

# **Self Managed Superannuation Fund**

Trust Deed Establishing

## **Charlett Family SMSF**

**Superannuation Industry (Supervision) Act 1993**

**PRELIMINARY**

This Superannuation Fund Trust Deed (hereinafter referred to as “Trust Deed”) is made and executed at 93 Hardy Street, Dover Heights NSW 2030 on the fifteenth day of July 2020 (hereafter referred to as the “Effective Date”) by the person/persons named in the Schedule A to the Trust Deed.

WHEREAS: The trustee wishes to create/establish a self managed Superannuation Fund for conferring superannuation benefits upon those person/persons who become member of the Fund as per the terms and conditions set forth in this Trust Deed.

**SCHEDULE A: DETAILS OF THE FUND**

**SIGNING DATE:** 15 July 2020

**TRUSTEE:** Charlett Family SMSF Pty Ltd  
(ACN 642 644 504)

**MEMBER:** Mr Martyn Neilson Charlett

**NAME OF FUND:** Charlett Family SMSF

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**NOW THIS DEED WITNESSES that:**

1. The trustee specified in Schedule A has agreed to act as the first Trustee of The Fund.
2. The member specified in Schedule A has agreed to be the first Member of The Fund.
3. The trustee hereby declares that they hold all of the assets of The Fund in trust to be applied in accordance with the provisions of this deed.
4. The Fund comes into operation from Signing Date stated in Schedule A.

**EXECUTION**

**EXECUTED AS A DEED** on the Signing Date

Executed by Charlett Family SMSF Pty Ltd (ACN 642 644 504) in accordance with Section 127 of the Corporations Act:

\* Director / Secretary

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Mr Martyn Neilson Charlett

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### 1. DEFINITIONS

**Account Based Pension:** means an income stream that is paid from the Member's Account that confirms with the current Superannuation Law.

**Approved Superannuation Arrangement:** means a complying superannuation fund, Approved Deposit Fund, Retirement Savings Account and any similar arrangement which can accept transfers of superannuation benefits under the Superannuation Law.

**Beneficiary:** means a Dependent or Legal Personal Representative specified in writing by a Member to the Trustee.

**Binding Death Benefit Nomination:** means any written nomination form given by a member to the Trustee pursuant to clause 21.5.1.

**Deed:** means this Trust Deed and all amendments and variations thereto which have been validly made from time to time.

**Dependent:** means a Spouse or Child of a Member; or any person who can be qualified as dependent under current Superannuation Law.

**Fund:** means the fund established by this Deed.

**Legal Personal Representative:** means the person who is the executor or administrator of the Estate of a deceased person, the trustee of the Estate of a person under a legal disability or a person who holds an enduring power of attorney.

**Member:** means the members in Schedule A and any person from whom the Trustee has received an application to join the Fund and who has been approved by the Trustee.

**Pension:** means an income stream paid to a Member and at all times satisfies the definition of pension in the Superannuation Law.

**Reserve:** means the provision or reserve with the Fund established by the Trustee.

**Superannuation Law:** means any provisions or requirements of an Act that must be complied with in order to obtain the maximum income tax and social security concessions available and satisfy regulatory requirements in respect of superannuation.

**Trustee:** the trustee in Schedule A or any other Trustee of the Fund appointed from time to time.

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### **2. INTERPRETATION**

In the Trust Deed unless there appears a contrary intention:

- 2.1. Singular includes plural and vice versa.
- 2.2. Reference to the masculine gender includes feminine.
- 2.3. The headings used in the Trust Deed in no manner are for the purpose of giving a meaning to the clauses of the Act.
- 2.4. A reference made to the word person or persons shall include “natural persons”, “company”, “firm” or any other legal entity.
- 2.5. The terms used in the Trust Deed but not defined in the Trust Deed are to be construed as per the provisions of general law or superannuation law applicable
- 2.6. If there is any doubt regarding the meaning of a word or phrase used in this Deed and the same or a similar word or phrase is used in the Superannuation Law, the meaning given to that word or phrase in the Superannuation Law will be deemed to be the meaning of that word or phrase in this Deed.

### **3. ESTABLISHMENT OF THE FUND**

- 3.1. The trustee, by the virtue of this deed establishes the Fund as a self managed superannuation fund (hereinafter referred to as “The Fund”).
- 3.2. Subject to the provisions, rules or clauses of the Trust Deed, The Fund shall be managed and controlled by the trustees.
- 3.3. The date of establishment of The Fund shall be as provided in the schedule A to the Trust Deed.
- 3.4. The Fund shall satisfy the conditions laid down in section 17A of the Superannuation Industry (Supervision) Act, 1993 and relevant legislation for superannuation funds to be treated as regulated funds.

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### **4. PURPOSE**

- 4.1. The trustees shall ensure that the purpose of the Fund shall be only one which is allowed / permitted as per the Superannuation Law.
- 4.2. The primary purpose of the Fund is to provide Retirement Benefits to members, Death Benefits to Members' Dependants and other benefits as provided in the Superannuation Law.

### **5. TRUSTEE**

- 5.1. The following Persons may be Trustees of the Fund:
  - 5.1.1. The Person specified in Schedule A as the Trustee;
  - 5.1.2. A Company;
  - 5.1.3. A natural Person; or
  - 5.1.4. Any other Person able to act as a trustee of the Fund under the Superannuation Law.
- 5.2. In case of an individual trustee, the person shall be a member of the Fund, unless they are within one of the exceptions stated in the SIS Act.
- 5.3. A company may become a trustee only if all the directors of the company are the members of the Fund, unless they are within one of the exceptions stated in the SIS Act.
- 5.4. In the case of a Member who is under the age of 18 or is under another legal disability that Member's legal personal representative (LPR) will act as a Trustee for that Member.
- 5.5. A person or company to become a Trustee shall give a written consent and shall undertake to abide by the rule/clause of the Trust Deed.
- 5.6. Any person who has been disqualified under the SIS Act cannot become a trustee.

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- 5.7. A body corporate cannot become a trustee of the Fund if that body corporate has been disqualified under the SIS Act.
- 5.8. A person may not act as a trustee of the Fund if that person is bankrupt or not of full capacity.

### **6. APPOINTMENT OF A TRUSTEE**

- 6.1. The current Trustee or any other person who has acted as Trustee previously may appoint a trustee. This appointment shall not be in violation of the Superannuation Law.
- 6.2. In any case wherein there is no Trustee available for making the appointment, member of the Fund may act as the Trustee. Consulting all the members of the Fund shall make the decision of appointment. If no member is available at the time of appointment, LPR of a member can take the decision of appointing a new Trustee.
- 6.3. In the event of death or loss of legal capacity of a Trustee, his LPR shall act Interim Trustee till the time a new appointment is made.

### **7. REMOVAL OF A TRUSTEE**

- 7.1. A trustee shall cease to be a trustee when:
  - 7.1.1. The Trustee becomes bankrupt and in case of a company, if it goes into liquidation or receivership.
  - 7.1.2. The trustee resigns from the post of trustee.
  - 7.1.3. The trustee, being a natural person dies.
  - 7.1.4. The trustee is removed by the majority decision of the members. The removal shall be effective only when the Trustee receives or becomes aware of the decision of the Majority members.
- 7.2. A trustee may retire at any time, given:

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- 7.2.1. In case of a single trustee, a new trustee has been appointed in accordance with the rules of the Trust Deed.
- 7.2.2. In case the Trustee is a company, it may retire only when all the directors of the company are appointed as trustee or when a new company is appointed as a trustee which has all the directors of the resigning company.
- 7.3. An existing trustee who ceases to be the trustee shall provide the new trustee with all relevant support and documents for essential and smooth transition.
- 7.4. Any change or removal of any trustee shall not take effect until and unless all the requirements of the Superannuation law are observed.

### **8. REMUNERATION AND INDEMNIFICATION OF A TRUSTEE**

- 8.1. The trustee must not be provided any kind of remuneration for acting as a Trustee for the Fund.
- 8.2. The trustee shall be indemnified, from the Fund, against all loss and liabilities in their capacity as a Trustee.

### **9. MEETINGS**

- 9.1. The Quorum of the meeting shall be all the trustees.
- 9.2. The chairperson appointed under the clause 9.6, may by notice specify the place of meeting.
- 9.3. Any decision by the Trustees or the directors of a Company that acts as Trustee may be made on a simple majority and shall be recorded in writing in the form of a minute of meetings of the Trustee.
- 9.4. Trustees shall be given at least 30 days notice of a meeting of the Trustees provided that this notice may be waived by unanimous consent which consent



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will be assumed if there is no reference to waiver in the minute of the meeting of the Trustee and no Trustee complains of the absence of sufficient notice.

- 9.5. Trustee shall retain all minutes of its meetings and all documents related to the minutes of their meetings for ten years or such longer period as is necessary to comply with the Superannuation Law.
- 9.6. The trustees shall appoint a chairperson by a simple majority vote. The chairperson shall a Trustee and will have the responsibility of conducting the meetings and observing necessary protocol.
- 9.7. Each Member will have one vote. A simple majority of votes of Members present in person or by proxy will determine all issues considered at the meeting. The Chairperson will have a casting vote if a matter cannot be otherwise resolved.
- 9.8. The trustees may keep and record the registers of the Fund and decisions made by them.

### **10. GENERAL POWERS OF TRUSTEE**

The trustee shall in addition to the powers granted or provided to him under the general law, Superannuation Law and any other law applicable to him, have the following powers:

- 10.1. The Trustee has complete power to delegate its powers or discretionary authorities to any person on conditions decided by him.
- 10.2. The trustee has the power to assign, pledge, mortgage or charge any amount of fund or assets comprising such fund.
- 10.3. The trustee has the power to purchase, take on lease or licence, develop, construct, hold, improve, sell, transfer, convey, surrender, lease, licence or otherwise deal with any real property and, without limiting the generality of this clause, to develop any commercial or retail premises and hold or sell, transfer, convey, surrender, lease or licence such premises.

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- 10.4. The trustee has the power to appoint a custodian or nominee to hold the legal title to an asset of the Fund.
- 10.5. The Trustee may give indemnities to or on behalf of any person the Trustee think fit.
- 10.6. Any additional power that is required for managing and utilizing the Fund shall vest with the trustee. These powers maybe called by the name of incidental powers.
- 10.7. The trustee shall have the power to institute or join any legal proceeding in accordance with the Superannuation Law.
- 10.8. The trustee has the power to establish and maintain a Reserve Account.
- 10.9. The trustee has the power to acquire and retain life insurance policies on the life of any member.
- 10.10. The trustee has the power to insure or reinsure any risks, contingencies or liabilities of the Fund with any insurance providers.
- 10.11. The trustee has the power to purchase and retain an Annuity.
- 10.12. The trustee has the power to promote or carry on any scheme or undertaking of any nature in any country upon such terms as the Trustee.
- 10.13. The trustee has the power to allow any assets to be held by or registered in the name of any Person in any country.
- 10.14. The trustee has the express power to appoint an attorney.
- 10.15. The trustee is permitted generally to exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unitholder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of

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the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

10.16. The trustee has the power to open any account or accounts with any financial institution and to operate such account or accounts and to draw make accept endorse discount issue or otherwise deal with any Promissory Note, Bill of Exchange, Bill of Lading, Cheque or other negotiable or transferable instrument.

10.17. The trustee has the power to purchase acquire hold and dispose of real and personal property including without limitation securities.

In exercising any of the powers granted by the Trust Deed, the trustee shall ensure that the Fund remains a Complying Superannuation fund.

### **11. TRUSTEE'S POWER REGARDING BORROWING**

In general, the trustee has the power to borrow moneys from any persons, firms, corporations, bodies, associations or governmental or municipal bodies for the purposes of acquiring an asset (other than an asset that the Trustee is prohibited by applicable law from acquiring) upon such terms with or without security or interest as the Trustee deems fit and to give, or to authorise the giving of security by mortgage, charge (whether fixed or floating) or otherwise over the asset. The rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries hereunder and all other persons whatsoever.

### **12. TRUSTEE POWER TO RECEIVE GIFTS**

The trustee may receive any property by gift or distribution through will or under any other trust or any other person. The trustee shall keep this property according to the general law or the Superannuation law.

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### **13. ASSETS ACQUISITION FROM MEMBERS**

The trustees may not acquire any asset from any member or any associate of a member until and unless it is an acquirable asset as per the general law and the superannuation law.

### **14. LIMITATION TO THE TRUSTEE'S LIABILITY**

14.1. The Trustee is not liable to a Member for any liability incurred or loss or cost incurred by the Fund due to any act or thing done or omitted to be done in connection with the Fund except if the Trustee:

14.1.1. Acts dishonestly or fraudulently;

14.1.2. Fails to exercise the standard of care required of a reasonable Person; or

14.1.3. Incurs a penalty under the Superannuation Law as a result of an act or an omission by the Trustee.

### **15. MEMBERS**

15.1. The following persons are eligible for being considered as Members:

15.1.1. Persons who are employed;

15.1.2. Persons who are self-employed including persons who are self-employed investors;

15.1.3. Persons who have retired, irrespective of age;

15.1.4. A Child;

15.1.5. Any other person for whom a contribution can be paid to the Fund under the Superannuation Law including a spouse of a Member.

### **16. MEMBERS APPLICATION**

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16.1. The Trustee may at his discretion accept written applications from persons to become Members.

16.1.1. The application, according to the discretion of the Trustee, include the date of the application; the person's name, address and contact details; the name of any other superannuation fund the Member is a member of, the amount and composition of any superannuation benefits to be transferred into the Fund and any other matter stated by the Trustee.

16.1.2. The written application to become a Member shall not be accepted by the Trustee if that person is employed by another Member unless that person is related to the other Member.

16.2. Acceptance of Contribution deemed to be acceptance of Member

The acceptance of a Contribution for a person is deemed to be the acceptance of that Person as a Member. If that person has not applied to become a Member under clause 15.1 that person is deemed to have applied in writing to become a Member provided that the Member as soon as is reasonably practical provides the Trustee with all personal details requested by the Trustee to record the Member's membership.

16.3. Trustee's discretion to accept an application to become a Member

16.3.1. The Trustee may refuse to accept an application from any Person to become a Member and will not be required to give that Person or any other Person any reason for doing so.

16.3.2. The Trustee may impose conditions on the acceptance of any Person's application to become a Member.

16.3.3. The Trustee may ask a Member to cease being a Member and may transfer that Member's Benefits to another Regulated Fund or Approved Superannuation Arrangement and will not be required to give any reason for doing so.

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### **16.4. Members to be bound by the Deed**

Persons who become Members are deemed to be bound by this Deed as if they were parties to it. The actual or deemed application to become a Member under the above clauses will be deemed to be consent by the Member to be bound by this Deed.

### **16.5. Members to Provide Information**

16.5.1. The Trustee may require a Member to provide information as the Trustee determines, including information regarding their age, address, financial situation, health and Dependants.

16.5.2. A Member shall inform the Trustee in writing within 7 days of any event occurring, including the attainment of any age, where the Trustee shall pay or commence to pay a Benefit to the Member under the Superannuation Law.

16.5.3. A Member shall provide the Trustee with the information necessary to allow the Trustee to comply with the Superannuation Law and to discharge its obligations under this Deed.

## **17. TERMINATION OF MEMBERSHIP**

A Member shall remain a Member until and unless:

17.1.1. The Member's Benefits are paid to the Member or to the Member's Dependants;

17.1.2. The Member's Benefits are paid to an Approved Superannuation Arrangement;

17.1.3. The Member's Benefit is nil;

17.1.4. The Member dies; or

17.1.5. Neither the Member nor the Member's legal personal representative is willing or able to act as a Trustee or as a Director of the Trustee for a continuous period of 6 months.

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17.1.6. The member becomes ineligible to continue being a member according to the superannuation law. The membership of such members will cease within 4 months from the date of such ineligibility.

### **18. MEMBERS ACCOUNT**

A record of all contributions, earnings, amounts allocated to and from any other trust, benefits paid and all other amount credited or debited shall be made by the trustee on behalf of the members. The trustees may maintain other records incidental to the above mentioned records. The Trustee shall set up an Accumulation Account for each Member.

#### **18.1. Credits to Members Accumulation Accounts**

The Member's Accumulation Account will be credited with:

- 18.1.1. Any amount paid into the Fund for the Member from any other Approved Superannuation Arrangement;
- 18.1.2. Any Member Contributions;
- 18.1.3. Any Employer Contributions;
- 18.1.4. Any Contributions made by a Spouse;
- 18.1.5. Any other Contributions made by any person for the Member;
- 18.1.6. The proceeds of any life insurance policy or similar contract held by the Trustee on the life of the Member;
- 18.1.7. The Member's share of the income derived from the Assets;
- 18.1.8. Amounts transferred from the Member's Pension Benefit Account;
- 18.1.9. Amounts transferred from another Member's Accumulation Account; and
- 18.1.10. Such other amounts as the Trustee may determine.

#### **18.2. The Member's Accumulation Account will be debited with:**

- 18.2.1. Any amount paid to an Approved Superannuation Arrangement for the Member;
- 18.2.2. Any amount paid to or for the Member;

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- 18.2.3. The costs of any life insurance policy or similar contract held by the Trustee on the life of the Member;
- 18.2.4. A share of the Fund's Taxation liability;
- 18.2.5. A share of the costs of the Fund including any realised or unrealised losses on Investments as determined by the Trustee;
- 18.2.6. Any amount transferred to the Member's Pension Benefit Account;
- 18.2.7. Any amount transferred to another Member's Accumulation Account;
- and
- 18.2.8. Such other amounts as the Trustee may determine or deem fit.

### **19. CONTRIBUTION**

- 19.1. The Trustees may accept any Contributions made on behalf of a Member or a Spouse of a Member by any person, entity or government body so long as the acceptance by the Fund of that contribution:
  - 19.1.1. As long as it would not affect the status of the Fund as complying superannuation fund.
  - 19.1.2. Is permitted by the general law or superannuation law.
- 19.2. The Trustees, subject to the superannuation law or the general law, at the request of a Member, will allot, transfer or rollover, within the period required by the Act, of all or part of a Member's Account to another Superannuation Entity or another Member's Account, if
  - 19.2.1. The Trustees are satisfied that any such action will not compromise or affect the Fund's status as a Complying Superannuation Fund, or
  - 19.2.2. The Trustees are required by order or agreement under the provisions of the Family Law Act 1975 to perform such an action.



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### 19.3. No Requirement to Contribute

19.3.1. No Person will be required to contribute to the Fund.

19.3.2. A Member will remain a Member notwithstanding that no Contributions have been made for that Member in any particular Year.

## 20. **MEMBERS' BENEFITS**

This Trust Deed shall provide benefit as per the purpose of the Trust Deed specified in Clause 4. The benefits are being provided under the Superannuation Law.

### 20.1. Transfers to Approved Superannuation Arrangements

20.1.1. A Member may request that all or a part of their Member's Benefit be transferred to an Approved Superannuation Arrangement.

20.1.2. On receiving the request the Trustee shall pay to the Approved Superannuation Arrangement the amount stated in the request less such costs, including taxation and other government charges, as the Trustee believes are appropriate. The payment may be in cash or other Assets and will be made within a reasonable time of receiving this request.

20.1.3. The receipt of the Member's Benefit by the Approved Superannuation Arrangement will be a complete discharge to the Trustee of all liabilities in respect of the amount transferred. The Trustee will thereafter not be responsible for the Member's Benefit and the Member will have no further claim on the Trustee for the amount transferred.

20.1.4. The Trustee shall provide the Approved Superannuation Arrangement with all information required under the Superannuation Law.

20.1.5. Amounts transferred may be in cash or in assets other than cash. In the case of Assets other than cash the amount recorded in the Member's Accumulation Account or the Member's Pension Account will be the Market Value of the other Assets at the date of the transfer.

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### 20.2. Preserved Benefits

Preserved Benefits may only be transferred to an Approved Superannuation Arrangement if the Governing Rules of the Approved Superannuation Arrangement require the Preserved Benefits to be preserved under the Superannuation Law.

### 20.3. Transfers from Approved Superannuation Arrangements

20.3.1. A Member may request the Trustee to accept a transfer of Benefits from another Approved Superannuation Arrangement.

20.3.2. The Trustee may accept or decline this request with or without conditions and will not be required to give reasons to the Member or any other Person for its decision.

20.3.3. The acceptance of the request will be subject to any relevant preservation requirements applying under the Superannuation Law to the Approved Superannuation Arrangement.

20.3.4. The Trustee shall record the value of the transferred Benefits in the Member's Accumulation Account.

20.3.5. Amounts transferred may be cash or other Assets. In the case of other Assets the amount recorded in the Member's Accumulation Account or the Member's Pension Account will be the Market Value of the other Assets at the date of the transfer.

## 21. **THE PAYMENT OF BENEFITS**

### 21.1. Pension Benefits

21.1.1. A Member may apply in writing for the Trustee to pay the Member a Pension or a similar superannuation benefit to the Member out of the Member's Benefit Account.

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21.1.2. This application may only be made if the Member's Benefit can be paid to the Member in the manner requested by the Member without breaching the preservation rules in the Superannuation Law or any other rules set out in the Superannuation Law.

21.1.3. On receiving the Member's application, and subject to any conditions that the Trustee may determine, the Trustee may pay a Pension Benefit to the Member.

21.1.4. The Pension Benefit may be paid in any form agreed by the Trustee and the Member, including any condition or restrictions prescribed by the Trustee.

21.1.5. Without limiting the generality of the above the Trustee may pay:

- (a) An allocated pension;
- (b) A complying pension;
- (c) A growth pension
- (d) A commutable lifetime pension;
- (e) A transition to retirement pension;
- (f) An account based pension; or
- (g) Any other form of pension benefit recognised under the Superannuation Law,
- (h) And the Trustee may attach any conditions on the form of payment of these pensions that it determines.

21.1.6. The Trustee may commute any Pension Benefit at any time and may replace it with a Lump Sum Benefit or another form of Pension Benefit unless to do so would breach the Superannuation Law

#### **21.2. Pension Account**

Where a Member applies for a Pension Benefit and the Trustee determines to pay the Member a Pension Benefit, the Trustee shall create a Pension Benefit Account for the Member. The Trustee shall transfer all or part of the Member's Benefit to the Member's Pension Benefit Account.

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### **21.3. Segregation of Pension Assets**

21.3.1. The Trustee may segregate the Assets comprising each Member's Pension Benefit Account from the other Assets of the Fund.

21.3.2. The Trustee must treat these Assets as segregated assets for the purposes of the Superannuation Law.

### **21.4. Death of a Member Receiving a Pension Benefit**

On the death of a Member receiving a Pension Benefit, the Trustee shall pay a Pension Benefit or a Lump Sum Benefit to any Automatic Reversionary Beneficiary.

### **21.5. Payment of Death Benefits**

21.5.1. Where a beneficiary has been nominated in writing by a Member on a Binding Death Benefit Nomination form, On the death of a Member the Trustee shall pay the balance of the deceased Member's Benefit to the Nominated Beneficiary as a Lump Sum Benefit or as a Pension Benefit as the Trustee may determine.

21.5.2. On the death of a Member who does not have a Nominated Beneficiary the Trustee shall pay the balance of the deceased Member's Benefits as follows:

21.5.2.1 On the death of a Member with Dependants the Trustee shall pay the balance of the deceased Member's Benefit to all or one of the deceased Member's Dependants as a Lump Sum Benefit or as a Pension Benefit as the Trustee may determine or to the legal personal representative of the deceased Member as a Lump Sum Benefit;

21.5.2.2 On the death of a Member without Dependants the Trustee shall pay the balance of the deceased Member's Benefit to the legal personal representative of the deceased Member as a Lump Sum Benefit and

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21.5.2.3 On the death of a Member with no Dependants and no legal personal representative the Trustee shall pay the balance of the deceased Member's Benefit to the deceased Member's Relatives as a Lump Sum Benefit.

### **21.6. Payment of Benefits to Disabled Members**

The Trustee may pay a Benefit to a Member or to the Member's Legal personal representative where the Member is disabled. The payment shall be in a form and of an amount that does not breach the Superannuation Law.

### **21.7. Mandatory Payment of Benefits**

21.7.1. The Trustee shall pay the Member's Benefit to the Member where this is necessary to maintain the status of the Fund as a Regulated SMSF.

21.7.2. The Trustee shall not pay a Benefit to a Member for the sole reason that the Member has reached a certain age.

### **21.8. Unclaimed Benefits**

The Trustee shall provide to the Regulator a statement of Unclaimed Benefits and shall pay any Unclaimed Benefits to the Regulator as required to maintain the Fund's status as a Regulated SMSF.

### **21.9. Anti-detriment payment**

The Trustee can pay an anti-detriment payment amount to:

21.9.1. A spouse or former spouse of the deceased,

21.9.2. A child of any age, or

21.9.3. The estate (provided the ultimate beneficiaries are the person in clause 21.9.1 and 21.9.2.)

An anti-detriment payment can be made when:

21.9.4. An accumulation death benefit is paid as a lump sum, or

21.9.5. A pension is commuted to a lump sum on the death of a pensioner (or reversionary pensioner) within the prescribed period.

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### **21.10. Other Pension Benefits**

The Trustee may pay a Member or a Member's Dependant or any other person a Pension Benefit other than an Allocated Pension Benefit or a Complying Pension Benefit where permitted to do so by the Superannuation Law.

## **22. LUMP SUM BENEFIT PAYMENT**

22.1 The Trustee may on the written application of a Member pay a Lump Sum Benefit to the Member. The payment of the Lump Sum Benefit will be a complete discharge of all liabilities owed by the Trustee to the Member in respect of the amount paid. The Trustee will not be bound to see to the application of this amount once paid. The Lump Sum Benefits paid under the preceding sub-paragraph may comprise all or only part of the Member's Benefits.

22.2. The Trustee shall withhold from the Lump Sum Benefit such income tax or such other amounts as is necessary to comply with the Tax Act and the Superannuation Law and these amounts will be deemed to have been paid to the Member at that time and will thereafter be remitted to the Australian Taxation Office on a timely basis.

## **23. INVESTMENT**

Authorised investments of the Fund are set out in the Investment Strategy and include the following:

- 23.1. Shares property trusts, options futures, exchange traded options, warrants and CFD's;
- 23.2. Foreign exchange;
- 23.3. Physical metals and commodities;

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- 23.4. Managed investments, unit trusts separately managed accounts and related investments;
- 23.5. Bonds, debentures, cash, bank operating accounts;
- 23.6. Cryptocurrencies, e.g. Bitcoin, Ethereum, EOS, etc.;
- 23.7. Residential and commercial property, with or without borrowing;
- 23.8. Collectibles; and
- 23.9. Others assets considered appropriate by the trustee and permitted by the trust deed and superannuation law.

The investments should be allocated to members as below:

### **23.10. INVESTMENT ALLOCATION**

All contributions are allocated to the Member who actually contributes those assets towards the Fund. All net investment earnings are allocated to members on a pro rata basis. An individual Member account shall be kept for each Member. Investment earnings should be allocated to Members on a time-weighted basis.

### **23.11. INVESTMENT STRATEGY**

The Trustee shall implement a written Investment Strategy. This strategy shall consider risk and return, liquidity, the diversification of Assets, the ability of the Fund to pay Benefits to Members as and when called to do so, its actual and prospective liabilities, other cash flow considerations and any other relevant matter. In the preparation of Investment strategy, the members may also submit their opinions.

## **24. TERMINATION OF THE FUND**

The Fund will be terminated on the first to occur of the following:

- 24.1. The trustees resolve that the Fund should be wound up and terminated.
- 24.2. The Fund shall be wound up for any purposes under the Act,
- 24.3. The Fund ceases to have Members
- 24.4. The regulator requires that the Fund be wound up; or
  - 24.4.1. The Trustee's office becomes vacant and no new Trustee is appointed

## **Superannuation Industry (Supervision) Act 1993**

within (90) days.

The Trustees will on Termination deal with the Fund in the following manner:

- 24.4.2. Dispose of any assets in the Fund in order to have sufficient cash with which to meet any debts and liabilities the Fund may have incurred. The Trustees have discretion to determine which of the Fund's assets are to be disposed;
- 24.4.3. Pay out any outstanding debts and liabilities of the Fund;
- 24.4.4. Pay out any Benefits due by the Fund to the Members. The Trustees retain sole discretion as to how these amount will be paid;
- 24.4.5. Transfer or roll over amounts standing to the credit of remaining Member's Accounts as if Members had been expelled.

### **25. ENTIRE DEED**

This Trust Deed along with its schedule shall be the entire deed and shall supersede all previous agreements, letters and verbal or written communications.

#### **25.1. DEED AMENDMENT**

The deed may be amended any time by the Trustee as permitted under this clause. A copy of the amended trust deed must be provided to all Members. The amended deed must not reduce the Member's Benefits. An amendment will not be effective if it is not permitted by superannuation law.

### **26. GOVERNING LAW**

The law applicable to the Trust Deed is the law of the state or territory of Commonwealth of Australia, where the trustee resides.

### **27. DEEMED COMPLIANCE WITH THE SUPERANNUATION LAW**



**Superannuation Industry (Supervision) Act 1993**

- 27.1. The Fund has been established with the intent that it be a Regulated SMSF.
- 27.2. The Trustee may do any act or thing necessary to ensure that the Fund complies with the Superannuation Law and remains a Regulated SMSF.
- 27.3. The Trustee may not do any act or thing that breaches the Superannuation Law or prejudices the Fund's status as a Regulated SMSF.
- 27.4. Each provision in this Deed shall be read as subject to a provision that it will not be of any effect if it prejudices the Fund's status as a Regulated SMSF.
- 27.5. In the absence of a specific provision in this Deed the provisions of the Superannuation Law applying to Regulated SMSFs are deemed to be incorporated into this Deed.
- 27.6. If there is a conflict between the specific provisions of this Deed and the provisions deemed to be included in the Deed under the preceding clause then the deemed provisions will prevail over the specific provisions of this Deed to the extent of any inconsistency.