



## **SELF-MANAGED SUPERANNUATION FUND DEED**

### **LENERA FARM SUPERANNUATION FUND**

LAST UPDATED: MAY 2007

BY:

**LENERA FARM PTY LTD**  
(the Trustee)

EA Law Pty Ltd (ABN 71 116 256 501)

Phone **1300 654 590** Fax **1300 656 398**

PO Box 3137, Melbourne Street, North Adelaide SA 5006

Level 13, 167 Macquarie Street, Sydney NSW 2000

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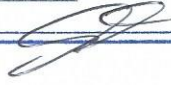
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Lenera Farm Superannuation Fund

**DEED OF TRUST** dated 18<sup>th</sup> March 2008

By: **LENERA FARM PTY LTD** (A.C.N. 130 165 614)  
 care of C/- Paul Gersch, PO Box 14, Maitland SA 5573  
 (the **Trustee**).

**RECITALS**

- A. The Trustee has agreed to establish and maintain an indefinitely continuing superannuation fund (hereinafter called, the **Fund**) for the purpose of providing superannuation benefits for Members of the Fund and their Dependants.
- B. The Fund shall be known as **LENERA FARM SUPERANNUATION FUND**.

This Deed **WITNESSES AS FOLLOWS:**

**1. PURPOSE OF FUND**

**1.1 Sole purpose**

The Trustee will maintain the Fund solely for one or more of the *core purposes* or for one or more *core purposes* and *ancillary purposes* set out in section 62 of the SIS Act, including but not limited to:

- (a) the provision of individual personal superannuation benefits to a Member upon their retirement;
- (b) the provision of individual personal benefits to the Dependants of a Member or to the estate of a Member (or both) in the event of the death of a Member; or
- (c) the provision of Non-Commutable Pensions to Members who have attained their preservation age.

**1.2 Primary purpose**

- (a) Whenever the Trustee is not a constitutional corporation then the primary purpose of the Fund will be the provision of Old-Age Pensions for Members.
- (b) Whenever the primary purpose of the Fund is not the provision of Old-Age Pensions, then the Trustee must be a Constitutional Corporation.



## **2. THE FUND**

### **2.1 Composition**

The Fund comprises the initial contributions and all other contributions made to and accepted by the Trustee for the purposes of the Fund, and includes any property arising from such contributions, whether by way of reinvestment or by way of earnings.

### **2.2 Investment of Fund**

- (a) The Trustee must invest the Fund to produce income or capital appreciation, or a mixture of both.
- (b) The Trustee may deal with, sell and reinvest the Fund in such manner as the Trustee considers suitable.
- (c) Without limiting the width of Clause 2.2(b), the Trustee may invest any property of the Fund in:
  - (i) shares, debentures and other securities issued by any body corporate – whether listed or unlisted;
  - (ii) investment life insurance policies;
  - (iii) pooled superannuation trusts;
  - (iv) units in any unit trust – whether listed or unlisted;
  - (v) interests in any managed investment scheme (whether the scheme is a registered scheme or not);
  - (vi) financial instruments;
  - (vii) real estate (or other forms of real property);
  - (viii) personal property (whether tangible or intangible and whether movable or immovable); and
  - (ix) any business venture including underwriting or sub-underwriting and securities lending transactions,

and may invest as tenants in common with a Member or any other person.

### **2.3 Investment portfolios and strategies**

- (a) The Trustee may:
  - (i) separate the Fund into two or more discrete portfolios of assets by allocating any asset of the Fund to a particular portfolio of assets for any one or more of the following purposes:

## Lenera Farm Superannuation Fund

- A. the establishment of an investment fluctuation reserve;
  - B. the establishment of a reserve from which taxation liabilities are to be met;
  - C. the establishment of a reserve from which fund expenses are to be met;
  - D. the establishment of a reserve to finance the payment of the benefits of a particular Member or a particular class of Members;
  - E. the establishment of separate investment portfolios to allow investment strategy choice to one or more Members; or
  - F. for such other purposes as the Trustee considers appropriate.
- (b) Where the Fund has been separated into two or more discrete portfolios, the Trustee will designate the portfolio in such manner as the Trustee considers appropriate.
- (c) Where the Trustee offers Members investment strategy choice, then the Trustee must determine the terms upon which investment strategy choice will be offered to the Members, including the extent to which Members may switch between investment strategies.
- (d) The Trustee may:
- (i) create new portfolios of assets from allocating the assets of an existing portfolio amongst two or more other portfolios or may merge two or more existing portfolios of assets;
  - (ii) change the investment parameters of an investment portfolio (eg asset class benchmarks, asset ranges), or
  - (iii) transfer assets between the various portfolios as the Trustee considers appropriate.
- (e) Where the Trustee has divided an existing portfolio of assets or merged existing portfolios of assets, then the Trustee will determine how the interests of Members will be attributed between the portfolios to reflect those changes.

### 2.4 Investment returns

Where the Trustee has created two or more portfolios of assets then the Trustee must ensure:



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- (a) assets and liabilities associated with each portfolio can be separately identified; and
- (b) the returns allocated to Beneficiaries reasonably reflect the financial returns generated by the assets allocated to the portfolio, movements in market values of those assets and tax attributes of those assets.

### 2.5 Single superannuation entity

- (a) Nothing in this Deed is to be taken as establishing a separate superannuation entity in respect of any portfolio of assets.
- (b) Neither the admission of a Member nor the payment of a pension benefit to a Beneficiary is taken as establishing a separate superannuation entity in respect of that Beneficiary.

### 2.6 Superannuation Law

- (a) The Trustee when exercising its investment powers must have due regard to the Superannuation Law requirements as those investment requirements apply to self managed superannuation funds, including:
  - (i) the requirement to formulate and give effect to an appropriate investment strategy for each portfolio of assets;
  - (ii) the requirement not to lend or provide financial assistance to members or relatives of members;
  - (iii) the requirement not to acquire certain assets from members and other related parties;
  - (iv) the requirement not to borrow for the Fund other than in certain limited circumstances;
  - (v) the requirement not to have an excessive level of “in-house” assets; and
  - (vi) the requirement to invest on an arms’ length basis.
- (b) For the purposes of Clause 2.6(a), having due regard does not prevent the Trustee from falling within any exception from a Superannuation Law investment requirement (eg the Trustee is not prevented from acquiring assets from a member (or other related party) where the asset is “business real property” or “listed securities”).

### 2.7 Title to property

Where the Trustee is not a corporate trustee, then title to the property constituting the Fund may, if the Trustees so decide, be held in the name of one or more of the Trustees but need not be held in the names of all the Trustees.

### **3. MEMBERSHIP**

#### **3.1 Number of Members is 4**

- (a) The maximum number of Members of the Fund is four.
- (b) A person will be a Member either by admission or by being presently entitled to receive a benefit from the Fund.

#### **3.2 Who are Members?**

The Members of the Fund will consist of:

- (a) the Initial Members; and
- (b) such other persons who are admitted as Members after the establishment of the Fund whether these persons are admitted as Members:
  - (i) by invitation of the Trustee; or
  - (ii) by nomination of the Trustee,

and who, in any case, have not ceased to be Members in accordance with Clause 3.7.

#### **3.3 By invitation**

Where an individual has been invited by the Trustee to become a Member then:

- (a) the individual must complete and submit to the Trustee an application for membership in such form as the Trustee approves or accepts; and
- (b) the individual will become a Member upon the Trustee's notification to the individual that the application has been accepted by the Trustee.

#### **3.4 By nomination**

Where an individual has been nominated for membership, that individual will become a Member upon the Trustee recording the nomination.

#### **3.5 No invitation or nomination without providing PDS**

The Trustee must not invite a person to become or nominate a person as a Member unless the Trustee has:

- (a) issued or caused to be issued to the prospective member a Product Disclosure Statement under the *Corporations Act 2001*;
- (b) issued or caused to be issued to the prospective member an offer document in relation to the prospective members' superannuation interest complying



with the *Corporations Act* 2001 requirements relating to Product Disclosure Statements for such interests; or

- (c) formed the opinion that a Product Disclosure Statement is not required by the *Corporations Act* 2001 to be issued to the prospective member by the Trustee.

### **3.6 Consideration of application**

Where an application for membership has been made to the Trustee, then the Trustee must determine to accept or reject the application.

### **3.7 Termination of membership**

An individual who is a Member ceases to be a Member on whichever of the following events first occurs in respect of the individual:

- (a) the individual was nominated for membership and within one month of becoming aware of their membership the individual irrevocably renounces their interest in the Fund by a signed instrument delivered to the Trustee;
- (b) the individual dies;
- (c) the individual gives an instruction to the Trustee to transfer or rollover their entire account balance to another superannuation entity;
- (d) an unconditional release condition has occurred in respect of the individual and the individual has given an instruction to pay their entire account balance to them;
- (e) the Member ceases to be eligible to act as a trustee of a regulated superannuation fund or their continued membership of the Fund would adversely affect the status of the Fund as a self managed superannuation fund; or
- (f) the Trustee resolves to terminate the membership of the individual and has duly notified the individual of the termination of membership.

### **3.8 Where number of Members would exceed 4**

Where the acceptance of an application for membership or a nomination for membership would result in the number of Members being 5 or more, then the acceptance of the application and the nomination will be treated as being of no effect and the relevant individual will be deemed never to have been a Member of the Fund.

### **3.9 Minor as a Member**

- (a) A minor, being a person who is under 18 years of age, may be a Member of the Fund provided the Superannuation Law is complied with.

- (b) In relation to a Member who is a minor:
  - (i) the minor's parent or guardian must make the application for the minor to become a Member in the form approved by the Trustee;
  - (ii) decisions in relation to the minor's membership must be made by the minor's parent or guardian until:
    - A. the minor turns 18; or
    - B. after the minor turns 16, the time at which the parent or guardian notifies the Fund that the minor will be making decisions in relation to the minor's Membership; and
  - (iii) when the minor turns 18, the minor becomes a director of the Trustee of the Fund provided that the Trustee has done everything necessary to appoint the minor as a director of the Trustee.

### **3.10 Information provided by Member**

An individual accepted or nominated as a Member must do such things (eg submit to a medical examination) and provide such information (eg personal health statement) as the Trustee reasonably requires for the purposes of the Fund where such information is relevant to the Trustee obtaining risk cover in respect of the Member.

### **3.11 Trustee deemed to be attorney of Member**

Where:

- (a) a company is the Trustee - then each Member irrevocably appoints the Trustee as the Member's attorney; and
- (b) individuals constitute the Trustee - then each Member irrevocably jointly appoints the Trustees (other than him or herself) as his or her attorney, to execute, sign and complete any deeds, instruments or other documents and to do anything the attorney or attorneys reasonably considers appropriate for the purposes of administering the Fund.

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## **4. MEMBERS AND BENEFICIARIES INTERESTS AND LIABILITIES**

### **4.1 Beneficiaries bound by this Deed**

Each individual who is a:

- (a) Member (whether by acceptance of an application or by nomination); or
- (b) Beneficiary or contingent Beneficiary of the Fund (including an individual in the capacity of a legal personal representative), is deemed to have been approved of and to be bound by the terms of this Deed.



#### **4.2 No proprietary interest in Fund property**

No individual who is a Member or a Beneficiary has any legal or equitable proprietary interest in any particular property or income of the Fund.

#### **4.3 Holding identifiable Fund property for particular Members**

The Trustee may determine to hold identifiable trust property or an identifiable portfolio of trust property for the benefit of a particular Member or Members or a particular Beneficiary or Beneficiaries in which case:

- (a) the Trustee will hold the identified trust property or portfolio for the particular Member or Beneficiary to the exclusion of the other Members and Beneficiaries;
- (b) the Trustee will still retain a lien over that identifiable trust property or portfolio; and
- (c) the identifiable trust property and portfolio will continue to remain a part of the Fund.

#### **4.4 Liability of a Beneficiary**

The liability of a Beneficiary in connection with the Fund is limited as described below:

- (a) the Trustee's right of indemnity and the right of recourse of any creditor is limited to the Fund; and
- (b) no Beneficiary is liable by reason only of being a Beneficiary:
  - (i) to indemnify the Trustee in respect of any deficiency in the Fund; or
  - (ii) in connection with claims by any of the Trustee's creditors relating to the Fund.

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## **5. CONTRIBUTIONS**

### **5.1 Generally**

The Trustee may accept as a contribution to the Fund any payment (including a payment from Superannuation Entities by way of benefit transfers or rollovers) made to the Trustee for the purpose of providing superannuation benefits for Beneficiaries and their Dependents, whether those contributions are made by Members for themselves, employers of Members for their benefit or by any other third parties.



## **5.2 Specific contributions**

Without limiting the generality of Clause 5.1, the Trustee may accept the following as contributions to the Trust Fund:

- (a) payments by a Member to provide superannuation benefits for themselves or their Dependants;
- (b) payments by an employer (or an associate of an employer) of a Member to provide superannuation benefits for the Member or the Member's Dependants;
- (c) payments which qualify as spouse contributions in respect of a Member;
- (d) payments which qualify as child contributions in respect of a Member;
- (e) payments in respect of a Member which are in satisfaction of an entitlement under a Payment Split in favour of that Member;
- (f) payments in respect of a Member from the superannuation holding accounts reserve;
- (g) payments in respect of the Member which are shortfall components;
- (h) payments in respect of the Member which are made under the Superannuation (Government Co-contribution for Low Income Earners) Act, 2003; and
- (i) payments which are Contribution Splitting payments in respect of the Member.

## **5.3 Superannuation Law limitation upon acceptance of payments**

Even where a payment is permitted to be accepted by the Trustee as a contribution to the Trust Fund, the Trustee must not accept the payment if the Trustee is of the view that acceptance of the payment would be contrary to Superannuation Law.

## **5.4 Form of contribution**

The Trustee may accept a contribution which is in the form of:

- (a) cash or the equivalent to cash (for example, by cheque or electronic funds transfer); and
- (b) a transfer of property (other than cash or its equivalent).

## **5.5 Value of contributed property**

Where the Trustee accepts a transfer of property as a contribution to the Fund, then the Trustee will ascribe a monetary value to the property transferred having regard

## Lenera Farm Superannuation Fund

to such matters as the Trustee considers relevant including the likely sale/realisation costs of converting that asset into cash.

### **5.6 Invalid contributions**

If the Trustee finds after accepting a payment as a contribution that the acceptance of the contribution was contrary to Superannuation Law, the Trustee will, if Superannuation Law permits, repay the payment to the person making the contribution. That amount must be calculated on a fair and reasonable basis but may be reduced having regard to any fee or expense (including any taxation or surcharge liability) the Trustee has or may incur by reason of the initial acceptance of the contribution.

### **5.7 Failure to make contribution**

If an amount is initially recorded as having been contributed or transferred to the Fund but that amount is not actually received (for example where a cheque is dishonoured), the contribution or transfer will be deemed to have never been made.

### **5.8 Provision for surcharge**

The Trustee must make provision for any surcharge or other amount that is payable in respect of the contribution under any applicable law, and must deduct and remit the amount from the relevant contributions in accordance with the applicable law.

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## **6. CONTRIBUTIONS SPLITTING**

### **6.1 Member may request Contributions Split**

A Member may request (in such form as the Trustee approves or accepts for the purposes of this Clause) the Trustee to implement, for the benefit of a Spouse of that Member, a Contributions Split in respect of the splittable contributions of the Member of an amount not exceeding the maximum splittable amount of those contributions.

### **6.2 Trustee may implement Contributions Split**

The Trustee may, as and when requested by a Member, implement a Contributions Split in respect of the Member.

### **6.3 Trustee not to implement Contributions Split if request invalid**

The Trustee must not implement a Contributions Split request by the Member if the request does not satisfy the relevant Superannuation Law requirements for valid Contributions Split applications.

### **6.4 Payment and crediting of Contributions Split payments**

The Trustee may implement a Contributions Split request by:



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- (a) creating a membership interest for the beneficiary of the Contributions Split and crediting the Contributions Split to that interest; or
- (b) where the beneficiary of the Contributions Split has satisfied an Unrestricted Release Condition - by paying the Contributions Split to the beneficiary of the contributions split; or
- (c) transferring the Contributions Split to another superannuation fund for the benefit of the beneficiary of the Contributions Split.

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## 7. ROLE EMPLOYER SPONSOR

Other than as may be provided by any relevant Superannuation Law, and subject to Clause 25, the role of the Employer Sponsor is redundant.

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## 8. BENEFITS

### 8.1 Entitlement to benefits

The Trustee will pay to or in respect of a Member the Member's Superannuation Benefits in accordance with this Clause 8, subject to the provisions set out in Clauses 9, 10 and 11.

### 8.2 Payment of Benefits to Member

- (a) The amount of the Member's Superannuation Benefit may be paid or commenced to be paid to or for the benefit of the Member when permitted by Superannuation Law.
- (b) The amount of the Member's Superannuation Benefit shall be paid or commence to be paid when the Member reaches the Compulsory Benefit Age.

### 8.3 Death or Total and Permanent Disablement

If a Member:

- (a) dies; or
- (b) becomes Totally and Permanently Disabled;

the Member's Superannuation Benefit shall be paid to or for the benefit of the Member and the Member's Dependants in accordance with Clause 11.

### 8.4 Temporary Disablement Benefit

Where the Trustee has in force insurance cover on the life of a Member, which provides benefits in the nature of salary continuance and the Member becomes temporarily disabled within the meaning of that cover, then the Trustee shall pay to



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or in respect of the Member any income benefits received by the Trustee under that cover to or for the benefit of the Member.

### 8.5 Payment by way of pension

Where all or part of a Member's Superannuation Benefit is to be paid in the form of a Pension Benefit, the terms of the Pension Benefit will be as agreed between the Trustee and the Beneficiary, provided that:

- (a) **Complying Pension Benefits:** Notwithstanding any of the provisions of this Deed (other than Clause 26), the payment of a Complying Pension shall be in accordance with Regulation 1.05(2) or (9) or Regulation 1.06(2) or (7) of the SIS Regulations or other applicable provisions of Superannuation Law; and
- (b) **Allocated Pension Benefits:** Notwithstanding any of the provisions of this Deed (other than Clause 26), the payment of an Allocated Pension shall be in accordance with Regulation 1.05(4) or Regulation 1.06(4) of the SIS Regulations or other applicable provisions of Superannuation Law.

### 8.6 Minimum Benefits and compliance with law

Notwithstanding any other provisions of this Deed:

- (a) the amount payable to a Beneficiary from the Fund shall not be less than any minimum benefit amount as prescribed by Superannuation Law; and
- (b) no benefit in whole or part shall be payable to a Beneficiary other than in accordance with Superannuation Law.

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## 9. FORM OF BENEFIT

### 9.1 Benefit preference by Member

A Member may express a preference to the Trustee to receive the Member's Superannuation Benefit by way of:

- (a) Lump-Sum Benefits; or
- (b) Pension Benefits

or a mixture of both, or in any other manner permitted by the Superannuation Law.

### 9.2 Form of benefits

Having regards to the Member's preference, but without being bound by it or having to assign any reasons for its decision, and to the extent permitted by the Superannuation Law, the Trustee may determine that the Member's Superannuation Benefit to be paid to a Beneficiary will be paid as:

- (a) a Lump-Sum Benefit; or

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- (b) as one or more separate Pension Benefits (whether of the same kind or not); or
- (c) in part as a Lump Sum Benefit and in part as one or more separate Pension Benefits (whether of the same kind or not).

### **9.3 Bankruptcy**

- (a) The Trustee shall not pay a benefit as a Lump Sum Benefit unless the Trustee is satisfied that the Member is not insolvent and that there is no immediate prospect of the Member's insolvency.
- (b) Without limiting Clause 9.3(a), the Trustee shall not be so satisfied if the Member notifies the Trustee that the Member is an undischarged bankrupt or that there is a prospect that the Member will become insolvent. However, the Trustee will be so satisfied if the Member is not an undischarged bankrupt and the Member notifies the Trustee that there is no immediate prospect of the Member's insolvency.
- (c) For the purposes of Clause 9.3(a), Member includes the legal personal representative of a deceased Member and beneficiaries of a deceased Member.

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## **10. GENERAL TERMS OF BENEFITS**

### **10.1 Proof and evidence of entitlement**

The Trustee may decline to pay any benefit until the Trustee is satisfied that the benefit is properly payable and that the person or persons claiming the benefit are properly entitled to the benefit or their share of the benefit.

### **10.2 Payment of Benefits by Trustee**

A benefit payable from the Fund shall be payable at such place and in such manner (including payment in specie or in kind) as the Trustee shall determine or approve and every person to whom a benefit is payable (whether in that person's own right or for and on behalf of another person) shall upon request by the Trustee provide such information and do such acts and things as the Trustee may consider necessary, desirable or expedient.

### **10.3 Payment upon conditions or by instalments**

The Trustee may:

- (a) impose such conditions (including the execution of a discharge or receipt or the execution of an indemnity) upon the payment of the benefit as the Trustee considers reasonable; and
- (b) pay a Lump Sum Benefit or a part of Lump Sum Benefit by instalments.



#### **10.4 Payment of benefit by transfer of trust property**

The Trustee may pay part or all of a benefit to a Beneficiary by the transfer of trust property.

#### **10.5 Beneficiary under disability**

If it appears to the Trustee that a Beneficiary is under any legal disability or is unable for any reason whatsoever to satisfactorily deal with an amount otherwise payable to the Beneficiary from the Fund, the Trustee may pay or apply the whole or part of any benefit payable to the Beneficiary in such one or more of the following ways as the Trustee may think fit, namely:

- (a) to any Dependant of the Beneficiary;
- (b) for or towards the maintenance, education, advancement or otherwise howsoever for the benefit of the Beneficiary or of any Dependant of the Beneficiary in such form and manner and subject to such terms and conditions as the Trustee may think fit; and
- (c) without limiting the generality of Clause 10.5(a), to a person who appears to the Trustee to be a trustee for (including a trustee appointed by the Trustee under a separate trust established by the Trustee, which trust may be subject to such trusts and powers as the Trustee may think fit) or a representative, spouse, child, parent or guardian of or to have for the time being the care or custody of the Beneficiary or any Dependant of the Beneficiary or to have the financial expense of the care or custody of the Beneficiary or of any Dependant of the Beneficiary.

#### **10.6 Discharge of Trustee upon payment**

- (a) The Trustee is fully discharged from all obligations in connection with benefit payments once the person to whom a payment has been made has received the benefit in full. The Trustee has no obligation to see how the payment is applied.
- (b) Without limiting Clause 10.6(a), where a person to whom benefits are payable is a minor, the Trustee may pay the benefit to any other person for application on behalf of that minor and the receipt of the person to whom the benefit is so paid shall be a complete discharge to the Trustee in respect of such benefit.

#### **10.7 Deductions from benefits**

- (a) The Trustee may deduct from a benefit otherwise payable to a Member or Beneficiary the following amounts:
  - (i) any amount owed by the Member to the Trustee;



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- (ii) any loss or damage incurred by the Trustee as a result of the Member's dishonesty, fraud or gross negligence; and
  - (iii) any interest and costs incurred by the Trustee in attempting to recover the amounts referred to in Clauses 10.7(a)(i) and 10.7(a)(ii).
- (b) For the purposes of this clause a written statement from the Trustee shall constitute evidence of the existence and amount of any debt, loss, damage or cost.
- (c) The operation of this Clause 10.7 shall at all times be subject to Superannuation Law.

### **10.8 Income Tax**

The Trustee may deduct from any benefit payable the amount of any income tax that is calculated by the Trustee to be payable in respect of such benefit and shall remit any amount so deducted to the Commissioner of Taxation.

### **10.9 Government Co-Contributions**

The Trustee may pay out of the assets of the Fund such amount of Government Co-Contributions as are required to be repaid to the Commonwealth of Australia under the *Superannuation (Government Co-Contribution for Low Income Earners) Act 2003* and is entitled to be reimbursed out of the assets of the Fund such amounts paid by the Trustee.

### **10.10 Adjustment of benefit where risk claim denied**

Where all or part of the benefits payable to or in respect of a Member arise from the Trustee's entitlement to insurance proceeds under a risk insurance cover and the insurer either does not pay the claim, or pays the claim by instalments or only partially pays the claim then, irrespective of the reason for the insurer's action, the Trustee may reduce the benefits otherwise payable to or in respect of the Member to reflect the non-payment, the delayed payment or the reduced payment.

### **10.11 Member may defer payment of benefit**

- (a) Subject to Clause 10.11(b), where a benefit is otherwise payable to a Member, the Member may request the Trustee to defer payment of part or all of the benefit, in which case:
- (i) the Trustee may accede to the request and defer payment of part or all of the benefit;
  - (ii) if part or all of the benefit is to be deferred, then the benefit will continue to accrue earnings and bear Fund expenses for the period of the deferral; and

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- (iii) the Member may at any subsequent time request the Trustee to pay all or a portion of the deferred benefit to the Member.
- (b) Where:
  - (i) the Member has died before the deferred benefit has been paid; or
  - (ii) Superannuation Law requires that the deferred portion of the benefit be paid,

then the Trustee must pay the amount of the remaining deferred benefit to or in respect of the Member.

**10.12 Payments to or as a trust fund**

Where the Trustee considers it appropriate, the Trustee may pay all or part of a benefit otherwise payable to a Beneficiary to or as a trust fund for the benefit of the Beneficiary on such terms as the Trustee considers appropriate.

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**11. BENEFICIARY NOMINATIONS**

**11.1 Death Benefit – Binding Nomination**

Where a Member has provided to the Trustee a nomination in respect of the benefits payable from the Fund on or after the death of the Member which written nomination:

- (a) is complete to the satisfaction of the Trustee;
- (b) nominates the Member's estate or one or more of the Dependants of the Member or both the estate and one or more Dependants;
- (c) (where the nomination nominates two or more recipients ) – specifies (whether by percentages or dollar amounts or by some other means) the amount allocated to each recipient;
- (d) is unambiguous;
- (e) is expressed to be binding;
- (f) has not been withdrawn by the Member or superseded by a more recent binding nomination; and
- (g) has been signed by the Member

then, subject to Clause 11.2, the nomination is binding on the Trustee and the Trustee will allocate the death benefit of the Member in the manner indicated in the nomination.



## 11.2 Lapse of Binding Nomination

To the extent an otherwise binding nomination nominates a person who at the time of death of the Member:

- (a) has predeceased the Member;
- (b) is an un-discharged bankrupt;
- (c) is a person whose financial affairs are subject to a debt agreement under Part IX of the Bankruptcy Act, 1966 which has not been completely performed;
- (d) is a person whose financial affairs are subject to a deed of assignment, deed of composition or deed of arrangement under Part X of the Bankruptcy Act, 1966 which have not been completely performed;
- (e) is a person whose financial affairs are subject to a personal insolvency agreement under Part X of the Bankruptcy Act, 1966 which have not been completely performed; or
- (f) nominates a person who has subsequently ceased (whether by divorce proceedings or by separation) to be the Spouse of the Member,

then the nomination is not binding, and to the extent an otherwise binding nomination nominates the estate of the Member and that estate is an insolvent estate or is likely to be an insolvent estate, then the nomination is not binding.

## 11.3 Death Benefits – No Binding Nomination

Where a Member either:

- (a) has made no nomination in relation to the benefits payable on or after their death; or
- (b) has made a nomination which is not binding;
- (c) has made a binding nomination but which is not binding in relation to one or more nominees; or
- (d) has made a valid binding nomination which does not apply to the entire benefits payable on or after the death of the Member,

then the Trustee will allocate the death benefit (or such part of the death benefit which is not subject to a binding nomination) to either:

- (e) the estate of the Member; or
- (f) one or more Dependants of the Member; or



- (g) to both the estate of the Member or one or more Dependants of the Member, in such proportions as the Trustee determines.

#### **11.4 Regard to any expression of the Member's intentions**

In making an allocation under the preceding Clause 11.3, the Trustee may have regard to any expression of the Member's intentions as to the allocation of their death benefit including the Will of the Member and any death benefit nomination by the Member.

#### **11.5 Regard to ineffective Binding Nomination**

For the avoidance of doubt, the Trustee may have regard to any nomination which purports but fails to satisfy one or more of the requirements of Clause 11.1 in exercising any discretion they may have in relation to benefits payable on or after the death of the Member.

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### **12. TRANSFERS/ROLLOVERS**

#### **12.1 Transfers/Rollovers to the Superannuation Fund**

Subject to Superannuation Law, the Trustee may accept as a contribution to the Trust Fund an amount or asset in respect of a Member or prospective Member that is transferred from another Superannuation Entity.

#### **12.2 Transfers/Rollovers from the Superannuation Fund**

The Trustee may subject to Superannuation Law, transfer the whole or part of any amount held in the Fund in respect of a Member to another Superannuation Entity.

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### **13. BENEFIT SPLITTING**

#### **13.1 Recognition of Payment Split**

If the Trustee receives a splitting agreement or court order under Part VIIIIB of the Family Law Act, then provided the agreement or court order has been properly served and subject to Superannuation Law, the Trustee may:

- (a) vary the relevant Member's benefit or benefit entitlement on such basis (including by commutation of any pension having regard to the advice of an actuary) and at any time the Trustee determines from time to time, to the extent permitted by Superannuation Law; and
- (b) make a payment to the non-member Spouse or a transfer in respect of the non-member Spouse in accordance with Clause 13.2.

#### **13.2 Interest subject to payment split**

Where a Member's interest in the Fund is subject to a Payment Split, then the Trustee may:

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- (a) where Superannuation Law permits, pay to the Spouse of that Member an amount equal to the transferable benefits of the Spouse in relation to that superannuation interest;
- (b) transfer to another Superannuation Entity for the benefit of the Spouse of the Member an amount equal to the transferable benefits of the Spouse in relation to that superannuation interest; or
- (c) take such other action (such as waiving rights under a Payment Split) as the Trustee considers necessary or desirable.

### 13.3 Rules for payment splits

The Trustee may as it determines from time to time subject to Superannuation Law, make rules dealing with:

- (a) the valuation of a non-Member Spouse's benefit or benefit entitlement (including any adjustments);
- (b) the timing of the calculation of the non-Member Spouse's benefit or benefit entitlement;
- (c) other matters relating to the payment split or the non-Member Spouse's benefit or benefit entitlement.

### 13.4 Deferred Payment Splits

- (a) If the Trustee is required by Superannuation Law or considers that it is appropriate to defer giving effect to a Payment Split, then provided the splitting agreement has been served properly, the Trustee must:
  - (i) record the existence of the agreement or court order; and
  - (ii) keep a record of the non-Member Spouse's benefit or benefit entitlement on such basis (including a notional basis) and in such manner as the Trustee determines from time to time subject to Superannuation Law.
- (b) Where a Payment Split interest has not been satisfied within 6 months of the operative time of the Payment Split, then the Trustee must satisfy the Payment Split interest by transferring, for the benefit of the Spouse of the Member whose interest is subject to the Payment Split, an amount equal to the transferable benefits of the Spouse under that Payment Split to a Superannuation Entity selected by the Trustee.

### 13.5 Full discharge

- (a) Any payment amount under this Clause must be in accordance with Superannuation Law.



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- (b) The receipt by the non-Member Spouse or the trustee of the non-Member Spouse's fund will sufficiently discharge the Trustee of its liability in respect of that non-Member Spouse.

### **13.6 Refusal to admit as Member**

Provided that the Trustee acts in accordance with Superannuation Law, the Trustee may refuse to admit a non-Member spouse as a Member of the Fund.

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## **14. RECORDS, AUDIT AND INFORMATION**

Without prejudice to those matters set out in Clause 15, the Trustee must, in accordance with the Superannuation Law:

- (a) keep records and accounts for the Fund;
- (b) prepare financial and other statements and/or returns in respect of the Fund;
- (c) arrange for audit of records, financial statements and other information in respect of the Fund;
- (d) arrange for the retention of records and other information in respect of the Fund; and
- (e) provide information to prospective Members, Members, Beneficiaries, the Regulator and such other persons as the Superannuation Law requires in connection with the Fund.

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## **15. FUND AND MEMBER ACCOUNTS**

### **15.1 Financial accounts and records**

The Trustee must keep financial accounts and records of the Fund as required by Superannuation Law.

### **15.2 Auditor**

The Trustee must appoint an auditor to audit the records and financial accounts of the Fund and to provide reports as required by Superannuation Law.

### **15.3 Terms of appointment of auditor**

Each appointment of an auditor will be on such terms as are determined by the Trustee.

### **15.4 Auditing of accounts**

The accounts and records prepared under this Clause must be audited by the auditor annually and at any other intervals determined by the Trustee and the auditor must certify to the Trustee the result of each audit in writing.



### 15.5 Audit certificate

The Trustee must obtain any certificate from an auditor that is required by Superannuation Law.

### 15.6 Removal and replacement of auditor

The auditor may be removed by the Trustee and, if so, the Trustee must appoint another person to act as auditor.

### 15.7 Benefit accounts - generally

The Trustee may establish and maintain any accounts it considers necessary or desirable including accounts to record and calculate the benefits of the Members or to permit the payment of the benefits to the Members.

### 15.8 Crediting and debiting to benefit accounts

The Trustee must credit and debit those accounts with any portion of any Trust Fund assets or any fund expense as the Trustee considers appropriate.

### 15.9 Benefits accounts to be maintained

Without limiting the forgoing the Trustee may establish and maintain one or more of the accounts set out below; namely

- (a) in respect of the Fund:
  - (i) an **Expense Account** - to record any amounts set aside to pay fund expenses or taxation liabilities;
  - (ii) an **Investment Reserve Account** - to record any investment earnings not allocated to a benefit account;
  - (iii) a **Foregone Benefits Account** - to record any portion of a benefit account of a Member which has not been paid to the Member upon their retirement; and
- (b) in respect of each Member:
  - (i) a **Member Contributions Account** for each Member - to record the contributions made by a Member for their own benefit;
  - (ii) a **Member Transferred/Rollover Benefits Account** - to record any transfers or rollovers of benefits in respect of the Member received from other Superannuation Entities and any contributions-splitting payments made in respect of the Member;
  - (iii) a **Member Co-Contribution Account** - to record any Government Co-Contributions received in respect of the Member;

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- (iv) a **Member Miscellaneous Contributions Account** - to record any contributions (eg Spouse contributions) made for the benefit of the Member which are not recorded in any other account;
  - (v) an **Employer SGC/Award Contributions Account** - to record any contribution made by an employer (or an associate of an employer) of the Member for the benefit of the Member to the extent that the contributions reduce the employer's SGC liability in respect of the Member;
  - (vi) an **Employer Additional Contributions Account** - to record any contributions made by an employer (or an associate of an employer) which are not recorded in the Employer SGC/Award Contributions Account; and
- (c) in respect of each Pension Benefit (whether commutable or non-commutable) payable to or in respect of a Member - to record the payment of that pension to or in respect of the Member.

**15.10 Where same amount may be credited to two or more accounts**

Where Clause 15.9 provides that the same amount may be credited to two or more accounts, then the Trustee must determine to which account the amount is to be credited.

**15.11 Debiting of fund expenses**

The Trustee may where the Trustee considers it appropriate:

- (a) debit each of the accounts directly with any fund expense or any portion of a fund expense;
- (b) debit the investment earnings of the Fund with such amount (if any) of fund expense as the Trustee determines; or
- (c) debit, in anticipation of any Fund expense, each or any of the benefit accounts as the Trustee considers appropriate on account of a Fund expense and transfer the amounts so debited to the Fund expense account from which the Trustee may debit the Fund expense.

**15.12 Allocation of investment earnings**

The Trustee may where the Trustee considers it appropriate:

- (a) credit to each of the benefit accounts such portion of the investment earnings of the Fund as the Trustee determines;
- (b) credit to the investment earnings account such portion of the investment earnings of the Fund as the Trustee determines; and



- (c) augment the investment earnings of the Fund with such amount from the investment reserve account as the Trustee determines.

**15.13 Where Fund has two or more investment strategies**

Where the Fund has two or more investment strategies, then when allocating the investment earnings to the various benefit accounts, the Trustee must have regard to relevant earnings of those strategies and to whether Members selected those investment strategies.

**15.14 Allocation of amounts from expense account**

In allocating amounts from the expense account to the benefit accounts, the Trustee may increase the amount otherwise to be credited to or in respect of any Member having regard to value of any tax attributes (such as deductions offsets, tax credits) due to the Trustee in such manner as the Trustee considers appropriate.

**15.15 Trustee's discretion as to accounts to be kept**

The Trustee need not keep all of the accounts listed in Clause 15.9 and may establish and maintain such other accounts either instead of or in addition to those listed in Clause 15.9, in which case the Trustee will determine what amounts are to be credited and debited to those accounts.

**15.16 Trustee may consolidate or divide accounts**

The Trustee may consolidate two or more accounts and may divide an account into two or more sub-accounts as the Trustee considers appropriate in which case the Trustee will determine what amounts are to be credited to or debited against the consolidated or divided accounts.

**15.17 Adjustment of accounts**

The Trustee may adjust any accounts which relate to the Superannuation Benefits of a Member in order to correctly reflect:

- (a) any contributions which have not been made by or in respect of that Member;
- (b) any Fund expenses which properly relate to that Member;
- (c) the satisfaction of any payment split interest which relates to that Member;
- (d) any contributions-splitting payments made at the request of the Member;
- (e) any benefit paid to or in respect of that Member;
- (f) any non-payment, or reduced or deferred payment by an insurer which relates to any risk cover held by the Trustee in respect of that Member;



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- (g) any correction to or additional information relating to the Member which relates to the amount or entitlement to benefits of that Member; and
- (h) any amount owing to the Trustee by a Member in their capacity as a Member.

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**16. SURPLUS/DEFICIENCY**

**16.1 Surplus/deficiency**

In respect of each accounting period of the Fund, the Trustee must:

- (a) value or cause the Fund (other than any risk insurance policy) to be valued; and
- (b) subject to Rules 16.2 and 16.3, determine the amount of the surplus or deficiency in the Fund which, in the opinion of the Trustee, it is appropriate to allocate to the benefit accounts and to the reserve accounts.

**16.2 Apportionment and allocation of surplus/deficiency**

The amount of any surplus or deficiency determined under Clause 16.1 must be apportioned between and allocated to each account in the manner and on the basis determined by the Trustee, either generally or in any particular case.

**16.3 Determination of surplus/deficiency**

In determining the surplus or deficiency in respect of any accounting period, the Trustee must have regard to:

- (a) the income of the Fund;
- (b) appreciation or depreciation in the value of the assets (including unrealised assets) of the Fund;
- (c) the Liabilities (including unrealised liabilities) of the Superannuation Fund and the fund expenses; and
- (d) any other matters the Trustee may consider appropriate,

and subject to the Superannuation Law, the Trustee may generally adopt whatever assumptions, methodology and procedures the Trustee considers appropriate or expedient, either generally or in any particular case, including: methodology and procedures concerning the method and basis of valuing particular assets, the intervals at which valuations must be carried out and the reserving or averaging of income.

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## **17. TERMINATION OF THE FUND**

### **17.1 General**

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

- (a) if the Trustee's office becomes vacant and no new Trustee is appointed within ninety (90) days;
- (b) if the Trustee resolves to terminate the Fund in accordance with Clause 17.2; or
- (c) if the rules of law known as the rules against perpetuities applies to the Fund, on the expiration of the maximum period allowed under that rule for the duration of the trusts and powers established under this Deed.

### **17.2 Termination by trustee**

The Trustee may, at any time, resolve to terminate the Fund and where the Trustee has resolved to terminate the Fund then the following provisions will apply:

- (a) the Members will be notified in accordance with the Superannuation Law; and
- (b) the Trustee will determine a closure date ("**Closure Date**").

### **17.3 Application of Trust Fund**

The Trust Fund will be applied in the following order on termination:

- (a) in payment of Liabilities relating to the Fund, except for those relating to benefits;
- (b) in the establishment of a reserve of such amount as the Trustee considers prudent, from which to pay contingent or future liabilities of the Fund (other than benefit liabilities); and
- (c) the balance of the Fund shall be divided amongst the Members in proportion to their Superannuation Benefits including, for the avoidance of doubt, those Members who are being paid a Pension Benefit.

### **17.4 Consequential matters**

Where the purpose for which the reserve established pursuant to Clause 17.3(b) has been achieved and a balance remains, the Trustee will apply that balance in the manner required by Clause 17.3(c).

### **17.5 Beneficiaries to stand in place of deceased member**

- (a) Where one or more Beneficiaries are receiving or are entitled to receive a Lump Sum Benefit or Pension Benefit from the Fund in respect of a



deceased Member who died before the Closure Date, then the amount which would have been paid to the Member (had the Member survived) under Clause 17.3(c) or Clause 17.4 shall be paid amongst those Beneficiaries in accordance with Clause 11.

- (b) Where a Member dies on or after the Closure Date but before the an amount has been allocated under either Clause 17.3(c) or Clause 17.4, then the amount which would have been allocated to the deceased Member (if the Member had survived) under those provisions will be allocated amongst the Beneficiaries of the deceased Member in accordance with Clause 11.

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## **18. THE TRUSTEE**

### **18.1 Generally**

The Trustee of the Fund will be the Initial Trustee and such other persons who have been duly appointed pursuant to this Clause to replace the Initial Trustee.

### **18.2 Number**

The number of Trustees shall be:

- (a) where a company is acting as trustee - **one**;
- (b) where individuals are acting as trustee and there is only one Member - the number of trustees shall be **two**; and
- (c) where individuals are acting as trustee and there are two, three or four Members - then the number of Trustees must equal the number of Members.

### **18.3 Eligibility for appointment – company**

For a company to act as the trustee of the Fund:

- (a) the company must not be disqualified from acting as a trustee of a regulated superannuation fund;
- (b) the company, if appointed, must not cause the Fund to cease to meet the SMSF Trustee Standard; and
- (c) the company must have consented to the proposed appointment, such consent evidenced in writing.

### **18.4 Eligibility for appointment - director of company acting as trustee**

For an individual to be appointed as a director of a company acting as trustee of the Fund:



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- (a) the individual must not be disqualified from acting as a director of a company which acts as trustee of a regulated superannuation fund;
- (b) the individual, if appointed, must not cause the Fund to cease to meet the SMSF Trustee Standard; and
- (c) the individual must have consented to the proposed appointment, such consent evidenced in writing.

### **18.5 Eligibility for appointment - as trustee**

For an individual to be appointed as a trustee of the Fund:

- (a) the individual must not be disqualified from acting as a trustee of a regulated superannuation fund;
- (b) the individual, if appointed, must not cause the Fund to cease to meet the SMSF Trustee Standard; and
- (c) the individual must have consented to the proposed appointment, such consent evidenced in writing.

### **18.6 Ceasing to be Trustee**

A Trustee will be ineligible to hold office on whichever of the following events first happens; namely

- (a) the Trustee retires in accordance with Clause 18.7;
- (b) where the Trustee is a company, it becomes an externally administered body corporate for the purposes of the *Corporations Act 2001*;
- (c) the Trustee is removed by the Regulator;
- (d) the Trustee ceases to satisfy the SMSF Trustee Standard and has not, within 6 months after ceasing to satisfy the standard, been restructured so to satisfy that standard; or
- (e) where the Trustee is an individual – the Trustee dies or ceases, by reason of physical or mental illness, to be able to act as trustee, in which case, the Trustee will cease to hold office upon the appointment of the replacement trustee (if necessary).

### **18.7 Retirement of Trustee**

A Trustee will be treated as retiring where:

- (a) the Trustee has arranged with another person for the other person to act as the replacement trustee; and

- (b) the arrangement is evidenced by an instrument in writing signed by both the retiring trustee and the replacement trustee, in which case, the retirement and appointment will be effective on the date specified by the instrument or, if no date is specified, then upon the date of execution of that instrument.

#### **18.8 Appointment of replacement trustee in circumstances other than retirement**

- (a) Where a person ceases to be a Trustee (other than by retirement) and the Regulator has not appointed a replacement Trustee, then the Member or Members may jointly appoint a replacement Trustee or Trustees.
- (b) Where the Trustee is also a Member of the Fund, or is the Legal Personal Representative of a Member, and that Trustee dies, the next Legal Personal Representative of that Member (or such other person or persons as may be nominated for this purpose in the Member's Will) shall automatically become a Trustee of the Fund.

#### **18.9 Remuneration of Trustees**

A person acting as Trustee is not entitled to receive from the Fund (or from any other person) any remuneration for acting as Trustee. For the avoidance of doubt, this prohibition does not preclude a Trustee from being reimbursed for Fund expenses properly incurred, does not prevent the person from being indemnified from the Fund for any Fund liabilities and does not prevent a Trustee from receiving reasonable remuneration for services the Trustee provides (other than services as a Trustee) in a professional or other capacity.

#### **18.10 Transfer of property, records etc**

A person ceasing to be a Trustee must:

- (a) provide to the replacement trustee all records, documents, information and other property relating to the Fund; and
- (b) do such acts, matters and things (including executing instruments relating to the transfer of title) as may be necessary or convenient to perfect, and complete the appointment of the replacement trustee.

#### **18.11 Where Trustees are individuals**

Where two or more individuals act as Trustees then:

- (a) the Trustee must act unanimously;
- (b) the Trustees may meet as and when they consider necessary, may conduct their meetings in such manner as they consider appropriate and may conduct meetings using such technology as they consider appropriate;



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- (c) may determine any issue by the use of circulating resolutions rather than convening a meeting; and
- (d) in relation to all matters required to be determined by the Trustees, the Trustees will have one vote each but where any Trustee requires the matter to be resolved by a formal vote, then each Trustee will have a voting power in proportion to the dollar value (to nearest \$10) of that Trustee's Superannuation Benefits.

**18.12 Member Representation**

Notwithstanding the other provisions of this Clause 18, the Trustee the must comply with all requirements of Superannuation Law in relation to representation of Members in the role of Trustee.

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**19. TRUSTEE'S POWERS, DISCRETIONS AND DUTIES**

**19.1 Powers generally**

Subject to the Superannuation Law, the Trustee:

- (a) is empowered to do anything whatsoever necessary or desirable for the purpose of maintenance, operation, management, development, promotion or proper winding up of the Fund; and
- (b) has, in addition to the powers conferred by this Trust Deed, all the powers conferred on a trustee by statute or general law including the Trustee Act applicable to the Proper Law of the Fund.

**19.2 Particular powers**

Without limiting anything in Clause 19.1 but subject to the Superannuation Law, the Trustee has the following powers:

- (a) to appoint and remunerate service providers including administrators, auditors, actuaries, taxation agents, legal and other advisers and agents;
- (b) to insure the property of the Fund;
- (c) to insure the lives of Members and Dependants of Members of the Fund;
- (d) to compromise claims against the Fund; and
- (e) to borrow and to lend and to grant security for any borrowing.

**19.3 Power to comply with Act and retain SMSF status**

Without limiting anything in Rules 19.1 or 19.2 the Trustee may:



## Lenera Farm Superannuation Fund

- (a) do anything that the Trustee considers necessary or desirable in order to comply with the SIS Act or to retain the status of a self managed superannuation fund; and
- (b) refrain from actions that the Trustee might otherwise be empowered or obliged to do if the Trustee considers it necessary or desirable in order to comply with the SIS Act or to retain the status of a self managed superannuation fund.

### **19.4 Discretions**

The Trustee:

- (a) has an absolute and uncontrolled discretion in exercising or refraining from exercising trusts, authorities and powers under this Deed;
- (b) may exercise any of the Trustee's powers at any time;
- (c) may refrain from exercising any of the Trustee's powers from time to time or at all; and
- (d) may exercise a power even if the Trustee or any of the Trustee's associates have an interest that may be affected by the exercise of that power.

### **19.5 Proofs and evidence**

The Trustee may inform itself in such ways as the Trustee considers reasonable and in forming its opinions is not bound by the law of evidence.

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## **20. TRUSTEE'S RIGHTS AND PROTECTIONS**

### **20.1 Limitation of personal liability**

Subject to Clause 20.2, no Trustee or, where the Trustee is a company, any of its directors or officers, will be personally liable for any loss or detriment whatsoever incurred by any person in connection with the Fund for whatever reason.

### **20.2 Exception for dishonesty, wilful or reckless neglect**

Clause 20.1 does not apply to the extent that the loss or detriment is due to the Trustee's, director's or officer's dishonesty or wilful or reckless failure to exercise the degree of care and diligence that the Trustee, director or officer was required to exercise.

### **20.3 Reliance on information, opinions**

The Trustee or, where the Trustee is a company, each of its directors, secretaries or executive officers may rely on and is not liable for acting on information, opinion or advice obtained from the Regulator or from a service provider (including an auditor, accountant, barrister, solicitor, superannuation adviser or financial planner)

who the Trustee or individual considered to be capable of properly providing such information, opinion or advice for the Trustee.

#### **20.4 Action notwithstanding interests**

A Trustee or, where the Trustee is a company, each director, secretary or executive officer of the Trustee is not prevented from exercising (or participating in exercising) a power or discretion by reason that the Trustee or officer of the Trustee has an interest as a Member or Beneficiary that may be affected by the exercise of that power or discretion and may exercise that power or discretion even when the interests of the Member or Beneficiary may, in comparison to other Members or Beneficiaries, be preferred or advantaged by the exercise.

#### **20.5 Indemnity from Fund**

The Trustee and, where the Trustee is a company, its directors, secretaries and officers are entitled, to the maximum extent permitted by the SIS Act, and by law, to be indemnified from the Trust Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or non-execution of the Trustee's powers and discretions under this Deed.

#### **20.6 Payment and reimbursement**

Subject to the SIS Act, the Trustee and, where the Trustee is a company, its directors, secretaries and officers, may recover from the Trust Fund amounts necessary:

- (a) to meet the indemnities referred to in Clause 20.5; and
- (b) to meet all liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed, and, to the maximum extent permitted by the SIS Act, the Trustee and its directors, secretaries and officers have, and may exercise, a lien over the Fund.

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### **21. CONFIDENTIALITY**

#### **21.1 Non-disclosure**

The Trustee must not disclose any confidential or personal information regarding or about the beneficiaries acquired in the course of acting as trustee to other parties unless such disclosure is required for the proper administration of the Fund.

#### **21.2 Exceptions**

This Clause does not apply:

- (a) where the Trustee may be legally compelled to, or penalised for failure to, disclose such information; or



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- (b) to disclosures made to agents, advisers or delegates of the Trustee in connection with the operation of the Fund; or
- (c) where non-disclosure of the material may cause adverse tax consequences to the Fund.

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## **22. NOTICES**

### **22.1 Form**

Any notice given under this Deed must be in writing.

### **22.2 Receipt**

Notices will be deemed to have been given to the recipient if:

- (a) they are handed to them personally; or
- (b) they are sent by pre-paid post addressed to:
  - (i) in the case of Beneficiary, the person's last known address or place of employment; or
  - (ii) in the case of a Trustee or an employer which is a corporation, its registered office or place of business; or
  - (iii) in the case of a Trustee or an employer which is not a corporation, its place of business or other last known address.

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## **23. PROPER LAW**

### **23.1 Proper Law**

Unless and until the Trustee determines otherwise, the law applicable to the Fund is the law of the State or Territory of the Commonwealth of Australia in which the Trustee resides at the execution of this Deed.

### **23.2 Where South Australia is the Proper Law of the Fund**

Where the law of South Australia is the proper law of the Fund, then it is expressly declared that s35B of the Trustee Act, 1936 does not apply to the Fund.

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## **24. SUPERANNUATION LAW COMPLIANCE CLAUSE**

### **24.1 Incorporation of new Superannuation Law requirements**

Where:

- (a) the compliance with a Superannuation Law is a pre-requisite for the Fund to qualify as a complying superannuation fund; and

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- (b) that Superannuation Law Requirement has either not been set out or has not been fully set out in the Deed,

then subject to Clause 24.3:

- (c) that Superannuation Law Requirement will be deemed to have been included in the Deed;
- (d) the Trustee is expressly empowered to comply with that Superannuation Law Requirement; and
- (e) the Superannuation Law Requirement will take precedence over any other provision of this Deed to the extent to which the other provision is inconsistent with that Superannuation Law Requirement, for so long as that Superannuation Law Requirement is a pre-requisite for the Fund to qualify as a complying superannuation fund.

**24.2 Amendment of existing Superannuation Law Requirements**

Where:

- (a) the Deed sets out a particular Superannuation Law which, at the time of establishment of the Fund or adopting the terms of this Deed, was a prerequisite for the Fund to qualify as a complying superannuation fund; and
- (b) that Superannuation Law subsequently is either amended, ceases to be a pre-requisite or is deleted

then,

- (c) if the Superannuation Law is amended and remains a Superannuation Law Requirement, then the Superannuation Law in its amended form will be deemed to be expressly included in the Deed, the Trustee is expressly empowered to comply with the amended Superannuation Law in its amended form and the Superannuation Law will, in its amended form, take precedence over any other provisions of the Deed to the extent that those other provisions are inconsistent with the Superannuation Law in its amended form;
- (d) if the Superannuation Law ceases to be a Superannuation Law Requirement, then the Trustee may determine that it is no longer bound by the Superannuation Law; and
- (e) if the Superannuation Law Requirement is deleted from the Superannuation Law, then the Trustee may determine that it is no longer bound by the Superannuation Law.

**24.3 Preservation of Grandfathered Superannuation Law**



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Where a Grandfathered Superannuation Law applies to a Fund, then Rules 24.1 and 24.2 will not apply so as to override the Grandfathered Superannuation Law referred to in Clause 25 unless an amendment to the Superannuation Law expressly removes or modifies the Grandfathered Superannuation Law.

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### **25. GRANDFATHERED SUPERANNUATION LAW**

#### **25.1 Application of Clause**

Where the terms of this Deed apply to a Fund by virtue of a replacement of the original terms of the Fund then this Clause applies to the Fund.

#### **25.2 Purpose of Clause**

As various transitional arrangements apply to certain Superannuation Law Requirements by which funds established before the introduction of a particular Superannuation Law Requirement were allowed exceptions to the application of that particular Superannuation Law Requirement, it is the purpose of this Clause to ensure that such exceptions continue to apply to the Fund and do not cease to apply merely because the terms of this Deed have been adopted.

#### **25.3 Approved ancillary purposes**

Where the Regulator has approved, pursuant to section 62(1)(b)(v) of the SIS Act, that the Fund may provide one or more benefits then the Fund may continue to provide those benefits in accordance with the terms (if any) which applies to the Regulator's approval.

#### **25.4 Lending to Members/Relatives of Members**

Where the Fund was established before 16th December 1985 and either:

- (a) the governing rules of the Fund expressly permitted the Trustee to lend money to the members; or
- (b) the governing rules of the Fund did not expressly prohibit the lending of money to members and the Trustee did lend money to members, and, in either case, that governing rules of the Fund have not been subsequently amended to remove that power or to impose the Superannuation Law Requirement not to lend money to members then, the Trustee may lend money to Members (notwithstanding the Superannuation Law Requirement against lending money to members) to the extent that the Trustee could have lent monies to members immediately before 16th December 1985;

#### **25.5 In House Assets – Transitional Provisions**

Where the Fund was established before 11th August 1999 and the Fund is entitled to the benefit of one or more of the transitional provisions in relation to In House Assets as set out in Subdivision D of Division 1 of Part 8 of the SIS Act, then

notwithstanding the application of the terms of this Deed to the Fund, the those transitional provisions will continue to apply to the Fund in accordance with there respective terms.

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## **26. GRANDFATHERED PENSION TERMS**

### **26.1 Application of Clause**

Where the terms of this Deed apply to a Fund by virtue of a replacement of the original terms of the Fund then this Clause applies to the Fund.

### **26.2 Purpose of Clause**

The purpose of this Clause is to provide for the continuation of the terms which applied to pensions which commenced on or before the date of this Conversion Deed.

### **26.3 Continuation of Pension terms**

The terms which apply to a pension which commenced on or before the date of Conversion Deed of the Fund continue to apply notwithstanding the adoption of the terms of this Deed or any subsequent amendment to the terms of this Deed unless either:

- (a) an amendment to a Superannuation Law has been made which modifies a term of the pension – in which case the relevant term of the pension is accordingly modified; or
- (b) the Member who is the pensioner expressly requests the Trustee to rollover the pension into a new pension.

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## **27. VARIATION OF DEED**

### **27.1 Power to vary**

- (a) The Trustee may at any time and from time to time, either by deed executed by the Trustee or by written resolution of the Trustee vary, add to or rescind all or any of the provisions of this Deed

**PROVIDED THAT** no variation, addition or rescission shall be made or take effect to the extent that it:

- (i) is not permitted by the Law; or
- (ii) has the effect of reducing the amount of a benefit that is, or may become, payable in relation to a period before the date of the variation, addition or rescission unless:



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- A. the reduction is required because of, and does not exceed the value of, any tax payable on the taxable income of the Fund;
  - B. the reduction is required to enable the Fund to comply with Superannuation Law;
  - C. the Member so affected consents in writing of the reduction; or
  - D. the Regulator approves in writing of the reduction; or
  - E. the variation is permitted or required by Superannuation Law.
- (b) Each new provision made under Clause 27.1(a) shall have the same validity and effect as if it had been originally contained in this Deed and shall be subject to being varied, added to or rescinded in a like manner.

**27.2 Notice of variation**

The Trustee shall as soon as practicable advise the Members in writing of the nature, purpose and effect of any variation or addition or rescission made pursuant to Clause 27.1.

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**28. INTERPRETATION AND DICTIONARY**

**28.1 Interpretative provisions:**

- (a) In this Deed a reference to a “person” includes any company, partnership, joint venture, association, corporation or other body corporate and any government authority but the words “natural person” have their normal meaning.
- (b) In this Deed a reference to a statute or to a provision of a statute includes:
  - (i) a reference to regulations, by-laws, proclamations, ordinances, orders and other instruments made under that statute and any amendment to or re-enactment of that statute, regulation, by-law, proclamation, ordinance, order or other instrument for the time being in force; and
  - (ii) a reference to any amendment to, replacement of or re-enactment of that statute or provision and any other provision of or regulation, bylaw, proclamation, ordinance, order or other instrument under the statute or provision required to give meaning, force or effect to the statute or provision.
- (c) In this Deed headings are for convenience of reference or search and do not affect the interpretation of this Deed.

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- (d) In this Deed if a party comprises two or more persons, the covenants and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or any two or more of them.
- (e) In this Deed:
  - (i) words denoting the singular include the plural;
  - (ii) words denoting the plural include the singular; and
  - (iii) words denoting a gender include each gender.
- (f) In this Trust Deed:
  - (i) a covenant by a party not to do or omit to do any act or thing includes a covenant not to suffer that act or thing to be done or omitted by any agent or employee of the party; and
  - (ii) a covenant to do everything necessary to ensure that the act or thing is not done or omitted to be done.
- (g) In this Trust Deed, all matters which are stated as being included in the ambit of an expression are without limitation to the breadth and generality of that expression.
- (h) If necessary, in order to avoid any provision of this Deed being made invalid by a law, the provision may be read down or severed to preserve the validity of the provision.
- (i) When the day or last day for doing an act is not a Business Day, the day or last day for doing the act will be the next following Business Day.
- (j) In this Deed, subject to any contrary intention, where a term is not defined in Clause 28.2 but is defined in either the SIS Act or in a Tax Act, then that term will have the meaning ascribed to that term in the SIS Act or in the applicable Tax Act as the case requires.
- (k) Where a provision confers on the Trustee a power or discretion then, unless the context otherwise requires, the provision conferring the power or discretion shall be construed so that the Trustee is able to exercise that power or discretion from time to time and at any time.
- (l) Where two or more individuals have been appointed trustees, the references to "The Trustee" are to be read as references to those individuals acting jointly as a group.
- (m) For the purposes of this Deed, a debt agreement, a deed of assignment, a deed of composition, a deed of arrangement or a personal insolvency agreement under Part X of the Bankruptcy Act, 1966 (collectively "a Part



X transaction”) will be taken as being completely performed if the person who is the subject of the Part X transaction is legally entitled to claim a certificate signed by the trustee of the Part X transaction confirming that the person has satisfied all of the obligations imposed on the person by the Part X transaction.

## 28.2 Dictionary

In this Deed

- (a) **Beneficiary** includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the SIS Act;
- (b) **Child**, in relation to a Beneficiary, includes a step-child, an adopted child or an exnuptial child, or any other person who is a child for the purposes of the SIS Act;
- (c) **Clause** means a provision of this Deed;
- (d) **Compulsory Benefit Age** means upon the death of a Member or the age at which, under the Superannuation Law, benefits are required to be paid to a Member;
- (e) **Constitutional Corporation** has the meaning given by the SIS Act;
- (f) **Contributions Split** in respect of a Member in relation to a financial year means the rollover, transfer or allotment to a Spouse of the Member of or a portion of the Superannuation Benefits of the Member, not exceeding an amount equal to the maximum splittable contributions of the Member in respect of the financial year which is the relevant financial year for the purposes of the split.
- (g) **Conversion Deed** means this Deed, to the extent that the terms and conditions of this Deed replace or modify the terms and conditions of an earlier executed deed that regulated the Fund;
- (h) **Dependant**, in relation to a Beneficiary, includes:
  - (i) the Beneficiary’s Spouse or Child;
  - (ii) any other person who, in the Trustee’s opinion, is or was at the relevant time dependant on the Beneficiary;
  - (iii) any other person who, in the opinion of the Trustee, the relevant Beneficiary had a legal or moral obligation to support at the relevant date; and
  - (iv) any person who is a dependant within the meaning of the SIS Act;

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- (i) **Employer Sponsor** means the person listed in the Schedule as an Employer Sponsor (if any);
- (j) **Fund** means the superannuation fund referred to in the Recitals and established in accordance with this Deed;
- (k) **Initial Members** means each of the persons listed in the Schedule as Members of the Fund;
- (l) **Initial Trustee** means each of the persons or the Constitution Corporation (as the case may be) named in the Schedule as the Trustee of the Fund;
- (m) **Legal Personal Representative** means:
  - (i) the executor of the Will or administrator of the estate of a deceased person;
  - (ii) the trustee of the estate of a person under a legal disability;
  - (iii) a person who holds an enduring power of attorney granted by a person; or
  - (iv) any other person falling within the definition of "Legal Personal Representative" in Section 10(1) of SISA;  
authorised by Section 17A(3) of SISA to be a trustee of a self-managed superannuation fund;
- (n) **Liabilities** means all liabilities whatsoever of the Fund, and includes any provisions the Trustee makes in connection with such liabilities;
- (o) **Lump Sum Benefit** means a Member's Superannuation Benefit or any part of it paid or provided other than a Pension Benefit;
- (p) **Member** means a person who has been admitted as a member of the Fund and who has not ceased to be a Member;
- (q) **Non-Commutable pension** means either a non-commutable allocated pension or a non-commutable market-linked pension;
- (r) **Old Age Pensions** has the same meaning as in SIS Act;
- (s) **Pension Benefits** means any annuity or pension, as those terms are determined by the Trustee and which are not prohibited by the Superannuation Law. The Trustee, subject to the Superannuation Law, may determine from time to time the title and conditions of various Pension Benefits;
- (t) **Payment Split** has the same meaning as in the Family Law Act, 1975.



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- (u) **Payment Split Interest** means the interest which a non-Member Spouse has in relation to the superannuation interest of a Member Spouse which is the subject of the Payment Split.
- (v) **Regulator** means the Commissioner of Taxation;
- (w) **Roll Back** in relation to a pension means to commute the pension and to retain the commutation lump sum within the Fund as an accumulation benefit for the pensioner;
- (x) **Roll Over** in relation to a pension mean to commute the pension and to pay the commutation lump sum to either the trustee of another superannuation fund for the purpose of commencing a pension or to an annuity issuer for the purpose of commencing an annuity;
- (y) **SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cth) and includes any regulations, declarations or orders made under that Act or any other law, or any requirement of a Regulator:
  - (i) which a superannuation fund must satisfy to qualify as a complying superannuation fund; or
  - (ii) which the Trustee or the Fund must comply with to avoid any penalty or disadvantage which might be incurred in connection with the operation of the Fund;
- (z) **SIS Regulations** means the Superannuation Industry (Supervision) Regulations 1994 (Cth);
- (aa) **SMSF Trustee Standard** means the standards set out in the SIS Act which determine whether a particular individual or body corporate can act as trustee of a regulated superannuation fund consistently with that superannuation fund satisfying the definition of being a “self managed superannuation fund”;
- (bb) **Spouse**, in relation to a person, includes:
  - (i) another person who, whether or not legally married to the person, lives with them on a genuine domestic basis as their husband or wife; and
  - (ii) any other person who is a spouse for the purposes of the SIS Act;
- (cc) **Superannuation Benefits** in respect of a Member means:
  - (i) the net amount standing to the Member’s credit in the Member’s benefit accounts, other than any pension account;
  - (ii) plus the capital value of any Pension Benefits payable to the Member (determined in accordance with Superannuation Law);

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- (iii) plus the value (if any) at that time of any policy of insurance owned by the Trustee and paid for out of that Member's account; and
  - (iv) any amount paid or payable, whether subject to any contingency or otherwise, by the Trustee out of the Fund pursuant to this Deed to or in respect of the Member;
- (dd) **Superannuation Entity** means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions, for example, including a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Reserve;
- (ee) **Superannuation Law** means the SIS Act, the SIS Regulations and those provisions of the Income Tax Assessment Act, 1936, Income Tax Assessment Act, 1997, Corporations Act, 2001, and the Family Law Act, 1975 which apply to the operation of or interests in self managed superannuation funds and such other acts which affect the operation of self managed superannuation funds;
- (ff) **Superannuation Law Requirement** means those provisions of the Superannuation Law (from time to time) the compliance with which is a pre-requisite for the Fund to qualify as a complying superannuation fund;
- (gg) **Tax** includes:
  - (i) all actual or anticipated stamp, financial institutions, registration and any other duties, bank accounts debits tax and other taxes, levies, imposts, deductions, surcharges and charges whatsoever;
  - (ii) any goods and services tax, value added tax or similar tax imposition or charge; and
  - (iii) any interest, fines, penalties, charges, fees or other amounts payable in respect of the items mentioned in paragraphs 28.2(gg)(i) or 28.2(gg)(ii);
- (hh) **Temporary Disablement** has the meaning as defined in any life insurance policy taken out by the Trustee for the purposes of providing a benefit to Members in that event or as agreed by the Trustee and insurer for the purposes of that policy;
- (ii) **Total and Permanent Disablement** means:
  - (i) if any part or all of the benefit payable on such disablement is insured under a life insurance policy in force in respect of a Member at the relevant time, total and permanent disablement as defined in that policy or as agreed by the Trustee and the insurer for the purposes of that policy; or



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- (ii) if at the relevant time the benefit is not insured under a policy, then in respect of such benefit, the term has the same meaning as the term permanent incapacity has for the purposes of the SIS Act;
- (jj) **Deed** means this Deed and includes the Annexure, the Rules and the Schedules to the Rules as they are amended from time to time;
- (kk) **Trustee** means the trustee for the time being of the Fund and where there is more than one trustee it refers to each trustee for the time being of the Fund;
- (ll) **Unrestricted Release Condition** means an event which is set out in Column 2 of Schedule 1 of the SIS Regulations where the “cashing restrictions” set out in Column 3 of that Schedule which corresponds to the event are expressed to be “Nil”.

**\* End of operative provisions \***

**EXECUTION PAGE**

**EXECUTED AS A DEED** on the date first written.

**EXECUTED** as a deed by **LENERA FARM PTY LTD (A.C.N. 130 165 614)** in accordance with its constitution in the presence of:

*Paul*  
  
\_\_\_\_\_  
Director/Authorised Officer

\_\_\_\_\_  
Director/Authorised Officer



Lenera Farm Superannuation Fund

## THE FIRST SCHEDULE

### (Fund details)

#### Fund details:

Name of Fund: **LENERA FARM SUPERANNUATION FUND**  
Address of Fund: C/- Paul Gersch, PO Box 14, Maitland SA 5573  
Date Fund established:  
Employer Sponsor (if applicable) Not applicable to this Fund

#### Trustee details:

Name of Trustee: **LENERA FARM PTY LTD**  
Address of Trustee: C/- Paul Gersch, PO Box 14, Maitland SA 5573

#### Member details:

Name of Member: **PAUL ANDREW GERSCH**  
Date of Birth 28/12/1967

**THE SECOND SCHEDULE**

**(Pro forma Application for Membership)**

**APPLICATION FOR MEMBERSHIP**  
**THE LENERA FARM SUPERANNUATION FUND**

I, [NAME OF MEMBER] of [ADDRESS OF MEMBER] hereby apply for membership of the above mentioned Fund.

I have been advised of the benefits that I am entitled to receive from the Fund in the event of my retirement, death, termination of service with my employer or the reaching of my preservation age.

In consideration of my admission to membership, I hereby agree to abide by and be bound by the provisions of the Deed regulating the Fund (as may be amended from time to time) (the Fund Deed).

I hereby agree to either acting as a Trustee of the Fund, or to my appointment as a director of the Constitution Corporation which may, from time to time, be the Trustee of the Fund (in each case in accordance with the terms of the Fund Deed).

I declare that I am not a disqualified person in that:

- I have never been convicted of an offence of dishonesty in Australia or any other country;
- No civil penalty order under SIS exists or has been made in respect of me;
- I am not an insolvent under administration under the Bankruptcy Act 1966 (Cth) or the law of a foreign country; and
- I have not been otherwise disqualified under the SIS Act.

I undertake to ensure that any Constitutional Corporation which may from time to time be the Trustee of the Fund shall not be appointed or continue as the Trustee of the Fund in the event that a receiver, official manager or provisional liquidator is appointed to the Constitutional Corporation.

Date: [DATE]

\_\_\_\_\_  
Applicant's Signature:

\_\_\_\_\_  
Witness' Signature:

\_\_\_\_\_  
Full name of Witness:



**THE THIRD SCHEDULE**  
**(Pro forma BINDING Death Benefit Notice)**

This is a **binding** death benefit notice (the **Notice**).

This Notice only allows straight-forward percentage (%) based nominations.

This Notice is only valid for a period of 3 years, unless this Notice is terminated in writing at an earlier date.

By completing and signing this Notice you as the Member of the Fund are requiring the Trustee to provide any benefit payable on or after your death to the persons you nominate in this Notice, being one or more of your dependants or your legal personal representative.

**MEMBER NOMINATION:**

Members' full name: \_\_\_\_\_

I, being the Member named above, hereby give a binding direction to the Trustee (including the directors of any company that is a Trustee) to pay the benefit that is payable from the Fund in the event of my death to the persons and in the proportions named in the following table:

<i>Either "To my Estate" OR Beneficiary's full name</i>	<i>Beneficiary's relationship to Member (if not nominating Estate)</i>	<i>Proportion of total death benefit to be paid (%)</i>
□	□	□%

\_\_\_\_\_  
Signed by the **Member**:

Date: \_\_\_\_\_

**WITNESSES:**

The following persons declare that:

- They are 18 years of age or older;
- They are not persons otherwise mentioned in this Notice; and
- This Notice was signed by or on behalf of the Member in their presence.

\_\_\_\_\_  
Signed by **First** Witness

\_\_\_\_\_  
Signed by **Second** Witness

Date: \_\_\_\_\_

**THE FOURTH SCHEDULE**  
**(Pro forma NON-BINDING Death Benefit Notice)**

*This is a **NON-binding** death benefit notice (the **Notice**).*

*The Trustee is not bound by this Notice, and the Trustee may in fact pay benefits in proportions different to those set out below, and to persons who may not be mentioned below.*

**MEMBER NOMINATION:**

Members' full name: \_\_\_\_\_

I, being the Member named above, hereby nominate the following persons to receive the following proportions of any benefit that is payable from the Fund in the event of my death:

<i>Either "To my Estate" OR Beneficiary's full name</i>	<i>Beneficiary's relationship to Member (if not nominating Estate)</i>	<i>Proportion of total death benefit to be paid (%)</i>

\_\_\_\_\_  
Signed by the **Member**:

Date: \_\_\_\_\_