

- electronic instrument effected by execution by electronic signatures of the relevant parties.
- 8.8 The Natural Person Trustees and Directors of a Corporate Trustee may resort to any remedy available in respect to the Trustee Laws, to determine matters in respect to the Trustee appointment, retirement, removal and/or substitution, where not otherwise expressly provided in the terms of the Governing Rules or the Superannuation Laws.
- 8.9 The appointment, removal and/or retirement of a Natural Person Trustee or Corporate Trustee shall, to the extent permitted by the Trust Laws and the Superannuation Laws, apply retrospectively or prospectively.
- 8.10 Each Natural Person Trustee, Corporate Trustee and Director of any Corporate Trustee (including An Alternate Decision-Maker acting as a Natural Person Trustee or Director of any Corporate Trustee) shall be entitled to be indemnified for reasonable costs and expenditures in acting in such capacity as prescribed in Rule 10.

## **9. Trustee Remuneration**

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- 9.1 A Natural Person shall not be permitted to be remunerated for acting as a Trustee of the Fund, unless the Superannuation Laws allow.
- 9.2 A Director of a Corporate Trustee shall not be permitted to be remunerated for acting as a Director of the Corporate Trustee, unless the Superannuation Laws allow.
- 9.3 Notwithstanding Rules 9.1 and 9.2, if a Natural Person acting as Trustee or a Director of a Corporate Trustee is engaged in a profession, business, occupation or trade, for which the Natural Person is usually paid for work done by them for the Fund (for example, as a bookkeeper, accountant, lawyer, builder, engineer, etc.) (**SMSF Contractor**), then the SMSF Contractor may be remunerated for the work done (other than acting as a Trustee or Director of a Corporate Trustee), provided the remuneration is paid at Market Value and on arm's length terms.
- 9.4 An RSE Licensee, acting as Trustee of the Fund, is permitted to charge its standard fees, to the extent authorised by the Superannuation Laws.

## **10. Trustee Indemnities**

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- 10.1 Each Natural Person acting as a Trustee or a Director of the Corporate Trustee and the Corporate Trustee, is indemnified by the Fund, and vested with a lien over the Fund Assets, in respect to:
- (a) any and all General Expenses or Specific Expenses (including, but not limited to taxes and SMSF Adviser fees) incurred in the conduct of the Fund;
  - (b) losses suffered as a consequence of reliance on the advice and/or recommendations of the Fund's SMSF Advisers, provided the Natural Person and/or Corporate Trustee (as the case may be) acted in good faith;
  - (c) losses suffered as a consequence of the delegation of the Trustee's powers, provided the Trustee (including Corporate Trustee) acted in good faith;
  - (d) losses suffered as a consequence of the Fund having insufficient or inadequate insurances in respect to the Members and/or the Assets of the

represented thereby, and where there is more than one Alternate Decision-Maker for one Member, then the Alternate Decision-Maker shall hold the voting power jointly and severally.

- (b) An Alternate Decision-Maker must resign on the payment of the Member's Death Benefits, restoration of the Member's Mental Capacity and/or the Member becoming 18 (eighteen) years of age, provided that the Alternate Decision-Maker does not individually hold a Superannuation Interest in the Fund (in which case he/she shall continue to act representing his/her individual Superannuation Interests).
- (c) If the Alternate Decision-Maker fails or refuses to resign following the Member's restoration of Capacity, termination of the Member's appointment by the Member or a Court (such as where a Member appoints a Person to act for the Member whilst the Member travels overseas, and withdraws the appointment upon the Member's return), following payment of a Deceased Member's Death Benefits, Minor Member becoming 18 (eighteen) years of age or otherwise upon the happening of an event upon which the Alternate Decision-Maker has no lawful right to remain an Alternate Decision-Maker, then the other Natural Person Trustees or Directors of the Corporate Trustee have, for the purposes of such Rule, Limited Power of Attorney to execute all legal documents, transfers and instruments necessary to divest the Alternate Decision-Maker of authority in respect to the Fund.
- (d) Rule 6.7(c) does not apply to the extent that an Alternate Decision-Maker is also a Member in the Fund, and acts in his/her individual capacity (and not as an Alternate Decision-Maker).

6.8 For clarity, the Bankruptcy Trustee of a Member does not qualify as the Member's Alternate Decision-Maker under the terms of Rule 6.

6.9 If a term of this Rule conflicts with the governing instruments of the Corporate Trustee, the terms of this Rule shall take precedence in respect to the Corporate Trustee's recognition and regard for a Member's Alternate Decision-Maker.

## **7. RSE Licensee**

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7.1 A RSE Licensee is not bound by the terms of either Rule 4 or 5.

## **8. Change of Trustee**

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8.1 Notwithstanding any other Rule, the Members may by Member Special Resolution resolve to convert the Fund to a small APRA Fund.

8.2 The Members shall be at liberty to appoint, remove, and replace the Trustee of the Fund as the Members determine from time to time, provided:

- (a) a Disqualified Person shall be prohibited from acting as a Natural Person Trustee (and be dealt with in accordance with Rule 4), or a Director of the Corporate Trustee (and be dealt with in accordance with Rule 5);
- (b) each Member (or the Member's Alternate Decision-Maker in accordance with Rule 6) is a Natural Person Trustee or a Director of the Corporate Trustee;
- (c) the Members have the authority, by Member Ordinary Resolution, to change the trusteeship of the Fund from a trusteeship of Natural Persons, to a trusteeship of a Corporate Trustee, or vice versa, with the trusteeship decisions, as constituted, determined in accordance with the applicable



- (i) Notwithstanding Rule 6.3(h), the Trustee may take whatever steps the Trustee deems appropriate to prove the Member's EPOA and/or Last Will.
- (j) An Alternate Decision-Maker shall not be liable for any loss or damage caused to the Mentally Incapacitated Member or Member's Legal Estate as a consequence of a delay in appointment or acceptance, excepting where the Alternate Decision-Maker acted fraudulently, or the Court, Regulator, or other Government authority having jurisdiction, determines otherwise.

**6.4 Default Alternate Decision-Maker Rules:**

(a) In the event a Member does not complete an Alternate Decision-Maker Nomination, the following default terms shall apply in respect to the appointment of a Default Alternate Decision-Maker of a Deceased Member or Mentally Incapacitated Member (**Default Alternate Decision-Maker Appointment**):

(i) if the Member has died (**Deceased Member**), the Legal Personal Representative of the Member shall be deemed to act in the place of the Deceased Member as an Alternate Decision-Maker from the Deceased Member's death, until the payment of the Deceased Member's Death Benefits has commenced, after which time the Alternate Decision-Maker must resign;

(ii) if the Member is Mentally Incapacitated (**Mentally Incapacitated Member**), then:

(1) the Person(s) holding the Mentally Incapacitated Member's EPOA shall be deemed to act in the place of the Mentally Incapacitated Member as an Alternate Decision-Maker from the date upon which the Member is determined to be a Mentally Incapacitated Member, until the date the Member is no longer a Mentally Incapacitated Member, at which time the Alternate Decision-Maker must resign; or

(2) the Person(s) appointed to act as administrator(s) for the Mentally Incapacitated Member by the Court, Tribunal or relevant Government authority having jurisdiction in such matters shall be deemed to act in the place of the Mentally Incapacitated Member as an Alternate Decision-Maker from the date of appointment, until the date the administration is ended, at which time the Alternate Decision-Maker must resign;

(iii) if the Member is under a Legal Disability due to the age of the Member (**Minor Member**) (being a Natural Person of less than 18 (eighteen) years of age), the Minor Member's parent or guardian shall be deemed to act in the place of the Minor Member as an Alternate Decision-Maker from the date of membership until the Minor Member's 18<sup>th</sup> (eighteenth) birthday, at which time the Alternate Decision-Maker must resign; and/or

(iv) if the Regulator suspends all the Trustees of the Fund, then the Constitutional Corporation, RSE Licensee, and/or Natural Persons appointed to act by the Regulator shall act as Trustee in accordance with section 134 of the SISA.

(b) For clarity, an Alternate Decision-Maker is deemed appointed for the purposes of the Governing Rules upon:

- (d) If a Member becomes a Disqualified Person, then the Member must retire as Director immediately. If the Member fails or refuses to retire, then the Directors (other than the Disqualified Person) can resolve by Trustee Ordinary Resolution (excluding the votes which the Disqualified Person would have been able to cast) to remove the Disqualified Person as Director.
- (e) The Directors (other than the Disqualified Person) have, for the purposes of Rule 5.4(d), Limited Power of Attorney to execute all legal documents, transfers and instruments necessary to divest the Disqualified Person of authority in relation to his/her position as Director.
- (f) Rules 5.4(d) and 5.4(e) shall be read to apply to an Alternate Decision-Maker acting on behalf of a Member as Director.
- (g) If a term of this Rule conflicts with the governing instruments of the Corporate Trustee, the terms of this Rule shall take precedence in respect to the Corporate Trustee's recognition and regard for a Member's Alternate Decision-Maker.

## **6. Alternate Decision-Maker for Member**

6.1 This Rule 6 prescribes the terms by which a Member appoints an Alternate Decision-Maker to act in his/her shoes as a Trustee (if constituted as Natural Persons), a Director of a Corporate Trustee and/or in relation to such other matters as may be relevant to the Member. This Rule 6 is to be read with Rule 39.

### **6.2 Nomination of Alternate Decision-Maker for Member with Legal Capacity:**

*For example, Bob is moving overseas. Jane and Mary are the other Members of the Fund. Bob has legal capacity, but he wants Jane to act as his Alternate Decision-Maker whilst he is overseas. Jane, accordingly, would hold the voting powers for John, as well as herself. Bob can apply this Rule to make an Enduring Power of Attorney (EPOA), appointing Jane to act for him whilst he is overseas, and subject to any terms he may include in the EPOA. He may complement the EPOA by making an **Alternate Decision-Maker Nomination** in the form shown at Annexure A (or as otherwise prescribed as an approved form for an Alternate Decision-Maker Nomination by the Trustee from time to time).*

- (a) A Member may appoint an Alternate Decision-Maker to act in his/her place by EPOA notwithstanding the Member being alive and having Legal Capacity to act, and on such terms as are recorded in such EPOA (including the term of appointment and conditions of appointment). The Alternate Decision-Maker shall act on a continuing basis for such Member upon acceptance by the Alternate Decision-Maker on terms of the EPOA, until the earlier of the following (unless otherwise prescribed in the EPOA):
  - (i) the Member removes the Alternate Decision-Maker in writing (including by way of a revocation of the EPOA);
  - (ii) the Member ceases to be a Member; or
  - (iii) the Member's death (unless the Alternate Decision-Maker is the same Person(s) who acts as the Alternate Decision-Maker on and following the Member's death, in which case the Person(s) shall have a continuing appointment).

### **6.3 Nomination of Alternate Decision-Maker Nomination for Mentally Incapacitated or Deceased Member**



- (i) if the Member wishes an Alternate Decision-Maker to act in his/her place for a reason unrelated to Mental Incapacity or death – refer to Rule 6.2; and/or
  - (ii) if the Member wishes an Alternate Decision-Maker to act in his/her place in the event of his/her Mental Incapacity or death – refer to Rule 6.3.
- (c) If the Member does not nominate an Alternate Decision-Maker to act, and the Member becomes Mentally Incapacitated or dies, then the Default Decision-Maker Rules apply – refer to Rule 6.4.
  - (d) If a Member becomes a Disqualified Person, then the Member must retire as Trustee immediately. If the Member fails or refuses to retire, then the Trustee (other than the Disqualified Person) can resolve by Trustee Ordinary Resolution (excluding the votes which the Disqualified Person would have been able to cast) to remove the Disqualified Person as Trustee.
  - (e) The Trustee (other than the Disqualified Person) has, for the purposes of Rule 4.3(d), Limited Power of Attorney to execute all legal documents, transfers and instruments necessary to divest the Disqualified Person of authority in relation to his/her position as Trustee.
  - (f) Rules 4.3(d) and 4.3(e) shall be read to apply to an Alternate Decision-Maker acting on behalf of a Member as Trustee.

#### 4.4 **Trustee Meetings and Decision-Making**

- (a) Any Trustee (**Calling Trustee**) may call a Trustee Meeting, by giving written notice to the other Trustees of not less than 5 (five) business days of the proposed Trustee Meeting identifying the date, time and location. The notice shall also contain details of the methods of telephone, video conferencing or such other mechanism for allowing each and every Trustee to hear and participate in the Trustee Meeting (should a Trustee be unable to attend personally). The notice may be by email (including attachments), facsimile, telephone text, personal service, or by posting to the other Natural Person Trustees.
- (b) The Calling Trustee may offer a written resolution (including but not limited to a resolution communicated by electronic means, and executable by an electronic signature of the Trustee(s)) for execution by the Trustees, which may be in addition, or in the alternative, to holding the proposed Trustee Meeting. The written resolution shall be determined on its terms, in accordance with the Decision-Making terms of this Rule 4.
- (c) A quorum of the Trustee Meeting is met when the Trustees representing not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund (excluding Reserve Account Balances) are in attendance (whether in person, by telephone, by video conferencing, or such other mechanism by which the Trustees may participate), and may be a single Trustee (provided that Trustee represents not less than 51% (fifty-one percent) of the Total Superannuation Interests in the Fund).
- (d) A Trustee Meeting shall be called when any significant event, transaction, acquisition, disposal, or other event directly related to the Fund is proposed. These matters include, but are not limited to, those that relate to an Asset of the Fund, Superannuation Interest, Investment Strategy, Reserve Account, Superannuation Benefit, Member or where otherwise required under the Superannuation Laws.

- 2.1 Upon settlement of the Fund and the Initial Trustee accepting to act as Trustee of the Fund, the Trustee shall do all things necessary to ensure that the Fund becomes a Regulated Superannuation Fund under the Superannuation Laws, including, but not limited to:
- (a) appointing Professionals and SMSF Advisers;
  - (b) appointing an Auditor;
  - (c) registering with the Regulator as a SMSF;
  - (d) applying for a tax file number and an Australian business number;
  - (e) completing any mandatory Trustee training or education required by the Superannuation Laws and/or the Regulator;
  - (f) opening a bank account, cash management account or similar account to enable the Trustee to receive contributions, dividends, income and other monies on behalf of the Fund and to make payments from the Fund for benefits and Fund expenses;
  - (g) accepting and dealing with the Members;
  - (h) communicating with the Members with respect to Roll-overs and Member Contributions;
  - (i) receiving Member Roll-overs and Member Contributions by any manner allowed under the Superannuation Laws; and
  - (j) doing such further and additional things as may be required from time to time to establish and operate validly as a Complying SMSF under the Superannuation Laws.

## **Part Two – The Trustee**

### **3. Trusteeship of the Fund**

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3.1 There shall be, at all times, a Trustee of the Fund.

#### **3.2 Interpretation as to Trustee:**

- (a) a reference in **Part Two** of this Deed to Trustee is to a trusteeship held by Natural Persons;
- (b) a reference in **Part Two** of this Deed to a Corporate Trustee is to a trusteeship by a Constitutional Corporation in accordance with the *Corporations Act 2001 (Cth)*;
- (c) a reference to Trustee in the remainder of the Governing Rules (other than a Rule of **Part Two**) is to the Trustee of the Fund as constituted and includes, but is not limited to, one or more Natural Persons (if less than two Natural Persons, then only in circumstances permitted by the Superannuation Laws), a Corporate Trustee, or such other Person or Persons (including an RSE Licensee) as the Superannuation Laws allow; and
- (d) if a term of the Governing Rules refers to a decision of the Trustee (other than a Rule of **Part Two**), then the decision-making of the relevant Trustee as constituted, whether being Natural Persons or the Directors of a Corporate Trustee, shall be determined in accordance with the terms of this **Part Two**.



1.7 The Fund is settled and maintained solely for not less than one of the following core purposes, as read at section 62(1)(a) of the SISA:

(a) the provision of benefits for each Member on or after whichever of the following is the earlier:

(i) the Member's Retirement from any business, trade, profession, vocation, calling, occupation, or employment in which the Member was engaged (**Retirement**); or

(ii) the Member's attainment of an age not less than the age prescribed for the purposes of Retirement (see SISR 6.01(7));

(b) the provision of benefits in respect of each Member on or after the Member's death, if:

(i) the death occurred before the Member's Retirement or the Member attaining **Preservation Age**; and

(ii) the benefits are provided to an **Eligible Pension Beneficiary** or Eligible Lump Sum Beneficiary and/or one or more of them.

1.8 The Fund is also settled and maintained for not less than one of the following ancillary purposes, as read at section 62(1)(b) of the SISA:

(a) the provision of benefits for each Member on or after the termination of the Member's employment with an employer who had, or any of whose Associates had, at any time, contributed to the Fund in relation to the Member;

(b) the provision of benefits for each Member on or after the Member's cessation of work, Retirement, Temporary Incapacity, Permanent Incapacity and/or a Terminal Medical Condition;

(c) the provision of benefits in respect of each Member on or after the Member's death if:

(i) the death occurred after the Member's Retirement (whether the Member's Retirement occurred before, or occurred after, the Member joined the Fund) or after the Member attained Preservation Age (or such other age prescribed by Superannuation Laws in respect to an ancillary purpose); and

(ii) the benefits are provided to the Legal Personal Representative of the Member's Legal Estate, to any or all of the Member's Dependants, or to both; and

(d) the provision of such other benefits as the Regulator approves in writing.

1.9 The Fund Assets are held on trust, in accordance with the Governing Rules (including any Special Rules in respect thereto).

### **Overview of the Governing Rules and Special Rules**

1.10 This Deed is to be read as the Governing Rules of the Fund (**Governing Rules**), and the Trustee may from time to time add, vary, amend, modify and/or replace the Governing Rules.

1.11 Special Rules of the Fund (each a **Special Rule**) (for example, a *Binding Death Benefit Nomination of a Member*) are unique arrangements resolved by the Trustee and/or Members, which are not capable of being amended or varied


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Executed as a Deed.

The first


James O'Reilly, of the County of Wick, Ireland, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of the County of Wick, Ireland, and that the same is a true and correct copy of the original as the same appears in the records of the County of Wick, Ireland, and that the same is a true and correct copy of the original as the same appears in the records of the County of Wick, Ireland.


  
Michael Elphinstone  
12/1/18

  
John O'Reilly  
12/1/18

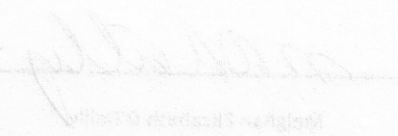
The second

That into memory and Michael Elphinstone, of the County of Wick, Ireland, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the records of the County of Wick, Ireland, and that the same is a true and correct copy of the original as the same appears in the records of the County of Wick, Ireland, and that the same is a true and correct copy of the original as the same appears in the records of the County of Wick, Ireland.

  
Michael Elphinstone  
12/1/18

  
John O'Reilly  
12/1/18

  
Michael Elphinstone  
12/1/18

  
Michael Elphinstone  
12/1/18

- 2. Operations of the Fund: The trustee shall the fund as a Company SMF, which fund shall be administered in accordance with the Governing Rules, including but not limited to processing the application by Members, recording of Contributions, holding and transfer of units of Member's interest and that with the assets of the fund, attend to the payment of Member's benefits and report and account to the Registrar and Members in accordance with the Governing Rules and the Subordinate Law.
- 3. Interpretation: The Trust and the Governing Rules are subject to the interpretation and definition provisions found in the Governing Rules.
- 4. Consent to Electronic Signature: The parties consent to execution of this Deed by electronic signature and waive the electronic signature (including witness) requirement for electronic signature, to be valid subject to any state or Commonwealth electronic transactions and/or property law statutory provisions restricting such execution by electronic signature.
- 5. Defective Execution: Should a party's execution of this Deed be defective under any applicable law, in a state where electronic signature is not allowed in the circumstances, then the party and witness (whether the same or a different witness) may re-sign the Deed to correct the defect. Notwithstanding any such remediation, if the execution, the effective date of the Deed shall be the date upon which the last of the parties executed the Deed, excluding any law remedial execution under the terms of this Clause.
- 6. Stampings: The Parties shall bear the responsibility of doing all things necessary to cause the stamping of this Deed (if needed).
- 7. Counterparts: The parties acknowledge and agree that this Deed may be executed in counterparts, and that each taken as a whole constitutes the fully constituted Deed.
- 8. Severability: The parties acknowledge and agree that should any part of this Deed be determined to be invalid, illegal or unenforceable for any reason, such part shall be severed and the balance of this Deed shall be retained.
- 9. Costs: The costs of drawing, execution and holding of this Deed are to be met from the assets of the Fund.





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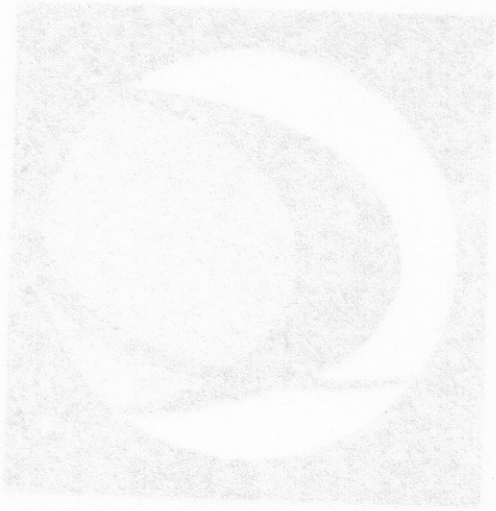
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SMSP TRUST DEED ESTABLISHMENT

THE NORMAN O'REILLY SUPERANNUATION  
FUND