

## **11. Incoming Roll-Overs and Transfers**

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### **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**

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### **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 long 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**

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### **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 their 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 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.

#### **(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 or 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**

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### **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 of 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**

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### **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**

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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 provisions 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 expenses 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 Trust 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**

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#### **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 in 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**

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### **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 interposed 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 Members 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 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**

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### **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.

### **(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 as 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 and table 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**

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### **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 and table 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**

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If a complaint or query is raised by a Member during a Member's meeting or provided to the Trustee in writing, then 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**

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### **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.

## **22.4. Membership of Non-Member Spouse**

Where Family Law proceedings render a Member's Superannuation Interest the subject of a splitting order, the Trustee must treat the Non-Member Spouse as a Member for the purposes of clause 5 and the Restricted Investments Rules.

However, the Trustee may refuse to admit a Non-Member Spouse as a Member of the Fund provided the Trustee acts in accordance with the Prescribed Law.

## **23. Administration of the Fund**

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### **23.1. Payment of Supervisory Levy**

The Trustee must pay to the Australian Taxation Office (or to such other entity as otherwise required by the Prescribed Law) the supervisory levy each year when due.

### **23.2. Debt Collection**

The Trustee must ensure that any money owing to the Fund is promptly collected or recovered.

### **23.3. Keep Books and Accounts**

The Trustee shall keep complete current and accurate books of account for the Fund describing:

- (a) The assets comprising the Fund from time to time;
- (b) The income derived by the Fund;
- (c) All receipts and expenditures on account of the Fund;
- (d) All classes of income;
- (e) A statement of the Fund's financial position;
- (f) The operating statement of the Fund;
- (g) All benefits and entitlements of individual Members in the Fund separated into categories of Minimum Benefits, Preserved Benefits, Restricted Non-Preserved Benefits and Unrestricted Non-Preserved Benefits;
- (h) The benefits and entitlements to which a Beneficiary or Member is entitled but has not yet been paid;
- (i) Any transaction that a Trustee has entered into; and
- (j) Any other information that is required by the Prescribed Law or the Trustee considers necessary or desirable.

### **23.4. Life Assurance**

If the Fund is a fund from which the Benefits to be paid to each individual Member are wholly determined by reference to policies of life assurance at the end of a Year of Income, then the Trustee must prepare:

- (a) A statement of the policies of life assurance that are in place at the end of the year of



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; and
- (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 the exercise of any discretion or power hereby or by law conferred on the Trustee or by any alleged failure to exercise any such discretion or power; or
- (b) Any breach of duty or trust 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) and 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 Trustee 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 required 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**

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### **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 (79<sup>th</sup>) 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

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Name of Trust: Theokoles Super Fund

Date of Deed: 24<sup>th</sup> November 2016

Trustee/s: (1) Theokoles Pty Ltd (ACN 616 107 156) of 6 Showgrounds Drive, Highvale QLD 4520

Member/s: (1) Ko Lane of 6 Showgrounds, Drive Highvale QLD 4520

(2) Dianne Linda Lane of 6 Showgrounds Drive, Highvale QLD 4520

## Schedule 2 - Sample Membership Application

### Theokoles Super Fund MEMBERSHIP APPLICATION FORM

To the Trustees of the  
Theokoles Super Fund

#### Member Details

Name:

Address:

Date of Birth:

Occupation:

Date Employment:

Commenced:

Salary:

Telephone:

Fax:

\*Tax File Number:

#### Employer Details

Name of Employer:

Address:

#### Member's Application, Acknowledgement and Authorisation

1. I hereby apply to become a Member of the Theokoles Super Fund.
2. I acknowledge receipt of a current Product Disclosure Statement in respect of the Fund, supplied prior to or with this Application;
3. I understand that my Membership is subject to the Deed and agree to be bound by the terms and conditions in the Deed.
4. I understand my rights and the terms and conditions of the Trust Deed including benefit payable to Members and the rights of dependants.
5. \* For the purposes of section 299F of the *Superannuation Industry (Supervision) Act 1993 (Cth)*, I understand that the Trustee must request that I provide my Tax File Number. I acknowledge that I am under no obligation to supply my Tax File Number but that failure to do so may result in tax being deducted from my account at the top marginal rate.

Dated this            day of            2016

Signed: \_\_\_\_\_  
[Member's Name]



## Schedule 3 - Sample Employer - Sponsor Application

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### Theokoles Super Fund MEMBERSHIP APPLICATION FORM

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To the Trustees of the  
Theokoles Super Fund

#### Employer Details

Name:  
Address:

"Respective  
Employee":

#### Employer's Application, Acknowledgement and Authorisation

1. I/We have apply to participate in the Fund and to contribute in respect of the Respective Employee.
2. I/We acknowledge receipt of a current Product Disclosure Statement in respect of the Fund, supplied with or prior to this Application.
3. I/We agree to observe and comply with all obligations placed on an Employer under the Trust Deed as varied from time to time and to be bound by the terms of the Deed as if I/we was/were a party thereto;
4. I understand that written approval by the Trustee or acceptance of a Contribution by me/us to the Fund, will be deemed to constitute acceptance of this application.

Dated this            day of            2016

Signed: \_\_\_\_\_  
[Employer's Name]

## Schedule 4 - Sample Preferential Death Benefit Nomination

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### Theokoles Super Fund PREFERENTIAL DEATH BENEFIT NOMINATION

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To the Trustees of the  
Theokoles Super Fund

#### Member Details

Name:  
Address:

Date of Birth:

#### Important Information for Member

A Preferential Death Nomination is not binding upon the Trustee. That is, the Trustee may take your Preferential Death Nomination into account when deciding who to pay your benefits to on your death, however the Trustee has complete discretion as to which of your dependants and/or Legal Personal Representative may receive the benefit and in what portions.

It is not essential to complete a Preferential Death Nomination, but it enables you to express your wishes to the Trustee. If you wish to make a death nomination that is binding upon the Trustee, then you should consider making a Binding Death Nomination or Non-Lapsing Binding Death Nomination.

In a Preferential Death Nomination, you can nominate a “dependant” or your legal personal representative to receive the death benefit. If you nominate your legal personal representative, it is important that you have a will and keep it up to date, as if the trustee, in its discretion, determines to pay part or all of your death benefit to your estate, then it will be dealt with by your will (or in the absence of a Will, by the law of intestacy).

Under superannuation law “dependant” includes any spouse, any child, any other person who the trustee considers was dependant on you for maintenance or support at the date of your death and any person who is in an “interdependent relationship” with you.

You may be defined as being in an interdependent relationship with someone if you share a close personal relationship, live together, one or each of you provides the other with financial support and one or each of you provides the other with domestic support and personal care.

Two people may also have an interdependency relationship (whether or not related by family) if they have a close personal relationship, but other requirements for interdependency are not met because either or both of them suffer from a physical, intellectual or psychiatric disability.

When you fill in your form, you must do the following:

1. Complete all sections of the form;
2. Ensure the beneficiaries are dependants or your legal personal representative;
3. Ensure that a benefit allocation between your beneficiaries adds up to 100%; and
4. Ensure you sign and date the form.



If you fail to complete all sections of the form, then the Trustee may disregard your nomination.

You are advised to seek further information and legal advice as to the manner and consequences of the request prior to it being made.

### Action Required

- ☐ I wish to make a new Preferential Death Nomination;
- ☐ I wish to amend my existing Preferential Death Nomination;
- ☐ I wish to cancel my Preferential Death Nomination.

### Nomination

Upon my death, I ask that the Trustee of the Superannuation Fund considers exercising its discretion to distribute my benefits as follows:

Surname	Given Name	Date of Birth	Relationship	% Allocation
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Personal Representative	
				Total 100%

### Member's Declaration and Signature

I have read the Important Information set out above. I understand that:

1. On my death, the Trustee has absolute discretion as to which of my dependants and/or my Legal Personal Representative will receive all or part of my death benefit.
2. I may at any time revoke this nomination by completing a new form and submitting it to the trustee.
3. By signing this form I consent to the handling of my personal information;
4. It is my responsibility to ensure my nomination continues to reflect my wishes;
5. This form overrides any previous Preferential Death Benefit Nomination but will not override any previous Binding Death Nomination or Non-Lapsing Binding Death Nomination.

Signature of Member

Date

## Schedule 5 - Sample Binding/Non-Lapsing Binding Death Benefit Nomination

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### Theokoles Super Fund

## BINDING DEATH BENEFIT NOMINATION/NON-LAPSING BINDING DEATH NOMINATION

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To the Trustees of the  
Theokoles Super Fund

### Member Details

Name:

Address:

Date of Birth:

### Important Information for Member

Please read this section to ensure your nomination is valid. If this nomination is found to be invalid, then normal trustee discretion will apply in relation to the payment of your death benefit.

This Binding Death Nomination or Non-Lapsing Binding Death Nomination (as the case may be) is a legal instrument that “binds” the trustee of the Superannuation Fund to pay your death benefit to your nominated beneficiaries. A Binding Death Benefit Nomination or Non-Lapsing Binding Death Nomination allows you to have certainty about where your death benefit will be paid.

The key difference between a Binding Death Nomination and a Non-Lapsing Binding Death Nomination is that, as the name suggests, a Binding Death Nomination will lapse if not renewed every three (3) years whereas a Non-Lapsing Binding Death Nomination continues until otherwise cancelled or amended by the Member.

Providing this nomination is valid and, for a binding death nomination, is less than three (3) years old, then the trustee has no discretion in relation to whom your death benefit is to be paid.

On your death, if your nomination is found to be invalid, then the trustee will use its discretion to determine who your death benefit will be paid to. An invalid nomination may still be an important consideration for the trustee when determining the payment of your death benefit, however this does not ensure the benefit will be paid in the same way as a valid Binding Death Nomination or Non-Lapsing Binding Death Nomination.

You can nominate a “dependant” or your legal personal representative to receive the death benefit. If you nominate your legal personal representative, it is important that you have a will and keep it up to date as the trustee will pay that part of the death benefit directed to the personal representative to your estate to be dealt with in account with your Will (or in the absence of a Will - the laws of intestacy).

Under superannuation law “dependant” includes any spouse, any child, any other person who the trustee considers was dependant on you for maintenance or support at the date of your death and any person who is in an “interdependent relationship” with you.

You may be defined as being in an interdependent relationship with someone if you share a close personal relationship, live together, one or each of you provides the other with financial support and one or each of you provides the other with domestic support and personal care.



Two people may also have an interdependency relationship (whether or not related by family) if they have a close personal relationship, but other requirements for interdependency are not met because either or both of them suffer from a physical, intellectual or psychiatric disability.

When you fill in your form, you must do the following:

1. Complete all sections of the form;
2. Ensure the beneficiaries are dependants or your legal personal representative;
3. Ensure that a benefit allocation between your beneficiaries adds up to 100%; and
4. Ensure you sign and date the form in front of two (2) witnesses who must be over 18 years of age and not nominated as beneficiaries.

Your nomination may become invalid if:

1. For a Binding Death Nomination - your form was signed more than three (3) years before you die. You must complete a new form or amend or confirm your existing form at least every three (3) years; or
2. One of your beneficiaries dies before you.

It is important that, like a will, you keep your Binding Death Nomination up to date. The trustee of the Superannuation Fund cannot alter your properly made Binding Death Nomination or non-lapsing binding death nomination regardless of the consequences or circumstances which might arise subsequent to you making the nomination and so long as that nomination remains current.

Careful consideration should be given to the wording of the request to ensure that your intentions are clearly and legally binding and executable.

You are advised to seek further information and legal advice as to the manner and consequences of the request prior to it being made.

### **Action Required**

- ☐ I wish to make a new Binding Death Nomination (acknowledging that the Binding Death Nomination will lapse if not renewed every three (3) years);
- ☐ I wish to amend my existing Binding Death Nomination;
- ☐ I wish to cancel my Binding Death Nomination.

**Or**

- ☐ I wish to make a new Non-Lapsing Binding Death Nomination;
- ☐ I wish to amend my existing Non-Lapsing Binding Death Nomination;
- ☐ I wish to cancel my Non-Lapsing Binding Death Nomination.

## Nomination

Upon my death, I direct the trustee of the Superannuation Fund to distribute my benefits as follows:

Surname	Given Name	Date of Birth	Relationship	% Allocation
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Spouse/Child/Other Dependant	
			Personal Representative	
				Total 100%

## Member's Declaration and Signature

I have read the Important Information set out above. I understand that:

1. This nomination need be accepted by the trustee before it is binding on the trustee.
  2. *For a Binding Death Nomination* - Once accepted by the trustee this nomination will remain in effect for 3 years from the date it was first signed or last confirmed or amended.
- or
3. *For a Non-Lapsing Binding Death Nomination* - Once accepted by the Trustee, this nomination will remain in effect until such time as I change or cancel the nomination - it will not lapse by passing of time.
  4. I may at any time revoke this nomination by completing a new form and submitting it to the trustee.
  5. By signing this form I consent to the handling of my personal information;
  6. It is my responsibility to ensure my nomination remains valid and continues to reflect my wishes;
  7. This form overrides any previous death benefit nomination.

Signature of Member

Date

*Your signature must be witnessed by two people, neither of whom is named as beneficiary.*

## Witnesses' Declaration and Signature

I, as a witness, declare that I am over 18 years and that this nomination was signed in my presence.

Signature of Witness 1

Signature of Witness 2

Date

Date

Full name of Witness 1

Full name of Witness 2



**Theokoles Super Fund**  
**TRUSTEE ACCEPTANCE OF BINDING DEATH BENEFIT NOMINATION/NON-**  
**LAPSING BINDING DEATH NOMINATION**

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**To the Member of the**  
Theokoles Super Fund  
**named below**

**Member Details**

Name:  
Address:

Date of Nomination

We, \_\_\_\_\_ and \_\_\_\_\_ being the Trustees of the Superannuation Fund hereby accept the Binding Death Nomination or Non-Lapsing Binding Death Nomination from you dated as above pursuant to the terms of the trust Deed establishing the Superannuation Fund.

Signature of Trustee

Signature of Trustee

Date

Date

## Schedule 6 - Guide to Pensions

### (A) Account-Based Pension

Account-Based Pensions must satisfy the requirements in the Prescribed Law (particularly Regulations 1.06(9A)(a) and Regulation 1.07D or as subsequently amended or replaced) including:

1. The amount supporting the Pension must be paid from a Pension Reserve established for the purpose of paying the Pension to the Member.
2. The Trustee must pay the Pensioner a Minimum Amount at least annually calculated in accordance with the Prescribed Law.
3. The Trustee is not required to make a minimum payment to the Member if the date of commencement of the Pension is 1 June in the Year of Income.
4. There is no restriction on the Maximum Amount that can be paid to a Pensioner annually.
5. Where the Pension commences after 1 July, the Minimum Payment amount for the 1st year is calculated proportionately to the number of days in the financial year, starting from the commencement day as follows:

$\text{Minimum Payment} \times \frac{\text{remaining days in financial year}}{\text{total days in financial year}}$
---

6. Once the Pension has commenced to be paid to a Member, the Trustee must not permit the capital supporting the Pension to be added to by way of Contribution or Roll-over.
7. The Pension can only be transferred if a Member dies, to one of the Member's Dependents. However, if a Member dies, the Pension cannot be transferred to a Child of the Member (but may be paid as a lump sum) unless 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 w financially dependant on the Member or has a disability under the *Disability Services Act 1986* (Cth).
8. The capital value of the Pension nor the income from it can be used as security for borrowing (e.g. loans).
9. Before the Trustee can commute a Pension, the Trustee must pay the Minimum Amount from the Pension before completing the commutation as follows:

**Pension Commenced After 19 September, 2007** - the amount paid must at least be the pro rata of the minimum annual payment amount and be paid from the Pension before the commutation. The minimum payment must occur in the financial year in which the commutation is to take place.

**Pension Commenced Same Year as Commuted** - the pro-rata minimum payment amount is calculated according to the number of days from the commencement of the Pension until the day it is commuted as follows:



**Minimum Payment x days from start of pension to day Pension commuted  
total days in financial year**

However, the Trustee does not have to make a minimum payment prior to the commutation where the commutation arises on the death of a Member or where the purpose of the commutation is to:

- (a) Pay a superannuation contributions surcharge liability;
- (b) Give effect to a Payment Split under the Family Law provisions; or
- (c) Give effect to a client's right to return a financial product under the Corporations Law provisions.

10. The Pension will cease when the balance of the Member's Pension Reserve is nil.

**(B) Transition to Retirement Pensions**

A newly created Transition to Retirement Pension (also known as a Workforce Pension) must meet the same requirements as set out for Account-Based Pensions in A) except that:

1. The Trustee is restricted to a maximum annual payment limit of 10% of Account Balance (or as otherwise provided for by the Prescribed Law from time to time) until the Member retires or attains the age of sixty-five (65); and
2. The Pension may be partially or fully commuted. However, if the Pension is commuted, the resulting Lump Sum amount cannot be paid unless:
  - (a) The Member has satisfied a Condition of Release which renders there 'Nil' Cashing Restriction on Preserved Benefits and Restricted Non-Preserved Benefits; or
  - (b) The purpose of the commutation is to:
    - (i) Pay a superannuation contributions surcharge liability;
    - (ii) Give effect to a Payment Split under the Family Law provisions; or
    - (iii) Cash a Member's unrestricted non-preserved benefit.

By way of clarification, the same requirements regarding minimum payment on commutation as for Account-Based Pensions in A) applies to Transition to Retirement Pensions.

Executed by Theokoles Pty Ltd (ACN 616 107 156) as  
Trustee in accordance with Section 127 of the  
Corporations Act 2001 (Cth)


  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Director/Secretary



Signature of Witness

Done

  
Signature of Witness

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