

Deed of Trust of B & V Superfund (Self Managed Superannuation Fund)



Brisbane | Mackay | Gold Coast | Surat Basin

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Deed of Trust of the B & V Superfund

This Deed is made on the date specified in Schedule 1

Parties: Sugar Shed Pty Ltd ACN 604 350 361 of Coastal Accounting Service, Shop 4,
73 Broad Street, Sarina QLD 4737 ("Trustee")

And: Robert John Prins of 277 Sugarshed Road, Erakala QLD 4740 ("Member")

Victoria Jane Cresswell of 277 Sugarshed Road, Erakala QLD 4740 ("Member")

Background:

- A. The Trustee has given a written consent to act as trustee and provided a declaration stating that the Trustee is not a Disqualified Person and understands the duties of a trustee of a SMSF.
- B. The Trustee will establish the Fund, which is to be operated and maintained as an indefinitely continuing self-managed superannuation fund for the purpose of providing superannuation benefits (old age pensions) to its Members.
- C. The Trustee has consented to hold the Fund as from the date of this Deed upon the trusts and subject to the terms set out in this Deed.

Operative Part:

1. Definitions

In this Deed the following expressions shall have the meanings set out below unless the meanings are repugnant to or inconsistent with the subject matter in which the expressions are used:

- (a) **"Account-Based Pension"** means a Pension that satisfies the requirements in Regulation 1.06(9A)(a);
- (b) **"Act"** means the *Superannuation Industry (Supervision) Act 1993* (Cth) as amended from time to time;
- (c) **"Actuary"** means a person who is a Fellow or an Accredited Member of the Institute of Actuaries of Australia;
- (d) **"ADI" or "Authorised Deposit-taking Institution"** means:
 - (i) A body corporate that is an ADI for the purposes of the *Banking Act 1959* (Cth); or
 - (ii) A State bank;
- (e) **"Agreement"** includes any arrangement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable, or intended to be enforceable, by legal proceedings;
- (f) **"Allocated Pension"** means a Pension that satisfies the requirements in Regulation 1.06(4);

- (g) **"Applicant"** means a prospective Member of the fund who has completed and submitted to the Trustee a Membership Application or intends to submit to the Trustee a Membership Application;
- (h) **"APRA"** means the Australian Prudential Regulation Authority;
- (i) **"Approved Arrangement"** means an arrangement into which or from which assets of the Fund can be rolled-over or transferred without breaching Prescribed Law including (but not limited to):
 - (i) Regulated superannuation funds;
 - (ii) Approved deposit funds;
 - (iii) Retirement savings accounts;
 - (iv) Exempt public sector funds;
 - (v) Deferred annuities; and
 - (vi) Unclaimed money authorities.
- (j) **"Approved Body"** means a body mentioned in Schedule 4 of the Regulations;
- (k) **"Approved Deposit Fund"** means a fund that:
 - (i) Is an indefinitely continuing fund;
 - (ii) Is maintained by an RSE licensee that is a constitutional corporation;
 - (iii) Is maintained solely for an approved purpose.
- (l) **"Approved Form"** means a reference to a form approved by the Regulator in writing for the provision in which the expression appears;
- (m) **"ASIC"** means the Australian Securities and Investment Commission;
- (n) **"Associate"** means an associate under s 12 of the Act and particularly, in relation to a Standard Employer-Sponsor, means an associate as if determined under the *Corporations Act* if the assumptions listed in s 12(2) of the Act were made including (but not limited to) business partners and any companies or trusts the Employer controls (either alone or with their other associates) or companies and trusts that control the Employer;
- (o) **"Auditor"** means an approved auditor under the Prescribed Law, being a person who:
 - (i) Is registered or taken to be registered as an auditor under the *Corporations Act*; or
 - (ii) Is the Auditor-General of the Commonwealth, a State or Territory, or is a delegate of the Auditor-General; or
 - (iii) Is associated with a professional organization listed below in the manner required:

Professional Organisation	Manner of Association Required
CPA Australia Limited	Member
The Institute of Chartered Accountants in Australia	Member
National Institute of Accountants	Member
Association of Taxation and Management Accountants	Member or Fellow
National Tax and Accountants Association Ltd	Fellow

- (p) **"Auditor's Certificate"** is a certificate issued by an appointed Auditor of the Fund for a Year of Income stating that the Fund has been audited;
- (q) **"Benefits"** means an amount payable from the Fund in respect of or to a Member or Beneficiary;
- (r) **"Beneficiary"** means a person who has a beneficial interest in the Fund and includes a Member (despite the express reference in this Deed to Member);
- (s) **"Business"** includes any profession, trade, employment, vocation or calling carried on for the purposes of profit, including (but not limited to):
- (i) The carrying on of primary production (as defined in the Tax Legislation); and
 - (ii) The provision of professional services;
- but does not include occupation as an employee;
- (t) **"Business Hours"** means 9:00am - 5:00pm, Monday to Friday excluding public holidays;
- (u) **"Business Real Property"** means:
- (i) Any freehold or leasehold interest of the Fund in real property;
 - (ii) Any interest of the Fund in Crown land, other than a leasehold interest, being an interest that is capable of assignment or transfer; or
 - (iii) Such other class of interest held by the Fund in relation to real property as prescribed by the Regulations;

where the real property is used *wholly and exclusively* in one or more businesses (whether carried on by the Fund or not), but does not include any interest held in the capacity of a beneficiary of a trust estate.

However, real property used in one or more primary production businesses does not cease to be used *wholly and exclusively* in that business only because:

- (iv) An area of the real property, not exceeding two (2) hectares, contains a dwelling used primarily for domestic or private purposes; and
- (v) The area is also used primarily for domestic or private purposes;

provided that the use for domestic or private purposes referred to in paragraphs 1(u)(iv)

and 1(u)(v) is not the predominant use of the real property;

- (v) **"Cashing Restriction"** means any restrictions placed on the payment of benefits on satisfaction of a Condition of Release under Column 2 of Schedule 1 of the Regulations
- (w) **"Child"** in relation to a person includes:
 - (i) An adopted child, a stepchild or an ex-nuptial child of the person; and
 - (ii) A child of the person's Spouse; and
 - (iii) Someone who is a child of a person within the meaning of the *Family Law Act 1975* (Cth).
- (x) **"Child Contributions"** means Contributions that are made to the Fund in respect of a Child, other than:
 - (i) Contributions made in respect of the Child by, or on behalf of, an Employer of the Child; and
 - (ii) Contributions made by a Child in respect of himself/herself;
- (y) **"Co-contribution Act"** means the Superannuation (Government Co-contribution for Low Income Earners) Act 2003 (Cth);
- (z) **"Commutable"** or **"Commute"** or **"Commutation"** as the terms are used interchangeably through the Deed, means withdrawing some of all of a Member's benefits and entitlements and paying as a lump sum;
- (aa) **"Company"** means a registered company, corporation or body corporate including a constitutional corporation;
- (bb) **"Condition of Release"** means those conditions of release under Schedule 1 of the Regulations as summarized in clause 8.6;
- (cc) **"Contributions"** includes Employer contributions for Employees, personal contributions by Members, spousal contributions, contributions made by another person, payments of shortfall components, payments to the Fund from the Superannuation Holding Account, Special Account but does not include benefits rolled-over or transferred into the Fund;
- (dd) **"Corporate Trustee"** means a Company which is acting as Trustee of the Fund from the time;
- (ee) **"Corporations Act"** means the *Corporations Act 2001* (Cth) as amended from time to time;
- (ff) **"Custodian"** means a person (other than the Trustee), who, under contract with the Trustee or an Investment Manager of the Fund, performs custodial functions in relation to any of the assets of the Fund;
- (gg) **"Death Nomination"** means a Preferential Death Nomination, a Binding Death Nomination or a Non-Lapsing Binding Death Nomination as the case may be;
- (hh) **"Defined Benefit Fund"** means:

- (i) A Public Sector Superannuation Scheme that:
 - (A) Is a Regulated Superannuation Fund; and
 - (B) Has at least 1 Defined Benefit Member; or
- (ii) a Regulated Superannuation Fund (other than a Public Sector Superannuation Scheme):
 - (A) That has at least 1 Defined Benefit Member; and
 - (B) Some or all of the Contributions (out of which, together with earnings on those Contributions, the benefits are to be paid) are not paid into a fund, or accumulated in a fund, in respect of any individual Member but are paid into and accumulated in a fund in the form of an aggregate amount;
- (ii) **"Defined Benefit Pension"** means an income stream which complies with the Regulations (such as a Lifetime Pension or Life Expectancy Pension) other than:
 - (i) A Pension wholly determined by a policy of life insurance purchased or obtained by the Trustee of the Fund solely for the purposes of providing benefits to a Member of the Fund;
 - (ii) An Allocated Pension;
 - (iii) A Market Linked Pension; or
 - (iv) From 1 July, 2007, an Account-Based Pension;
- (jj) **"Dependant"** in relation to a person, includes the Spouse of the person, any Child of the person and any person with whom the person has an Interdependency Relationship;
- (kk) **"Derivative"** means a financial asset or liability the value of which depends on, or is derived from, other assets, liabilities or indices;
- (ll) **"Derivatives Contract"** means an options contract or futures contract relating to any right, liability or thing;
- (mm) **"Director"** means:
 - (i) In relation to the Fund - a director of a Corporate Trustee of the Fund;
 - (ii) In relation to another entity - a director of the other entity;
- (nn) **"Disqualified Person"** means:
 - (i) **For an individual** - a person that:
 - (A) Has been convicted of an offence against or arising out of a law of the Commonwealth, a State, a Territory or foreign law involving dishonest conduct; or
 - (B) A civil penalty order was made in relation to; or

- (C) Is insolvent under administration; or
 - (D) Has been disqualified by the Regulator under s 126H or 126K of the Act;
- (ii) **For a Company** - a Company where:
 - (A) A Director, secretary or executive officer of that Company is a Disqualified Person;
 - (B) A receiver, receiver and manager, official manager or administrator, or provisional liquidator has been appointed to the Company; or
 - (C) Action to wind up the company has commenced;
- (oo) **"Eligible Rollover-Fund"** means a Fund that has the following characteristics:
 - (i) The fund is a Regulated Superannuation Fund or an Approved Deposit Fund;
 - (ii) The trustee of the fund has given to APRA a notice in the Approved Form stating that it is an Eligible Rollover Fund;
 - (iii) The fund has not ceased to be an Eligible Rollover Fund; or
 - (iv) The fund:
 - (A) Was an Eligible Rollover Fund immediately before 1 July 1995; and
 - (B) Has not ceased to be an Eligible Rollover Fund;
- (pp) **"Eligible Spouse Contribution"** means a Contribution made by an individual to the Fund:
 - (i) To provide superannuation Benefits for the individual's Spouse, whether or not the Benefits would be payable to the Dependants of the individual's Spouse if the Spouse dies before or after becoming entitled to receive the Benefits; and
 - (ii) In circumstances in which the individual:
 - (A) Could not have deducted the Contribution under section 82AAC of the *Income Tax Assessment Act 1936* (Cth) in the 2006-07 income year or a previous year; and
 - (B) Cannot deduct the contribution under Subdivision 290-B of the 1997 *Income Tax Assessment Act 1936* (Cth) in the 2007-08 income year or a later year;
- (qq) **"Employee"** has its natural and ordinary except where that meaning is expanded by s 15A of the Act;
- (rr) **"Employer"** has its natural and ordinary meaning except where that meaning is expanded by s 15A of the Act;
- (ss) **"Employer Contributions"** means a Contribution by, or on behalf of, an Employer-Sponsor of the Fund;

- (tt) **"Employer-Sponsor"** means an Employer who:
- (i) Contributes to the Fund; or
 - (ii) Would, apart from a temporary cessation of Contributions, contribute to the Fund;
- for the benefit of:
- (iii) A Member of the Fund who is an Employee of the Employer or an Associate of the Employer; or
 - (iv) The Dependants of such a Member in the event of Death;
- (uu) **"Fulltime"** in relation to being Gainfully Employed, means Gainfully Employed for at least thirty (30) hours each week;
- (vv) **"Fund"** means the Self-Managed Superannuation Fund established by this Deed and any subsequent amendments under the name in Schedule 1;
- (ww) **"Fund-Capped Contributions"** means Member Contributions other than the following:
- (i) A Contribution to which a valid and acknowledged notice under section 290-170 of the *Income Tax Assessment Act 1997* (Cth) relates;
 - (ii) A Contribution that meets the requirements of s 292-95 (1) (d) of the *Income Tax Assessment Act 1997* (Cth);
 - (iii) A Contribution that meets the requirements of s 292-100 (9) of the *Income Tax Assessment Act 1997* (Cth);
 - (iv) A payment made by the Commissioner of Taxation under s 65 of the *Superannuation Guarantee (Administration) Act 1992* (Cth);
 - (v) A payment made by the Commissioner of Taxation under s 61 or 61A of the *Small Superannuation Accounts Act 1995* (Cth);
 - (vi) A Government Co-Contribution made under the *Superannuation (Government Co-contribution for Low Income Earners) Act 2003* (Cth);
 - (vii) A Contribution that is a directed termination payment within the meaning of s 82-10F of the *Income Tax (Transitional Provisions) Act 1997* (Cth);
- (xx) **"Gainful Employment"** or **"Gainfully Employed"** means any business, trade, profession, vocation, calling, occupation or employment in which the member was engaged;
- (yy) **"Governing Rules"** means:
- (i) In relation to this Fund - this Deed; and
 - (ii) Any rules contained in a trust instrument, other document or legislation, or combination of them or any unwritten rules establishing the Fund;

(zz) **"In-House Asset"** means:

- (i) A Loan to a Related Party;
- (ii) An investment in a Related Party;
- (iii) An asset of the Fund that is subject to a lease or lease arrangement between the Trustee and a Related Party;

but does not include:

- (iv) A life policy issued by a life insurance company; or
- (v) A deposit with an ADI; or
- (vi) An investment in a pooled superannuation trust, where a trustee of the fund and the trustee of the pooled superannuation trust acted at arm's length in relation to the making of that investment; or
- (vii) An asset of a public sector fund, where the asset consists of an investment in securities issued under the authority of:
 - (A) The Commonwealth or a government of a State or a Territory; or
 - (B) A public authority constituted by or under a law of the Commonwealth, a State or a Territory, where the public authority is neither a Standard Employer-Sponsor, nor an Associate of a Standard Employer-Sponsor, of the Fund; or
- (viii) An asset which the Regulator, by written notice given to a Trustee of the Fund, determines is not an In-House Asset of the Fund; or
- (ix) An asset which the Regulator, by legislative instrument, determines is not an In-House Asset of:
 - (A) Any fund; or
 - (B) A class of funds in which the fund is included; or
- (x) Real property subject to a lease, or to a lease arrangement enforceable by legal proceedings, between the Trustee and a Related Party of the Fund, if, throughout the term of the lease or lease arrangement, the property is Business Real Property; or
- (xi) An investment in a Widely Held Unit Trust; or
- (xii) Property owned by the Fund and a Related Party as tenants in common, other than property subject to a lease or lease arrangement between the Trustee and a Related Party; or
- (xiii) An asset included in a class of assets specified in the Regulations not to be an In-House Asset of the Fund or a class of funds to which this Fund belongs.

In paragraph 1(zz)(xi), a trust is a *Widely Held Unit Trust* if:

- (i) It is a unit trust in which entities have fixed entitlements to all of the income and capital of the trust; and
- (ii) It is not a trust in which fewer than 20 entities between them have:
 - (A) Fixed entitlements to 75% or more of the income of the trust; or
 - (B) Fixed entitlements to 75% or more of the capital of the trust;
- (aaa) **"Insolvency Event"** means official management, appointment of an administrator and/or receiver, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme of composition or arrangement of creditors, fixing by creditors of any floating security over the assets of the person or body, any act of insolvency or bankruptcy or any similar procedure or event;
- (bbb) **"Interdependency Relationship"** means, subject to the Act and the Regulations, two (2) persons (whether or not related by family) if:
 - (i) They have a close personal relationship; and
 - (ii) They live together; and
 - (iii) One or each of them provides the other with financial support; and
 - (iv) One or each of them provides the other with domestic support and personal care.
- (ccc) **"Interested Parties"** means the Applicants, Members, former Members, Legal Personal Representatives, Beneficiaries, Employers, the Federal Commissioner for Taxation, Australian Taxation Office, APRA, ASIC, Centrelink, any other person or body that may be responsible for regulation of the Fund under the Prescribed Law or such other person as the Trustee may in the Trustee's sole discretion determine to have a direct or indirect interest in the operation and activities of the Fund;
- (ddd) **"Invest"** means to apply assets in any way, or make a contract, for the purpose of gaining interest, income, profit or gain;
- (eee) **"Investment Manager"** means a person appointed by the Trustee to invest on behalf of the Trustee;
- (fff) **"Legal Personal Representative"** means:
 - (i) **Where a Member is Incapable:** the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted to a person;
 - (ii) **Where A Member Dies Leaving a Will** - the executor/s of the estate as stated in a Grant of Probate or administrator/s of the estate as stated in a Grant of Letters of Administration issued by the Supreme Court of Queensland or another equivalent Grant from another State or jurisdiction;
 - (iii) **Where A Member Dies Intestate** - the administrator/s of the estate as stated

in a Grant of Letters of Administration issued by the Supreme Court of Queensland or another equivalent Grant from another State or jurisdiction;

- (iv) **Where No Grant** - The Trustee may, in the Trustee's sole discretion, decide to recognize an executor or intending administrator (the person with the best priority to act as administrator under the Uniform Civil Procedure Rules 1999 (Qld) or other equivalent legislation of another jurisdiction) without insisting on the production of a Grant of Probate or Letters of Administration. In making such a determination, the Trustee may require the executor or intending administrator to provide such information as the Trustee may deem necessary for that purpose including (but not limited to) a copy of the will and Statement of Assets and Liabilities;
- (v) **Release and Indemnity** - If the Trustee decides to recognize an executor or intending administrator in 1(ff)(iv), then the Trustee may reasonably require the executor or intending administrator to sign documents releasing the Trustee from any liability arising through the Trustee recognizing the executor or intending administrator, and indemnifying the Trustee against any loss suffered as result;
- (ggg) **"Listed Security"** means a security listed for quotation in the official list of any of the following:
 - (i) A licensed market within the meaning of s 761A of the *Corporations Act*;
 - (ii) An approved stock exchange as defined by the Tax Legislation;
 - (iii) A market exempted under section 791C of the *Corporations Act*;
- (hhh) **"Loan"** includes the provision of credit or any other form of financial accommodation, whether or not enforceable, or intended to be enforceable, by legal proceedings;
- (iii) **"LPR"** means Legal Personal Representative;
- (jjj) **"Lump Sum"** means a one-time payment received that is not expected to recur (as opposed to an income stream or pension);
- (kkk) **"Mandated Employer Contributions"** means Contributions by, or on behalf of, an Employer that are equal to the sum of:
 - (i) The Contributions made by, or on behalf of, the Employer to the Fund in relation to the Member, that:
 - (A) Reduce the Employer's potential liability for the superannuation guarantee charge imposed by s 5 of the *Superannuation Guarantee Charge Act 1992* (Cth); or
 - (B) Are payments of shortfall components; and
 - (ii) The Contributions (other than Contributions of the kind specified in paragraph 1(kkk)(i)) made by, or on behalf of, the Employer to the Fund in relation to the Member in or towards satisfaction of the Employer's obligation to make Contributions for the Member, being an obligation under an agreement certified, or an award made, on or after 1 July 1986 by an industrial authority;

- (III) **"Maximum Splittable Amount"** means as it is defined in Regulation 6.40. In essence, the Maximum Splittable Amount is:
- (i) Up to eighty-five (85%) of the Contributions where the Contributions will be included in the Fund's taxable income for a Year of Income; and
 - (ii) Up to 100% of the Contributions if the Contributions were made on or before 5 April, 2007 and will not be included in the Fund's taxable income for a Year of Income;
- (mmm) **"Member"** means those persons listed in Schedule 1 to this Deed (initial Members) or such additional Members as the Trustee may admit to the Fund from time to time pursuant to clause 5.2;
- (nnn) **"Membership Application"** means the form set out in Schedule 2 to this Deed or such other form as may be approved by the Trustee;
- (ooo) **"Member Contributions"** means Contributions by, or on behalf of, the Member to the Fund, but does not include Employer Contributions made in respect of the Member;
- (ppp) **"Minor"** means a person under the age of eighteen (18) years;
- (qqq) **"Non-Concessional Contributions Cap"** means the amount mentioned in subsection 292-85(2) of the *Income Tax Assessment Act 1997* (Cth);
- (rrr) **"Non-Member Spouse"** in relation to a Superannuation Interest that is subject to a Payment Split means the person who is the Non-Member Spouse in relation to the interest under Part VIIIB of the *Family Law Act 1975* (Cth);
- (sss) **"Old Age Pensions"** has the same meaning as in section 51 (xxiii) of the Constitution;
- (ttt) **"Part-Time"** in relation to being Gainfully Employed, means Gainfully Employed for at least 10 hours, and less than 30 hours, each week;
- (uuu) **"Payment Split"** means a payment split under Part VIIIB of the *Family Law Act 1975* (Cth);
- (vvv) **"Prescribed Law"** means the Act; the Regulations; the *Corporations Act*; the *Social Security Act 1991* (Cth); the *Trusts Act 1975* (Qld); the Tax Legislation; any regulations made under any of the above statutes; any common law decisions relating to superannuation practice or policy, and any other lawful requirements, policies or practices of the Federal Commissioner for Taxation, the Australian Taxation Office, APRA, ASIC or any other body that regulates superannuation law or retirement benefits in Australia;
- If there is an inconsistency arising between the various sources comprising the Prescribed Law, then the Act and Regulations shall prevail over all other sources;
- (www) **"Preservation Age"** means:
- (i) For a person born before 1 July 1960 — 55 years; or
 - (ii) For a person born during the year 1 July 1960 to 30 June 1961 — 56 years; or

- (iii) For a person born during the year 1 July 1961 to 30 June 1962 — 57 years; or
- (iv) For a person born during the year 1 July 1962 to 30 June 1963 — 58 years; or
- (v) For a person born during the year 1 July 1963 to 30 June 1964 — 59 years; or
- (vi) For a person born after 30 June 1964 — 60 years;
- (xxx) **“Product Disclosure Statement”** means a product disclosure statement under section 761A of the Corporations Act;
- (yyy) **“Public Sector Superannuation Scheme”** means a Scheme for the payment of superannuation, retirement or death benefits, where the Scheme is established:
 - (i) By or under a law of the Commonwealth or of a State or Territory; or
 - (ii) Under the authority of:
 - (A) The Commonwealth or the government of a State or Territory; or
 - (B) A municipal corporation, another local governing body or a public authority constituted by or under a law of the Commonwealth or of a State or Territory;
- (zzz) **“Receiving Spouse”** means a receiving spouse as defined by Regulation 6.46;
- (aaaa) **“Regulator”** means the person or body who is administering the Act and monitoring the activities of the Fund including the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC) or the Federal Commissioner of Taxation;
- (bbbb) **“Regulations”** means the Superannuation Industry (Supervision) Regulations 1994 (Cth) as amended from time to time;
- (cccc) **“Regulated Superannuation Fund”** is a Fund that:
 - (i) Has a Trustee; and
 - (ii) Either the Trustee of the Fund must be a constitutional corporation pursuant to a requirement contained in the governing rules or the governing rules must provide that the sole purpose of the fund is the provision of old-age pensions; and
 - (iii) The Trustee must have given to APRA (or such other body or person specified in the Regulations), a written notice that is in the Approved Form and signed by all Trustees electing that the Act is to apply in relation to the Fund;
- (dddd) **“Relatives”** means those set out in s 10 of the Act, namely:
 - (i) A parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or his or her spouse; or
 - (ii) A spouse of the individual or of any other individual referred to in paragraph 1(dddd)(i);

- (eeee) **"Related Party"** means the Members, the Member's Associates, the Employer-Sponsors of the Fund and the Employer-Sponsor's Associates;
- (ffff) **"Restricted Investments"** means those as listed in clause 18 to this Deed and any other restricted investments under the Prescribed Law;
- (gggg) **"Reversionary Pension Nomination"** means a nomination made by a Member when commencing a Pension in accordance with clause 9.6 providing for the Pension to continue to be paid after the Member's death to an eligible reversionary Beneficiary under the Prescribed Law;
- (hhhh) **"Scheme"** means:
- (i) Any agreement, arrangement, understanding, promise or undertaking:
 - (A) Whether express or implied; or
 - (B) Whether or not enforceable, or intended to be enforceable, by legal proceedings; and
 - (ii) Any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;
- (iiii) **"SMSF"** or **"Self Managed Superannuation Fund"** means a complying Self Managed Superannuation Fund under the Prescribed Law;
- (jjjj) **"Sole Purpose Rule"** means the requirements for a complying SMSF as set out under s 62 of the Act and summarised in clause 4.1 of this Deed;
- (kkkk) **"Splittable Contributions"** are defined under Regulation 6.42;
- (llll) **"Spouse"** of a person includes another person (whether of the same sex or a different sex) who lives with the person on a genuine domestic basis as a couple although not legally married;
- (mmmm) **"Standard Employer-Sponsor"** means an Employer who contributes to the Fund for the benefit of a Member, under an arrangement between the Employer and the Trustee;
- (nnnn) **"Superannuation Holding Accounts Special Account"** means the Special Account established by s 8 of the Small Superannuation Accounts Act 1995 (Cth);
- (oooo) **"Superannuation Interest"** means a beneficial interest in a superannuation entity;
- (pppp) **"Tax File Number"** has the meaning given by s 202A of the Income Tax Assessment Act 1936 (Cth);
- (qqqq) **"Tax Legislation"** means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) as amended from time to time;
- (rrrr) **"Transition to Retirement Pension"** means a 'Transition to Retirement Income Stream' under Regulation 6.01 as summarized in Schedule 6 to this Deed;
- (ssss) **"Trustee"** means the person, persons or the Corporate named in Schedule 1 to this

Deed;

- (tttt) **"Year of Income"** means a period that is, for the purposes of the Tax Legislation, a year of income of the Fund.

2. Interpretation

In this Agreement, unless the context requires otherwise:

- (a) A reference to a word includes the singular and the plural of the word and vice versa;
- (b) A reference to a gender includes any gender;
- (c) A term which refers to a natural person includes a company, a partnership, an association, a corporation, a body corporate or a joint venture;
- (d) Headings are included for convenience only and do not affect interpretation;
- (e) A reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
- (f) A reference to a part, clause, part, annexure, exhibit or schedule is a reference to an item of that type in this Agreement;
- (g) A reference to this Agreement includes any annexure and any schedule (if any) to this Agreement;
- (h) A reference to a statute or statutory provision includes but is not limited to a statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision;
- (i) A covenant or an agreement between more than one person binds them jointly and severally.
- (j) A reference to any legislation (including subordinate legislation) in this Deed shall include any amendments, variations or new legislation replacing the legislation from time to time;
- (k) Any reference to "State" includes a reference to "Territory".
- (l) If any term or provision of the Deed is unenforceable or inconsistent with the Prescribed Law then it shall be severed from the Deed or read down but so as to maintain all other terms of this Deed so far as it is possible to do so.

3. Basic Rules for Self Managed Superannuation Funds

Subject to the Act and Regulations, the Fund is a Self Managed Superannuation Fund only if it satisfies all of the conditions in either 3.2 or 3.3.

3.1. Extended Definitions

In this clause:

- (a) The meaning of "Employee" in the Definitions is extended such that a person is also

taken to be an employee of another person ("Other Person") if the Other Person is:

- (i) A Relative of the Other Person;
 - (ii) Either a Company of which the Other Person or a Relative of the Other Person is a director or a Company related to that Company;
 - (iii) A Trustee of a trust of which the Other Person or a Relative of the Other Person is a beneficiary;
 - (iv) A partnership where the Other Person or a relative of the Other Person is either an individual partner, a director of a Company that is a partner or a trustee of a trust that is a partner in the partnership.
- (b) "Relative", in relation to an individual means:
- (i) A parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the individual or of his or her Spouse or former Spouse; or
 - (ii) A Spouse or former Spouse of the individual, or of an individual referred to in 3.1(b)(i).

3.2. Funds Other Than Single Member Funds

Where the Fund has more than one member, the Fund is a Self Managed Superannuation Fund if and only if it satisfies the following conditions:

- (a) It has fewer than 5 members;
- (b) If the Trustees of the fund are individuals - each individual Trustee is a member of the Fund;
- (c) If the Trustee of the fund is a Company - each Director of the Company is a Member of the Fund;
- (d) Each Member of the Fund is:
 - (i) A Trustee of the Fund; or
 - (ii) In the case of a Corporate Trustee, each Member of the Fund is a Director of the Company;
- (e) No Member of the Fund is an Employee of another Member of the Fund, unless the Members are Relatives.
- (f) No Trustee of the Fund receives any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund;
- (g) If the Trustee of the Fund is a Company - no Director of the Company receives any remuneration from the Fund or from any person (including the Company) for any duties or services performed by the director in relation to the Fund.

3.3. Funds with Single Members

Where the Fund only has one Member, the Fund is a Self Managed Superannuation Fund if and only if it satisfies the following conditions:

- (a) If the Trustee of the Fund is a Company:
 - (i) The Member is the sole Director; or
 - (ii) The only Directors are the Member and one Relative of the Member;
 - (iii) The only Directors are the Member and one other person who is not the Member's Employer; and
- (b) If the Trustees of the Fund are individuals:
 - (i) The Trustees are the Member and one Relative of the Member; or
 - (ii) The Trustees are the Member and one other person who is not the Member's Employer; and
- (c) No Trustee of the Fund receives any remuneration from the Fund or from any person for any duties or services performed in relation to the Fund;
- (d) If the Trustee of the Fund is a Company - no Director of the Company receives any remuneration from the Fund or from any person (including the Company) for any duties or services performed in relation to the Fund.

3.4. Certain Other Persons May Be Trustee

The Fund does not fail to satisfy the conditions in clauses 3.2 or 3.3 because:

- (a) A Member of the Fund has died and the Member's LPR is Trustee of the Fund or a Director of a Corporate Trustee of the Fund in place of the Member for the period from when the Member dies until such time as death benefits commence to be payable in respect of the Member of the Fund; or
- (b) A Member's LPR is Trustee of the Fund or Director of a Corporate Trustee in place of the Member during any period where the Member is under a legal disability or the LPR has an enduring power of attorney from the Member; or
- (c) If a Member is under a legal disability because of age but does not have a LPR and the Member's parent or guardian is Trustee of the Fund or Director of a Corporate Trustee in place of the Member; or
- (d) An appointment under s 134 of the Act of an acting Trustee of the Fund is in force.

4. The Fund

4.1. Sole Purpose

It is a requirement of this Deed that:

- (a) The trustee of the Fund must be a Constitutional Corporation; or

- (b) Where the trustee is a natural person or persons, that the sole or primary purpose of this Fund is to provide Old Age Pensions to its Members.

4.2. Sub-Plans

The Trustee may, for any objective it considers reasonable and prudent, break up the Fund into one or multiple Sub-Plans provided that no Member's Benefits or entitlements are reduced without informed, written consent being given from the Member.

The Trustee must maintain the Memberships, Contributions, Assets and Liabilities in the Sub-Plan for payment of Benefits separately from the remainder of the Fund.

5. Membership

5.1. Initial Members of the Fund

The initial Members of the Fund shall be those persons named in Schedule 1 to this Deed. Each of the initial Members have completed and submitted a Membership Application to the Trustee. Having completed and submitted a Membership Application to the Trustee, each initial Member is deemed to be bound by the provisions of this Deed.

5.2. Additional Members

- (a) Application by Additional Members

The Trustee may at anytime admit additional person/s as Members to the Fund provided that each of the Applicants have completed and submitted a Membership Application.

- (b) Eligible Members

The Trustee may admit as a Member, any person who is or has at any time been an Employee or a Child of a Member and/or any other person acceptable to the Trustee and Regulator. In determining whether an Applicant is acceptable, the Trustee may request in writing such information as the Trustee thinks necessary for this purpose. If the Applicant fails to provide the requested information, then the Trustee may decline to accept the Applicant as a Member of the Fund.

- (c) Additional Member who is a Minor

A Minor's parent or guardian may make application for the Minor to become a Member of the Fund by completing a Membership Application on behalf of the Minor. The parent or guardian of the minor shall make all decisions regarding the Minor's membership in the Fund until the Minor reaches the age of eighteen (18) years. Once the Minor reaches the age of eighteen (18) years then the Minor will become a Member of the Fund.

- (d) Additional Member to Consent to be Trustee

Each Applicant must consent to becoming a Trustee of the Fund or in the case of a Corporate Trustee, a Director unless the Applicant is disqualified from acting as Trustee.

- (e) Bound by Deed

Each Applicant of the Fund who completes and submits a Membership Application to the Trustee is deemed to be bound by the provisions of this Deed (as if the Applicant was an initial

Member under this Deed).

- (f) Comply with SMSF Rules

When admitting new Members to the Fund, the Trustee must ensure that it does not offend the rules for SMSF as set out in clause 3.

- (g) Commencement of Membership

The Applicant's commencement as a Member of the Fund shall be such date as specified by the Trustee or if no date is specified, shall be seven (7) days from the date which the Applicant submitted his or her Membership Application to the Trustee. The Applicant will become a Trustee of the Fund on the same date as the Applicant becomes a Member of the Fund.

- (h) Conditions on Membership

The Trustee may impose such conditions on the Applicant's membership and may alter the conditions at anytime.

5.3. Member Disclosure

A Member must immediately notify the Trustee if:

- (a) The Member becomes an Employee of another Member who is not a Relative of the Member;
- (b) The Member's circumstances have changed such that the Member is disqualified from acting as Trustee.

If the Trustee receives notice of either of the above events, then the Trustee must ensure that the Member ceases to be a Member of Fund within six (6) months of the event having occurred.

5.4. Classes of Members

The Trustee may split the Members into different classes as it deems appropriate and attach different conditions, criteria, Benefits and entitlements to each class provided that the split does not cause any Member's Benefits or entitlements to be reduced without consent.

5.5. Ceasing of Membership/Trusteeship

A person will cease to be a Member of the Fund upon any of the following events:

- (a) The Member's death; or
- (b) The Member ceasing to be Trustee of the Fund or in the case of a Corporate Trustee, ceasing to be a Director; or
- (c) When Benefits payable to or for the Member cease to be payable; or
- (d) When the Member's Benefits are paid to the Member or to an Approved Arrangement in favour of the Member.

Further, when a person ceases to be a Member of a Fund, then that Member also automatically ceases to be Trustee of the Fund.

6. Accounts

6.1. Accumulation Account

(a) Establish Accumulation Account

The Trustee must establish an Accumulation Account for each new Member of the Fund.

(b) Credits to Accumulation Account

The Trustee must credit to a Member's Accumulation Account:

- (i) All Contributions made by, for, or in respect of a Member;
- (ii) All Contributions allocated to the Member's Accumulation Account from the Non-Compulsory Contributions Reserve;
- (iii) All Benefits and entitlements which are rolled-over or transferred to the Fund in respect of a Member pursuant to this Deed;
- (iv) All income which is allocated to the Member's Accumulation Account, earned from investments of the Fund or in respect of a sub-plan (where a Member is a member of a sub-plan) attributable to the amounts in 6.1(b)(i) and 6.1(b)(ii);
- (v) Any amount allocated to the Member's Accumulation Account by the Trustee from any reserves held by the Fund or sub-plan (where the Member is a member of a sub-plan);
- (vi) An amount transferred from the Pension Reserve of a Beneficiary of the Member;
- (vii) The proceeds of any insurance policy or annuity effected by the Trustee for a Member or a Beneficiary which the Trustee deems appropriate to credit to the Member's Accumulation Account;
- (viii) The current surrender value of any capital guaranteed life assurance policy taken out over the life of a Member by the Trustee;
- (ix) Any refunds of overpaid tax, levies or other charges together with interest accrued on such sums (if any) in circumstances where the tax, levies or other charges were directly deducted from the Contributions made by, for or in respect of a member; and
- (x) Any other amount that the Trustee thinks appropriate to credit to the Member's Accumulation Account.

(c) Deductions from Accumulation Account

The Trustee must debit from a Member's Accumulation Account, where necessary:

- (i) Such proportion as the Trustee deems appropriate of:
 - (A) The expenses associated with setting up, operating, and winding up

the Fund;

- (B) Any administrative costs associated with the setting up, operating, and winding up of the Fund;
 - (C) The premiums of any group insurance policies taken out by the Trustee for a number of or class of Members and/or Beneficiaries;
 - (D) Any tax payable in respect of any income derived by the Fund and credited to the Member's Accumulation Account;
- (ii) Any taxation assessed on the Member's Contributions, payment of Benefits to the Member or Member's Beneficiaries or as a consequence of a roll-over or transfer which are required to be taken directly from a Member's Contributions;
 - (iii) Any amounts required to be paid to the Regulator as a consequence of a Member failing to provide the Member's Tax File Number;
 - (iv) Any amounts required to be paid by the Fund for overpayment of the Government Co-Contribution;
 - (v) Any amount rolled-over or transferred out of the Fund in respect of a Member;
 - (vi) The costs of any annuity or premiums on any policy of insurance effected for a Member by the Trustee;
 - (vii) Any amount allocated to a Pension Account of a Beneficiary; and
 - (viii) An amount to be allocated and credited to another Member's Accumulation Account pursuant to a Contributions-Split accepted by the Trustee;
 - (ix) Any other amount that the Trustee thinks appropriate to debit from the Member's Accumulation Account.

Where a Trustee has discretion to determine what proportion of amounts should be debited from a Member's Accumulation Account, the Trustee must exercise that discretion in a just, reasonable and consistent fashion, taking into consideration any extraordinary circumstances of any Members which may affect the allocation of debits from a Member's Accumulation Account. The Trustee's decision as to the allocation of amounts to be debited shall be final.

6.2. Accounts for Non-Member Spouses

(a) Family Court Orders

If an order is made under the *Family Law Act* with respect to any Member's Superannuation Interest, the Trustee may be required to:

- (i) Establish and maintain a new Accumulation Account for a Non-Member Spouse;
- (ii) Transfer or roll-over a Non-Member Spouse's Superannuation Interest to another Approved Fund;
- (iii) Split with the Non-Member Spouse, the sum standing to the credit of a

Member's Accumulation Account;

- (iv) Classify or categorise part of a Member's Superannuation Interest which is to be paid to a Non-Member Spouse;
- (v) Notify the Members and the Non-Member Spouse of any orders requiring a Payment Split.

(b) Costs

The Trustee may deduct any costs of complying with the order from the Non-Spouse's Interest including any costs incurred through the Trustee seeking professional advice.

6.3. Non-Compulsory Contributions Reserve

(a) Non-Mandated Contributions

The Trustee may establish a Non-Compulsory Contributions Reserve for the Fund or for each sub-plan (where there are sub-plans within the Fund) to which the Trustee may credit all Non-Mandated Contributions (voluntary).

(b) Allocation of Funds from Non-Compulsory Contributions Reserves

Upon any amounts being received into the Non-Compulsory Contributions Reserve, the Trustee must, in the Trustee's discretion, either:

- (i) Use the reserve for the Fund's activities; or
- (ii) Within twenty-eight (28) days (or if not reasonably practicable, such longer period as is reasonable in the circumstances), allocate the amounts to the Members' Accumulation Accounts in such proportions as the Trustee shall determine.

(c) Direct Allocation from Non-Compulsory Contributions Reserves to Accumulation Accounts

Notwithstanding the above, nothing in this clause shall prevent the Trustee from allocating and crediting any Non-Mandated Contributions received directly to the Members' Accumulation Accounts (rather than to the Non-Compulsory Contributions Reserve).

6.4. Income Reserve

(a) Credit Income to Income Reserve

Subject to the Prescribed Law, the Trustee may credit:

- (i) Any income earned by the Fund or by a sub-plan (where a sub-plan exists in the Fund) through investments; and
- (ii) Any proceeds of an insurance policy that the Trustee decides not to credit immediately to the Members' Accumulation Accounts or Pension Reserves;

to an Income Reserve.

(b) Application of Income Reserves

The Trustee, in its discretion, may use the Income Reserves for such purposes of the Fund as the Trustee deems fit including (but not limited) to smoothing out investment earnings being allocated to Member's Accumulations Accounts and partially or fully satisfying any debts owing by the Fund.

(c) Allocation of Income Reserve to Accumulation Accounts

The Trustee may allocate part or all of the remaining Income Reserve:

- (i) Where the income is earned by the Fund's investments - to the Member's Accumulation Accounts; or
- (ii) Where the income is earned by the Fund attributable to investments for a sub-plan - to the Accumulation Accounts of Members of the sub-plan;

in such proportions as the Trustee, in its sole discretion, may decide.

(d) Exercise of Discretion

The Trustee must exercise its discretion in a just, reasonable and consistent fashion, taking into consideration any extraordinary circumstances of any Members which may affect the allocation of Income Reserves to a Member's Accumulation Account. The Trustee's decision as to the proportion of Income Reserves allocated to Member's Accumulation Accounts shall be final.

(e) Income Tax from Income Reserve

The Trustee must ensure payment is made of any tax assessable in respect of income earned by the Fund and deduct any taxation assessed from the Income Reserves or the Member's Accumulation Accounts as is required.

6.5. Pension Reserve

(a) Credits to Pension Reserves

If the Trustee decides to pay a pension to a Member or Beneficiary, the Trustee **must** transfer or allocate amounts to one or multiple pension reserves established in order to pay the pension. The Trustee must reduce the Members' Accumulation Accounts to the extent of any amounts transferred from a Member's Accumulation Account into a pension reserve.

(b) Debits to Pension Reserve

All expenses incurred in establishing or administering a pension reserve including taxes, levies or other outgoings associated with the reserve may be deducted from the reserve balance.

6.6. Other Reserves

(a) Credits to Other Reserves

The Trustee may, if it desires, transfer or allocate amounts which are not already allocated to the Member's Accumulation Accounts to one or multiple other reserves as the Trustee may establish from time to time.

(b) **Debits to Other Reserves**

All expenses incurred in establishing or administering any other reserve including taxes, levies or other outgoings associated with the reserve may be deducted from the reserve balance.

6.7. Transfer between Accounts or Reserves

The Trustee may, on receipt of advice from an Actuary, transfer amounts between the Member's Accumulation Accounts, Income Reserves, Pension Reserves and Other Reserves as the Trustee thinks fit provided the Trustee does so in a just, reasonable and consistent fashion.

7. Contributions

7.1. When Contributions May be Accepted

From 1 July, 2007, the Trustee may only accept Contributions that are made in accordance with the Prescribed Law and more particularly, regulation 7.04 of the Regulations as summarised below.

The Trustee may accept the following Contributions where the Member is:

- (a) **Under 65** - all Contributions made in respect of that Member; or
- (b) **Over 65 but under 70** - Contributions made in respect of the Member that are:
 - (i) Mandated Employer Contributions;
 - (ii) If the Member has been Gainfully Employed on at least a Part-Time Basis during the financial year in which the Contributions are made then the Trustee may accept Employer Contributions (except Mandated Employer Contributions) or Member Contributions;
 - (iii) Payment under s 31(1)(b)(i) or (ii) of the *First Home Saver Accounts Act 2008*; or
- (c) **Not under 70, but under 75** - Contribution made in respect of a Member that are:
 - (i) Mandated Employer Contributions, or
 - (ii) If the Member has been Gainfully Employed on at least a Part-Time Basis during the financial year in which the contributions are made then the Trustee may accept Contributions received on or before the day that is twenty-eight (28) days after the end of the month in which the Member turns 75 that are either Employer Contributions (except Mandated Employer Contributions) or Member Contributions made by the Member; or
- (d) **Not under 75** - Contributions made in respect of a Member that are Mandated Employer Contributions.

7.2. Tax File Number

The Trustee must not accept any Member Contributions if the Member's Tax File Number has not been quoted to the Trustee.

7.3. Maximum Fund Cap Contributions

The Trustee must not accept any Fund-Capped Contributions in a financial year of a member that exceed:

- (a) If a Member is 64 or less on 1 July of the financial year - three (3) times the amount of the Non-Concessional Contributions Cap; or
- (b) If the Member is 65 but less than 75 on 1 July of the financial year - the Non-Concessional Contributions Cap.

7.4. Government Co-Contributions

The Trustee may accept Contributions received in respect of a Member under the Co-Contribution Act.

7.5. Contribution for Spouse or Child

The Trustee may accept Eligible Spouse Contributions or Child Contributions subject to the rules in r 7.04 of the Regulations.

7.6. Splitting-Contributions

The Trustee may accept Splitting-Contributions in accordance with clause 7.12.

7.7. Contributions in Specie

The Trustee must not accept any Contributions in specie to the Fund so as to cause a contravention of the Restricted Investment rules unless an exemption applies under the Prescribed Law.

7.8. Contributions from Employers

The Trustee may accept Contributions from any Employer, even if such Employer has not given written notice of their agreement to the terms and conditions in Deed. Notwithstanding this, a sample application to become a Standard Employer-Sponsor appears in Schedule 3 to this Deed.

7.9. Allocation of Funds

The Trustee must allocate Contributions received by, from or in respect of Members within twenty-eight (28) days after the end of the month or, if not reasonably practicable, within such longer period as is reasonable in the circumstances.

7.10. Contributions received as Preserved Benefits

From 1 July, 1999, all Contributions which are made by or on behalf of a Member to the Fund and all earnings after that date are deemed Preserved Benefits, regardless of who makes the Contribution and whether or not they are entitled to a concession for such Contribution under the Tax Legislation.

7.11. Return of Non-Complying Contributions

Where a sum is unable to be accepted by the Trustee under the Prescribed Law, the sum must be returned to the person or entity who paid the sum within thirty (30) days of the Trustee becoming aware that the sum was received in a manner inconsistent with the Prescribed Law.

7.12. Contribution-Splitting

(a) Application to Trustee

A Member may apply to the Trustee to roll-over, transfer or allot an amount of Benefits for the benefit of the Member's Spouse. An application to the Trustee may be made in the Approved Form (as at the date of this Deed - a 'Superannuation Contributions Splitting Application') or subject to the Prescribed Laws, as otherwise approved by the Trustee.

(b) Contributions Able to be Split

The Trustee may only split Splittable Contributions. The Member may apply for the roll-over, transfer or allotment of the amount of Splittable Contributions made by or on behalf of the Member in:

- (i) The last financial year that ended before the application (ie. a Member can or request a contributions split from 1 July for Contributions made in the year up to the previous 30 June); or
- (ii) The financial year in which the application is made but only where the Member's entire Benefit is to be rolled-over or transferred in that year.

(c) Contributions Unable to be Split

Contributions which are not eligible for splitting are:

- (i) Existing Benefits and Contributions made before 1 January, 2006;
- (ii) Amounts rolled-over or transferred from another superannuation fund;
- (iii) An amount allotted to a Member's Account under Division 6.7 of the Regulations;
- (iv) A superannuation Lump Sum that is paid from a foreign superannuation fund;
- (v) A directed termination payment or an amount that would form part of the Contributions segment of the Superannuation Interest; and
- (vi) A Contribution by the Commonwealth, a state or territory to a Public Sector Superannuation Scheme in relation to a Benefit that accrued in a financial year that commenced prior to 1 July, 2005;
- (vii) Those subject to a Payment Split or Payment Flag.

(d) Invalid Applications for Contribution-Splitting

A Member's application under clause 7.12 is invalid if:

- (i) The Member has already made a Splitting Application in the current Year of Income, which the Trustee is either still considering or has already motioned;
- (ii) It relates to Benefits exceeding the Maximum Splittable Amount of a Member's Contribution for the year;

- (iii) At the time of the Contribution, the Member's Spouse is aged sixty-five (65) years or more or is aged between the relevant Preservation Age and sixty-five (65) years and has satisfied the "Retirement" Condition of Release.

However, an application may be valid if it includes a statement from the Receiving Spouse ("*Receiving Spouse's Statement*") that, at the time of the Contributions, they are either between their relevant Preservation Age and sixty-five (65) and not permanently retired, or that they are under their Preservation Age.

(e) Trustee's Decision

A Trustee may only accept a Member's Contribution-Splitting application if all of the following requirements are satisfied:

- (i) The application complies with Regulation 6.44;
- (ii) The Trustee has no reason to believe that the Receiving Spouse's Statement is untrue; and
- (iii) The application relates to an amount that is not more than the Maximum Splittable Amount for the Year.

The decision as to whether to accept a Member's Contribution Splitting application is at the sole discretion of the Trustee and the Trustee may accept an application subject to any terms and conditions it wishes to impose (subject to the Prescribed Law).

If the Trustee accepts a Member's Contribution Splitting application, then the Trustee must roll-over, transfer or allot the amount within ninety (90) days of receiving the Benefit.

(f) Consequences of Contributions Splitting

The Splitting of a Member's Contributions with his/her Spouse causes:

- (i) Either:
 - (A) A new superannuation Benefit to be created for the Spouse where the Trustee must credit the sum set out in the Contribution-Splitting Application subject to any terms and condition imposed by the Trustee;
 - (B) If the Receiving Spouse already has an interest in the Fund, credit the sum set out in the Contribution-Splitting Application to the existing interest of the Receiving Spouse;
- (ii) The new superannuation Benefit is treated as a roll-over if rolled over to another fund or if transferred to an account in the existing fund in the Spouse's name (it is not treated as a Contribution to the Spouse's fund);
- (iii) The new Benefit consists entirely of a taxable component;
- (iv) The Benefit rolled over or transferred for a Member's Spouse is deemed to be a Preserved Benefit unless and until the Trustee is satisfied that it is not a Preserved Benefit.

8. Payment of Benefits

8.1. Prescribed Law to Prevail

The Trustee must only cash and pay benefits to the Members or other entitled persons in accordance with the Prescribed Law. To the extent that any of the provisions of this Deed may be inconsistent with the Prescribed Law, the Prescribed Law shall prevail.

8.2. Payment of Preserved Benefits

The Trustee may only cash and pay a Member's Preserved Benefits in the Fund if a Condition of Release has been satisfied and subject to any Cashing Restrictions.

8.3. Payment of Restricted Non-Preserved Benefits

The Trustee may only cash and pay a Member's Restricted Non-Preserved Benefits in the Fund if a Condition of Release has been satisfied and subject to any Cashing Restrictions.

8.4. Payment of Unrestricted Non-Preserved Benefits

The Trustee may cash (subject to any Cashing Restrictions) and pay a Member's Unrestricted Non-Preserved Benefits at anytime on written request by the Member. It is not necessary that the Member satisfy a Condition of Release in order for the Unrestricted Non-Preserved Benefits to be paid

8.5. Cashing Restriction "Nil"

If the Cashing Restriction with respect to any of the Benefits above is "nil" then, then subject to any restrictions in this Deed or otherwise relating to commutation of a Pension to a Lump Sum, the Benefits may be cashed as one or multiple Lump Sums, one or multiple Pensions and/or the purchase of one or multiple Annuities.

8.6. Conditions of Release

The Conditions of Release are as set out in Schedule 1 of the Regulations. In summary, the Conditions of Release are as follows:

- (a) **Retirement** - the Retirement of a Person is taken to occur:
 - (i) In the case of a person who has reached the Preservation Age that is less than 60 years of age:
 - (A) If an arrangement under which the Member was Gainfully Employed has come to an end; and
 - (B) The Trustee is reasonably satisfied that the person intends never to again become Gainfully Employed, either on a Full-Time or Part-Time basis; or
 - (ii) In the case of a person who has attained the age of 60:
 - (A) An arrangement under which the Member was Gainfully Employed has come to an end and either the person has attained that age on or before the ending of employment; or

- (B) The Trustee is reasonably satisfied that the person intends never to again become Gainfully Employed, either on a Full-Time or a Part-Time basis;
- (b) **Attaining age 65;**
- (c) **Termination of Gainful Employment** - termination of Gainful Employment with an Employer who had, or any of whose Associates had, at any time, contributed to the Fund in relation to the Member;
- (d) **Termination of Gainful Employment with Preserved Benefits <\$200** - termination of Gainful Employment with a Standard Employer-Sponsor of the Fund on or after 1 July 1997 (where the Member's Preserved Benefits in the Fund at the time of the termination are less than \$200);
- (e) **Terminal Medical Condition** - in relation to a person exists at a particular time if the following circumstances are satisfied:
- (i) Two (2) registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the certification period) that ends not more than twelve (12) months after the date of the certification;
 - (ii) At least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
 - (iii) For each of the certificates, the certification period has not ended.
- (f) **Death** - see clause 8.7;
- (g) **Permanent Incapacity** - in relation to a Member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, due to the ill-health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;
- (h) **Temporary Incapacity** - in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;
- (i) **Severe Financial Hardship** - a person is taken to be in Severe Financial Hardship if:
- (i) The Trustee of the Fund is satisfied:
 - (A) Based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that the person has received Commonwealth income support payments for a continuous period of 26 weeks and the person was in receipt of payments of that kind on the date of the written evidence; and
 - (B) That the person is unable to meet reasonable and immediate family living expenses; or

- (ii) The person has reached the age that is the person's Preservation Age plus 39 weeks and the Trustee of the Fund is satisfied:
 - (A) Based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments — that the person received Commonwealth income support payments for a cumulative period of 39 weeks after the person reached the person's Preservation Age; and
 - (B) That the person was not Gainfully Employed on a Full-Time, or Part-Time basis on the date of the application for cashing of his or her Preserved Benefits, or Restricted Non-Preserved Benefits, in the Fund.

However, the written evidence provided for this Condition of Release is of no effect if it is dated more than twenty-one (21) days before the date of the person's application to the Trustee for cashing of his or her Preserved Benefits or Restricted Non-Preserved Benefits.

- (j) **Compassionate Grounds** - are those grounds listed in reg 6.19A of the Regulations, being (in summary):

- (i) To pay for medical treatment or medical transport for the person or a Dependant; or
- (ii) To enable the person to make a payment on a Loan, to prevent:
 - (A) Foreclosure of a mortgage on the person's principal place of residence; or
 - (B) Exercise by the mortgagee of an express, or statutory, power of sale over the person's principal place of residence; or
- (iii) To modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a Dependant, arising from severe disability; or
- (iv) To pay for expenses associated with the person's palliative care, in the case of impending death; or
- (v) To pay for expenses associated with a Dependant's:
 - (A) Palliative care, in the case of impending death; or
 - (B) Death; or
 - (C) Funeral; or
 - (D) Burial; or
 - (E) To meet expenses in other cases where the release is consistent with a ground mentioned in paragraphs 8.6(j)(i) to 8.6(j)(v), as the Regulator determines.

- (k) **Attaining Preservation Age;**
- (l) **Lost Member** - Being a lost member who is found, and the value of whose Benefit in the Fund, when released, is less than two hundred dollars (\$200);
- (m) **Temporary Residents** - former temporary resident to whom reg 6.20A or 6.20B of the Regulations applies, requesting in writing the release of his or her Benefits;
- (n) **Transitional Release Authority** - A person gives a transitional release authority to the Trustee under section 292-80B of the Income Tax (Transitional Provisions) Act 1997;
- (o) **Release of Benefits under ATO authority** - either:
 - (i) A person gives a release authority to a superannuation provider under subsection 292-410(1) of the *Income Tax Assessment Act 1997* (Cth);
 - (ii) The Commissioner of Taxation gives a released authority to the Trustee under s 292-410(4) of the *Income Tax Assessment Act 1997* (Cth);
- (p) **Release to ATO** - the Trustee is required to pay an amount to the Commissioner of Taxation under the Superannuation (Unclaimed Money and Lost Members) Act 1999 for the person's Superannuation Interest in the Fund.
- (q) **Any other condition**, if expressed to be a Condition of Release under the Act.

8.7. **Payment of Death Benefit**

- (a) **When Payable**

A Member's Death Benefits becomes payable upon the Member's death or upon the death of a Spouse who is receiving a Pension. A Member's Death Benefit must be paid as soon as practicable after the Member's death.

- (b) **Calculation**

A Member's Death Benefit is the balance credited to the Member in the Member's Accumulation Account less any duties, fees, taxes or reasonable expenses levied or incurred with respect to the payment of the Death Benefit.

- (c) **Trustee's Discretion as to Recipient**

Subject to any valid Reversionary Pension Nomination, Binding Death Nomination or Non-Binding Death Nomination by the deceased Member, the Trustee shall, in its sole discretion elect, having due regard to any wishes of the Member contained in a Preferential Death Nomination or an invalid or failed Reversionary Pension Nomination, Binding Death Nomination or Non-Lapsing Binding Death Nomination, which of the following persons shall receive the Member's Death Benefit (noting that the Trustee may decide to pay the entire Death Benefit to only one of these persons):

- (i) The Member's Legal Personal Representative; and/or
- (ii) The Member's Dependants.

By way of clarity, if a Member has made a Reversionary Pension Nomination and either a

Binding Death Nomination or Non-Binding Death Nomination which conflict (e.g. nominate different Beneficiaries or methods by which they are to take the Death Benefit), then the Reversionary Pension Nomination will prevail (unless an express contrary intention exists in the Reversionary Pension Nomination or the Binding Death Nomination or Non-Lapsing Binding Death Nomination), even if the Reversionary Pension Nomination was made prior to the Binding Death Nomination or Non-Binding Death Nomination.

(d) Notifying Death Benefit Beneficiary

If on a Member's death, the Death Benefit is payable to a person or persons other than the deceased Member's LPR, then the Trustee must notify such person or persons as to why the death benefits are payable to them, the sums payable and any conditions on which the sums are to be paid.

(e) Lost Death Benefit Beneficiary

If the Trustee, after exhausting all reasonable efforts, is unable to locate a Dependant to whom death benefits are payable, then the Trustee may, in its sole discretion, decide to pay such part of the death benefits as the lost Dependant was to receive to the deceased Member's LPR or other remaining Dependents. The Trustee shall not be liable or subject to any claim or action as a result of exercising this discretion, provided the Trustee has exhausted all reasonable efforts to locate the lost Dependant.

(f) Method of Payment

The Trustee may pay the Death Benefit in the form of a Lump Sum, one or more Pensions (subject to clauses 9.6 and 9.7) or Annuities as the Trustee in its sole discretion thinks fit.

(g) Discharge of Trustee

The receipt of the Death Benefit (or any part of it) by a Dependant, LPR or other person discharges the Trustee from liability insofar as the Trustee is not responsible to see to its proper application.

(h) Anti-detriment Payment

Where a Death Benefit is to be paid in the form of a lump sum to a Spouse, former Spouse or Child of the deceased Member, then the Trustee may also pay to the Spouse, former Spouse or Child an anti-detriment payment from the reserves of the Fund or from such other source (such as life insurance) permitted by the Prescribed Law.

8.8. Preferential Death Nomination

(a) Giving of Notice

At any time, a Member may provide the Trustee with a Preferential Death Nomination informing the Trustee of how the Member would prefer his or her Death Benefit to be paid but leaving the final decision as to whom the Death Benefit will be paid to the discretion of the Trustee.

(b) Trustee's Discretion

On the death of a Member who has provided a Preferential Death Nomination, the Trustee retains its discretion regarding payment of the Death Benefit (as in clause 8.7) but must make the eventual decision having given careful and due consideration to the Member's stated

intention contained in the Preferential Death Nomination and all the other relevant circumstances.

This in no way restricts the Trustee's ability to make a decision as to the payment of the Death Benefit which departs from a Member's Preferential Death Nomination.

(c) Requirements

A Preferential Death Nomination must:

- (i) Be in writing; and
- (ii) Be signed and dated by the Member making the Preferential Death Nomination; and
- (iii) Be delivered to the Trustee; and
- (iv) Only list the Member's Legal Personal Representative or Dependants as potential nominees.

A Preferential Death Nomination does not have to be witnessed. A sample form of Preferential Death Nomination appears in Schedule 4 to this Deed.

8.9. Binding Death Nomination

(a) Giving of Notice

At any time, the Member may provide the Trustee with a Binding Death Nomination, directing the Trustee of the Fund where to pay some or all of the Member's Death Benefit. A Member may vary or revoke a Binding Death Nomination at anytime by written notice to the Trustee.

(b) When Trustee Bound

Unless the Binding Death Nomination is invalid, has lapsed, been revoked by the Member, is overturned by a Court or contravenes the Prescribed Law, the Trustee will be bound to pay the Member's Death Benefit in accordance with the notice. However, the Trustee will not be required to follow the Binding Death Nomination if the Trustee is aware that the paying the Death Benefit in accordance with the Binding Death Nomination would breach a court order.

(c) Requirements for Valid Notice

For a Binding Death Nomination to be valid:

- (i) It must be in writing; and
- (ii) It must be signed and dated by the Member making the Binding Death Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Binding Death Nomination; and
- (iii) It must contain sufficient detail to identify the Member making the Binding Death Nomination; and
- (iv) It must contain a declaration by the witnesses which is signed and dated,

stating that the Binding Death Nomination was signed by the Member in their presence; and

- (v) It must be delivered to the Trustee; and
- (vi) It must be accepted by the Trustee (with such acceptance of a valid Binding Death Nomination not to be unreasonably withheld); and
- (vii) Each nominee under the Binding Death Nomination must be a LPR or Dependant of the Member making the Binding Death Nomination; and
- (viii) The allocation of the Death Benefit among the nominees must be clear; and
- (ix) It must be 'in effect' in that it has been renewed, signed, amended or confirmed within a three (3) year period from the day the Binding Death Nomination was made, or last signed, amended or confirmed.

A Member may also nominate a backup or alternative recipient, being either the Member's LPR or one or more of the Member's Dependants to receive all or part of the Death Benefit in the event that the initial nomination should fail. A sample form for a Binding Death Nomination appears as Schedule 5 to this Deed.

(d) Trustee Must Supply Information

The acceptance of a Member's Binding Death Nomination is subject to the Trustee having supplied the Member with information that the Trustee believes the Member requires to allow the Member to make an informed decision on the making of a Binding Death Nomination. The Trustee should also recommend that the Member seek independent legal advice prior to making such a nomination.

8.10. Non-Lapsing Binding Death Nomination

(a) Giving of Notice

At any time, the Member may provide the Trustee with a Non-Lapsing Binding Death Nomination, directing the Trustee of the Fund where to pay some or all of the Member's Death Benefit. A Member may vary or revoke a Non-Lapsing Binding Death Nomination at anytime by written notice to the Trustee.

(b) When Trustee Bound

Unless the Non-Lapsing Binding Death Nomination is invalid, has been revoked by the Member, has been overturned by a Court, or contravenes the Prescribed Law, the Trustee will be bound to pay the Member's Death Benefit in accordance with the notice. However, the Trustee will not be required to follow the Non-Lapsing Binding Death Nomination if the Trustee is aware that the paying of the Death Benefit in accordance with the Binding Death Nomination would breach a court order.

(c) Requirements for Valid Notice

For a Non-Lapsing Binding Death Nomination to be valid:

- (i) It must be in writing; and

- (ii) It must be signed and dated by the Member making the Non-Lapsing Binding Death Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Non-Lapsing Binding Death Nomination; and
- (iii) It must contain a declaration by the witnesses which is signed and dated, stating that the Non-Lapsing Binding Death Nomination was signed by the Member in their presence; and
- (iv) It must be delivered to the Trustee; and
- (v) It must be accepted by the Trustee (with such acceptance of a valid Non-Lapsing Binding Death Nomination not to be unreasonably withheld); and
- (vi) Each nominee under the Non-Lapsing Binding Death Nomination must be a LPR or Dependant of the Member making the Non-Lapsing Binding Death Nomination; and
- (vii) The allocation of the Non-Lapsing Death Benefit among the nominees must be clear; and
- (viii) It must state that the notice will not lapse by passing of time.

A Member may also nominate a backup or alternative recipient, being either the Member's LPR or one or more of the Member's Dependants to receive all or part of the Death Benefit in the event that the initial nomination should fail. A sample form for a Binding Death Nomination appears as Schedule 5 to this Deed.

(d) **Trustee Must Supply Information**

The acceptance of a Member's Non-Lapsing Binding Death Nomination is subject to the Trustee having supplied the Member with information that the Trustee believes the Member requires to allow the Member to make an informed decision on the making of a Non-Lapsing Binding Death Nomination. The Trustee should also recommend that the Member seek independent legal advice prior to making such a nomination.

8.11. Automatic Revocation of Nomination

Any valid Preferential Death Nomination, Binding Death Nomination or Non-Lapsing Binding Death Nomination by a Member is automatically revoked by a later Binding Death Nomination or Non-Lapsing Binding Death Nomination, regardless of whether or not the same type of nomination is made.

8.12. Deductions from Benefits

Prior to making payment of any Benefits, the Trustee may deduct from the Member's Benefits, any taxation, administrative and insurance costs, levies and expenses relating to the creation, operation and winding up of the Fund applicable to the Member's Benefits.

8.13. Suspended or Terminated Benefits

(a) **Circumstances Causing Suspension or Termination**

Subject to the Prescribed Law, a Beneficiary's Benefits payable out of the Fund will be suspended while or terminated if the Beneficiary:

- (i) Attempts to assign, alienate or charge all or part of their Benefit entitlement other than in accordance with the Prescribed Law;
 - (ii) Has their Benefits or entitlements vested in or made payable to another person or a government or public authority;
 - (iii) Commits an act of bankruptcy or is or becomes insolvent;
 - (iv) In the Trustee's opinion, is incapable of managing his/her own affairs;
 - (v) Has been found guilty of fraud or dishonesty;
- (b) Dealing with Suspended or Terminated Benefits

If all or any part of a Beneficiary's Benefits become payable during a period when the Benefits have been suspended or terminated, then the Trustee may, in its ultimate discretion, pay or apply the Benefits to:

- (i) The Beneficiary; or
- (ii) A Pension for the sole objective of applying the Benefits for the Beneficiary or their Dependants;

on the basis that the payment or application of the Benefits will be an absolute discharge to the Trustee and the Fund. After the payment or application, the Trustee is not responsible to see to the proper application of the Benefits.

8.14. Procedural Requirements

When making payment of Benefits, the Trustee must ensure that it:

- (a) Registers for pay as you go (PAYG) withholding tax
- (b) Obtains a tax file number declaration from the Member or Beneficiary receiving the Benefits;
- (c) Issues payment summaries; and
- (d) Complies with any other requirements as may be required under the Prescribed Law.

9. Payment of Pensions

9.1. Manner of Payment of Benefits

Although this Deed primarily contemplates payment of Pensions, the Trustee is not prevented from making Lump Sum payments of Benefits. The Trustee may pay any Pension permitted by the Prescribed Law to its Members, having regard to any restrictions, terms or conditions imposed on the type of Pension by the Prescribed Law.

9.2. New Pensions Commencing After 30 June, 2007

All new Pensions commencing after 20 September, 2007 must be paid as:

- (a) An Account-Based Pension - summarised in (A) in Schedule 6; or
- (b) A Transition to Retirement Pension - summarised in (B) in Schedule 6; or
- (c) An Allocated Pension; or
- (d) Any other form of Pension that the Trustee chooses to make available, subject to the Prescribed Law.

9.3. Existing Pensions

Pensions which commenced prior to 20 September, 2007 and complied with the Pension rules existing at that time must continue to be paid in accordance with those rules (apart from Allocated Pensions).

The types of Pensions that may have commenced prior to 20 September, 2007 include (but are not limited to):

- (a) Allocated Pension;
- (b) Market Linked Pensions;
- (c) Lifetime Pensions;
- (d) Life Expectancy Pensions;
- (e) Lifetime Commutable Pensions;
- (f) Non-Commutable Allocated Pensions.

9.4. No Defined Benefit Pensions

The Fund must not pay a Defined Benefit Pension to its Members or Beneficiaries.

9.5. Allocated Pensions which Commenced Prior to 1 July 2007

Allocated Pensions which commenced prior to 1 July, 2007 under previous Pension standards can be paid in accordance with the Pensions standards (for Account-Based Pensions) from 1 July, 2008 without the need to commute and restart a new Pension.

9.6. Reversionary Pension Nomination

A Member taking a Pension may make a Reversionary Pension Nomination when they commence a Pension from the Fund providing that upon the Member's death, the Pension is to continue to be paid to an eligible reversionary Beneficiary under the Prescribed Law.

9.7. Deceased Member's Pension to Spouse

If a Member dies during a period in which they were receiving a Pension from the Fund, then the Member's Spouse, on application to the Trustee, may request to have the Pension continued, but only if the person was the Member's Spouse before the Member retired. The continuing Pension must comply with the Prescribed Law.

9.8. Restriction on Death Benefit Pensions to Children

If a Member dies after 30 June, 2007 and part or all of the Member's Death Benefit is to be paid to a Dependant Child, then the Death Benefit may only be paid as a Pension if the Child:

- (a) Is under the age of eighteen (18); or
- (b) Is aged between eighteen (18) years and twenty-five (25) years and either was financially dependant on the Member or has a disability under the Disability Services Act 1986 (Cth).

9.9. Pension Reserve

Before commencing payment of a Pension to a Member or Beneficiary, the Trustee must establish a Pension Reserve for the Member in accordance with clause 6.5.

9.10. Actuarial Certificate

Unless provided otherwise by the Tax Legislation, the Trustee must obtain an Actuarial Certificate in relation to any Pension to be paid pursuant to the Prescribed Law.

9.11. Record Keeping

The Trustee must ensure that the Fund's Minutes of Meetings record that the Member has:

- (a) Requested to commence a Pension; and
- (b) Except where the Member is requesting a Transition to Retirement Pension - met a Condition of Release.

9.12. Summaries of Pension Types and Requirements

The summary of pensions in Schedule 6 is designed to reflect certain provisions (or parts of provisions) of the Act relating to Pensions. To the extent that those provisions of the Act may be:

- (a) Varied or supplemented, the Trustee may offer pensions on terms that are consistent with the varied or supplemented provisions; or
- (b) Removed, the Trustee may adjust the features of pensions to which the clauses may apply, having regard to the provisions that have been removed.

If the situation in either paragraphs 9.12(a) or 9.12(b) apply or if the Trustee considers it otherwise appropriate, the Trustee may change the terms on which a current pension is payable, without being required to vary the Deed.

10. Lump Sum Payments

The Trustee may, on written request, commute any amount or pay any Benefit (other than a Total or Temporary Disablement Benefit) as a Lump Sum in one or more installments to a person who is entitled to receive a Pension from the Fund (other than a Transition to Retirement Pension) to the extent permitted by this Deed or the Prescribed Law.

11. Incoming Roll-Overs and Transfers

11.1. Trustee's Discretion to Accept or Reject

On a Member's request, the Trustee has the power (refer clause 16.23) to accept or reject, in full or part, a roll-over or transfer of benefits or entitlements. In reaching such decision, the Trustee may have regard to:

- (a) The balance of the Member's Accumulation Account prior to and following the roll-over or transfer;
- (b) Restrictions on payment of Benefits to the Member;
- (c) The existing conditions under which the Benefits or entitlements are being held;
- (d) Any other relevant matters.

11.2. Restrictions on Roll-Overs or Transfers

The Trustee must not accept any Benefits or entitlements for a Member that would result in a breach under this Deed or the Prescribed Law. The Trustee must preserve the Benefits and entitlements pursuant to this Deed and the Prescribed Law and only deal with or pay the Benefits pursuant to this Deed and the Prescribed Law.

11.3. Rolled-Over or Transferred Benefits' Status

Any Benefits or entitlements which are rolled-over or transferred to the Fund shall retain their same status and nature as they had in the previous transferring/rolling-over entity.

12. Outgoing Roll-Overs or Transfers

12.1. When Benefits may be Transferred/Rolled-Over

The Trustee may transfer or roll-over all or part of a Member's Benefits and entitlements provided the following conditions are met:

- (a) A written request to transfer or roll-over a Member's Benefits and entitlements has been received from the Member, or where the Member is incapable or deceased, the Member's LPR; and
- (b) The proposed fund or entity to receive roll-over or transfer is an Approved Arrangement;
- (c) Notice has been given of the proposed transfer or roll-over to all other Members of the Fund, or where any Member is incapable or deceased, such Member's LPR; and
- (d) No objection has been received to the proposed roll-over or transfer by any of those persons given notice under 12.1(c) within fourteen (14) days from the notice having been provided, sent, delivered or served or if the Trustee is satisfied that any objection has been resolved in favour of the transfer or roll-over or completely retracted.

12.2. Member to Provide Necessary Information

Before the Trustee can process a Member's request to rollover or transfer Benefits and entitlements, the Member must provide to the Trustee such information as is required to be given in a 'Request to Transfer'.

Whole Balance of Super Benefits Between Funds' form as contained in Schedule 2A of the Regulations or such other information as may be required under the Prescribed Law from time to time or by the Trustee.

By way of clarification, a request to roll-over or transfer an amount that is the whole of the Member's Benefits and entitlements may be made by simply delivering a completed 'Request to Transfer Whole Balance of Super Benefits Between Funds' form to the Trustee.

12.3. Timing of the Roll-Over or Transfer

Unless otherwise required by the Prescribed Law or this Deed, the Trustee must ordinarily complete the roll-over or transfer of a Member's Benefits and entitlements:

- (a) Thirty (30) days from receipt of a request to transfer or roll-over the Benefits and entitlements; or
- (b) If the Trustee requires further information - the time when the Trustee receives all the information required; or
- (c) In the case of a suspension under the Regulations - the end of the period of suspension.

However, if a Member makes an Investment Choice and the Investment Strategy chosen is an illiquid investment (one that cannot easily be converted into cash in the short term), then the Trustee is not required to complete the roll-over or transfer within the thirty (30) days period above provided that the Trustee:

- (d) Informs the Member of:
 - (i) The effect of this before the Member makes the Investment Choice; and
 - (ii) The reasons why the investment is illiquid; and
 - (iii) The maximum period by which a transfer or roll-over must be effected; and
- (e) Obtains written consent that the Member understands and accepts that a period longer than the thirty (30) days mentioned is required because of the illiquid nature of the investment.

12.4. Rollover or Transfer of Non-Member Spouse's Superannuation Interest

On request given by a Non-Member Spouse, or by decision made by the Trustee in its sole discretion, the Trustee may roll-over or transfer a Non-Member Spouse's Superannuation Interest provided that the Trustee complies with the requirements of this clause.

Prior to attending to a roll-over or transfer of a Non-Member Spouse's Superannuation Interest, the Trustee may first deduct any costs and expenses incurred (or expected to be incurred) by the Fund in completing the roll-over or transfer.

12.5. Refusal to Roll-over or Transfer

A Trustee may refuse to roll-over or transfer a Member's Benefits and entitlements out of the Fund if:

- (a) The Fund to which the Member has requested the amount be rolled over or transferred

to will not accept the amount; or

- (b) The amount to be rolled over or transferred is part only of the Member's Superannuation Interest in the Fund, and the effect of rolling-over or transferring the amount would be that the Member's interest in the fund from which the amount is to be rolled over or transferred would be less than \$5,000; or
- (c) The Trustee has rolled over or transferred an amount of the Member's Superannuation Interest within 12 months before the request is received.

If a Trustee refuses to roll over or transfer a Member's Benefits or entitlements, the Trustee must advise the Member of the refusal in writing.

12.6. Information to Regulator

The Trustee must provide the Regulator with any information required under the Prescribed Law in the Approved Form (if any) regarding the recipients of any Benefits and entitlements.

13. The Trustee

13.1. Appointment of Trustees

(a) New Trustee

The Members of the Fund may, by majority vote at a Member's Meeting appoint one or more individual or Corporate Trustees, or where a Company is acting as Trustee of the Fund, appoint one or more Directors of the Company provided that in no case shall the appointment of Trustees or Directors contravene the basic rules for a SMSF (as set out in Clause 3) to render the Fund non-compliant.

(b) Written Consent

Each Trustee must provide a written consent to act as Trustee or in the case of a Corporate Trustee, a written consent to act as Director of the Company. Upon providing a written consent the Trustee (or director as the case may be) is deemed to be bound by the provisions of this Deed.

(c) Not Disqualified Person

Each Trustee or in the case of a Corporate Trustee, the Director/s, must provide a declaration stating that he or she or it is not a Disqualified Person.

(d) Declaration

Within twenty-one (21) days of appointment, the Trustee or in the case of Corporate Trustee, the Director/s, must sign a declaration in the Approved Form stating that he or she understands the duty as trustee of a SMSF. The Declaration must be retained for the later of ten (10) years from the date upon which they were appointed Trustee or Director, or for the period that the person holds office as Trustee or Director.

13.2. Vesting of Fund in Trustees

The entire Fund is vested in the Trustees who must manage the Fund in accordance with this Deed and the Prescribed Law. Subject to the provisions of this Deed, no other person or body has any legal or

beneficial interest in the Fund.

13.3. Multiple Trustees

Where there is more than one (1) Trustee, then the Trustees must exercise their duties, powers and responsibilities jointly and are jointly and severally liable for all acts.

13.4. Removal, Dismissal or Suspension of Trustee

(a) Individual

An individual Trustee or Director (in the case of Corporate Trustee) ceases to be Trustee of the Fund or Director of the Corporate Trustee if the person:

- (i) Becomes a Disqualified Person;
- (ii) Dies;
- (iii) Becomes incapable of managing his/her affairs; or
- (iv) Suffers an Insolvency Event.

(b) Company

A Corporate Trustee ceases to be Trustee of the Fund if the Company:

- (i) Becomes a Disqualified Person;
- (ii) Is otherwise disqualified from office as Trustee;
- (iii) Is de-registered or otherwise lacks full capacity;
- (iv) Suffers an Insolvency Event.

(c) By Regulator

The Regulator may also dismiss or suspend a Trustee under Part 17 of the Act.

(d) By Members

The Members may, by majority vote at general meeting, resolve to dismiss a Trustee. The Trustee must then be provided with written notice of the dismissal.

(e) Removal of Member on Change of Trustee

When a Trustee or Director is removed, dismissed or suspended, such person may also need be removed as a Member of the Fund to ensure that there is no contravention of the basic rule for SMSF (as set out in Clause 3) to render the Fund non-compliant.

(f) Vesting of Fund

The continuing Trustee/s must take steps to vest the Fund in the continuing Trustees and the outgoing Trustee must deliver up to the continuing Trustee/s all records and other books in his her or its possession.

13.5. Retirement/Resignation of Trustee

(a) Notice of Retirement/Resignation

The Trustee or Director/s (in the case of a Corporate Trustee) may at any time, by notice in writing to the Members of the Fund, retire or resign as Trustee or Director of a Corporate Trustee of the Fund as the case may be.

(b) Removal of Member on Change of Trustee

When a Trustee or Director retires or resigns, such person may also need to be removed as a Member of the Fund to ensure that there is no contravention of the basic rules for SMSF (as set out in Clause 3) to render the Fund non-compliant.

(c) Vesting of Fund

The continuing Trustee/s must take steps to vest the Fund in the continuing Trustees and the outgoing Trustee must deliver up to the continuing Trustee/s all records and other books in his/her or its possession.

13.6. Discharge of Retiring/Removed Trustee

Where a trustee retires, resigns, ceases or is removed, the members shall not be obliged to appoint a new trustee in place of the trustee that has retired, resigned, ceased to act or been removed provided:

- (a) There is at least one commencing or continuing individual or corporate trustee; and
- (b) The Fund has the appropriate trustee structure to comply with the Prescribed Law and ensure the Fund remains a compliant self-managed superannuation fund.

Where the above conditions are satisfied, the trustee that has retired, resigned, ceased to act or been removed shall be discharged from the trusts contained in this Deed as from the date of retirement, resignation, ceasing or removal despite any legislative requirement or rule of law to the contrary.

14. Trustee Disclosure

14.1. Product Disclosure Statement

The Trustee shall decide whether or not it is appropriate and necessary to provide a Product Disclosure Statement pursuant to section 1012B of the *Corporations Act*. Pursuant to section 1012D(2A) of the *Corporations Act*, the Trustee does not have to give a Product Disclosure Statement if:

- (a) The financial product is an interest in a SMSF; and
- (b) The Trustee believes on reasonable grounds that the Member has received, or has and knows that they have access to all of the information that the Product Disclosure Statement would be required to contain ("Relevant Information").

If the Trustee considers that there is an obligation to give a Product Disclosure Statement, then the Trustee must comply with Part 7.9 of the *Corporations Act* regarding the preparation, content and delivery of the Product Disclosure Statement.

14.2. When Provision of Information is Required

(a) Disclosure Under Prescribed Law

The Trustee of the Fund must ensure that the Interested Parties are provided with such information, records, reports, disclosure, accounts or documents as the Prescribed Law requires and in the manner the Prescribed Law requires.

(b) Particular Circumstances May Require Disclosure

Particularly, the Trustee should consider whether or not it has an obligation under the Prescribed Law to provide information concerning the Fund to the Interested Parties:

- (i) At or prior to the time that an Applicant applies for membership to the Fund;
- (ii) On written request from an Interested Party;
- (iii) On a Trustee or Member ceasing to be a Trustee or Member of the Fund;
- (iv) At quarterly periods or at the end of each income year;
- (v) Prior to a Death Nomination being entered into by the Member and accepted by the Trustee;
- (vi) Rolling over or transfer of the Member's membership, Benefits or entitlements to another fund or entity;
- (vii) At such time as Benefits or entitlements are paid at a Member's direction;
- (viii) On termination or winding up of the Fund;
- (ix) Upon the issuing of notification under the Prescribed Law of non-compliance with the Fund;
- (x) Upon the Prescribed Laws being changed and consequently having an adverse effect on:
 - (A) A Member's Benefits;
 - (B) The circumstances or manner in which the Benefits would become payable;
 - (C) The security of a Member's Benefits; or
 - (D) The circumstances, content or manner in which a Product Disclosure Statement is or should have been provided.

15. Trustee Covenants

15.1. The Covenants

By consenting to act as Trustee, the Trustee covenants:

- (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 ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members and Beneficiaries;
- (d) To keep the money and other assets of the Fund separate from any money and assets:
 - (i) Held by the Trustee personally; or
 - (ii) That are money or assets (as the case may be) of an Standard Employer-Sponsor or their Associate;
- (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 the Trustee's functions and powers;
- (f) To formulate and give effect to an Investment Strategy that has regard to the whole of the circumstances of the entity 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 entity 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;
- (g) If there are any reserves of the Fund—to formulate and to give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) To allow a Beneficiary access to any information or documents which are required to be disclosed or accessible to them by the Prescribed Law;
- (i) To do any such thing as may be prescribed as a covenant by the Regulations for the purposes of s 52(2) of the Act.

15.2. Covenant by Corporate Trustee has Effect as Covenant by Directors

A covenant given by a Corporate Trustee (or deemed given) also operates as a covenant by each of the Directors of the Trustee to exercise a reasonable degree of care and diligence for the purposes of ensuring that the Trustee carries out the above covenants. A 'reasonable degree of care and diligence' is the degree of care and diligence that a reasonable person in the position of a Director of the Trustee would exercise in the Trustee's circumstances. This provision operates as if the Directors were all parties to this Deed.

15.3. Covenant does not Restrict Delegation

The covenant in clause 15.1(e) does not prevent the Trustee from engaging or authorizing other persons to do acts or things on behalf of the Trustee.

15.4. Direction from Beneficiaries

An investment strategy is taken to be in accordance with clause 15.1(f) even if it provides for a respective Beneficiary or 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 in circumstances covered by Regulations.

16. Powers of the Trustee

The Trustee shall have the power to engage in any transaction on behalf of the Fund as it could do if it were the beneficial owner of the Fund. Without limiting the generality of this power, the Trustee shall have the powers described in this clause in addition to power otherwise conferred upon Trustees by law.

However, all the powers of Trustee are subject to other provisions of this Deed (particularly the provision relating to Restricted Investments) and the Prescribed Law to ensure that the Trustee's powers are not exercised in such a manner that would render the Fund a non-complying SMSF. The Trustee may not exercise a power herein if the exercise of such power would render the Fund a non-complying SMSF.

16.1. Power to Invest

The Trustee may apply and invest all moneys at any time forming part of the Fund in any investments of whatsoever and upon such terms and conditions as the Trustee shall in its absolute discretion think fit to the same extent as it could do if it were the beneficial owner of the Trust Fund.

Without limiting the broad nature of this power the Trustee may:

- (a) Deposit monies with a bank, building society, financial institution, non-banking financial institution, credit co-operative or trustee company; and
- (b) Engage in hedging, swapping or another similar arrangement, even if not linked to any assets of the Fund; and
- (c) Subscribe for or take up an allotment or issue of any units, shares, stocks, bonds, obligations, options, futures; and
- (d) Purchase or acquire the whole or any part or share or interest in (including a minority part or share or interest in) any business or partnership and the goodwill and assets thereof; and
- (e) Purchase a policy or annuity from an insurer; and
- (f) Purchase or acquire any real or personal property wherever it may be situated or any part or share or interest therein; and
- (g) Exercise all rights and privileges and perform all duties and obligations appertaining or incidental thereto.

The Trustee shall also have the power to transfer, sell or vary any investment at any time in accordance with this Deed and the Prescribed Law.

16.2. Power to Use Different Forms of Consideration

To purchase or make the investments described herein using any form of consideration whatsoever including (without limiting the generality thereof) cash, the transfer of any part of the Fund in specie, the performance of any service, the supply of any goods or the provision of an annuity or any similar right.

16.3. Power to Blend Fund in Common Investments with others

To blend for the purposes of investment as it may from time to time decide any monies which the Trustee holds upon the trusts herein declared with other moneys (whether or not such moneys are subject to any other settlement or trust and whether or not the Trustee is trustee of such other settlement or trust) and to join with any other person or persons including a trustee of another trust in making common investments including in carrying on any business, partnership or joint enterprise.

16.4. Power to Deal with Property

To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release, discharge or otherwise deal with any real or personal property and in particular with shares debentures or securities of any company and with or without deferred restricted qualified or special rights relating thereto upon such terms and conditions as the Trustee shall think fit.

16.5. To Indemnify

To give indemnities to or on behalf of any person the Trustee thinks fit in respect of claims, matters or things related to the Fund (provided the giving of the indemnities by the Trustee does not breach the Prescribed Law).

16.6. Power to Deal in Derivatives

To buy or sell in derivatives such as options and futures contracts.

16.7. Power to Deal in Shares and Debentures

To exercise all rights and perform all duties pertaining to any shares, stock or debentures in any Company or corporation subject to the trusts hereof as the Trustee could do if it was the beneficial owner of the shares stock or debentures or was personally interested or concerned in the corporation or Company.

Without limiting the generality of the foregoing the Trustee may agree to:

- (a) Any arrangement which modifies any rights or duties; or
- (b) Any Scheme or arrangement for the reconstruction or the increase or reduction of the capital of any corporation or Company; or
- (c) The winding up of any corporation or Company; or
- (d) A share buy back of the shares;

and for any of the above purposes the Trustee may deposit, surrender or exchange any of the shares stock or debentures or the title thereto and to pay any calls or contributions or other necessary expense in connection with any such shares stock or debentures or any title thereto.

16.8. Power to Carry on Business

To carry on anywhere in the world and either alone or in partnership, any trade or business whatsoever and to discontinue the same from time to time provide that this power does not contravene the Sole Purpose Rule.

16.9. Power to Partition or Subdivide Land

To partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property which, or any interest in which, may for the time being form part of the Fund and to pay any moneys be way of equality of partition.

16.10. Power to Purchase Annuities and Pay Pensions and Income Streams

To purchase annuities and pay pensions and income streams.

16.11. Power to Negotiate and Enter into Contracts

To enter into any negotiations, contracts, transactions, agreements, variations, rescissions or deeds in the name of and on behalf of the Fund whether for sale, lease or other purpose as may be required or expedient from time to time to give effect to this Deed and the purposes of the Fund.

16.12. Power to Transact With Trustee

To sell, transfer, hire, lease or dispose of any real or personal property of the Fund to the Trustee in its capacity as trustee of other trust funds or in its individual capacity or to any company or partnership whatsoever notwithstanding that the Trustee is a shareholder or director or member or partner of such company or partnership or to any Spouse or Child of any Trustee.

16.13. Power to appoint Agent as Custodian

To appoint a Custodian as agent of the Trustee to acquire and hold any property on behalf of the Trustee as Trustee of the Fund and to enter into a deed with the Custodian that sets out the basis upon which property is to be acquired and held.

16.14. Power to Borrow Money and Grant Security*

(*Note: The borrowing rules under the Act are very strict and complicated and a trustee should seek further legal advice before entering into any Loan agreement or other borrowing arrangement)

To the extent allowed by the Prescribed Law:

- (a) To borrow and raise money from any Person (including any company, corporation, government or municipal body) in any lawful manner including (without limitation) by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument on such terms as the Trustee in the Trustee's absolute discretion shall determine.
- (b) For the purpose of securing the payment of any monies or the performance of any

obligations for which the Trustee may pursuant to these provisions become liable:

- (i) To grant any form of security or charge as the Trustee may think fit over the Trustee's interest in any particular assets of the Fund upon such terms as comply with the Prescribed Law;
- (ii) To instruct a Custodian holding any property on behalf of the Trustee as trustee of the Fund to grant any form of security or charge as the Trustee may think fit over the Trustee's interest in any particular assets of the Fund upon such terms as comply with the Prescribed Law.

Without in any way limiting the form of security that may be granted it shall include the power to grant a mortgage, charge (whether fixed, floating or fixed and floating), lien, bill of sale or any other security over real or personal property as the Trustee may elect and it shall also include the power to join with others to grant security over real or personal property in which the Trustee has an interest as Trustee of this Fund (whether in its own name or in the name of a Custodian on behalf of the Trustee).

16.15. Power to Vary Investments

To vary or transpose any investments into or for any other or others of any nature whatsoever and to vary the terms of or property comprised in any security.

16.16. Power to Insure Fund and Individual Member Interests

To insure:

- (a) The Fund or any part thereof for such value as the Trustee may think fit and to insure against such risks as the Trustee may in its absolute discretion think fit including the power to effect public liability insurance; and
- (b) Members' or Beneficiaries' interests in the Fund for the reason of providing benefits under this Deed.

The powers in this subclause include the power for the Trustee to pay all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any policy or policies of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option right or benefit thereunder.

16.17. Power to Provide for Protection of Trust Fund

To take such action as it shall think fit for the adequate protection of any part or parts of the Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

16.18. Power to Pay Benefits

To pay Benefits and entitlements from the Fund to those Members or Beneficiaries who are entitled thereto.

16.19. Power to Credit/Allocate

The Trustee may credit any Contributions, income, reserves or other amounts received or held to the Member's Accumulation Accounts, Non-Compulsory Contributions Reserve, Income Reserve, Pension Reserve or other such account as the Trustee thinks fit, subject to this Deed and the Prescribed Law.

16.20. Power to Determine Dependants

To make a determination as to who are a Member's Dependants when required to give effect to the Deed.

16.21. Power to Enter into Agreements with Members

Subject to this Deed and written consent by the affected Member/s, to make an agreement with a Member:

- (a) Altering the Member's Benefits and entitlement; or
- (b) Altering the Contributions payable in respect of a Member;

in such manner as the Trustee in its ultimate discretion shall decide.

16.22. Power to Appropriate

Subject to written consent by the respective Member or Beneficiary, to appropriate any part or parts of the Fund in the actual condition or state of investment thereof (in specie rather than paying cash) to:

- (a) The Member or Beneficiary; or
- (b) An Approved Arrangement for the Member or Beneficiary;

in partial or full satisfaction of a Member's or Beneficiary's Benefits or entitlements under this Deed.

In making such appropriation the Trustee may estimate the value of the component parts of the Fund or employ qualified persons to make such valuation as the Trustee deems proper. Every appropriation so made shall bind all Members and Beneficiaries of the Fund notwithstanding that they may not yet be in existence or may be under a legal disability.

16.23. Power to Transfer/Roll-Over Benefits and Entitlements

To roll-over or transfer a Member's or Beneficiary's Benefits or entitlements to:

- (a) An Approved Arrangement on written request from a Member or Beneficiary provided that the Member or Beneficiary has, or is able to join the Approved Arrangement; or
- (b) An Eligible Roll Over Fund; or
- (c) An Approved Arrangement that is a successor fund to this Fund under the Prescribed Law;

provided that the transfer occurs in accordance with the Prescribed Law.

16.24. Power to Receive Transfers/Roll-Overs

To receive assets from an Approved Arrangement by way of roll-over or transfer or as a result of a takeover which represents the interest of a participant of the Arrangement who is, or will become a Member or Beneficiary of the Fund. The person will maintain the same rights to the interest as the person had as a participant of the Approved Arrangement. The Trustee will hold the assets in the respective Member's Pension Account, Reserve or Accumulation Account.

16.25. Power to Value Fund Assets

From time to time, the Trustee may undertake a valuation of the assets of the Fund and allocate the valuation sum between such of the Members and Beneficiaries in accordance with this Deed.

16.26. Power to Open Bank Account

To open any account or accounts with any bank, credit union, building society or other financial institution and to operate by and in all usual ways any such account or accounts. This power includes the power to agree to the relevant financial institution debiting the account with interest, charges and expenses pertaining thereto. The Trustee may also make rules about the operation of those accounts such as the signing and endorsement of cheques.

16.27. Power to Deposit Securities

To deposit securities, deeds and other documents belonging or related to the Fund with any lawyer, bank or other financial institution.

16.28. Power to Give Receipts and Determine Those Entitled to Sign

To give effectual receipts, releases and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts, matters and things provided for in this Deed. Further, to decide upon those persons who will be entitled to sign receipts, acceptances, endorsements, releases, contracts and documents on behalf of the Fund.

16.29. Power to Delegate Duties

Any Trustee may delegate the exercise of all or any of the powers, discretions or duties conferred on that Trustee to another person or persons provided such delegation is in writing signed by that Trustee. Any Trustee, being the sole Trustee or one of a number of Trustees, may also appoint an attorney to act for that Trustee and to execute any document or do any act on behalf of the Trustee provided the appointment of the attorney is in writing signed by the Trustee.

16.30. Power to Engage, Dismiss or Suspend Auditor, Actuary, Custodian or Accountant

To engage and/or dismiss or suspend an Auditor, Actuary, Custodian or qualified accountant on a permanent or temporary basis for specified or general services and advice and pay such reasonable remuneration or salary from the Fund as the Trustee shall deem fit.

16.31. Power as to Payment of Duties, Fees, Levies and Taxes

To pay out of the Fund all or any part of the duties, levies, fees and taxes which become payable in any part of the world in respect of the Fund or any part thereof including those duties, fees, levies and taxes levied on the death of any of the Members. This power applies notwithstanding that such duties fees or taxes or some part thereof are not or may not be recoverable from the Trustee or from the Fund by legal process in the place where the same becomes payable.

16.32. Power to Pay Management Expenses

To pay out of the Trust Fund or the income thereof all costs, charges and expenses incidental to the management of the Trust Fund or the exercise of any power, authority or discretion herein contained or in carrying out or performing the trusts hereof which the Trustee may at any time incur including:

- (a) Costs in any way connected with the preparation and execution of this Deed; and
- (b) Costs associated with the obtaining of advice or services in respect of the ongoing management, administration and operation of the Fund including (but not limited to) engaging an Investment Manager or Custodian.

16.33. Power to Seek Counsel

To take and act upon the written opinion of any solicitor, barrister or lawyer practicing in any country where the Fund or any part thereof may for the time being be invested in relation to the interpretation or effect of this Deed, the Prescribed Law or any other document or statute or as to the administration of the Trusts hereof without being liable to any of the Beneficiaries in respect of any act done by the Trustee in accordance with such opinion. Nothing in this clause shall prohibit or impede the Trustee from applying to the court if it shall think fit.

16.34. Power to Institute or Compromise Court Proceedings

To institute and defend and join in any proceedings to resolve any dispute including proceedings in a court or tribunal and including any mediation or arbitration and to settle or compromise any dispute in which the Trustee is involved on such terms and conditions as the Trustee considers appropriate.

16.35. Power to Determine Matters of Doubt

To generally determine all matters about which any doubt, difficulty or question may arise under or in relation to the execution of the Trusts and powers contained in this Deed. Every determination of the Trustee in relation to any of these matters shall bind all Interested Parties therein and shall not be objected to or questioned on any ground whatsoever.

16.36. Power to Act notwithstanding Personal Interest

To exercise or concur in exercising all the previous powers and discretions contained in this Deed or by law notwithstanding that:

- (a) The Trustee; or
- (b) Any Person being a Trustee; or
- (c) Any Person being a Director or shareholder of a Corporate Trustee hereof;

has or may have a direct or personal interest (whether as trustee of any other settlement or in his personal capacity or as a shareholder or director or member or partner of any company or partnership or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

17. Investment

17.1. Investment Strategy

Before exercising the Trustee's Power of Investment in sub-clause 16, the Trustee must develop and implement an Investment Strategy for the Fund. The Investment Strategy should:

- (a) Reflect the purpose of the Fund such that Member's Benefits are invested with the primary purpose of generating retirement benefits (rather than providing current-day

- support);
- (b) Reflect the circumstances of the Fund;
- (c) Reflect the circumstances of the Members of the Fund in terms of age, income level, employment pattern and retirement needs;
- (d) Comply with the Prescribed Law and not inadvertently cause any breaches so as to render the Fund a non-complying SMSF;
- (e) Carefully consider:
 - (i) The **risks** involved in making the investments;
 - (ii) The likely **returns** from the investments;
 - (iii) The **diversification of investments** across different asset classes as part of its long-term investment strategy;
 - (iv) The **liquidity of the investments** and the ability of the Fund to meet its existing and prospective liabilities.

The Investment Strategy must be in writing setting out the investment objectives of the Fund and detailing the investment methods the Fund will adopt to achieve these objectives. In formulating an appropriate Investment Strategy, the Trustee must have regard to any rulings, directives, interpretative decisions or other similar guidelines issued by the Regulator regarding appropriate investments.

17.2. Investment Strategy for Reserves

If there are any reserves in the Fund then the Trustee must to formulate and to give effect to a strategy for the prudential management of the reserves, consistent with the Fund's Investment Strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due.

17.3. Review of Investment Strategy

The Trustee must review the Investment Strategy for the Fund regularly, being reviewed no less frequently than every three (3) months. On reviewing the Investment Strategy, the Trustee must make any variations or adjustments as are considered necessary and prudent by the Trustees having regard to the matters discussed in sub-clause 17.1.

17.4. Directions by Members/Beneficiaries

A Member or Beneficiary may provide directions to the Trustee relating to the strategy to be adopted and followed by the Trustee in relation to the investment of a particular asset or assets of the Fund where the following conditions are satisfied:

- (a) The Trustee gives to the Beneficiary, or to each member of the class of Beneficiaries, a choice of two (2) or more Investment Strategies from which the Beneficiary, or class of Beneficiaries, may choose a strategy or combination of strategies; and
- (b) The Trustee gives the Beneficiary or each Member of class of Beneficiaries:
 - (i) The investment objectives of each of the strategies; and

- (ii) All information the Trustee reasonably believes a person would reasonably need for the purpose of understanding the effect of, and any risk involved in, each of the strategies.
- (c) The Beneficiary, or each member of a class of Beneficiaries, is fully informed of the range of directions that can be given and the circumstances in which they can be changed; and
- (d) The direction is given after compliance with the above paragraphs, and the direction specifies which of the strategies or which combination of strategies are to be followed relation to the investment of the Beneficiary's or class of Beneficiaries' interest in the Fund and the reasons for such a choice; and
- (e) The Trustee clearly identifies to the Beneficiary, or to each member of a class of Beneficiaries, which Investment Strategy the Trustee will adopt in the absence of any directions being received.

17.5. Appointment of Investment Manager

The Trustee of the Fund may engage an Investment Manager provided such appointment is in writing and the Investment Manager agrees to the terms of the investment management agreement. The investment management agreement must:

- (a) Enable the Trustee to gain access to sufficient information about the Fund's investments and performance;
- (b) Enable for termination of the agreement without liability; and
- (c) Not excuse or restrict the Investment Manager's liability for negligence.

18. Restricted Investments

18.1. Investments must be at Arm's Length

Rule: *The Trustee and Investment Manager must ensure that all investments, dealings and transactions are completed and maintained on an arm's length basis.*

Whether or not an investment, dealing or transaction is at arm's length depends on all the circumstances. The test for 'arm's length' is whether a prudent person acting with due regard to his or her own commercial interests would have made such an investment, dealing and transaction.

Accordingly, the Trustee should ensure that where possible, all investments, dealings or transactions occur at market value and the Trustee makes reasonable efforts to call in and collect benefits the Fund may be entitled to such as trust distributions.

18.2. In-House Assets

Rule: *The Trustee and Investment Manager must ensure that at no time, the Fund holds a level of In-House Assets which exceeds five percent (5%) of the total assets of the Fund (based on market value).*

Some exemptions to the In-House Asset rule (noting that the list is not exhaustive) includes:

- (a) **Existing investments at 11 August 1999** - investments and leases with Related Parties in place at 11 August, 1999 are not subject to the In-House Asset rules. The

assets are not counted as In-House Assets unless they were already classified as In-House Assets under the previous definition. However, the Fund cannot make additional investments in such investments.

- (b) **Investments 11 August 1999 - 23 December 1999** - investments and leases with Related Parties that occurred between 11 August 1999 and 23 December 1999 were not counted as In-House Assets until 1 July 2001.
- (c) **Particular Investments post 11 August 1999** - the following investments made after 11 August 1999 are not subject to the In-House Assets rules:
 - (i) If the Fund had partly paid shares or units at 11 August 1999 then it may make further payments on those shares or units after that date provided the payments are made before 30 June, 2009;
 - (ii) If a Fund had an investment in a Related Party (entity) at 11 August, 1999, then it can reinvest its earning from that Related Party back in the Related Party before 30 June, 2009;
 - (iii) If the Fund had an investment in a Related Party (entity) at 11 August, 1999, then it could make further payments following that date provided that the investments do not surpass the level of the debt in the entity and are made no later than 30 June, 2009.

18.3. Financially assisting Related Parties

Rule: *The Trustee must ensure that no Loans or financial assistance are or have been given from the Fund have been given to a Member or a Relative of a Member (or for their benefit through a third party).*

A Trustee or an Investment Manager of the Fund must not lend money from the Fund or give any other financial assistance using the resources of the Fund to a Member or a Member's Relative or for their benefit through a third party.

18.4. Acquiring Assets from Related Parties

Rule: *The Trustee and Investment Manager of the Fund must ensure that no asset (other than money) has been acquired or will be intentionally acquired from a Related Party save for where an exemption applies.*

Exemptions to the prohibition include where the assets are acquired at market value and:

- (a) The asset is a Listed Security;
- (b) The asset is Business Real Property;
- (c) The asset is acquired under a merger between superannuation funds;
- (d) The Regulator has made a written document that the asset is a kind that may be acquired by the fund or by a class of funds.
- (e) The asset is an In-House Asset and its acquisition would not result in Fund's total level of In-House Assets exceeding five percent (5%) of the Fund's total assets or an asset that is particularly excluded from being an In-House Asset.

Prohibited Avoidance Schemes: A person must not enter into, commence or carry out a Scheme with the intention that that Scheme would result in the acquisition of an asset by the Trustee or the Investment Manager from a person that has a connection (either directly or indirectly through one or more interpose companies, partnerships or trusts) with a Related Party of the Fund.

18.5. Borrowing and Charging Assets

Rule: *The Trustee and Investment Manager must ensure that the Fund has not and does not borrow money, maintain an existing borrowing and/or charge its assets unless otherwise permitted by the Prescribed Law.*

Some of the limited circumstances in which borrowings are permitted include:

- (a) For a period not exceeding ninety (90) days to satisfy benefit payments due to Member or Beneficiaries provided that the borrowing does not exceed ten percent (10%) of the Fund's total assets;
- (b) Short-term borrowings for a period not exceeding seven (7) days to cover settlement of security transactions including:
 - (i) Bonds, debentures, stock, bills of exchange or other securities;
 - (ii) Shares in a company;
 - (iii) Units in a unit trust;
 - (iv) Futures contracts;
 - (v) Forward contracts;
 - (vi) Interest rates swap contracts;
 - (vii) Currency swap contracts;
 - (viii) Forward exchange rate contracts;
 - (ix) Forward interest rate contracts;
 - (x) A right or option in respect of such a security, share, unit, contract or policy;
 - (xi) Any similar financial instrument;
 - (xii) Foreign currency;

provided that the borrowing does not exceed ten percent (10%) of the Fund's total assets and at the time the relevant investment decision was made, it was likely that the borrowing would not be needed;

- (c) For a period not exceeding ninety (90) days where the purpose of the borrowing is to enable the Trustee to make a payment of surcharge or advance instalment which the Trustee is required to make under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997 (Cth)* and which, apart from the borrowing, the Trustee would not be able to make provided that the borrowing does not exceed ten percent (10%) of the Fund's total assets;

- (d) Certain instalment warrant arrangements which satisfy s 67(4A) of the Act and the Prescribed Law;

Charging Assets for Derivatives: A Trustee may give a charge over, or in relation to an asset of the Fund if:

- (a) The charge is given in relation to a Derivatives Contract entered into by or on behalf of the Trustee or by a broker on instructions or account of the Trustee; and
- (b) The charge is given in order to comply with the rules of an Approved Body that requires the performance of obligations in relation to the Derivatives Contract to be secured; and
- (c) The Fund has in place a derivatives risk statement that sets out:
 - (i) Policies for the use of Derivatives that include an analysis of the risks associated with the use of Derivatives within the Investment Strategy of the Fund; and
 - (ii) Restrictions and controls on the use of Derivatives that take into consideration the expertise of staff; and
 - (iii) Compliance processes to ensure that the controls are effective (for example, reporting procedures, internal and external audits and staff management procedures); and
- (d) The investment to which the charge relates is made in accordance with the derivatives risk statement.

19. Meeting of Trustees

19.1. How to Convene a Meeting

- (a) Notice Requirement

Any Trustee or in the case of a Corporate Trustee, any Director, may convene a meeting of the Trustees by providing thirty (30) days written notice to each of the other Trustees or to the other Director/s of a Corporate Trustee of the time, venue and agenda proposed for the meeting.

- (b) Notice Can Be Waived

A meeting may be convened by giving notice shorter than thirty (30) days where all Trustees or Directors agree to waive the thirty (30) day notice requirement.

- (c) Circular Resolution

The Trustees may pass a resolution without a Trustee meeting being held if all the Trustees entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

- (d) Meeting During Business Hours

Unless otherwise agreed, a meeting must only be scheduled to occur during Business Hours.

19.2. Quorum

(a) Sole Director

In the case of a sole Director Corporate Trustee, a quorum for a Trustee's Meeting shall be one (1) Director.

(b) Multiple Trustees/Directors

Where there is more than one Trustee or Directors of a Corporate Trustee, a quorum for a Trustee's Meeting shall be all the Trustees and/or Directors (or their proxy) as the case may be. If all the Trustees and/or Directors (or their nominated Proxy) are not present at the meeting within twenty (20) minutes of its scheduled time for commencement, the meeting shall automatically be adjourned for five (5) business days, to be held at the same time and venue previously advised. A quorum for an adjourned meeting shall be the same as for the original meeting.

(c) Electronic Attendance

A Trustee or Director may attend a meeting by telephone, SKYPE, video link or other instantaneous electronic form of communication.

(d) Appointment of Proxy

A Trustee or Director ("Principal") may appoint a Proxy to attend at a meeting on behalf of the Trustee or Director provided the following conditions are satisfied:

- (i) The Proxy must present to the meeting a written authority signed by the Principal for the purposes of a particular meeting.
- (ii) A Proxy may only be appointed for one (1) meeting at a time - a Principal may not appoint a Proxy for an indefinite period of time in a single authority or for a number of meetings. The Principal may though, by further authority, appoint the same Proxy for a subsequent meeting.
- (iii) The Proxy must act in the best interests of the Principal who appointed the Proxy, voting only in accordance with the directions of the Principal.
- (iv) The Chairperson of a meeting must allow the Proxy an opportunity to read aloud any statement in writing from the Principal, but the Proxy (unless a Trustee or Director) shall not be otherwise entitled to participate in any discussion in the meeting.

19.3. Appointment of a Chairman

Prior to commencing discussion of matters on a meeting agenda, the Trustees and/or Directors must nominate a Chairman to conduct the meeting. The Chairman must manage the meeting using a fair and reasonable approach and administer the agenda items.

19.4. Frequency of Meetings

The Trustees and/or Directors must meet at least every six (6) calendar months to consider:

- (a) The current Investment Strategy and performance of the Fund's investments;

- (b) The accounts of the Fund;
- (c) Reporting and taxation requirements;
- (d) Any other matters requiring attention, decision or discussion.

20. Meetings of Members

20.1. How to Convene a Meeting

- (a) Notice Requirement

Any Trustee or in the case of a Corporate Trustee, any Director may convene a meeting of the Members by providing thirty (30) days written notice to each of the Members of the time, venue and agenda proposed for the meeting.

- (b) Notice Can Be Waived

A meeting may be convened by giving notice shorter than thirty (30) days where all Members agree to waive the thirty (30) day notice this requirement.

- (c) Circular Resolution

The members may pass a resolution without a Members' meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

- (d) Meeting During Business Hours

Unless otherwise agreed, a meeting must only be scheduled to occur during Business Hours.

20.2. Quorum

- (a) Sole Member

In the case of an individual Member, a quorum for a Member's Meeting shall be one.

- (b) Multiple Members

Where there is more than one Member, a quorum for a Member's Meeting shall be all the Members (or their Proxy) as the case may be. If all the Members (or their Proxy) are not present at the meeting within twenty (20) minutes of its scheduled time for commencement, the meeting shall automatically be adjourned for five (5) business days, to be held at the same time and venue as previously advised. A quorum for an adjourned meeting shall be the same as for the original meeting.

- (c) Electronic Attendance

A Member may attend a meeting by telephone, SKYPE, video link or other instantaneous electronic form of communication.

- (d) Appointment of Proxy

A Member ("Principal") may appoint a Proxy to attend at a meeting on behalf of the Member

provided the following conditions are satisfied:

- (i) The Proxy must present to the meeting a written authority signed by the Principal for the purposes of a particular meeting.
- (ii) A Proxy may only be appointed for one (1) meeting at a time - a Principal may not appoint a Proxy for an indefinite period of time in a single authority or for a number of meetings. The Principal may though, by further authority, appoint the same Proxy for a subsequent meeting.
- (iii) The Proxy must act in the best interests of the Principal who appointed the Proxy, voting only in accordance with the directions of the Principal.
- (iv) The Chairperson of a meeting must allow the Proxy an opportunity to read out any statement in writing from the Principal, but the Proxy (unless a Member) shall not be otherwise entitled to participate in any discussion in the meeting.

20.3. Appointment of a Chairman

Prior to commencing to discuss matters on a meeting agenda, the Trustees and/or Directors must nominate a Chairman to conduct the meeting. The Chairman must manage the meeting using a fair and reasonable approach and administer the agenda items.

20.4. Member's Resolutions

The Trustee must use all reasonable endeavours to comply with any resolutions passed by the Members in their majority in a meeting subject to this Deed and the Prescribed Law.

20.5. Frequency of Meetings

A Member's meeting must be held where:

- (a) The Trustee receives a written request for a Member's Meeting signed by at least 50% of the Members; or
- (b) The Trustee considers it needed or desirable; or
- (c) A complaint or query under clause 21 is not dealt with to the satisfaction of any Member after given careful and proper consideration by the Trustee and/or Director/s.

21. Complaints or Queries

If a complaint or query is raised by a Member during a Member's meeting or provided to the Trustee in writing, then the Trustee must, within three (3) months of receiving the complaint or query, give careful and proper consideration to the complaint or query and take any necessary action and correspond with the Members as the Trustee deems appropriate.

If however, a complaint or query is not resolved to the satisfaction of a Member, then a Member's Meeting must be convened in order to attempt to resolve the complaint or query.

22. Provisions Relating to Family Law

22.1. Disclosure of Information Pursuant to Family Law Orders

Where a Member's Superannuation Interest becomes the subject of a Payment Split or other agreement, order or restriction under the *Family Law Act 1975* (Cth), then the Trustee is required to disclose information in accordance with the Prescribed Law to the Member and the Non-Member Spouse.

The Trustee may levy reasonable charges against the Superannuation Interest of a Non-Member Spouse for provision of such information, including the costs of obtaining professional advice regarding any requirements under this clause.

22.2. Payment Splits

(a) Adjustment, Payment or Transfer

If the Trustee receives a properly served splitting agreement or court order under Part VIIIB of the *Family Law Act 1975* (Cth) and complying with the Prescribed Law, then the Trustee may:

- (i) Adjust the Benefits and entitlements of the Member whose Superannuation Interest is the subject of the agreement or order to the extent permitted by the Prescribed Law, in such manner and at such times as the Trustee may determine; and
- (ii) Make a payment or transfer to the Non-Member Spouse.

(b) Imposition of Rules

Subject to the Prescribed Law, the Trustee may make rules from time to time dealing with the valuation and timing for calculation of Benefits and entitlements (including adjustments) of a Non-Member Spouse and any other matters relating to the Payment Split or the benefit and entitlement of a Non-Member Spouse.

(c) Deferred Payment Splits

If required by the Prescribed Law or otherwise considered appropriate, the Trustee may defer giving effect to a Payment Split. In such circumstances, the Trustee must:

- (i) Record that the agreement or court order exists; and
- (ii) Keep a record of the Benefit and entitlement of the Non-Member Spouse.

22.3. Flagging Agreements/Orders

If the Trustee receives a validly served flagging agreement or court order under Part VIIIB of the *Family Law Act 1975* (Cth) and complying with the Prescribed Law, then the Trustee must:

- 22.1. Record that the agreement or court order exists; and
- 22.2. Postpone making payment of the Benefit to or in respect of the Member whose Superannuation Interest is the subject of the agreement or order until the agreement or court order is lifted.

income; and

- (b) A statement as to whether those policies have been fully maintained as directed by the relevant insurers; and
- (c) A statement of which identifies the insurers; and
- (d) The amounts contributed by Employers and Members; and
- (e) A statement detailing the sum of premiums paid on the policies; and
- (f) The expenses incurred by the Fund, other than sums covered as premiums.

23.5. Keep Records

- (a) Keep for Five Years

For a period of five (5) years, the Trustee must retain the following records:

- (i) Accurate and accessible accounting records that explain the transactions and financial position of the Fund; and
- (ii) An annual operating statement; and
- (iii) an annual statement of the Fund's financial position.

- (b) Keep for Ten Years

For a period of ten (10) years, the Trustee must retain the following records:

- (i) Minutes of Trustee meetings and decisions (where matters affecting the Fund were discussed); and
- (ii) Records of all changes of Trustees; and
- (iii) Trustee declarations recognising obligations and responsibilities for any Trustee, or Director of a Corporate Trustee, appointed after 30 June, 2007; and
- (iv) Member's written consent to be appointed as Trustee; and
- (v) Copies of all reports provided to Members;
- (vi) Copies of annual returns lodged with the Regulator.

23.6. Annual Reporting

Promptly after the close of each Financial Year (and before the due date for lodgement) the Trustee shall prepare and lodge with the Regulator:

- (a) An annual return in the Approved Form containing such information as is required by the Regulator;
- (b) If necessary, a Member Contributions Statement in the Approved Form containing such information as is required by the Regulator;

- (c) A copy of the Auditor's Certificate;
- (d) A brief explanation of any audit qualification and/or other contravention of the Prescribed Law that occurred during the Year of Income which is detailed in or otherwise evident from the report prepared by an independent Approved Auditor; or
- (e) An income tax return for the Year of Income with the Australian Taxation Office in the Approved Form containing any information required.

23.7. Audits

The Trustee must appoint an Auditor for the Fund and ensure that the Fund's books, accounts and records are audited annually as required by the Prescribed Law.

23.8. Limited Liability of Trustee

No Person acting as Trustee or as a Director of a Corporate Trustee shall be responsible for:

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

unless the same shall be proved to have been:

- (c) Committed unlawfully; or
- (d) Made or omitted in conscious and fraudulent bad faith by that Trustee; or
- (e) Caused through the Trustee acting recklessly (whether intentionally or negligently) failing to exercise a reasonable standard of care required.

23.9. Breach by One Trustee

Where there is more than one Trustee or Director, no Trustee or Director shall be bound to take proceedings against the other Trustee/s or Director/s for any alleged breach of Trust.

23.10. Trustee's Right of Indemnity

To the extent permitted by the Prescribed Law, the Trustee, the Director/s (in the case of a Corporate Trustee), Investment Manager and Custodian ("Indemnified Persons") shall be entitled to be indemnified out of the assets for the time being comprising the Fund against liabilities incurred in the execution or attempted execution or as a consequence of the failure to exercise any of the authorities, powers and discretions hereof or by virtue of being involved in the activities of the Fund. In this regard, the Trust holds a lien over the assets of the Fund.

However, the right of indemnity shall be lost where:

- (a) The Trustee commits a breach of trust by:
 - (i) Acting dishonestly or fraudulently in any matter concerning the fund;
 - (ii) Intentionally or recklessly failing to exercise the required degree of care and

diligence; or

- (b) A monetary penalty is incurred by any of the Indemnified Persons under criminal or civil penalty provision.

23.11. Trustee to be Reimbursed for Expenses

If the Trustee necessarily or reasonably incurs any expenses through the exercise of the Trustee's role as Trustee, then the Trustee shall be entitled to be reimbursed for such expenses on presentation of proof of the expense (ie receipt). By way of clarification, this clause does not allow a Trustee to charge any fee or receive any remuneration for performance of its services as Trustee.

23.12. Confidential Information

- (a) Member/Beneficiary Privacy

The Trustee is not permitted to provide any Member with any information concerning the personal details of another Member or Beneficiary or details of another Member's Superannuation Interest in the Fund unless such Member or Beneficiary has given written consent to the Trustee to release such information.

- (b) Fund Privacy

The Trustee must keep all matters relating to the accounts, dealings and activities of the Fund confidential except:

- (i) Where the Trustee is required to report to the Regulator or otherwise under the Prescribed Law regarding the accounts and activities of the Fund; or
- (ii) Where the Trustee is require or deems it necessary or desirable to provide information to all Beneficiaries of the Fund; or
- (iii) Where information is reasonably required by a third party (e.g. Regulator, Employer-Sponsor, bank or insurer) for the purposes of administering the Fund or engaging in the Fund's activities.

24. Winding Up

24.1. Trustee's Election to Wind Up

The Trustee may elect to wind up the Fund if:

- (a) The Trustee resolves to wind up the Fund - on the date of the resolution;
- (b) There are no Members or Beneficiaries remaining of the Fund and the Trustee considers that it is unlikely that any new Members will join the Fund - on the date elected by the Trustee.

24.2. Other Terminating Circumstances

The trusts created by this Deed will end if:

- (a) The Trustee has knowledge that the Fund is insolvent - on the day the Regulator gives permission to the Trustee to wind-up the Fund;

- (b) The Members unanimously resolve to wind-up the Fund - on the day when all the Benefits and entitlements are paid, rolled over or transferred from the Fund so that the Fund is void of assets and all memberships have been terminated;
- (c) The Prescribed Law does not exclude the operation of the Rule Against Perpetuities - the last day of the seventy-ninth (79th) year after the execution of the Deed.

24.3. Process for Winding-Up

Once the Trustee has an intention to wind-up the Fund or becomes aware that the Fund is to be wound up pursuant to the above sub-clauses then the Trustee must:

- (a) Ensure that the Regulator together with each Member, Beneficiary, Employer-Sponsor, Standard Employer-Sponsor and other Interested Party of the Fund are given reasonable notice of the Trustee's intention to wind-up the Fund;
- (b) Lodge a final taxation return and regulatory return;
- (c) Ensure that all taxation and reporting obligations have been satisfied;
- (d) Pay out any outstanding liabilities owing by the Fund including any taxation or supervisory levies outstanding;
- (e) Deduct from the assets of the Fund the costs (whether known or anticipated) of winding up the Fund;
- (f) Distribute the balance assets of the Fund to the Members and Beneficiaries; and
- (g) Attend to any other matters that the Trustee considers reasonable and necessary in winding up the Fund.

At all times during the process of winding up the Fund, the Trustee must comply with the Prescribed Law.

25. General Matters

25.1. Interpretation of the Deed

The Deed will be interpreted and governed in accordance with the Prescribed Law. To the extent of any inconsistency between the provisions of this Deed and the Prescribed Law, the Prescribed Law shall prevail. By way of clarification, if the interpretation of or the inclusion of any clause (or part thereof) in this Deed or the exercise of any power by the Trustee pursuant to any clause means that the Fund will become non-complying SMSF then such clause (or part thereof) shall be:

- (a) Given the interpretation which ensures that the arrangement does comply with the Prescribed Law; or
- (b) If it is not possible to give the clause (or part thereof) an interpretation to ensure compliance with the Prescribed Law then such clause (or part thereof) shall be severed from this Deed without invalidating or affecting the remaining clauses of this Deed in which case the Trustee must seek to amend the Deed by including a clause so that it complies with the Prescribed Law and yet strives to give effect to the intent behind the clause or part of the clause that was severed from this Deed.

25.2. Variation

The Trustee may:

- 25.1. At any time and from time to time by supplementary Deed or by resolution revoke, add to or vary all or any of the provisions hereof or trusts hereinbefore limited or the trusts limited by any variation or alteration or addition made thereto from time to time; and
- 25.2. May by the same or any other Deed or Deeds, or by resolution declare any new or other trusts or powers concerning the Trust Fund or any part or parts thereof the trusts whereof shall have been so revoked added to or varied;

provided that the revocation, addition or variation of the provisions must not:

- (a) Be inconsistent with the Act, Regulations or Prescribed Law generally;
- (b) Alter the purpose or objects of the Fund;
- (c) Render the Fund to be a non-complying SMSF;
- (d) Result in a reduction to any of the Members' rights, Benefits or entitlements unless the Members have given informed, written consent to the reduction or unless the variation is necessary to comply with the Prescribed Law;
- (e) Result in a Binding Death Nomination or Non-Lapsing Binding Death Nomination being invalid unless the change is required by the Prescribed Law.

25.3. Access to the Deed

All Members to the Fund must be provided with access to and/or a copy of this Deed if requested to the Trustee in writing.

25.4. Effect of Changes in Prescribed Law

Notwithstanding the provisions in this Deed, the Trustee is permitted and authorized to act only in accordance with the Prescribed Law as amended or varied from time to time (or any other law, rule, direction or requirement to enable the Fund to become or remain a complying SMSF). If there are any changes to the Prescribed Law that results in the Trustee doing anything that is permitted by this Deed rendering the Fund a non-complying SMSF then the Trustee is prohibited from doing that thing. If there are any changes to the Prescribed Law that permit a Trustee from doing anything that is not permitted by this Deed then the Trustee has the power to do that thing provided it does not render the Fund a non-complying SMSF.

25.5. Jurisdiction

This Deed is made under the laws of the State of Queensland and the rights of all parties and the construction and effect of each and every provision hereof shall be subject to such laws and the situs of this trust and of all the beneficial interests therein shall be deemed to be that State.

25.6. Notices

- (a) How a Notice May be Given

A notice may be given by the Trustee to any Member, Beneficiary or other Trustee either

personally or by sending it by post to him at his registered address or (if he has no registered address within the Commonwealth of Australia) to the address (if any) within the Commonwealth of Australia supplied by him to the Trustee for the giving of notice to him.

(b) By Post

Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing, prepaying and posting an envelope containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post.

(c) By Facsimile and Email

If the Trustee shall so determine a notice may be given by means of a facsimile and/or email and service of such notice shall be deemed to be effected if the facsimile or email is properly transmitted and to have been effected at the time at which in the ordinary course the facsimile or email would be received.

(d) Form of Signature

The signature to any notice to be given by the Trustee may be written or printed or stamped and the signature may be that of one or more of the Trustee or of any Director or secretary of a Corporate Trustee.

25.7. Undefined Terminology

Terminology used in this Deed which is not otherwise defined in this Deed has the same meaning as under the Prescribed Law unless the context otherwise requires.

25.8. Summaries

Any summaries or commentary included throughout this Deed is for the ease of the reader only and are designed to reflect certain provisions (or parts of provisions) of the Prescribed Law (particularly the Act and the Regulations). If any of the summaries or commentary in this Deed are or become inconsistent with the Prescribed Law as amended or varied from time to time, then the Prescribed Law shall prevail.

Schedule 1 - Deed Particulars

Name of Trust: B & V Superfund

Date of Deed:


Trustee/s: (1) Sugar Shed Pty Ltd ACN 604 350 361 of Coastal Accounting Service, Shop 4, 73 Broad Street, Sarina QLD 4737

Member/s: (1) Robert John Prins of 277 Sugarshed Road, Erakala QLD 4740
(2) Victoria Jane Cresswell of 277 Sugarshed Road, Erakala QLD 4740

Executed by Sugar Shed Pty Ltd ACN 604 350 361 as
Trustee in accordance with Section 127 of the
Corporations Act 2001 (Cth)

Director/Sole Director

Director/Secretary



Witness James

W. J. Little

Witness Franklin