

## **SUPERANNUATION FUND DEED**

Tran Nguyen Self Managed Super Fund

Tran Nguyen SMSF Pty Ltd  
ACN: 633 915 401  
(Trustee)

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*Demystifying Law, Delivering Value*

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## Date

**This deed** is made on the 6<sup>th</sup> June 2019

## Parties

<b>Name</b>	Tran Nguyen SMSF Pty Ltd ('Trustee')
<b>Address</b>	C/- Bartley Partners, 322 Glen Osmond Road, Myrtle Bank, SA, 5064

<b>Name</b>	Tin Tran ('Member')
<b>Address</b>	9C Lindsay Street Vale Park SA 5081

<b>Name</b>	Toya Tran Nguyen ('Member')
<b>Address</b>	9C Lindsay Street Vale Park SA 5081

## Recitals

- A. The Trustee hereby establishes an indefinitely continuing complying superannuation fund (Fund) which is:
- a. A self-managed superannuation fund for the purposes of the Superannuation Industry (Supervision) Act 1993-,
  - b. A complying superannuation fund for the purposes of the Income Tax Assessment Act 1997,
  - c. A regulated superannuation fund for the purposes of the Superannuation Industry (Supervision) Act 1993;
  - d. An accumulation fund within the meaning of the Superannuation Industry (Supervision) Regulations 1994; and e. subject to the duties and powers under this Deed for the purpose of providing superannuation benefits for those persons who, being eligible for membership, become Members of the Fund and their Dependants.
- B. The Trustee agrees to act as Trustee of the Fund.

Now this deed witnesses that the Trustee hereby constitutes an indefinitely continuing superannuation fund known as the "Tran Nguyen Self Managed Super Fund" vested in and controlled and administered by the Trustee upon the trusts of this Deed (which includes this preamble, the Recitals and all of the following Parts hereof) effective from the date hereof.

## Operative Terms

### 1 Definitions

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<b>Term</b>	<b>Meaning</b>
<b>Account</b>	an account established by the Trustee for the purpose of administering the Fund or calculating the Benefits payable in respect of a Member or for any other purpose under this Deed
<b>Account-Based Pension</b>	has the meaning given in sub-regulation 1.03(1) of the SIS Regulations
<b>Allocated Pension</b>	a Pension that complies with sub-regulation 1.06(4) of the SIS Regulations
<b>Auditor</b>	an approved auditor within the meaning of the Relevant Law being the auditor appointed by the Trustee from time to time to audit the Fund
<b>Beneficiary</b>	a person (including a Member or a former Member) beneficially entitled to a Benefit from the Fund
<b>Benefit</b>	the benefits payable or that may be payable to a Member or his Dependants or any other person under this Deed or the Relevant Law
<b>Commencement Date</b>	the date of this Deed
<b>Deed</b>	this Deed
<b>Dependant</b>	<ol style="list-style-type: none"><li>a) a Member's spouse and, where there is more than one person who fits that description, the person determined by the Trustee to be the Member's spouse;</li><li>b) a Member's child including any person who is, in the Trustee's opinion, maintained as a child by the Member;</li><li>c) any other person whom the Trustee considers to be substantially financially dependant on the Member at the relevant time; and</li><li>d) any other person considered to be a dependant under the Relevant Law</li></ol>
<b>Eligible Fund</b>	a superannuation fund, an approved deposit fund, an eligible rollover fund, a rollover annuity, or any other like fund or annuity which the acceptance of monies or assets from, or the payment or transfer of monies or assets to, would not, in the opinion of the Trustee, be in breach of the Relevant Law

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<b>Term</b>	<b>Meaning</b>
<b>Eligible Person</b>	any person who is eligible to become a member of a self managed superannuation fund under the Relevant Law
<b>Financial Year</b>	<ul style="list-style-type: none"><li>a) the period from the Commencement Date to the following 30 June;</li><li>b) the period from each subsequent 1 July to each following 30 June before the termination of the Fund;</li><li>c) the period from the last 1 July before the termination of the Fund to the date of termination of the Fund; and</li><li>d) such other period ending on such other date as the Trustee may from time to time determine</li></ul>
<b>Fund</b>	all of the assets from time to time held by the Trustee in the trusts established by this Deed
<b>Member</b>	a person who has been admitted to membership of the Fund and has not ceased membership of the Fund
<b>Old-Age Pension</b>	has the meaning given in section 10 of the SIS Act
<b>Pension</b>	has the meaning given in section 10 of the SIS Act
<b>Pension Standards</b>	<ul style="list-style-type: none"><li>a) for an Account-Based Pension, the standards in sub-regulation 1.06(9A) of the SIS Regulations;</li><li>b) for an Allocated Pension, the standards in sub-regulation 1.06(4) of the SIS Regulations;</li><li>c) for a Transition to Retirement Income Stream, the standards in the definition of that term in sub-regulation 6.01(2) of the SIS Regulations; and</li><li>d) for any other Old-Age Pension, the relevant standards contained in the SIS Regulations</li></ul>

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<b>Term</b>	<b>Meaning</b>
<b>Relevant Law</b>	<p>that legislation which must be complied with, or that the Trustee considers desirable to comply with, in order for the Fund to be a regulated and complying self managed superannuation fund or such other fund (whether by another name) that is entitled to concessional treatment for Taxation purposes. That legislation may include:</p> <ul style="list-style-type: none"> <li>a) the SIS Act;</li> <li>b) the SIS Regulations;</li> <li>c) the <i>Superannuation (Financial Assistance Funding) Levy Act 1993</i> (Cth);</li> <li>d) the <i>Superannuation (Resolution of Complaints) Act 1993</i> (Cth);</li> <li>e) the <i>Superannuation (Rollover Benefits) Levy Act 1993</i> (Cth);</li> <li>f) the <i>Superannuation Entities (Taxation) Act 1987</i> (Cth);</li> <li>g) the <i>Superannuation Supervision Levy Act 1991</i> (Cth);</li> <li>h) the <i>Income Tax Assessment Act 1936</i> (Cth);</li> <li>i) the <i>Income Tax Assessment Act 1997</i> (Cth); and</li> <li>j) any other legislation, requirements, standards, guidelines, rulings or announcements</li> </ul>
<b>Review Date</b>	the final day of each Financial Year and/or any other date the Trustee determines in its absolute discretion
<b>SIS Act</b>	the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)
<b>SIS Regulations</b>	the <i>Superannuation Industry (Supervision) Regulations 1994</i> (Cth)
<b>Taxation</b>	includes income tax (including capital gains tax, tax on eligible termination payments and tax on contributions), payroll tax, land tax, goods and services tax, stamp duty and any other taxes or duties
<b>Transition to Retirement Income Stream</b>	has the meaning given by sub-regulation 6.01(2) of the SIS Regulations
<b>Trustee</b>	the trustee(s) for the time being of the Fund

## **2 Rules of interpretation**

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- a) Any provision of this Deed must be read down to the extent necessary to be valid. If that is not possible, it must be severed. All other provisions of this Deed are unaffected.
- b) A provision of this Deed will not be construed to the disadvantage of a party because that party was responsible for including that provision and/or that provision benefits that party.
- c) In this Deed unless the contrary intention appears:
  - (i) a person includes any other legal entity and vice versa;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a gender includes all other genders;
  - (iv) where an expression is defined, its other grammatical forms have a corresponding meaning;
  - (v) a clause or annexure is a clause of or an annexure to this Deed;
  - (vi) a reference to a document is to that document as amended or varied;
  - (vii) any legislation includes any subordinate legislation and amendments;
  - (viii) conduct includes any act, omission, representation, statement or undertaking whether or not in writing;
  - (ix) 'writing', 'written' and 'in writing' include any mode of representing or reproducing words in a visible form; and
  - (x) 'including', or similar words, does not limit what else might be included.

Headings are for convenience and do not affect the interpretation of this Deed.

## **3 Relevant Law**

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### **3.1 Inconsistency**

Any provision of this Deed that is inconsistent or conflicts with the Relevant Law or prevents the Trustee from complying with the Relevant Law must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this Deed but only to the extent necessary to avoid that effect. All other provisions of this Deed continue to be valid and enforceable.

### **3.2 Power to act in accordance with Relevant Law**

The Trustee has the power to do all acts and things, or to omit to do such acts and things, as the Trustee considers necessary, desirable or expedient for the Fund to comply with the Relevant Law.

### **3.3 Deemed inclusion of Relevant Law**

Notwithstanding any provision of this Deed, any clause or provision that must be included in this Deed from time to time in order for the Fund to comply with the Relevant Law is deemed to be included in this Deed as if every such provision was set out in this Deed, but only for so long as that deemed inclusion is necessary for the Fund to comply with the Relevant Law.

## **4 The Fund**

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### **4.1 Establishment**

By this Deed the Trustee establishes the Tran Nguyen Self Managed Super Fund.

### **4.2 Fund vested in Trustee**

- (a) The Fund will be vested in the Trustee.
- (b) The Trustee will at all times hold, control and manage the Fund in accordance with the provisions of this Deed.
- (c) No Member will have any beneficial interest in the Fund or any asset of the Fund.

### **4.3 Purpose**

Trustee must be a Constitutional Corporation or where the Trustee is not a Constitutional Corporation the primary purpose of the Fund shall be to provide old age pension and maintained solely for one or more of the purposes laid out in section 62 of the SIS Act.

## **5 Trustee**

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### **5.1 Number of Trustees**

- (a) Where the Trustee consists of a constitutional corporation, there will only be one Trustee.
- (b) Where the Trustee consists of natural persons, there may be any number of Trustees subject to any minimum and maximum number prescribed by the Relevant Law.

### **5.2 Appointment and removal**

- (a) Members may at any time by deed:
  - (i) remove any Trustee who is not a Member or a person acting as Trustee pursuant to **clauses 5.2(c) to 5.2(f)**;
  - (ii) appoint any person in that Trustee's place; and/or
  - (iii) appoint any person as an additional or replacement Trustee.
- (b) A Trustee will continue to hold office until the Trustee:
  - (i) resigns by notice to the Members;
  - (ii) if a natural person, dies;
  - (iii) if a natural person, becomes incapable of performing his duties as Trustee;
  - (iv) if a company, becomes an externally administered body corporate (as defined in the *Corporations Act 2001* (Cth)) or has a provisional liquidator appointed;
  - (v) is removed from office by the Members pursuant to the provisions of this Deed or the Relevant Law; or
  - (vi) becomes a disqualified person under the Relevant Law.
- (c) Subject to any restrictions imposed by the Relevant Law, if a Member dies:

- (i) the deceased Member's legal personal representative may act as a Trustee in place of the deceased Member for so long as the Relevant Law allows; and
  - (ii) for the purpose of this **clause 5.2(c)** the 'legal personal representative' of a deceased Member includes the executor named in the Will of the deceased Member whether or not a grant of Probate has been issued or will be sought in relation to the deceased Member's estate.
- (d) If a Member is under a legal disability, that Member's legal personal representative may act as Trustee in his place.
  - (e) If a Member is under a legal disability because of age, and the Member does not have a legal personal representative, the Member's parent or guardian may act as Trustee on behalf of the Member.
  - (f) A Trustee may, by enduring power of attorney, appoint another person to act as Trustee in his place.
  - (g) Where the Trustee consists of a constitutional corporation, the Members will do all things necessary to ensure that the appointment and removal of directors of the Trustee is governed in a manner substantially similar to **clauses 5.2(c) to 5.2(f)**.
  - (h) Section 14(2)(c) of the *Trustee Act* 1936 (SA) does not apply to this Deed.

### **5.3 Trustee meetings**

- (a) Any Trustee may at any time convene a Trustees' meeting by notice to the other Trustees.
- (b) The Trustee that convenes the Trustees' meeting will be the chairman of the meeting unless all of the Trustees agree otherwise.
- (c) A Trustees' meeting may be held by any technological means by which the Trustees are able simultaneously to hear each other and to participate in discussion.
- (d) Subject to the provisions of this Deed, the Trustees may meet together, adjourn and regulate their meetings as they think fit.
- (e) A quorum for a meeting of Trustees is two Trustees unless there is only one Trustee, when a quorum is that Trustee.

#### **5.4 Decisions of Trustees**

- (a) Each Trustee has one vote and questions arising at a Trustees' meeting will be decided by a majority of the Trustees present and voting.
- (b) If there are an equal number of votes for and against a resolution the chairman of the Trustees' meeting will have the casting vote.

#### **5.5 Minutes**

- (a) The Trustees must record their decisions in written minutes, signed by the chairman of the Trustees' meeting.
- (b) Signed minutes are sufficient evidence of decisions and proceedings at meetings unless proved incorrect.

#### **5.6 Written resolutions**

A resolution in writing signed by all of the Trustees (or if the Trustee is a constitutional corporation, a resolution signed by all of the directors of the Trustee) will:

- (a) have the same effect and validity as a resolution of all the Trustees present and voting at a Trustees' meeting; and
- (b) be deemed to have been passed on the day on which the document was last signed by a Trustee (or if the Trustee is a constitutional corporation, by a director), notwithstanding that the written resolution may have been signed in two or more counterparts and may be in the form of a copy, telex, or facsimile transmission.

#### **5.7 Conflict of interest**

- (a) A Trustee and any firm, body or entity in which a Trustee has a direct or indirect interest may in any capacity:
  - (i) enter into any contracts or arrangement with the Fund;
  - (ii) be appointed to and hold any office or place of profit under the Trustees, other than the office of Auditor; and
  - (iii) act in a professional capacity, other than as the Auditor, for the Fund,

and may receive and retain for his own benefit any remuneration, profits or benefits as if he was not a Trustee.

- (b) Every Trustee must disclose his interest to the other Trustees.
- (c) The failure by a Trustee to make disclosure under this **clause 5.7** does not render void or voidable a contract or arrangement in which the Trustee has a direct or indirect interest.
- (d) A Trustee may vote in respect of a contract or arrangement or any other matter in which the Trustee has a direct or indirect interest.

#### **5.8 Validity of acts of Trustees**

The acts of the Trustee will remain valid notwithstanding that it is subsequently discovered that there was a defect in the appointment of a person as a Trustee or a person appointed as a Trustee was a disqualified person for the purposes of the Relevant Law.

## **5.9 Constitution**

The Trustee must, if a constitutional corporation, ensure that its Constitution is consistent with any applicable requirements of the Relevant Law.

## **6 Trustee's duties**

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The Trustee (and if the Trustee is a constitutional corporation, the directors of the Trustee) must:

- (a) act honestly in all the Trustee's dealings with the Fund;
- (b) exercise the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another person for whom the person felt morally bound to provide;
- (c) ensure that the Trustee's duties and powers in respect of the Fund are performed and exercised in the best interests of Members;
- (d) keep the money and other assets of the Fund separate from any money and assets of the Trustee; and
- (e) not enter into any contract or do anything else that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers in respect of the Fund.

## **7 Trustee's powers**

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### **7.1 All powers**

The Trustee will have power to do everything necessary or desirable to manage, administer and deal with the Fund and all proceedings, matters and things connected with the Fund in an efficient and economical manner and so as to comply with the Relevant Law, including:

- (a) entering into and executing all contracts, deeds and documents and doing all such matters and things as it considers expedient for the purpose of carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by this Deed;
- (b) giving such undertakings and incurring all such obligations relating to the Fund as the Trustee thinks fit;
- (c) instituting, conducting, defending or abandoning, settling, compromising or submitting to arbitration any claim, proceedings, matter or thing relating to the Fund or to the rights of Members or other persons claiming to be entitled to be paid a benefit from the Fund;
- (d) borrowing or lending money and securing the repayment of that money in any manner and upon any terms, with or without security which the Trustee may consider advisable;
- (e) insuring or re-insuring any risks, contingencies or liabilities of the Fund;
- (f) paying out of the Fund all expenses of and incidental to the management and administration of the Fund, including the fees of any advisers or agents and the remuneration of persons appointed pursuant to this Deed;
- (g) giving receipts and releases or discharges of any other kind in relation to any debts owed to the Fund; and

- (h) indemnifying or undertaking to indemnify any person in respect of any claim, matter or thing relating to the Fund or to the rights of Members or other persons entitled in respect of the Fund.

## **7.2 Absolute discretion**

- (a) The Trustee, in the exercise of the authorities, powers and discretions given to it under this Deed, has an absolute and unfettered discretion and may from time to time exercise or enforce all or any of such powers, authorities and discretions, and will have power generally to do all such things as the Trustee in its absolute discretion considers appropriate in the administration of the Fund and the performance of its obligations under this Deed.
- (b) The Trustee may also in its absolute discretion waive any requirement of this Deed in respect of any Member.

## **7.3 Delegation**

The Trustee may delegate and vary or remove any delegation to any person, on such terms as the Trustee may think fit, any of the authorities, powers and discretions conferred upon the Trustee by this Deed or the Relevant Law.

## **7.4 Remuneration**

- (a) The Trustee will not receive any salary or remuneration from the Fund in respect of its services as Trustee.
- (b) Subject to the Relevant Law, nothing in this Deed will preclude any firm, corporation or partnership of which the Trustee or any of its directors is a partner, director, shareholder, related body corporate (as defined in the *Corporations Act 2001* (Cth)) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.

## **7.5 Confidentiality**

The Trustee will regard as strictly confidential so far as practicable all information disclosed to or gained by it in the course of administering the Fund or otherwise in connection with this Deed, or anything relating or incidental to it.

## **7.6 Dependants and other beneficiaries**

The Trustee may exercise all its powers under this Deed and the Relevant Law in respect of Dependants and any other person entitled to a Benefit. All such persons must comply with the provisions of this Deed and any direction of the Trustee in relation to the payment of any Benefit to them or otherwise.

## **7.7 Indemnity**

The Trustee (and if a constitutional corporation, each of its directors) will be indemnified out of the Fund against all liabilities, losses, costs and expenses incurred in the exercise, purported exercise or attempted exercise of the trusts, powers, authorities and discretions vested in the Trustee or at law, including in respect of any payments made to any person whom the Trustee bona fide believes to be entitled to the payment and it is subsequently found that the person was not in fact so entitled.

## **7.8 Release**

The Trustee (and if a constitutional corporation, each of its directors) is released from all liabilities, losses, costs and expenses incurred in the exercise, purported exercise or attempted exercise of the

trusts, powers, authorities and discretions vested in the Trustee or at law, including in respect of any payments made to any person whom the Trustee bona fide believes to be entitled to the payment and it is subsequently found that the person was not in fact so entitled.

#### **7.9 Limited indemnity and release**

Nothing in this Deed has the effect of giving the Trustee (and if a constitutional corporation, each of its directors) an indemnity or release in respect of any liability:

- (a) for a breach of trust, where the Trustee fails to act honestly, or intentionally or recklessly fails to exercise, the degree of care and diligence that the Trustee was required to exercise; or
- (b) for a monetary penalty under a civil penalty order.

#### **7.10 Trustee's lien**

The Trustee will have, to the extent permitted by law, a lien on and over the assets of the Fund for the purpose of satisfying the indemnities given to the Trustee under this Deed and the Relevant Law.

## **8 Membership**

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### **8.1 Admission**

The Trustee may in its absolute discretion admit any Eligible Person who has lodged with the Trustee an application for membership, in such form as the Trustee may require, to membership of the Fund.

### **8.2 Bound by this Deed**

Every person admitted to membership of the Fund becomes a Member and is bound by this Deed.

### **8.3 Variation of membership terms**

The Trustee may, by written agreement with any Member, vary the terms and conditions applicable to that Member's membership of the Fund, including the contributions and benefits payable to or in respect of the Member.

### **8.4 Information to new Members**

The Trustee must, as soon as practicable after the admission of a Member, give to that Member any information required by the Relevant Law.

### **8.5 Trustee's requirements**

A Member must provide such information and documents, submit to such medical examinations, and generally do such things as the Trustee deems necessary in order for the Trustee to satisfy itself that such person is entitled to a Benefit from the Fund.

### **8.6 Cessation**

A Member ceases to be a Member if:

- (a) the Member dies; or
- (b) all Benefits payable to the Member under the Fund have been:
  - (i) transferred to another fund pursuant to **clause 10**; or
  - (ii) paid to the Member pursuant to **clause 0**.

## **9 Contributions to the Fund**

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### **9.1 Employer contributions**

Subject to **clause 9.4**, the Trustee will accept such contributions to the Fund from a Member's employer as may be agreed from time to time between the Trustee, the Member and the employer.

### **9.2 Member contributions**

Subject to **clause 9.4**, the Trustee will accept such contributions to the Fund as a Member may wish to make from time to time.

### **9.3 Manner and timing of contributions**

The Trustee may determine the manner and timing of contributions to be accepted from a Member or a Member's employer.

### **9.4 Contributions**

The Trustee:

- (a) may accept contributions from any person in respect of a Member to the extent permitted by the Relevant Law;
- (b) must not accept any contribution if, in the opinion of the Trustee, the acceptance of the contribution would be in breach of the Relevant Law; and
- (c) may refuse to accept such contributions as the Trustee deems appropriate.

### **9.5 Form of contributions**

- (a) Contributions may be made either in cash or by transfer to the Trustee of an asset in specie or by any other means authorised by the Relevant Law.
- (b) If a contribution is made by the transfer of an asset to the Trustee:
  - (i) the amount of the transfer will be the market value of that asset determined by the Trustee at the time of its transfer; and
  - (ii) the other terms and conditions of the transfer will be as determined by the Trustee.

## **10 Transfers to and from other funds**

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### **10.1 Transfers to other funds**

- (a) If requested by a Member, the Trustee may pay or transfer all or part of the Member's Benefits to an Eligible Fund, provided that the payment or transfer is not in breach of the Relevant Law.
- (b) If a Member ('Requesting Member') makes a request ('Transfer Request') pursuant to **clause 10.1(a)** of this Deed, the Trustee must resolve within one month whether or not to accept the Transfer Request.
- (c) If the Trustee does not accept the Transfer Request, the Requesting Member may, by one month's notice to each of the other Members, call a meeting of the Members to reconsider the Transfer Request.

- (d) A quorum for a Members' meeting will be two Members unless there is only one Member, when a quorum is that Member.
- (e) The chairman of the meeting will be the Requesting Member unless all of the members agree otherwise.
- (f) Any Member may appoint a proxy to vote on that Member's behalf.
- (g) If there are an equal number of votes in favour of and against accepting the Transfer Request, the chairman will have the casting vote.
- (h) If a majority of votes at the meeting of members are in favour of accepting the Transfer Request, the Requesting Member must notify the Trustee ('Notice') of that decision within one month.
- (i) The Members' decision in relation to a Transfer Request is binding on the Trustee.
- (j) The Trustee must pass all resolutions and do all acts necessary to give effect to the Transfer Request within one month of receiving the Notice unless the Requesting Member agrees otherwise.

#### **10.2 Transfer by Trustee**

The Trustee may of its own initiative pay or transfer the whole or part of a Member's Benefits to an Eligible Fund in such circumstances as may be permitted or required by the Relevant Law, whether or not the Member has requested or consented to such payment or transfer.

#### **10.3 Benefits cease**

The payment or transfer of a Member's Benefits to an Eligible Fund satisfies the Member's entitlement to those Benefits to the extent of the amount so paid or transferred. The receipt of such an amount by the Trustee of the other Eligible Fund completely discharges the Trustee for any liability in respect of that amount. The Trustee will have no responsibility to see to the application of that amount.

#### **10.4 Transfers from other funds**

If a Member requests, the Trustee may accept the transfer of money or assets from an Eligible Fund. The Trustee will credit the Member's Accounts in the manner agreed between the Trustee and the Member with the money or assets so received.

### **11 Investment portfolios**

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#### **11.1 Selection of investment portfolios**

- (a) Subject to the Relevant Law, the Trustee may allow a Member to select the investments for that Member's investment portfolio and the proportions of those investments.
- (b) The Trustee may restrict or impose conditions on that selection.

#### **11.2 No selection**

If a Member does not select an investment portfolio, the Trustee must invest the balance of that Member's Account in accordance with this Deed.

#### **11.3 Variation or redemption**

- (a) A Member may request the Trustee to vary or redeem any part of that Member's investment portfolio, as allowed by the Relevant Law.
- (b) The Trustee may (whether or not it is requested to do so) vary or redeem any part of an investment portfolio.

#### **11.4 Delay or refusal**

- (a) The Trustee may:
  - (i) delay in establishing, varying or redeeming any part of an investment portfolio; or
  - (ii) refuse to establish, vary or redeem any part of an investment portfolio.
- (b) If the Trustee delays in establishing, or refuses to establish, any part of an investment portfolio the Trustee must invest the balance of the Member's Account in accordance with this Deed.

#### **11.5 Trustee may cease investment portfolio**

- (a) The Trustee may cease any Member's investment portfolio. The Trustee must notify that Member that it has ceased its investment portfolio.
- (b) If the Trustee ceases a Member's investment portfolio the Trustee must invest the balance of that Member's Account in accordance with this Deed.

#### **11.6 No liability**

The Trustee is not liable to compensate a Member for any loss incurred in exercising or not exercising any of its powers under this **clause 11**.

#### **11.7 No separate trust funds.**

Investment portfolios are not separate trust funds.

## **12 Fund Accounts**

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### **12.1 Fund Accounts**

The Trustee will keep such Accounts and reserves as the Trustee considers appropriate for the purpose of administering the Fund and calculating the Benefits payable to each Member.

### **12.2 Member Accounts**

The Trustee must keep separate Accounts for each Member and, if desirable, keep in respect of each Member such separate Accounts as the Trustee considers necessary or desirable for any one or more of the following purposes:

- (a) differentiating between contributions made by the Member and contributions made for the benefit of the Member by an employer or any other person;
- (b) differentiating between the Member's preserved and non-preserved benefits;
- (c) calculating the Member's minimum benefits within the meaning of the Relevant Law;
- (d) identifying those monies and assets which are funding the Member's retirement benefits;
- (e) enabling the Member to have more than one pension; and

- (f) such other purpose as the Trustee considers appropriate.

### **12.3 Crediting Member's Accounts**

The Trustee will credit or debit (as the case may be) each Member's Accounts with:

- (a) contributions received from the Member or any other person in respect of the Member;
- (b) any amounts transferred to or from an Eligible Fund;
- (c) if the Relevant Law permits, any amount transferred from or to the Member to or from the account of a spouse (as defined by section 10 of the SIS Act) either in this Fund or an Eligible Fund;
- (d) the income of the Fund at a rate determined by the Trustee pursuant to **clause 13.5**;
- (e) any Taxation, costs, expenses or liabilities in relation to the contributions received in respect of the Member including excess contributions tax;
- (f) any Taxation, costs, expenses or liabilities of the Fund that the Trustee considers appropriate;
- (g) any premiums and other expenses of any insurance policies in respect of the Member;
- (h) such proceeds, bonuses or rebates under any insurance policies as the Trustee determines; and
- (i) any other amounts that the Trustee considers appropriate.

### **12.4 Investment fluctuation Account**

The Trustee may establish such Accounts for the purposes of smoothing any fluctuations in the value and earnings of investments of the Fund and for such other purposes as the Trustee may consider appropriate.

### **12.5 Reserves**

The Trustee may establish reserves for the purposes of making provision for any existing or prospective liability for Taxation or any other liability or for any other purpose the Trustee considers appropriate in the course of administration of the Fund, including reserves for:

- (a) assets set aside to fund the pension of a Member;
- (b) forfeited Benefits;
- (c) contributions made on account of a specific group of Members;
- (d) earnings not allocated to Members' Accounts;
- (e) any proceeds, bonuses or rebates under an insurance policy not allocated to Member's Accounts; and
- (f) any amount left in a Member's Account after all benefits have been paid to the Member.

## **13 Investments**

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### **13.1 Strategy**

The Trustee must formulate and give effect to an investment strategy that has regard to:

- (a) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to the Fund's objectives and cash flow requirements;
- (b) the composition of the Fund's investments as a whole, including the extent to which the investments are diverse or involve the Fund being exposed to risks from inadequate diversification;
- (c) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
- (d) the ability of the Fund to discharge its existing and prospective liability; and
- (e) all other circumstances of the Fund and any other factor or matter the Trustee considers appropriate to have regard to.

The Trustee must notify Members of the investment strategy if required by the Relevant Law.

### **13.2 Authorised investments**

The Trustee may invest all or so much of the moneys forming part of the Fund from time to time as is not required immediately for the payment of Benefits or other amounts authorised by this Deed in any investment whatsoever which the Trustee considers appropriate and which is authorised by the Relevant Law.

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

The Trustee will have power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by this Deed.

### **13.4 Investment income**

- (a) The Trustee must at the Review Date:
  - (i) value all of the assets of the Fund; and
  - (ii) determine all the net income and net capital gains of the Fund in respect of the period since the last Review Date, whether realised or unrealised, and after deducting any capital losses and such allowance for expenses and Taxation as the Trustee considers appropriate.
- (b) If, within 30 days of a Review Date, the Trustees have not determined the value of an asset, any Trustee or any director of a corporate Trustee may request the Trustee to fix the value of the asset pursuant to **clause 13.4(c) to 13.4(g)**.
- (c) As soon as practicable after receipt of a request pursuant to **clause 13.4(b)**, the Trustee must appoint a valuer ('Valuer') to fix the value of the asset. The Valuer must:
  - (i) be suitably qualified to carry out a valuation of the nature and dimension required;
  - (ii) have evidenced his ability to produce credible work;
  - (iii) have at least five years experience in the valuation and analysis of assets similar to the asset;

- (iv) have an extensive knowledge of discounted cash flow analysis;
  - (v) have the ability to meet time requirements; and
  - (vi) have no pecuniary interest that could reasonably be regarded as being capable of affecting his ability to give an unbiased opinion.
- (d) The Valuer will receive written and verbal submissions from the Trustees or the directors of the Trustee within the time appointed by the Valuer. The Valuer will give reasonable consideration to such submissions before making a determination.
- (e) The asset value will be that sum which in the Valuer's opinion is the fair market value of the asset at the Review Date:
- (i) assuming a willing buyer and a willing seller;
  - (ii) assuming a reasonable period within which to negotiate the sale taking into account the nature of asset and the state of the market;
  - (iii) assuming the asset will be freely exposed to the market with reasonable publicity; and
  - (iv) on the basis that no account is taken of the interest of a special buyer.
- (f) The Valuer will act as an expert and not as an arbitrator. The Valuer's decision as to the value of the asset will be final.
- (g) The Trustee will pay the Valuer's costs of determining the value of the asset from the Fund.

### **13.5 Fund earning rate**

At each Review Date, the Trustee must also determine the rate at which the income of the Fund is to be credited or debited to Member Accounts, any investment fluctuation account and other Accounts and reserves established by the Trustee, having regard to the following considerations:

- (a) whether the Member has established an investment portfolio;
- (b) the amount of income for the Financial Year ending on the relevant Review Date;
- (c) the amount of income expected for the subsequent Financial Year;
- (d) the amount of income credited to the Member's Accounts in previous Financial Years;
- (e) the amount of Taxation, costs and other liabilities of the Fund;
- (f) the investment strategy of the Fund; and
- (g) such other matters as the Trustee considers relevant.

### **13.6 Interim Fund earning rate**

The Trustee may from time to time during a Financial Year determine an interim rate at which the income of the Fund is to be credited or debited to a Member's Accounts for the purpose of calculating the Member's Benefits.

## **14 Benefits**

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### **14.1 When payable**

- (a) A Member's Benefit becomes payable if:
  - (i) the Member retires in the circumstances prescribed by the Relevant Law for the release of preserved and non-preserved Benefits;
  - (ii) the Member retires on the ground of permanent incapacity (within the meaning under the Relevant Law);
  - (iii) the Member requests payment and the Relevant Law allows that payment;
  - (iv) the Member dies; or
  - (v) such other event occurs that requires the Benefit to be paid pursuant to the Relevant Law.
- (b) If a benefit becomes payable to a Member under **clause 14.1** the Member may request that the Trustee retain all or part of the Member's Benefit in the Fund. The Trustee may accept the Member's request on any terms and conditions it wishes to impose but must commence to pay a Benefit to a Member when required by the Relevant Law.

### **14.2 Method of payment**

Subject to **clause 14.3**, a Benefit may be paid:

- (a) in a lump sum;
- (b) by way of Pension or annuity;
- (c) by transfer of an asset of the Fund;
- (d) in such other manner as permitted by the Relevant Law; or
- (e) any combination of the above.

### **14.3 Pension**

- (a) If the Trustee is not a constitutional corporation any Benefit payable under this Deed must be paid in the form of a Pension or in any other form that complies with the Relevant Law.
- (b) At the written request of a Member receiving a Pension or a Member who will be receiving a Pension in the future, the Trustee may commute all or part of the Pension to a lump sum.

### **14.4 Pension rules**

- (a) Subject to the SIS Regulations, the Trustee must pay a Pension Benefit to a Beneficiary in the form of:
  - (i) an Allocated Pension;
  - (ii) an Account-Based Pension;
  - (iii) a Transition to Retirement Income Stream;
  - (iv) a Pension wholly determined by reference to policies of life assurance purchased or obtained by the Trustee solely to provide Pension Benefits to Members; or

- (v) such other form of Old-Age Pension as is permitted by the SIS Regulations.
- (b) The Trustee and the Beneficiary may agree which form of Pension is to be paid.
- (c) A Pension Benefit is subject to, and must be paid in accordance with, the relevant Pension Standards.
- (d) The Trustee may alter the amount or frequency of a Beneficiary's Pension as permitted by the relevant Pension Standards.

## **14.5 Death Benefits**

### **14.5.1 General**

If a Member dies, the Trustee must pay the Member's Benefit:

- (a) in accordance with the Member's binding death benefit nomination (if any) made under **clause 14.5(a)** unless the Trustee has rejected the binding death nomination pursuant to **clause 14.5(a)(i)**;
- (b) if that Member did not have a binding death benefit nomination, to one or more of that Member's Dependants or legal personal representatives in the manner, at the times, by such instalments and in such proportions determined by the Trustee in its absolute discretion, taking into consideration the Member's non-binding death benefit nomination (if any) made under **clause 14.5.2**; or
- (c) if the Trustee is, after reasonable enquiry, unable to locate any Dependants or legal personal representatives of the Member, in accordance with **clause 15**.

### **14.5.2 Non-binding death benefit nomination**

- (a) A Member may make a non-binding death benefit nomination by notifying the Trustee of a manner in which the Member would prefer his benefit to be distributed upon his death between his Dependants and/or legal personal representative.
- (b) The Trustee may require a Member to complete a new non-binding death benefit nomination at any time.
- (c) A non-binding death benefit nomination is or becomes invalid if:
  - (i) the Relevant Law does not permit the Trustee to follow it;
  - (ii) the Member completes a later non-binding death benefit nomination; or
  - (iii) the Member makes a binding death benefit nomination under **clause 14.5.3**

### **14.5.3 Binding death benefit nomination**

- (a) A Member may make a binding death benefit nomination by notifying the Trustee in a form binding upon the Trustee in accordance with the Relevant Law of the manner in which the Member's benefits are to be distributed upon his or her death between his or her Dependants and/or legal personal representative.
  - (i) A binding death benefit nomination can apply for a defined period of time or can apply indefinitely ('Non Lapsing Nomination').
  - (ii) A Non Lapsing Nomination must express to be binding until such time as it has been replaced by a subsequent valid binding death benefit nomination.

- (iii) If a Member is or is deemed to be under a legal disability any binding death benefit nomination they have previously made can be renewed by the duly appointed Attorney of the Member.
  - (iv) No binding death benefit nomination can be revoked or altered except by the execution of a subsequent valid binding death benefit nomination by the Member.
- (b) The Trustee may reject a binding death benefit nomination on any grounds provided the Trustee notifies the Member of the rejection within 10 days of the Trustee receiving the binding death benefit nomination. If the Trustee rejects a binding death benefit nomination then:
  - (i) the Trustee is not bound to pay a Member's Benefits in accordance with that binding death benefit nomination; and
  - (ii) the Member may make another binding death benefit nomination.
- (c) The Trustee may require a Member to make a new binding death benefit nomination at any time.

#### **14.5.4 Method of Payment**

Subject to the Relevant Law, a Death Benefit payable under this **clause 14.5** may be paid:

- (a) in a lump sum;
- (b) by way of a pension or annuity;
- (c) by transfer of an asset of the Fund;
- (d) in such other manner as permitted by the Relevant Law; or
- (e) by any combination of the above.

#### **14.6 Conditions**

The payment of any Benefit under this Deed is subject to the Trustee receiving such information or documents or evidence as the Trustee considers necessary, and the person to whom the Benefit is to be paid executing such documents and doing such things as the Trustee considers necessary.

#### **14.7 Taxation on Benefits**

The Trustee may deduct from any Benefit payable any Taxation that is payable or that the Trustee considers to be payable.

#### **14.8 Suspension of Benefit**

The Trustee may suspend, alter or withhold any Benefit in respect of a Member who fails to provide any information (or if any information provided is incorrect, misleading or deliberately withheld) or who otherwise fails to comply with the provisions of this Deed or the requirements of the Relevant Law.

#### **14.9 Transfer of assets**

If a Benefit is paid by the transfer of an asset of the Fund, the value of the asset will be determined by the Trustee in its absolute discretion as at the date of transfer. That amount will be deducted from the Member's Benefit and the Trustee shall not be bound to see to the application of that amount.

#### **14.10 Preserved Benefits**

Nothing in this Deed requires or permits the payment of a Benefit to a Member where the Relevant Law requires that Benefit to be preserved.

### **15 Forfeiture of Benefits**

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#### **15.1 Conditions of forfeiture**

Subject to the Relevant Law, a Member forfeits his Benefit if any one or more of the following occurs:

- (a) the Member assigns, charges, or attempts to assign or charge any benefit;
- (b) the Member is, in the opinion of the Trustee, incapable of managing his affairs;
- (c) the Member's Benefit becomes payable to, or vested in, any other person, whether by his own act, operation of law, order of Court or otherwise;
- (d) the Member cannot be found by the Trustee after reasonable inquiry for a period of at least three years since the last contact between the Member and the Trustee; or
- (e) the Member dies and the Trustee is, after reasonable inquiry, unable to locate any Dependants or legal personal representative of the Member.

#### **15.2 Application of forfeited Benefits**

The Trustee may deal with any forfeited Benefit in one or more of the following ways:

- (a) for or towards the maintenance, education, advancement or otherwise for the benefit of the Member or his Dependants or any one of them in such proportions as the Trustee thinks fit, and in such form and manner and subject to such terms and conditions as the Trustee thinks fit; and
- (b) for or towards any other person or other purpose that is permitted by the Relevant Law.

### **16 Costs and expenses and Taxation**

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#### **16.1 Costs and expenses**

- (a) Except as otherwise expressly provided in this Deed, all costs, charges and expenses incurred in connection with the preparation, establishment, maintenance, administration, operation or winding up of the Fund will be borne by the Fund and paid by the Trustee out of the assets of the Fund.
- (b) The Trustee may debit Member Accounts, reserves and any other Accounts in such manner as it considers appropriate to reflect the payment of, or the making of, any provision for any such costs, charges and expenses.

#### **16.2 Taxation**

The Trustee will not be liable to account to any Member or any other person for any payments made by the Trustee in good faith to:

- (a) the Commonwealth of Australia or any State or Territory, or any other country or part of a country for Taxation or any other charges upon the Fund; or

- (b) on account of the retention of any moneys or assets in the Fund to meet any prospective liability on the part of the Trustee in relation to the Fund to such fiscal authority, notwithstanding that any such payment or provision need not have been made.

## **17 Records**

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### **17.1 Records and accounts to be kept**

The Trustee must:

- (a) keep full and comprehensive minutes of all Trustee meetings;
- (b) keep account of all moneys received for, and disbursed from, the Fund and of all dealings in connection with the Fund;
- (c) collect and pay promptly into a bank or other Account of the Fund all moneys from time to time due to the Fund;
- (d) keep appropriate records, books and accounts, having regard to the requirements of the Relevant Law and make suitable arrangements for custody of documents relating to the investments of the Fund; and
- (e) prepare accounts and statements in relation to the Fund as at the end of the Financial Year in accordance with the Relevant Law.

### **17.2 Audit**

The Trustee may appoint and remove an Auditor to audit the accounts and statements of the Fund and to report in writing to the Trustee in respect of such audit within the time specified by the Relevant Law.

### **17.3 Disclosure**

The Trustee must provide to Members such documents and information as the Relevant Law requires the Trustee to provide.

## **18 Termination of the Fund**

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### **18.1 Termination**

The Fund will terminate on such date as the Trustee determines in the following circumstances:

- (a) if it appears to the Trustee that the Fund is unable to pay its debts as and when they become due and payable and the Trustee resolves to terminate the Fund;
- (b) if for any reason the Trustee thinks it is appropriate to and does resolve to terminate the Fund;
- (c) if there are no Members in the Fund and the Trustee resolves to terminate the Fund; or
- (d) if the Members, by unanimous resolution, ask the Trustee to terminate the Fund.

### **18.2 Application of assets**

The Trustee must, subject to the Relevant Law, apply the assets of the Fund in the following priority:

- (a) towards the costs of administering and winding up the Fund;
- (b) in paying or transferring Members' Benefits in accordance with this Deed; and
- (c) any balance to Members, Dependants, former Members, deceased Members or legal personal representatives, in such proportions as the Trustee in his discretion determines is appropriate, and the receipt by any such person is in full discharge of any claims in respect of the Fund.

## **19 Amendments**

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### **19.1 By deed**

The Trustee may at any time, and from time to time, by deed or resolution add to, amend, alter, modify, vary or delete any provision of this Deed with immediate, prospective or retrospective effect to such extent as the Relevant Law permits.

### **19.2 Notice to Members**

The Trustee must promptly give the Members notice of any such amendment if required pursuant to the Relevant Law to do so.

## **20 Trustee Act**

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To the extent permitted, section 35B of the Trustee Act 1936 (SA) does not apply to the Fund.

## **21 Other acts**

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Each party must, at its expense, promptly do all things reasonably necessary to give full effect to this Deed.

## **22 Costs**

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The Trustee must pay the costs (including stamp duty) payable in respect of this Deed.

## **23 Consents, requests and notices**

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- (a) A consent, request or notice must be in writing and executed by the person giving it or their agent. It may be given:
  - (i) by pre-paid post to the address notified to all parties;
  - (ii) by facsimile transmission to the facsimile number notified to the other parties; or
  - (iii) by any other means allowed by law.
- (b) A consent, notice or request, if validly given, is deemed to have been received:
  - (i) on the third business day after posting;
  - (ii) on the next business day after transmission by facsimile; or
  - (iii) at any other time allowed by law.

## **24 Governing law**

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The laws in South Australia govern this Deed. The parties submit to the jurisdiction of the Courts of South Australia and the Federal Court of Australia (Adelaide Registry).

## **25 Dealing with rights and obligations granted by this Deed**

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The rights and obligations under this Deed:

- (a) are personal and cannot be assigned or charged without the prior consent of all parties;
- (b) cannot be waived except by express notice specifying the waiver;
- (c) are in addition to and do not effect any other rights that party may have; and
- (d) will not merge with any act done to complete or perform this Deed.

## **26 Parties**

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- (a) A party includes the party's successors and permitted assigns.
- (b) This Deed confers no rights or obligations upon any person who is not a party.
- (c) An agreement, representation, or warranty:
  - (i) (on the part of two or more persons binds them jointly and severally; and
  - (ii) in favour of two or more persons is for the benefit of them jointly and severally.

## **27 Time**

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- (a) Time means South Australian time.
- (b) A month means a calendar month.
- (c) A business day means any day that is not a Saturday, Sunday or public holiday in South Australia. If an act must be done on a day that is not a business day, it may be done on the next business day.
- (d) Where time is to be calculated from a day or event, that day or the day of that event must be excluded from that calculation.
- (e) Unless stated otherwise, time is of the essence.

## **28 Execution**

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- (a) This Deed (and any other document contemplated by this Deed) may be signed in counterparts. Each counterpart is taken to be an original. All counterparts together constitute one Deed. A signed counterpart may be delivered by facsimile.
- (b) A person signing this Deed on behalf of a party warrants that they have authority to bind that party for that purpose.

**Executed as** a deed.

**Executed by Tran Nguyen SMSF Pty Ltd ACN 633 915 401** in accordance with section 127 of the *Corporations Act 2001* (Cth):

		10 June 2019
Signature (Tin Tran)	Signature (Toya Tran Nguyen)	Date of Signing