Trustees shall preserve the member's account balance in the appropriate benefit and account categories as set out in the SIS law and in so far as the SIS law permits, the Trustees have power to
- (a) recategorise segregate divide between or split member's account balances in the Fund into one or more accounts in the Fund; or
  - (b) to remove any such segregation division or split so as to amalgamate any such accounts.
9. In so far as permitted by the SIS law contributions may be made into the Fund or a segregated part of it by a member or on his behalf despite that member receiving a pension from the Fund.
10. The Trustee shall allocate a payment made as a result of the happening of an insured event:-
- (a) to the account balance of the member of the Fund to whom the payment is intended or directed or for whom it is held on trust; or
  - (b) if the above does not apply, to the account balance of the



- member of the Fund most closely related to the insured event; or
- (c) if there is no such member, as the Trustee sees fit.
11. Except as provided elsewhere in this deed, the Trustee may refuse to accept and may return any contribution which the Fund is not permitted to accept under the SIS law.
12. When returning any contribution the Trustee may adjust the amount returned to take into account those matters permitted by the SIS law (including any change in value of the contribution, reasonable administration and transaction costs, and tax or penalties payable by reason of the making of the contribution) but only to the extent permitted by the SIS law.
13. If after the date of execution of this deed the SIS law is amended so as to extend any particular power of trustees of self managed superannuation funds to accept any amount type timing or form of contribution or a contribution from any particular source, in so far as permitted by the amendment or its transitional provisions applying to it the amendment shall operate to extend the power of the Trustee or the Fund.

## **F. INVESTMENTS and POWERS**

1. Subject to the provisions of this deed and unless prohibited by the SIS law the Trustee has all the powers of investment, lending, borrowing, acquisition, variation of investment, mixed investment, entrepreneurial enterprise, disposal, assignment, mortgage charge and provision of security, which a natural person or legal entity would have with his or its own assets; and in respect of the rights and obligations which may arise from the exercise of the powers:-
- (a) there is no geographical restriction where they may be situated or enforceable;
  - (b) there is no restriction as to the form in which they may be held;
  - (c) they may vest immediately or in the future or they may be contingent;
  - (d) they may be legal contractual or beneficial;
  - (e) they may be held solely by the Trustee or jointly or in common with others whether in partnership or by way of joint enterprise or in any way whatsoever.
2. The following powers do not limit the generality of the above but may be exercised only in so far as permitted by the SIS law.
3. The Trustee may acquire and hold, or enter into a position (either long or short or any combination of positions) in:-
- (a) cash deposits, term deposits and fixed income investments;
  - (b) foreign currency, foreign investments or investments denominated in a foreign currency;
  - (c) cryptocurrency or crypto-assets, and investments denominated in, or derivatives based on, cryptocurrency or crypto-assets;
  - (d) treasury or government bills notes stock or bonds;
  - (e) exchange traded funds, exchange traded commodities, exchange traded notes and other exchange traded products,

- stock, convertible stock, securities, bonds, warrants, futures, and futures options;
- (f) exchange traded options, which may be bought (long) and/or written (short) positions, covered or uncovered, or any combinations thereof;
  - (g) commodities, metals, minerals, gems, crystals, chattels and physical goods of any description;
  - (h) shares in any legal entity whether listed or unlisted;
  - (i) shares in partnerships and joint ventures however structured;
  - (j) unit trusts, investment trusts, listed trusts, insurance policies, shares or units in funds of any sort;
  - (k) derivatives, structured products and leveraged instruments and investments;
  - (l) contracts for differences, spreadbetting and leveraged forex;
  - (m) stocks trusts and funds mainly investing in real estate;
  - (n) intellectual property, collectables, goods and chattels.
4. The Trustee may acquire, hold, be granted or take the benefit of:-
- (a) personal or real property;
  - (b) a lease or tenancy;
  - (c) a contractual right, a licence, a promissory note, a bill of exchange or a right of action;
  - (d) a legal or beneficial interest in, or any security upon, any of the above.
5. The Trustee may establish, take a share in, own, manage, or operate:-
- (a) a partnership or joint venture;
  - (b) a business and its premises, contracts, employees, stock, equipment and goodwill;
  - (c) a concession, agency or franchise.
6. The Trustee may do all things which it regards as necessary and incidental to the exercise or the proposed exercise of the above powers or to manage the Fund including:-
- (a) operating and managing;
  - (b) marketing purchasing and selling;
  - (c) trading and supplying goods or services;
  - (d) discharging debts or making payments;
  - (e) giving a guarantee or agreeing to provide an indemnity;
  - (f) protecting securing and insuring;
  - (g) arranging or purchasing goods supplies utilities or services;
  - (h) owning hiring and running vehicles plant or equipment;
  - (i) repairing maintaining or improving;
  - (j) granting a lease or sublease, a tenancy or subtenancy, a right of possession or other interest;
  - (k) giving contractual rights or taking on contractual obligations;
  - (l) granting a concession agency or franchise;
  - (m) paying taxes rates dues fines fees or commissions;
  - (n) employing appointing or engaging others;
  - (o) giving authority to others to act, including making a power of attorney;

- (p) applying for and obtaining licences or permissions;
  - (q) making a disposition;
  - (r) opening closing operating and keeping accounts;
  - (s) dealing with creditors, claimants, debtors and wrongdoers.
7. Accounts may be internal to the Fund or external and may be any type of account, including dealing broking transaction savings or investment accounts and any other type of banking or investment facility, and may be one or more reserve accounts, segregated accounts, accounts of forfeited benefits or account balances, or accumulation, current, contribution, pension, pension payment, investment money, income, equalisation, suspense, temporary or miscellaneous accounts.
8. Employing appointing or engaging others includes obtaining secretarial administrative managerial or professional services of any type including agency legal financial brokerage tax actuarial accounting or auditing advice assistance or representation.
9. Dealing with creditors, claimants, debtors and wrongdoers includes making an arrangement with creditors or debtors, compounding a debt owed by the Fund, giving credit or time to pay, compounding or releasing a debt owed to the Fund, seeking to resolve disputes by alternative dispute resolution, and bringing or defending legal action.
10. Save as permitted by the SIS law the Trustee must not lend the Fund's money or give any other financial assistance (that is to say any assistance that improves the financial position of a person directly or indirectly including the provision of credit) using the resources of the Fund to:
- (i) a member of the Fund; or
  - (ii) a relative of a member of the Fund.
11. The Fund may only acquire and hold assets from related parties, or lend or lease to or invest in related parties (including related trusts) if this is permitted by the SIS law. By way of example at the time of this deed this is permitted only if the asset is acquired at market value and is either listed shares and securities or a direct acquisition of business real property or indirect acquisition through a related trust that meets the requirement of the SIS law (business real property being land and buildings used wholly and exclusively in a business) or is an in-house asset which takes the in-house assets of the Fund to no more than 5% of the market value of the Fund's total assets at the year end or is an acquirable asset funded by permitted borrowing.
12. The Trustee may borrow or maintain an existing borrowing but only in the circumstances permitted by the SIS law. By way of example only, at the time of the execution of this deed the SIS law permits borrowing (limited to 10% of the value of the fund) for up to 90 days in order to pay a beneficiary, to cover super surcharge debts or to meet the settlement of securities transactions, for instalment warrant type arrangements and borrowing to acquire a single acquirable asset or collection of identical assets which have the same market value or a replacement asset.
13. The power to provide security includes a power to give a charge over or in relation to any asset of the fund in relation to a derivatives contract,

or in relation to a limited recourse borrowing arrangement, in so far as permitted by the SIS law.

14. The power to lend includes a power to lend stock or other assets to another party in consideration for payment for use of that asset in so far as permitted by the SIS law.
15. Any part of the Fund may be held on behalf of the Trustee by one or more nominees agents custodians or trustees.

**Insurance**

16. Subject to the clause immediately below the Trustee may purchase and hold any type of insurance whether for the benefit or protection of the Fund or any of its investments, a member of the Fund, the Trustee or a director of the Trustee, or to protect a member's income or capital or account balance, or to provide death or disablement benefit, and may:-
  - (a) use contributions or a member's account balance or the balances within the Fund including the Fund's earnings to pay the insurance premium or premiums;
  - (b) surrender sell transfer settle charge or assign any such policy of insurance or any right to its proceeds;
  - (c) receive the proceeds of any such policy of insurance and credit a member's account balance or any part of the Fund with them;
  - (d) retain the said proceeds, and invest and use them in any way that any asset of the Fund may be invested and used by this deed;
  - (e) pay the said proceeds and any income derived from those proceeds to any person or use them to provide a financial benefit to any person in any way whatsoever.

The Trustee shall have absolute discretion as to the manner in which the aforesaid powers in respect of a policy of insurance or its proceeds are exercised provided that such discretion shall only be exercised in accordance with any rights and equities in respect of them and cannot be exercised other than in accordance with the SIS law.

17. The Trustee must not provide an insured benefit in relation to a member of the Fund who became a member on or after 1 July 2014 unless the insured event is consistent with a condition of release specified in the SIS law namely death, terminal medical condition, or temporary or permanent incapacity.

**Conflict of interest**

18. Subject the SIS law and the general law, the Trustee may exercise any of its powers notwithstanding that it, or any of the members of the Fund, or directors of the trustee, have an interest in the exercise of the power or anything which results from the exercise of the power.
19. If after the date of execution of this deed the SIS law is amended so as to extend any particular power of trustees of self managed superannuation funds to invest manage or use the Fund, in so far as permitted by the amendment or its transitional provisions which apply to it the amendment shall operate to extend the power of the Trustee or the Fund.

## **G. CONDITIONS OF RELEASE or EARLY RELEASE**

1. This section should be read subject to the QROPS clauses below.
2. The Trustee must ensure that the account balance of each member of the Fund is preserved and may only release it on the happening of such an event and in such circumstances, at such time, in such amount, using such category of benefits, in such proportion, and with such frequency, as is permitted by the SIS law.
3. At the time of execution of this deed by way of example only the SIS law permits the release or early release of the member's account balance upon the happening of the following events:-
  - (a) retirement;
  - (b) termination of gainful employment;
  - (c) attaining age 65;
  - (d) permanent incapacity;
  - (e) attaining preservation age;
  - (f) temporary incapacity;
  - (g) terminal medical condition;
  - (h) death;
  - (i) compassionate ground;
  - (j) severe financial hardship;
  - (k) a request for release from a former temporary resident permanently departing Australia if permissible;
  - (l) a request or release authority given by the Commissioner of Taxation;
  - (m) upon the giving of a member release authority;
  - (n) upon approval by the Regulator.
4. The Trustee may postpone the payment of benefit in so far as permitted by the SIS law if the Trustee is reasonably of the opinion that this is necessary to await the resolution of a dispute as to entitlement or to comply with the Trustee's obligations in the case of a payment flag.
5. If after the date of execution of this deed the SIS law is amended so as to extend the power of trustees of self managed superannuation funds to release a member's account balance at any particular time or upon the happening of any particular event, in so far as permitted by the amendment or its transitional provisions which apply to it the amendment shall operate to extend the power of the Trustee or the Fund to do so.

## **H. FORM OF RELEASE**

1. This section should be read subject to the QROPS clauses below.
2. In so far as permitted by the SIS law, but only to satisfy the member's entitlement or upon the member's direction, the Trustee may cash, transfer, roll over or release the member's account balance in any way whatsoever.
3. Without prejudice to the generality of clause 2 and in so far as permitted by the SIS law the type of benefits which may be made or paid by the Fund or (in so far as appropriate) arranged and purchased by the Fund include:-

- (a) a pension or life pension;
  - (b) an annuity or life annuity;
  - (c) interim payments, lump sum or series of lump sums;
  - (d) a rollover or transfer of an asset in specie;
  - (e) a rollover or transfer to another fund or funds;
  - (f) a rollover or transfer to another account within the Fund;
  - (g) a market-linked pension;
  - (h) periodical payments;
  - (i) repayments of loans or interest;
  - (j) release from a loan or debt;
  - (k) any form of income stream, including a transition to retirement income stream;
  - (l) any form of benefit pension or income stream which lawfully has been paid to a member by another superannuation fund, supported by assets which have now been transferred or rolled over into the Fund;
  - (m) any combination of the above.
4. A member's account balance or benefits may be adjusted transferred or paid in accordance with an agreement or court order under the Family Law Act or under the Family Law (Superannuation) Regulations 2001 or any law replacing these provisions.
5. A pension payable by the Fund where there is an account balance attributable to the beneficiary has the following rules:
- (a) The capital supporting the pension cannot be added to by way of contribution or rollover after the pension has commenced.
  - (b) Payment of this type of pension must be made at least annually.
  - (c) The total of payments in any year (including under a payment split but excluding amounts rolled over) is at least the amount calculated under the SIS law and known as the minimum payment amounts.
  - (d) The pension is transferable to another person only on the death of the member or reversionary beneficiary, as the case may be.
  - (e) The capital value of the pension and the income from it cannot be used as a security for a borrowing.
  - (f) The pension cannot be commuted, in whole or in part, unless the commutation results from the death of the member or a reversionary beneficiary, or the member is entitled to the release of the member's account balance without restriction, or the sole purpose of the commutation is:
    - (i) to pay a superannuation contributions surcharge; or
    - (ii) to give effect to an entitlement of a non-member spouse under a payment split; or
    - (iii) to meet the rights of a client to return a financial product under Division 5 of Part 7.9 of the *Corporations Act 2001*;
- or in other circumstances set out in the relevant part of the SIS law.

6. A pension payable by the Fund where the member's account balance was purchased with a rollover superannuation benefit resulting from a commutation of a complying annuity or a pension has the rules set out in clauses (b) to (e) of the immediately preceding clause, but also must comply with the requirements of either Regulations 1.06(7) and 1.07B or Regulations 1.06(8) and 1.07C of the Superannuation Industry Regulations 1994.
7. Unless restricted by the SIS law, the Trustee may transfer or rollover the member's account balance, rollback a pension into the Fund, carry out an rollover within the Fund, stop a pension, start a new pension or commute a pension upon the request of the person entitled to the pension.
6. Pension benefits may be suspended in accordance with the SIS regulations during a period when the beneficiary is the holder of a paid public office.
7. The Trustee may deduct from any payment of benefit taxes costs and charges arising by reason of the payment or as required to do by any law.
8. If the Trustee is reasonably of the opinion that a person to whom a benefit is payable is under a legal disability or unable to manage his own affairs the Trustee may instead provide the benefit to another person for the maintenance, education, advancement or otherwise for the benefit of the person upon any terms and conditions as the Trustee thinks fit.
9. Notwithstanding any other provision, the Trustee may pay or provide to the member at the times and in the manner permitted by the SIS law:-
  - (a) his unrestricted non-preserved benefits;
  - (b) his restricted non-preserved benefits.
10. Unless the Trustee otherwise decides or is ordered by the court, whilst a person to whom a benefit is payable is and remains bankrupt the Trustee may disregard any request for particular payments to be made and shall pay only the minimum benefit in respect of the person as is permissible under the SIS law.
11. If after the date of execution of this deed the SIS law is amended so as to extend the power of trustees of self managed superannuation funds to release a member's account balance in any particular manner, in so far as permitted by the amendment or its transitional provisions which apply to it the amendment shall operate to extend the power of the Trustee or the Fund to do so.

## **I. MEMBER'S DEATH**

### **Binding Death Benefit Nomination**

1. A member may either before or after becoming a member give to the Trustee a Binding Death Benefit Nomination ("BDBN") specifying how the member's account balance should be distributed in the event of the member's death.
2. The BDBN may provide for:-
  - (a) one or more persons who are entitled to receive a benefit;
  - (b) one or more ways in which the benefit is to be conferred;

- (c) the proportion of the member's account balance which is to be allocated to satisfy the entitlement so conferred;
  - (d) one or more conditions which have to be satisfied or events which should occur before the benefit is to be conferred;
  - (e) one or more alternative provisions if any such conditions are not satisfied or events do not occur;
  - (f) the benefits to be subject to one or more conditions or encumbrances;
  - (g) the obligation to make a distribution or pay a pension not to happen automatically upon the member's death;
  - (h) the member's account balance or any benefit to be paid to the member's estate for distribution in accordance with the member's will or the laws of intestacy;
  - (i) the manner of discharge of any taxes expenses and liabilities arising from the member's death or arising from the payment of benefit;
  - (j) another specified document or documents to contain the member's direction.
3. In order to be valid a BDBN:-
- (a) must be made in writing;
  - (b) must be made on paper signed by the member in the physical presence of two witnesses each of whom is 18 or over and neither of whom are persons mentioned in it;
  - (c) the original document so created must be given to the Trustee by or on behalf of the member;
  - (d) the original document so created must be received by or on behalf of the Trustee prior to the death of the member.
4. The following procedure shall also be followed but failure to follow this procedure will not invalidate the BDBN:-
- (a) prior to making a BDBN in order for the member to make an informed decision as to its content the Trustee shall provide the member with such information as the member requests or as specified by the SIS law;
  - (b) after receiving the original BDBN the Trustee shall sign it to acknowledge its receipt, copy the document as acknowledged, file the original with the papers of the Fund and provide the member with the copy document as acknowledged.
5. The BDBN may make no provision for its expiry or it may state that it will automatically expire at a time after it was first signed, or last confirmed or amended by the member. If it contains no provision for its expiry it will remain current until amended or revoked by the member or by order of the court.
6. The member may confirm a BDBN by giving the Trustee a written notice signed and dated to that effect at any time before the end of a period of three months after the expiry of the BDBN. If a BDBN expires and is not confirmed within the time specified it shall cease to be current.
7. The member may only amend or revoke a BDBN by giving the Trustee another BDBN validly created and given to the Trustee in the



manner required by clause 3 above.

8. A Representative may not make amend confirm or revoke a BDBN.

**Expression of wishes**

9. An Expression Of Wishes ("EOW") and any changes to it must be made in writing by the member. If it is signed by the member it need not be witnessed but if made in any other way it must be witnessed by at least one witness.
10. An EOW and any changes to an existing one can be made by the member's Representative provided that:-
  - (a) the member is still alive at the time;
  - (b) the change is made with the member's knowledge and approval; and
  - (c) the member has the mental capacity to make the change.
11. An EOW may be made in one or more documents but if there is any inconsistency between them the wishes expressed in the later document or documents shall prevail over earlier ones.

**If there is a Binding Death Benefit Nomination**

12. Subject to the provisions of this deed and the SIS law, or order of the court, if at the time of the death of the member there is a valid and current BDBN specifying how the member's account balance or any part of it should be distributed or that a pension should be paid then the Trustee shall distribute that balance or part balance and/or pay that pension in accordance with the provisions in the BDBN: and the obligation to make such distribution and pay such pension shall be regarded as:-
  - (a) unless stated otherwise in the BDBN, happening automatically upon the member's death; and
  - (b) having such force and validity as if the BDBN had been incorporated within this trust deed.
13. If any provision in the BDBN irremediably fails either because of the SIS law or for any other reason then the part of the member's account balance which is referable to that failed provision shall be regarded as not provided for in a valid and current BDBN.

**If there is no Binding Death Benefit Nomination**

14. If at the time of the death of the member there is any part of the member's account balance for which there is no valid and current BDBN specifying how that part should be distributed then that part shall be distributed by the Trustee as the Trustee sees fit having regard to any expression of wishes and/or will made by the member.

**Further provisions**

15. The Trustee may pay or agree to pay an amount to a beneficiary which exceeds that beneficiary's share of the account balance of the deceased member by way of anti-detriment payment if the SIS law so permits.
16. The Trustee shall be entitled to deduct from any distribution or payment arising from the death of a member any taxes, costs and expenses payable by the Fund which arise or will arise from the making the distribution or payment.
17. Any cashing or distribution of the member's account balance made by

the Trustee and arising from the death of a member shall:-

- (a) only be done in so far as permitted under the SIS law; and
  - (b) shall not be done if the Trustee is aware that to do so would breach a court order.
18. If after the date of execution of this deed the SIS law is amended so as to extend the power of trustees of self managed superannuation funds to make provision for any person after the death of a member, in so far as permitted by the amendment or its transitional provisions which apply to it the amendment shall operate to extend the power of the Trustee or the Fund to do so.

## **J. COVENANTS BY THE TRUSTEE**

1. By this deed the Trustee covenants as follows:-

- (a) To act honestly in all matters concerning the Fund.
- (b) To exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide.
- (c) To perform the Trustee's duties and exercise the Trustee's powers in the best financial interests of the beneficiaries. This also applies in respect of payments to a third party by, or on behalf of, the Fund.
- (d) To keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (a) that are held by the Trustee personally; or
  - (b) that are money or assets, as the case may be, of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund.
- (e) Not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising its functions and powers *except that* this covenant does not prevent the Trustee from engaging or authorising persons to do acts or things on its behalf.
- (f) To formulate, review regularly and give effect to an investment strategy for the whole of the circumstances of the Fund, including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and

- prospective liabilities;
- (v) whether the Trustee should hold a contract of insurance that provides insurance cover for one or more members of the Fund.
  - (g) If there are any reserves of the Fund—to formulate, review regularly and give effect to a strategy for their prudential management, consistent with the Fund's investment strategies and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.
  - (h) To allow a beneficiary of the Fund access to any prescribed information or any prescribed documents.
2. An investment strategy is taken to be in accordance with paragraph (f) above even if it provides for a specified beneficiary or a specified class of beneficiaries to give directions to the Trustee, where:
    - (a) the directions relate to the strategy to be followed by the Trustee in relation to the investment of a particular asset or assets of the Fund; and
    - (b) the directions are given following compliance with the rules as to investment strategies which may require certain information and investment strategy options to be given to the member.
  3. Each of the directors of the corporate Trustee are also bound by the SIS law by these covenants as if they were parties to this trust deed. And the reference in this section to care and diligence is a reference to the degree of care and diligence that a reasonable person in the position of director of the Trustee would exercise in the Trustee's circumstances.
  4. There may be more than one investment strategy, each to suit segregated parts of the Fund and/or the individual circumstances of members.

## **K. QROPS CLAUSES**

1. It is intended that the Fund shall be a Qualifying Recognised Overseas Pension Scheme (QROPS) for the purposes of the Commissioner of Taxation and also for the purposes of Her Majesty's Revenue and Customs of the United Kingdom (HMRC).
2. The Fund is not an occupational pension scheme and it is or will be established in Australia where there is a body that regulates superannuation schemes, and the Fund is or will be regulated by that body.
3. The Fund is open to residents of Australia.
4. The Fund is established in a country with a system of personal taxation that provides tax relief in respect of pensions.
5. The Fund is intended to be approved or recognised by, or registered with, the relevant tax authorities as a pension scheme in Australia as defined by section 995-1 of the Income Tax Assessment Act 1997.
6. In the country in which the Fund is established tax relief is available in respect of benefits paid by the Fund to a member who is not resident, and that tax relief (or tax relief that is substantially the same) is also

available to members of the scheme who are resident.

7. The country in which the Fund is established has a double taxation agreement with the United Kingdom which contains provisions about the exchange of information between the parties.
8. The benefits payable to a member of this Fund, to the extent that they consist of the member's relevant transfer fund or ring-fenced transfer funds, are payable no earlier than they would be if pension rule 1 in section 165 of the Finance Act 2004 applied. To ensure that this can never happen, no member of this Fund can be below the age of 55. The Trustee shall make all necessary checks and request sight of all necessary documents to satisfy itself as to the age of any applicant for membership of the Fund and must refuse to admit to membership any applicant below that age.
9. The Trustee has undertaken, or intends of undertake to HMRC to comply with the reporting and information requirements and to inform HMRC it if the Fund ceases to be a recognised overseas pension scheme.
10. The Trustee (as scheme manager) intends to confirm, or has confirmed to HMRC that the Trustee understands its potential liability to the overseas transfer charge and intends to undertake or has undertaken to operate the charge including by meeting the Trustee's liabilities to the charge,
11. Notwithstanding any provision to the contrary in this deed the Trustee may accept into the Fund transfers which are treated as non-concessional contributions which exceed the applicable non-concessional contributions cap.
12. Notwithstanding any provision to the contrary in this deed the Trustee may establish maintain and accept a transfer into, an arrangement in the Fund under which no other sums or assets are held.

## **L. LIABILITY and INDEMNITIES**

1. Except for liability arising from the SIS law or another law the Trustee or a director of the corporate Trustee is only liable for
  - (a) failure to act honestly in a matter concerning the Fund; or
  - (b) intentionally or recklessly failing to exercise, in relation to a matter affecting the Fund, the degree of care and diligence which a director of the corporate Trustee is required to exercise; or
  - (c) a liability for a monetary penalty under a civil penalty order.
2. Neither the Trustee nor a director of the corporate Trustee is liable to the Fund or to a member of the Fund for any act or omission which reasonably appears to the Trustee to be necessary to avoid or rectify a contravention of the SIS law.
3. In so far as permitted by the SIS law the Trustee or a director of the corporate Trustee may use the Fund to pay the costs arising from a claim made for a breach of this deed or for failing to follow the investment strategy including the cost of defending such a claim.
4. The Trustee or a director of the corporate Trustee may be indemnified

out of the assets of the Fund in respect of a liability incurred while acting as a Trustee or as director except for liability as set out in clause 1 above.]

5. The provisions of this section apply to Trustees and directors of the corporate Trustee even if their appointment has ended.

## **M. MISCELLANEOUS**

1. The headings in this deed may be used as an aid to interpretation but do not restrict any powers conferred by this deed.

### **Provision of information and documents**

2. The Trustee must provide information to prospective members, existing members and former members of the Fund and other persons in accordance with the product disclosure rules contained in Part 7.9 of the *Corporations Act 2001* and the *Corporations Regulations*, although these requirements may be relaxed in the case of a self managed superannuation fund.
3. A member of the Fund shall be entitled to receive:-
  - (a) copies of the Fund's financial statements, investment strategies, a copy of this trust deed and the company constitution and all amendments to those documents;
  - (b) copies of the resolutions of members and of the Trustee;
  - (c) information and documentation about the Fund as would reasonably be required for that member at any particular time to understand the state and performance of the Fund and the member's account balance and entitlements and to participate in consideration of the investment strategy,

*provided that* a member shall not be entitled to receive any information and documentation which is confidential to any other person.
4. The Trustee shall provide the Australian Taxation Office (ATO) with such documents and information as the SIS law requires and the ATO shall request.
5. The Trustee may provide the ATO, the auditor, an accountant or an actuary or any other person such documents and information as the Trustee reasonably believes may be required to fulfil its obligations under this deed or under the SIS law and to ensure that the core and ancillary principles of the deed are achieved.
6. The Trustee may provide such documents and information to the appropriate authority as it may be obliged to do under the SIS law if the Fund or its members have breached the SIS law or on becoming aware of the occurrence of an event having a significant adverse effect on the financial position of the Fund.
7. The Trustee may request a member of the Fund or the Representative of a member of the Fund to provide such information and evidence as is reasonably required to decide upon the member's entitlement to make contributions or for the cashing transfer or rollover of the member's account balance.

### **Remuneration, expenses and other payments**

8. The Trustee of the Fund may receive remuneration from the Fund or from any person for duties or services performed by the Trustee in relation to the Fund, provided it is permitted by the SIS law.
9. A director of the corporate Trustee of the Fund may receive remuneration from the Fund or from any person (including the corporate Trustee) for duties or services performed by the director in relation to the Fund, provided it is permitted by the SIS law.
10. By way of example only, at the time of this deed the SIS law permits a trustee or a director of a corporate trustee (if suitably qualified and licensed) to receive remuneration at arm's length rates for duties or services performed as a business and not in the capacity of trustee.
11. In so far as permitted by the SIS law the Trustee may use the Fund:-
  - (a) to pay all costs or expenses of the Fund;
  - (b) to reimburse another who has paid or undertakes to pay any cost or expense of the Fund;
  - (c) to pay all costs or expenses of the Trustee or of a member of the Fund or of the Representative of a member of the Fund or of a director of the corporate Trustee if all members of the Fund consent to the payment or to the extent that such cost or expense is genuinely incurred:-
    - (i) in pursuance of a core or ancillary purpose of the Fund; or
    - (ii) to establish or maintain the Fund or its corporate Trustee; or
    - (iii) to terminate the Fund or to wind up its corporate Trustee; or
    - (iv) to ensure that the Fund qualifies for concessional tax treatment under the SIS law.
12. Without prejudice to the generality of the words "cost or expense" in the above clause it includes one-off or periodic payments fees or liabilities, fees payable to the government or an organ of the government, all operating costs, all costs of carrying out any duties and powers provided by this deed, the cost of equipment stationery and consumables, depreciation, amortisation, revaluations, travelling costs, expenses incurred attending meetings, disbursements, bank charges, transaction charges, interest and taxes, fees, penalties, surcharges, fines, insurance premiums, death and disability benefits, and other liabilities.

#### **Division of credits and debits**

13. In accordance with the SIS law the Trustee shall distribute all costs fees taxes surcharges and penalties payable by the Fund, investment returns and any refund of the same amongst all members of the Fund and in respect of their benefits in a fair and reasonable manner.

#### **Accounting year**

14. The Trustee shall administer the fund and keep its accounts so as to cover the year of income beginning and ending on a date specified in the SIS law (currently 1 July to 30 June), but if those rules are relaxed the Trustee may choose a financial year which is convenient.

### **Solvency**

15. The Trustee must comply with SIS law financial management standards to ensure that the Fund remains solvent or to deal with its insolvency.

### **Winding up**

16. The Trustee may do all things necessary to terminate or wind-up the Fund if this is required or necessary.

## **N. AUDIT and RECORDS**

1. For each year of income as soon as in practicable or at least within the time required by the SIS law the Trustee shall appoint an approved auditor to audit the Fund and shall arrange and permit the audit.
2. The Trustee shall comply with the accounts, record keeping, audit and reporting obligations in the SIS law.
3. Those requirements at the time of executing this deed are as follows:-
  - (a) to keep and retain accurate accounts and records to enable the Fund's accounts and statements and the annual return to be prepared and the Fund to be conveniently and properly audited;
  - (b) to prepare those documents or accounts and a statements which are required by the SIS law;
  - (c) to provide all necessary documents and information to the auditor and receive the auditor's report;
  - (d) to lodge an annual return with the ATO.
4. Records of the Fund:-
  - (a) shall be kept by the Trustee for at least 5 years after the end of the year of income to which the transactions relate (except that minutes of trustee meetings and meetings of directors of the corporate trustee, trustee changes, changes of directors of the corporate trustee, consents to act as trustees and all reports given to members shall be kept for at least 10 years);
  - (b) shall be kept in Australia;
  - (c) shall be in the English language or in a form which is readily accessible and convertible into writing in the English language.

## **O. AMENDING THIS DEED**

1. Subject to the provisions below, this deed may be amended by the Trustee but only if a majority by value of the members' account balances of the Fund (if appropriate by a member's Representative) have agreed to the amendment, and provided that the amendment would comply with the SIS law.
2. No amendment to the deed may be made in any way whatsoever so as to affect or potentially affect, whether directly or indirectly:-
  - (a) after the death of a member in respect of that member's account balance or any part or proportion of it:
    - (i) its amount;
    - (ii) the way in which it would be distributed or paid;


- (iii) the timing of any such distribution or payment;
  - (iv) to whom or for whose benefit it would or could be distributed or paid;
  - (v) whether it falls into the member's estate.
- (b) if a member is under a legal disability the amount of that member's account balance or any part or proportion of it.
- 3. Any permitted amendment to the deed may be made so as to operate from the date of the amendment or subject to SIS law it may be made so as to operate retrospectively.
- 4. Any permitted amendment to the deed must be made in writing dated and signed by or on behalf of the Trustee and shall be firmly affixed to the deed and each member of the Fund shall be notified in writing of the amendment which has been made unless the requirement for such notification is waived by the member.

#### **P. APPLICABLE LAW**

The law governing the Fund and this deed is that which applies in the State or Territory of the Trustee's address at the beginning of this deed.



**EXECUTED** as a Deed by **TURBO TURNER SUPER FUND PTY LTD** ACN 660651490 in accordance with section 127 of the Corporations Act 2001 (signed by two directors of the company or by the director and company secretary of a company with a sole director):



**STEPHEN TURNER (director/secretary)**

Date of execution of this deed: 5/07/2022

**TO COMPLETE THIS DOCUMENT AND EXECUTE IT**

1. Ensure that the following appears in the document correctly:-
  - (a) the name of the company exactly as it appears on the certificate of registration; please check there are no extra or omitted spaces or characters and that it is in the correct case.
  - (b) the ACN number of the company;
  - (c) the registered office of the company;
  - (d) the chosen name for the superannuation fund; please check there are no extra or omitted spaces or characters and that it is in the required case.
2. **IMPORTANT!** The name of a signatory should accord exactly with their ID documentation and the name of the company and of the fund should be 100% accurate.
3. Print out the document.
4. The company must now execute the trust deed. This is done by directors signatures in the space provided. Ensure that the director's name is printed just below. The rule in section 127 of the Corporations Act 2001 which applies in this case is that the deed must be signed by:-
  - (a) 2 directors of the company; and/or
  - (b) in a sole director company, that director if also company secretary.