

**Schedule 7 to this deed**

**Death Benefit Agreement – Soares Superannuation Fund (Fund)**

1 This Agreement, executed as a deed, is between the Fund's trustee listed below and the Fund's member listed below.

2 This Agreement is an addition to the "Superannuation Trust Deed for a Self-Managed Fund" for the Fund (**Deed**). It has effect in the way described in Part H of that Deed. This Agreement is not a binding death benefit notice given in accordance with regulation 6.17A of the *Superannuation Industry (Supervision) Regulations*. Therefore:

- 2.1 it continues in force until amended or terminated; and
- 2.2 it does not end after 3 years as binding death benefit notices are required to do by the law.

3 On execution, this Agreement forms part of the Deed.

4 The member directs the trustee that, on the member's death, the persons named in the following table are to receive the proportion specified in that table of any benefit that is payable:

Person	Relationship to member	Proportion of death benefit
[Insert beneficiary's name]	[Insert beneficiary's relationship to member]	[Insert proportion of the death benefit to be paid to this person] %
[Add rows to table as required]		
Total (which must total to 100%)		100%

5 The trustee consents to acting on this direction as evidenced by it executing this Agreement.

6 If compliance with superannuation law prevents any part of the benefit being paid to the named person, then that part of the benefit will be dealt with under Part H of the Deed.

7 The parties agree that:

- 7.1 the member may terminate this Agreement by serving a notice terminating the Agreement on the trustee; and
- 7.2 this Agreement may be replaced by the trustee and the member executing a later death benefit agreement at which time this Agreement terminates.

**[If the Fund's trustee is a company:**

8 The details of the trustee are:

8.1 Trustee Company Name:.....

Dated: \_\_\_\_\_

Signed sealed and delivered by  
[Insert name of member making death benefit  
arrangements]  
in the capacity of member in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of member

\_\_\_\_\_  
Name of witness (please print)

***[If the Fund's trustee is a company and signs under common seal, then it uses this sort of signing clause:***

The common seal of null  
ACN null  
in its capacity as trustee, was affixed in  
accordance with section 127(2) of the  
Corporations Act 2001 (Cwth) in the presence  
of:

\_\_\_\_\_  
Signature of director/Sole director and sole  
company secretary

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director/Sole director and sole  
company secretary (please print)

\_\_\_\_\_  
Name of director/secretary (please print)

***[If the Fund's trustee is a company then use this sort of signing clause:***

## What you need to consider

When you, as a member, are considering signing a binding death benefit notice or a non-binding nomination form it is important to consider that:

- a death benefit agreement *takes priority over* any binding death benefit notice or any non-binding nomination form;
- to the extent permitted by superannuation law, the trustee must pay or apply the relevant benefit in accordance with the death benefit agreement. Therefore if you sign a binding death benefit notice or a non-binding nomination form, then they will have no effect on any earlier or later death benefit agreement that you sign; and
- if any part of a death benefit agreement is invalid, then the trustee (as required by the Fund's deed) will pay or apply the "invalid" part of the death benefit in accordance with any binding death benefit notice, or by reference to any non-binding nomination form, you have signed.

### **Second Notice: Consistency of death benefit arrangements with pension terms**

It is important to consider how any death benefit nomination or death benefit agreement interacts with the arrangements for payment of a pension to a reversionary beneficiary. The terms of the pension, and the terms of the death benefit nomination or death benefit agreement should be considered together.

For instance, if the pension terms require an automatic reversionary pension, then the death benefit nomination or death benefit agreement has no effect in relation to that pension. If the member wants to ensure all these arrangements – under pension terms, a death benefit nomination or death benefit agreement – are consistent, or to deliberately vary from one to the other, then careful drafting is required and the member should seek professional advice.

**Complying superannuation fund** means a complying superannuation fund under superannuation law.

**Contributions** means gross contributions made to the fund before tax in accordance with this deed.

**Corporation** means a constitutional corporation under superannuation law.

**Death Benefit Agreement** means all, or that part of, an agreement (in the form set out in Schedule 7 to this deed) describing the trustee's obligations concerning the payment of benefits on a member's death which:

- directs the trustee to pay the benefits to a person to whom those benefits may be paid in accordance with superannuation law;
- has been executed by the trustee and the member; and
- has not later been:
  - terminated by the member; or
  - replaced by a separate death benefit agreement with the agreement of the trustee and the member.

**Dependant**, in relation to a member, former member or beneficiary (the 'primary person'), means each of the following:

- the spouse or widow or widower of that primary person.
- any child of that primary person, including a person who, in the trustee's opinion, is or was actually maintained by the primary person as the child of the primary person.
- any person with whom the primary person has an interdependency relationship.
- any other person who, in the trustee's opinion, was substantially dependent on the primary person at the relevant time.

**Doctor** means a registered medical practitioner.

**Eligible roll over fund** means what it means in Part 24 of the SIS Act.

**Employee** means a person who is an eligible person under superannuation law for the purpose of an employer making contributions in order to avoid a liability for the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992*.

**Employer** means what it means under superannuation law and includes a participating employer.

**Employment relationship** – an employment relationship exists between 2 persons if any of the following applies:

- one person is an employee of the other within the ordinary meaning of that term, or within the meaning of section 15A of the SIS Act, or is taken to be an employee under superannuation law.
- one person is the trustee of a trust of which the other person, or a relative of the other person, is a beneficiary.
- one person is a member of a partnership in which the other person, or a relative of the other person, is either a partner or a director of a body corporate that is a partner.
- one person is a member of a partnership in which the other person, or a relative of the other person, is a beneficiary of a trust, the trustee of which is a partner.

**Payment flag** means an agreement or court order referred to in clause 131.

**Payment split** means a payment split under Part VIII B of the Family Law Act.

**Pension account** means a pension account established under clause 86.

**Pension age** means what it means under superannuation law.

**Pension dependant** means a dependant of a member to whom a pension may be paid on the member's death, as defined by r6.21(2A) of the SIS Regulations.

**Preservation age** means what it means under superannuation law.

**Preserved payment** means a payment made to the fund which is required to be preserved under superannuation law if the fund is to be a complying superannuation fund.

**Preserved payment benefit** means a benefit arising from a preserved payment.

**Regulator** means the particular Commonwealth body responsible for the administration of the relevant aspect of superannuation. It may be the Regulator of Taxation, the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or some other body.

**Relative** for the purpose of the definition of 'employment relationship' and for the purpose of eligibility to be a director of the trustee, means each of the following in respect of a person:

- a parent, grandparent, child, grandchild, sibling, uncle, aunt, great aunt, great uncle, nephew, niece, first cousin or second cousin of the person;
- another person who has any such relationship to the person by reason of adoption or re-marriage;
- the spouse or former spouse of the person or of any of the persons listed in the previous bullet points.

For any other purpose, means each of the following in respect of a person:

- the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the person or of the spouse of the person;
- the spouse of the person or of any person listed in the previous bullet point.

**Retires** in relation to employment, means retirement for the purpose of the payment of benefits under superannuation law.

**Reversionary beneficiary** means an eligible dependant for the purpose of superannuation law, including a Pension Dependant, nominated by a pensioner at the commencement of the pension as his or her residuary beneficiary.

**Roll over payment** includes a transitional employment termination payment made or received by the trustee in accordance with superannuation law and an eligible benefit payment rolled out of or in to a complying superannuation fund.

**Securities** includes fully paid and partly paid shares, fully paid and partly paid stocks, debentures, notes, bonds, mortgages, options and other similar securities. Neither security nor registration is required.

**Self managed superannuation fund** means what it means under the SIS Act.

**Shortfall component** means what it means in section 64 of the *Superannuation Guarantee (Administration) Act 1992* and regulations made under that Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*, as amended from time to time.

## Execution


Executed as a deed.

Dated: 23/1/2013

Executed by  
Soares SMSF Co Pty Ltd ACN 162006439, in  
its capacity as trustee, in accordance with  
section 127(1) of the *Corporations Act 2001*  
(Cwth):



\_\_\_\_\_  
Quynh Anh Soares, director



\_\_\_\_\_  
Alston Alvito Soares, director