

- (i) The Member has already made a Splitting Application in the current Year of Income, which the Trustee is either still considering or has already motioned;
- (ii) It relates to Benefits exceeding the Maximum Splittable Amount of a Member's Contribution for the year;
- (iii) At the time of the Contribution, the Member's Spouse is aged sixty-five (65) years or more or is aged between the relevant Preservation Age and sixty-five (65) years and has satisfied the "Retirement" Condition of Release.

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

(e) Trustee's Decision

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

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

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

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

(f) Consequences of Contributions Splitting

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

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

- (iii) The new Benefit consists entirely of a taxable component;
- (iv) The Benefit rolled over or transferred for a Member's Spouse is deemed to be a Preserved Benefit unless and until the Trustee is satisfied that it is not a Preserved Benefit.

## **8. Payment of Benefits**

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### **8.1. Prescribed Law to Prevail**

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

### **8.2. Payment of Preserved Benefits**

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

### **8.3. Payment of Restricted Non-Preserved Benefits**

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

### **8.4. Payment of Unrestricted Non-Preserved Benefits**

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

### **8.5. Cashing Restriction "Nil"**

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

### **8.6. Conditions of Release**

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

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



- (ii) In the case of a person who has attained the age of 60:
  - (A) An arrangement under which the Member was Gainfully Employed has come to an end and either the person has attained that age on or before the ending of employment; or
  - (B) The Trustee is reasonably satisfied that the person intends never to again become Gainfully Employed, either on a Full-Time or a Part-Time basis;
- (b) **Attaining age 65;**
- (c) **Termination of Gainful Employment** - termination of Gainful Employment with an Employer who had, or any of whose Associates had, at any time, contributed to the Fund in relation to the Member;
- (d) **Termination of Gainful Employment with Preserved Benefits <\$200** - termination of Gainful Employment with a Standard Employer-Sponsor of the Fund on or after 1 July 1997 (where the Member's Preserved Benefits in the Fund at the time of the termination are less than \$200);
- (e) **Terminal Medical Condition** - in relation to a person exists at a particular time if the following circumstances are satisfied:
  - (i) Two (2) registered medical practitioners have certified, jointly or separately, that the person suffers from an illness, or has incurred an injury, that is likely to result in the death of the person within a period (the certification period) that ends not more than twelve (12) months after the date of the certification;
  - (ii) At least one of the registered medical practitioners is a specialist practicing in an area related to the illness or injury suffered by the person;
  - (iii) For each of the certificates, the certification period has not ended.
- (f) **Death** - see clause 8.7;
- (g) **Permanent Incapacity** - in relation to a Member, means ill-health (whether physical or mental), where the Trustee is reasonably satisfied that the Member is unlikely, due to the ill-health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience;
- (h) **Temporary Incapacity** - in relation to a Member who has ceased to be Gainfully Employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), means ill-health (whether physical or mental) that caused the Member to cease to be Gainfully Employed but does not constitute Permanent Incapacity;
- (i) **Severe Financial Hardship** - a person is taken to be in Severe Financial Hardship if:
  - (i) The Trustee of the Fund is satisfied:
    - (A) Based on written evidence provided by at least one Commonwealth department or agency responsible for administering a class of Commonwealth income support payments, that the person has

received Commonwealth income support payments for a continuous period of 26 weeks and the person was in receipt of payments of that kind on the date of the written evidence; and

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

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

- (j) **Compassionate Grounds** - are those grounds listed in reg 6.19A of the Regulations, being (in summary):
  - (i) To pay for medical treatment or medical transport for the person or a Dependant; or
  - (ii) To enable the person to make a payment on a Loan, to prevent:
    - (A) Foreclosure of a mortgage on the person's principal place of residence; or
    - (B) Exercise by the mortgagee of an express, or statutory, power of sale over the person's principal place of residence; or
  - (iii) To modify the person's principal place of residence, or vehicle, to accommodate the special needs of the person, or a Dependant, arising from severe disability; or
  - (iv) To pay for expenses associated with the person's palliative care, in the case of impending death; or
  - (v) To pay for expenses associated with a Dependant's:
    - (A) Palliative care, in the case of impending death; or
    - (B) Death; or



- (C) Funeral; or
  - (D) Burial; or
  - (E) To meet expenses in other cases where the release is consistent with a ground mentioned in paragraphs 8.6(j)(i) to 8.6(j)(v), as the Regulator determines.
- (k) **Attaining Preservation Age;**
- (l) **Lost Member** - Being a lost member who is found, and the value of whose Benefit in the Fund, when released, is less than two hundred dollars (\$200);
- (m) **Temporary Residents** - former temporary resident to whom reg 6.20A or 6.20B of the Regulations applies, requesting in writing the release of his or her Benefits;
- (n) **Transitional Release Authority** - A person gives a transitional release authority to the Trustee under section 292-80B of the Income Tax (Transitional Provisions) Act 1997;
- (o) **Release of Benefits under ATO authority** - either:
- (i) A person gives a release authority to a superannuation provider under subsection 292-410(1) of the *Income Tax Assessment Act 1997* (Cth);
  - (ii) The Commissioner of Taxation gives a released authority to the Trustee under s 292-410(4) of the *Income Tax Assessment Act 1997* (Cth);
- (p) **Release to ATO** - the Trustee is required to pay an amount to the Commissioner of Taxation under the Superannuation (Unclaimed Money and Lost Members) Act 1999 for the person's Superannuation Interest in the Fund.
- (q) **Any other condition**, if expressed to be a Condition of Release under the Act.

## 8.7. Payment of Death Benefit

### (a) When Payable

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

### (b) Calculation

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

### (c) Trustee's Discretion as to Recipient

Subject to any valid Reversionary Pension Nomination, Binding Death Nomination or Non-Binding Death Nomination by the deceased Member, the Trustee shall, in its sole discretion elect, having due regard to any wishes of the Member contained in a Preferential Death Nomination or an invalid or failed Reversionary Pension Nomination, Binding Death Nomination or Non-Lapsing Binding Death Nomination, which of the following persons shall receive the

Member's Death Benefit (noting that the Trustee may decide to pay the entire Death Benefit to only one of these persons):

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

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

(d) Notifying Death Benefit Beneficiary

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

(e) Lost Death Benefit Beneficiary

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

(f) Method of Payment

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

(g) Discharge of Trustee

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

(h) Anti-detriment Payment

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

## 8.8. Preferential Death Nomination

(a) Giving of Notice

At any time, a Member may provide the Trustee with a Preferential Death Nomination informing



the Trustee of how the Member would prefer his or her Death Benefit to be paid but leaving the final decision as to whom the Death Benefit will be paid to the discretion of the Trustee.

(b) Trustee's Discretion

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

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

(c) Requirements

A Preferential Death Nomination must:

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

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

## 8.9. Binding Death Nomination

(a) Giving of Notice

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

(b) When Trustee Bound

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

(c) Requirements for Valid Notice

For a Binding Death Nomination to be valid:

- (i) It must be in writing; and
- (ii) It must be signed and dated by the Member making the Binding Death

Nomination in the presence of two (2) witnesses who are both over the age of eighteen (18) and not a person mentioned in the Binding Death Nomination; and

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

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

(d) Trustee Must Supply Information

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

## **8.10. Non-Lapsing Binding Death Nomination**

(a) Giving of Notice

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

(b) When Trustee Bound

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



court order.

(c) Requirements for Valid Notice

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

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

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

(d) Trustee Must Supply Information

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

### **8.11. Automatic Revocation of Nomination**

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

### **8.12. Deductions from Benefits**

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

winding up of the Fund applicable to the Member's Benefits.

### **8.13. Suspended or Terminated Benefits**

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

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

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

#### **(b) Dealing with Suspended or Terminated Benefits**

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

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

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

### **8.14. Procedural Requirements**

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

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

## **9. Payment of Pensions**

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### **9.1. Manner of Payment of Benefits**

Although this Deed primarily contemplates payment of Pensions, the Trustee is not prevented from



making Lump Sum payments of Benefits. The Trustee may pay any Pension permitted by the Prescribed Law to its Members, having regard to any restrictions, terms or conditions imposed on the type of Pension by the Prescribed Law.

## **9.2. New Pensions Commencing After 30 June, 2007**

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

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

## **9.3. Existing Pensions**

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

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

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

## **9.4. No Defined Benefit Pensions**

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

## **9.5. Allocated Pensions which Commenced Prior to 1 July 2007**

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

## **9.6. Reversionary Pension Nomination**

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

#### **9.7. Deceased Member's Pension to Spouse**

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

#### **9.8. Restriction on Death Benefit Pensions to Children**

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

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

#### **9.9. Pension Reserve**

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

#### **9.10. Actuarial Certificate**

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

#### **9.11. Record Keeping**

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

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

#### **9.12. Summaries of Pension Types and Requirements**

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

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

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



## **10. Lump Sum Payments**

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

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

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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 longer than the thirty (30) days mentioned is required because of the illiquid nature of the investment.

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

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

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



completing the roll-over or transfer.

## **12.5. Refusal to Roll-over or Transfer**

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

- (a) The Fund to which the Member has requested the amount be rolled over or transferred to will not accept the amount; or
- (b) The amount to be rolled over or transferred is part only of the Member's Superannuation Interest in the Fund, and the effect of rolling-over or transferring the amount would be that the Member's interest in the fund from which the amount is to be rolled over or transferred would be less than \$5,000; or
- (c) The Trustee has rolled over or transferred an amount of the Member's Superannuation Interest within 12 months before the request is received.

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

## **12.6. Information to Regulator**

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

## **13. The Trustee**

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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 respect 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 Trustee as Trustee of the Fund and to enter into a deed with the Custodian that sets out the basis upon which property is to be acquired and held.

#### **16.14. Power to Borrow Money and Grant Security\***

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



To the extent allowed by the Prescribed Law:

- (a) To borrow and raise money from any Person (including any company, corporation, government or municipal body) in any lawful manner including (without limitation) by drawing, endorsing, accepting or otherwise dealing in any bill of exchange, promissory note or other negotiable instrument on such terms as the Trustee in the Trustee's absolute discretion shall determine.
- (b) For the purpose of securing the payment of any monies or the performance of any obligations for which the Trustee may pursuant to these provisions become liable:
  - (i) To grant any form of security or charge as the Trustee may think fit over the Trustee's interest in any particular assets of the Fund upon such terms as comply with the Prescribed Law;
  - (ii) To instruct a Custodian holding any property on behalf of the Trustee as trustee of the Fund to grant any form of security or charge as the Trustee may think fit over the Trustee's interest in any particular assets of the Fund upon such terms as comply with the Prescribed Law.

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

#### **16.15. Power to Vary Investments**

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

#### **16.16. Power to Insure Fund and Individual Member Interests**

To insure:

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

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

#### **16.17. Power to Provide for Protection of Trust Fund**

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

#### **16.18. Power to Pay Benefits**

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

#### **16.19. Power to Credit/Allocate**

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

#### **16.20. Power to Determine Dependants**

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

#### **16.21. Power to Enter into Agreements with Members**

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

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

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

#### **16.22. Power to appropriate**

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

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

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

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

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

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

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



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

#### **16.24. Power to Receive Transfers/Roll-Overs**

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

#### **16.25. Power to Value Fund Assets**

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

#### **16.26. Power to Open Bank Account**

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

#### **16.27. Power to Deposit Securities**

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

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

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

#### **16.29. Power to Delegate Duties**

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

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

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

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

To pay out of the Fund all or any part of the duties, levies, fees and taxes which become payable in any part of the world in respect of the Fund or any part thereof including those duties, fees, levies and taxes levied on the death of any of the Members. This power applies notwithstanding that such duties fees or



taxes or some part thereof are not or may not be recoverable from the Trustee or from the Fund by legal process in the place where the same becomes payable.

#### **16.32. Power to Pay Management Expenses**

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

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

#### **16.33. Power to Seek Counsel**

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

#### **16.34. Power to Institute or Compromise Court Proceedings**

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

#### **16.35. Power to Determine Matters of Doubt**

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

#### **16.36. Power to Act notwithstanding Personal Interest**

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

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

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



## 17. Investment

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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.