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## **TRUST DEED**

**THIS TRUST DEED** is made on the date of execution specified in Item 1 of the Schedule 1.

**MADE BY:** the person named and described in Item 2 of the Schedule 1 ("**Founder**")

**AND:** the persons named and described in Item 3 of the Schedule 1 ("**Trustee**")

### **RECITALS**

- A. The Founder wishes to establish a self-managed superannuation fund, to be known as the fund described in the Schedule 1, for the sole purpose of providing superannuation benefits for its Members and their Dependants on the terms and conditions set out in this Deed.
- B. The Trustee agrees to be the initial trustee of the Fund and acknowledges by execution of this Deed that they have read and agreed to be bound by this Deed.
- C. The Trustee will hold the Fund property upon trust pursuant to the terms of this Deed for the Members and their Dependants.

### **THIS DEED WITNESSES:**

#### **1. Definitions and Interpretation**

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In this Deed, unless the subject or context otherwise requires:

**APRA** means Australian Prudential Regulatory Authority.

**ATO** means Australian Taxation Office.

**Account** or **Member Account** means a record of the Member's Benefits held by the Trustee in the Fund.

**Account Based Pension** means a Pension which is allocated to a separate account for each Member and which account balance is

attributable to the Member only and cannot be transferred to another person unless that person is a Beneficiary of a deceased Member.

**Ancillary Purposes** means the purposes as specified in section 62 of SISA.

**Application Form** means an application form provided to the Trustee by a prospective member with request to admit as a Member of the Fund.

**Associate** means a “Part 8 associate” of an individual for the purpose of Part 8 of SISA in relation to the in-house asset rules.

**Auditor** means a person who is an approved SMSF auditor as defined in section 10(1) of SISA or as amended from time to time, or otherwise determined by the Regulator.

**Authorised Contributor** means a person or entity who can lawfully make a Contribution on behalf of the Member and includes without limitation a Member, a person or entity who can lawfully make a Contribution on behalf of the Spouse of the Member, Government, Regulator or similar entity, any other superannuation fund permitted to make contributions, transfers or rollovers to or in respect of the Fund, and any other person permitted under the Superannuation Laws to make Contributions, transfers or rollovers to or in respect of the Fund.

**Asset** means (without limitation) money, property, investments, contributions, rollovers, income, rights, distributions, dividends, and/ or insurance proceeds that the Trustee receives, acquires, accepts and holds as the Fund’s assets on the terms and conditions set out in this Deed.

**Beneficiary** means a Member, a Dependant of a deceased Member, a trustee for a Dependant, a Member’s LPR 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 SISA.

**Benefit** means any amount paid or payable or may become payable to or in respect of a Member or Beneficiary, or distributable by the Fund which may include a Pension or Lump Sum payment, an Income Stream and any other payment by virtue of this Deed but excludes a Defined Benefit Pension.

**Binding Death Nomination** means a written direction to the Trustee by a Member which is binding upon the Trustee that sets out the Dependents and/or Legal Personal Representative that the Member

wants to receive the Member's Death Benefit in the event of the Member's death.

**Child** in relation to a Member, includes:

- (a) an adopted child, a stepchild or an ex-nuptial child of the Member; and
- (b) a child of the Member's spouse; and
- (c) someone who is a "child" of the Member within the meaning of the *Family Law Act 1975* (Cth).

**Commissioner or Commissioner of Taxation** means Federal Commissioner of Taxation.

**Complying Superannuation Fund** means a "complying superannuation fund" within the meaning of Section 45 of SISA and which satisfies all of the conditions in Section 42A of SISA.

**Condition of Release** means a condition under the Superannuation Laws and under the rules of this Deed which must be satisfied before the Trustee may allow superannuation Benefits to be released and provided to a Member or Beneficiary.

**Corporation** means a company or body corporate which is a trading or non-trading entity or financial corporation and includes a company incorporated under the provisions of the *Corporations Act 2001* (Cth).

**Contribution** means a payment of money or property transferred to the Fund for the Benefit of a Member or other person who can be or become entitled to Benefit from any such payment or transfer in accordance with the Superannuation Laws, but excludes benefits that have been rolled over or transferred to the Fund.

**Core Purposes** means the purposes as specified in section 62 of SISA.

**Death Benefit** means a Benefit paid or payable after the death of a Member in accordance with this Deed.

**Deed** means this deed as amended from time to time and includes the Recitals, Schedules, any supplementary or other deed and any resolution of the kind referred to in this Deed.

**Defined Benefit Pension** means a regular income stream as defined under section 10 of SISA.

**Dependant** in relation to a Member (living or deceased), includes

the spouse of the Member, any child of the Member including any natural child, step-child, adopted child or ex-nuptial child of the Member, someone who is a “child” of the Member within the meaning of the *Family Law Act 1975* (Cth), and any person with whom the Member has an Interdependency Relationship.

**Death Benefit Agreement** means agreement which does not lapse unless terminated by a Member, which binds the Trustee to pay the Member’s Death Benefit in the manner and to the specified persons as the Member so chooses; including whether the Benefit is to be a Lump Sum Benefit, a Pension Benefit or combination of both.

**Disqualified Person** if an *individual*, someone who has died, or who becomes incapable of discharging his or her duties because of illness or an unsound mind, or who becomes bankrupt or has been disqualified by the Regulator, or at any time has been the subject of a civil penalty order made under the Superannuation Laws, or at any time has been convicted of an offence involving dishonest conduct; if a *corporation*, has a director who is a Disqualified Person, or an order is made or a resolution is passed which will have the effect of winding up the corporation, or has had an official manager or administrator appointed in respect of the corporation, or has had a liquidator or provisional liquidator appointed in respect of the corporation.

**Earnings** means the “income of the Fund” less expenses, costs and tax paid or payable from or in respect of the Fund for a Financial Year, wherein “income of the Fund” has the meaning as defined in Section 95(1) of the Tax Act 1936 and franking credits; or as the Trustee decides at any time up to and including 30 June in a Financial Year to apply for that Financial Year an alternative definition of “income of the Fund” and treat or equate as income of the Fund any receipt, profit, gain or amount which is assessable income for the purposes of the Tax Act 1936 or the Tax Act 1997 and to treat income to also mean but not to be limited to income of the trust Fund as determined under Australian Accounting Standards or income of the trust Fund as determined under generally accepted accounting principles or income of the trust Fund as determined for Trust Law purposes.

**Eligible Rollover Fund** means a fund defined by Part 10 of SISR.

**Employee** means a person who is Gainfully Employed by an Employer.

**Employer** means a person who employs a Member for wages or salary and has the meaning as defined by Superannuation Laws.

**Excess Contributions** has the meaning under the Tax Law and Superannuation Laws and includes a tax imposed by reason of the *Superannuation (Excess Concessional Contributions Tax) Act 2007* or the *Superannuation (Excess Non-Concessional Contributions Tax) Act 2006* as amended from time to time.

**Financial Year** means 12 consecutive calendar months commencing the 1st day of July next until the 30th day of June or that period of 12 months adopted by the Trustee as the Fund's financial year as permitted by the Superannuation Laws.

**Fund** means the superannuation fund referred to in the Schedule 1 and established by this Deed.

**Gainful Employment or Gainfully Employed** means activity in which a person is employed or self-employed for gain or reward in any business, trade, profession, vocation, calling, occupation or employment within the meaning of the Superannuation Laws.

**Incapacity or Incapacitated** means that a person is unable to perform any Gainful Employment due to congenital disability, illness (including mental or brain damage), physical injury, advanced age or intellectual deficiency.

**Income Stream** means a series of periodic Benefit payments to a Member that is account based, and includes Pension, annuity, Transition to Retirement Income Stream, Temporary Incapacity Income Stream and other payments permitted under the Superannuation Laws.

**Insurance Proceeds** means the proceeds of an insurance Policy received by the Fund in respect of a Member upon the Member's death, Total Permanent Incapacity, Temporary Incapacity or any other event to fund a Members' Benefit.

**Interdependency Relationship** has the meaning given in section 10A of SISA.

**Investment Strategy** means a document prepared by the Trustee which reflects all investment rules and restrictions of the Superannuation Laws, sets out the investment objectives of the Fund and details the investment methods the Fund will adopt to achieve these objectives.

**LPR or Legal Personal Representative** means an executor of a will or administrator of an estate of a deceased person, a trustee of an estate of a person under a Legal Disability or a person who holds an enduring

power of attorney granted by a person, but excludes a legal representative of a Disqualified Person.

**Legal Disability** relates to a following person:

- (a) a minor under 18 years of age; or
- (b) a person with a mental disability, i.e. who is not legally competent to be a party to a court proceeding, and includes the person even if a guardian or manager who has not been appointed for that person under the *Guardianship and Management of Property Act 1991*.

**Lump Sum** means a payment to a Member of all or some of their superannuation Benefit as a single payment, but is not an Income Stream.

**Manager** means the person or entity appointed by the Trustee to manage the Fund.

**Mandated Employer Contributions** means contributions made by an Employer under a law or industrial agreement for the benefit of the Fund Member and includes Super Guarantee Contributions.

**Member** means a person who has been accepted by the Trustee as a member of the Fund in accordance with the terms of this Deed and who has Contributions made for them or who receives Superannuation Entitlement from the Fund, and if the Trustee determines or the Superannuation Laws require, includes a person who has ceased to be a Member, or an LPR of a Member, or an LPR of a deceased Member.

**Member's Accumulation Account** means an account established by the Trustee for a Member to accumulate investments and earnings of the Member.

**Member's Pension Account** means an account established by the Trustee for a Member from which all payments of a Pension shall be debited.

**New Trustee** means a new trustee appointed to replace an existing Trustee in accordance with the provisions of this Deed or application of the Superannuation Laws.

**Non-Binding Death Benefit Nomination** means a discretionary nomination given to the Trustee by a Member which the Trustee may but is not bound to follow in the event of the Member's death.

**Non-Member Spouse** has the meaning given by the term "non-member spouse" by the *Family Law Act 1975*.

**Non-Concessional Contribution Cap** means the non-concessional contribution amount that can be contributed for a Member each Financial Year.

**Old Age Pension** has the meaning given by the term “old-age pension” as in paragraph 51(xxiii) of the *Commonwealth of Australia Constitution Act* 1901.

**Payment Split** has the meaning given to the term “payment split” in Part VIIIIB of the *Family Law Act* 1975 (the “Act”) or as agreed between the parties in the agreement under the Act.

**Pension** means a periodic payment or benefit provided by the Fund, if the benefit is taken, under the Regulations, to be a pension for the purposes of SISA.

**Policy** means an insurance policy arranged by the Trustee for a Member.

**Product Disclosure Statement or PDS** means a summary of significant information about the Superannuation Entitlements that may be paid by the Trustee from the Fund and includes other information required to be disclosed under the Superannuation Laws.

**Preserved Superannuation Entitlement** means an entitlement in respect of the Member that SISA requires to be retained in the Fund or another complying Superannuation Entitlement Arrangement until a Condition of Release specified by SISA is met, or until such other circumstances as SISA permits.

**Preservation Age** means the age which depends on the Member's date of birth, as set out in the table below, as provided in Regulation 6.01(2) of SISR, or such other age prescribed from time to time by the Superannuation Laws.

<b>Date of birth</b>	<b>Preservation age</b>
Before 1 July 1960	55
1 July 1960 – 30 June 1961	56
1 July 1961 – 30 June 1962	57
1 July 1962 – 30 June 1963	58
1 July 1963 – 30 June 1964	59
After 30 June 1964	60

**Regulator** means:

- (a) the Commissioner of Taxation, if in respect of SMSFs; and
- (b) APRA, if in respect of small APRA Funds and other types of Funds; and
- (c) ASIC, if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by ASIC; and
- (d) the Chief Executive Medicare, if the provision in which it occurs is, or is being applied for the purposes of, a provision that is administered by the Chief Executive Medicare.

**Regulated Superannuation Fund** has the meaning given by section 19 of SISA.

**Relative** of a Member means:

- (a) a parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the Member or of his or her spouse or former spouse; or
- (b) a spouse or former spouse of the Member, or of an individual referred to in paragraph (a); or
- (c) as defined in section 17A(9) of SISA.

**Reserve Account** means the Account as described in Clause 13.4.

**Retire, Retired and/or Retirement** means a Member's arrangement, when the Member is:

- (a) less than 60 years of age - permits access their Benefits only when they reach Preservation Age, and the Trustee is reasonably satisfied that the Member has ceased Gainful Employment and intends never to become Gainfully Employed in the future; or
- (b) 60 years of age - permits access their Benefits when the Member has ceased Gainful Employment.

**Reversionary Pension** means a Pension which automatically becomes payable to a Beneficiary or the 'reversionary beneficiary' upon the death of the Member who was receiving the Pension.

**Self Managed Superannuation Fund or SMSF** means a fund as defined in section 17A of SISA.

**SISA** means *The Superannuation Industry (Supervision) Act 1993* (Cth).

**SISR** means *The Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Splittable Contribution** has the meaning given to the term “splittable contribution” by Regulation 6.42 of SISR.

**Spouse** of a Member includes:

- (a) another person (whether of the same sex or a different sex) with whom the Member is in a relationship that is registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* (Cth) as a kind of relationship prescribed for the purposes of that section; and
- (b) another person who, although not legally married to the Member, lives with the Member on a genuine domestic basis in a relationship as a couple.

**Spouse Splittable Contributions** means Contributions made by the Trustee for the benefit of the Member's Spouse in accordance with this Deed and Superannuation Laws.

**Superannuation Entity** means:

- (a) a Regulated Superannuation Fund;
- (b) an approved deposit fund;
- (c) a pooled superannuation trust; or
- (d) an eligible rollover fund or any other arrangement which the Trustee determined should be treated for the purposes of the Fund as a Superannuation Entity.

**Superannuation Fund** means a “superannuation fund” within the meaning of section 10 of SISA.

**Super Guarantee Contributions** means the compulsory superannuation contributions made by Employers on behalf of their Employees.

**Superannuation Interest** means an interest in the Fund or such other interest as defined in section 995-1(1) of Tax Act 1997 and as determined by the Trustee with reference to section 307-200 of Tax Act 1997 and relevant regulations.

**Superannuation Entitlement** means an entitlement of a Member to the Benefits in accordance with this Deed.

**Superannuation Laws** mean any relevant or applicable law or provision, as amended from time to time in any of the following legislations: *The Superannuation Industry (Supervision) Act 1993* (Cth), *The Superannuation Industry (Supervision) Regulations 1994* (Cth), *The Superannuation Guarantee (Administration) Act 1992*, *The Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cth), *The Superannuation*

(*Government Co-contribution for Low Income Earners*) Act 2003 (Cth), *The Tax Act 1936*, the *Tax Act 1997*, the *Corporations Act 2001*(Cth), the *Family Law Act 1975*, the *Privacy Act 1988* (Cth), the *Social Security Act 1991*, the *Veterans' Entitlements Act 1986*, the *Trustee Law* and any applicable regulations made pursuant or in relation to any such legislation, and any successor acts, and any announcement, declaration, determination, ruling or guideline made or issued by the Regulator.

**Tax** means any liability or provision for a liability for income tax, land tax sales tax payroll tax, fringe benefits tax, stamp duty, goods and services tax, and any other Commonwealth or State taxes or duties (including fines, additional tax, interest or penalties and any liability for tax on a Contribution made in excess of applicable from time to time superannuation Contribution limits).

**Tax Act, Tax Act 1936 or Tax Act 1997**

Either or both of the *Income Tax Assessment Act 1936* and/or the *Income Tax Assessment Act 1997* (as the case may be including any replacement, amendment or supplement).

**Taxable Component** means the total value of the superannuation Benefit less the Tax Free Component as provided under section 307-215 of *Tax Act 1997*. The Taxable Component consists of an 'element taxed in the fund' and may also include an 'element untaxed in the fund' as provided under 307-275 of *Tax Act 1997*.

**Tax Free Component** means the component of a superannuation Benefit that is tax free as defined by sections 307-210 and 307-220 of *Tax Act 1997* and consists of:

- (a) contributions made after 30 June 2007 that are not assessable to the fund, referred to as the 'contributions segment of the interest'; and
- (b) amounts that would have been tax-free if paid before 1 July 2007, referred to as the 'crystallised segment of the interest'.

**Temporary Incapacity** means in relation to a Member, the Member's ill health (whether physical or mental) that a Trustee is reasonably satisfied that the ill health caused the Member to cease Gainful Employment (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be Gainfully Employed), but does not constitute Permanent Incapacity under SISR.

**Terminal Medical Condition** means in relation to a Member, exists if two registered medical practitioners have certified jointly or separately that the Member suffers from an illness, or has incurred an injury that is

likely to result in the Member's death within 24 months of the date of the certification.

**Total and/or Permanent Incapacity** means in relation to a Member, the Member's ill health (whether physical or mental) that a Trustee is reasonably satisfied that the ill health makes it unlikely that the Member will engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience; or any other circumstances that are acceptable to the Trustee and are acceptable under the Superannuation Laws.

**Transition to Retirement Income Stream or TRIS** means an Account Based Pension that can be commenced after a Member reaches Preservation Age and must:

- (a) have a maximum annual income payment of no more than 10% of the account balance on the commencement of a TRIS for the year it starts or on 1 July for each subsequent Financial Year; and
- (b) cannot be commuted to cash, except in the following circumstances:
  - (i) where the income stream is paid from unrestricted non-preserved benefits;
  - (ii) where another condition of release with a 'nil' cashing restriction has been met (e.g. retirement after preservation age, or attaining age 65);
  - (iii) to meet a family law payment split; or
  - (iv) to pay a superannuation contributions surcharge liability; or
  - (v) otherwise comply with the Superannuation Laws dealing with Transition to Retirement Income Streams.

**Trustee** means the person named and described in Item 3 of the Schedule 1 or any other person acting as trustee including any substitute or successor trustee, corporate trustee, additional trustee or replacement trustee from time to time, and if there is more than one trustee at any time, then at that time "trustee" means "trustees" (the singular includes the plural and vice versa).

- (a) Words importing the singular number include the plural number and vice versa.
- (b) Words importing any one gender include all other genders.
- (c) Words importing the present tense also import the future tense.
- (d) References to any statute, ordinance or other law include all regulations and other instruments under this Deed and all consolidations, amendments, re-enactments or replacements thereof.

- (e) If any provision of this Deed is ambiguous then it shall be construed broadly so as to widen and not restrict the power authority and exercise of discretion by the Trustee.
- (f) In the event that a clause (or any part of a clause) contained in this Deed is void or invalid then such clause (or part of a clause) shall be severed from the Deed and shall not affect the validity or operation of any other provision of the Deed.
- (g) Headings do not affect the interpretation of this Deed and are inserted for convenience only.

## **2. Establishment of the Fund and Purpose**

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### **2.1 Establishment**

The Founder by this Deed establishes the fund as a Self Managed Superannuation Fund (“**Fund**”). The Fund will be vested in the Trustee and will at all times be held, controlled and managed by the Trustee for the benefit of the Members on the terms of this Deed.

### **2.2 Purpose**

The Fund is to be maintained for the sole purpose of providing superannuation Benefits for its Members when payment of the Benefit is permitted under Superannuation Laws.

### **2.3 Duration**

The Fund will be in existence from the date specified in the Schedule 1 and continue indefinitely, unless it is terminated either under the terms of this Deed, or by virtue of application of any Superannuation Laws or a pronouncement by the Regulator.

### **2.4 Name of Fund**

The Fund will be known by the name described in the Schedule 1 or such other name as the Trustee might determine by a deed.

### **3 The Trustee**

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#### **3.1 Trustee**

- 3.1.1 The Fund must have at least one trustee.
- 3.1.2 The Trustee is appointed and agrees to be the initial trustee of the Fund and acknowledges by execution of this Deed that the Trustee has agreed to be bound by this Deed.
- 3.1.3 The Trustee has signed a declaration that they understand their duties as trustee of a Self Managed Superannuation Fund.

#### **3.2 Who can be a Trustee**

- 3.2.1 The Fund as a SMSF, must have either:
  - (a) one or more individual Trustee; or
  - (b) a Corporate Trustee.
- 3.2.2 The Trustee must be:
  - (a) 18 years of age and over;
  - (b) not under a Legal Disability; and
  - (c) not a Disqualified Person.
- 3.2.3 Unless the Superannuation Laws provide otherwise, if the SMSF has **individual** Trustees, the Fund:
  - (a) may have four or fewer Members;
  - (b) each Member must be a Trustee of the Fund;
  - (c) each Trustee must be a Member of the Fund;
  - (d) no Member must be an Employee of another Member unless they are Relatives; and
  - (e) no Trustee must be paid for their duties or services as a Trustee in relation to the Fund.

3.2.4 Unless the Superannuation Laws provide otherwise, if the SMSF has a **Corporate** Trustee:

- (a) each Member of the Fund must be a director of the Corporate Trustee;
- (b) each director of the Corporate Trustee must be a Member;
- (c) no Member must be an Employee of another Member unless they are Relatives;
- (d) the Corporate Trustee must not be paid for its services as a Trustee in relation to the Fund; and
- (e) no director of the Corporate Trustee must be paid for their duties or services as a director in relation to the Fund.

3.2.5 Unless the Superannuation Laws provide otherwise, if the SMSF is a **single** Member Fund with a **Corporate** Trustee:

- (a) the Corporate Trustee must have one or two directors;
- (b) the Member must be either the sole director or one of the directors;
- (c) if there are two directors and the Member is an Employee of the other director, the Member and the other director must be Relatives;
- (d) the Corporate Trustee must not be paid for its duties or services as a Trustee in relation to the Fund;
- (e) no director of the Corporate Trustee must be paid for their duties or services as a director in relation to the Fund.

3.2.6 Unless the Superannuation Laws provide otherwise, if the SMSF is a **single** Member Fund with **individual** Trustees:

- (a) there must be two Trustees;
- (b) one Trustee must be a Member;
- (c) if the Member is an Employee of the other Trustee, the Member and the other Trustee must be Relatives;

- (d) no Trustee must be paid for their duties or services as a Trustee in relation to the Fund.

### **3.3 Retiring, Adding and Appointment of New Trustee**

3.3.1 The Trustee may at any time as it thinks fit retire, provided that:

- (a) A written notice of the retirement of Trustee is provided to any other Trustee or New Trustee and Members;
- (b) a New Trustee is appointed by an instrument in writing;
- (c) the New Trustee accepts its appointment as trustee;
- (d) all Assets and liabilities of the Fund are transferred to the New Trustee.

3.3.2 The Trustee or majority of the Members may at any time:

- (a) appoint an Additional Trustee in addition to any existing Trustee; or
- (b) replace an existing, retiring, removed or deceased Trustee with a New Trustee.

3.3.3 If the SMSF is a *single* Member Fund with *individual* Trustees, a Trustee who is not a Member may retire as a Trustee, provided that another person who is a Relative of the Member or is a person who is not an Employer of the Member is appointed as a Trustee.

3.3.4 A *Corporate* Trustee may retire provided that:

- (a) each director of the resigning company are appointed as Trustees; or
- (b) another company is appointed as a Trustee where all directors of the resigning company are also directors of the company being appointed as Trustee; and
- (c) each director of the new corporate Trustee is a Member.

**3.4 Removal of Trustee**

3.4.1 The Trustee must be immediately removed from their office if:

- (a) the Trustee is a Disqualified Person, provided that if the person has died, Clause 3.5 will apply; or
- (b) a Member is an individual Trustee and is under Legal Disability, unless a LPR of the Member is appointed as Trustee in place of the Member and therefore Clause 3.5 will apply; or
- (c) a Member is an individual Trustee, when that Member ceases to be a Member, provided that if the person has died, Clause 3.5 will apply; or
- (d) the Trustee is prohibited from being a Trustee under this Deed, SISA or SISR; or
- (e) the continued appointment of the Trustee will result in the Fund losing its status as a Complying SMSF.

3.4.2 A director of a corporate Trustee must be immediately removed from their office as a director if:

- (a) the director is a Disqualified Person, provided that if the person has died, Clause 3.5 will apply; or
- (b) the director is also a Member and has ceased to be a Member, provided that if the person has died, Clause 3.5 will apply; or
- (c) the director is prohibited from being a director of the corporate trustee under this Deed, SISA or SISR; or
- (d) the continued appointment of the director will result in the Fund losing its status as a Complying SMSF.

**3.5 Appointment of LPR**

Unless this Deed or the Superannuation Laws provide otherwise, if a Member dies or becomes Incapacitated or under Legal Disability:

3.5.1 The LPR of the Member will be appointed as a replacement Trustee or a director of the corporate Trustee, provided that the LPR:

- (a) consents in writing to act as a Trustee or a director of the corporate Trustee;

- (b) acknowledges in writing to be bound by this Deed and the constitution of a corporate Trustee; and
- (c) signs a declaration that the LPR understands their duties as trustee of a Self Managed Superannuation Fund.

3.5.2 The LPR of the deceased Member will be appointed as a Trustee only for the period:

- (a) beginning when the Member died; and
- (b) ending when Death Benefits commence to be payable in respect of the Member,

after which period the LPR must resign or be removed as a Trustee or a director of the corporate Trustee.

3.5.3 The LPR of the Incapacitated or under Legal Disability Member must resign or be removed as a Trustee or a director of the corporate Trustee when Incapacity or Legal Disability ends.

### **3.6 Trustee Remuneration**

3.6.1 Subject to and except as permitted by the Superannuation Laws, and subject to any right of indemnity or reimbursements:

- (a) if the Trustee is an individual, no Trustee shall receive any remuneration from the Fund or from any person for any duties or services performed by the Trustee in relation to the Fund;
- (b) if the Trustee is a corporation, neither the corporation no director of the corporation shall receive any remuneration from the Fund or from any person (including the corporation) for any duties or services performed by the director in relation to the Fund.

3.6.2 If the Fund is no longer a SMSF, and subject to and except as permitted by the Superannuation Laws, any Trustee being a solicitor, accountant or other person engaged in any profession or business shall be entitled to be paid all usual professional or proper charges for business transacted, time expended and acts undertaken in relation to the Fund or its management or administration.

**3.7 Liability and Indemnity of Trustee**

- 3.7.1 Subject to Clause 3.7.4, the Trustee or a director or officer of a corporate Trustee shall be entitled to be indemnified out of the Assets of the Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to execute any of the trusts, authorities, powers and discretions under this Deed or by virtue of being the Trustee, director or officer of a corporate Trustee.
- 3.7.2 The individual Trustee while acting or purporting to act in the execution of the Fund and powers under this Deed, the Trustee will have recourse only to the Assets of the Fund in payment of any debts incurred thereby or claims made against the Trustee. The Trustee will not be personally liable for any loss which is not attributable to the circumstances described in Clause 3.7.4. The Members are under no obligation to indemnify the Trustee against any such debts or claims.
- 3.7.3 A corporate Trustee or a director or officer of a corporate Trustee, while acting or purporting to act in the execution of the Fund and powers under this Deed, the Trustee, director or officer will have recourse only to the Assets of the Fund in payment of any debts incurred thereby or claims made against the Trustee, director or officer. The director or officer will not be personally liable for any loss which is not attributable to the circumstances described in Clause 3.7.4. The Members are under no obligation to indemnify the Trustee, director or officer of the Trustee against any such debts or claims.
- 3.7.4 Clause 3.7 does not exempt or indemnify the Trustee or a director or officer of a corporate Trustee against:
- (a) liability for breach of trust if the Trustee or a director or officer of a corporate Trustee:
    - (i) fails to act honestly in a matter concerning the Fund; or
    - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting the Fund, the degree of care and diligence that the Trustee or a director or officer of a corporate Trustee was required to exercise; or
  - (b) liability for a monetary penalty under a civil penalty order; or

- (c) the payment of any amount payable under an infringement notice; or
- (d) liability for the costs of undertaking a course of education in compliance with an education direction; or
- (e) liability for an administrative penalty imposed by Division 3 of SISA.

## **4 Compliance with SMSF Obligations**

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- 4.1 The Trustee is bound by and must comply with:
  - 4.1.1 this Deed;
  - 4.1.2 duties under the Superannuation Laws; and
  - 4.1.3 any direction from a Regulator.
- 4.2 At all times from the date of this Deed the Trustee must maintain and operate the Fund as:
  - 4.2.1 the Regulated Superannuation Fund; and
  - 4.2.2 the Complying SMSF.
- 4.3 At all times from the date of this Deed the Trustee must ensure that the Fund complies with:
  - 4.3.1 the Investment Strategy within the meaning of section 52 of SISA;
  - 4.3.2 the sole purpose test within the meaning of section 62 of SISA;
  - 4.3.3 the lending rules under section 65 of SISA;
  - 4.3.4 the prohibition on acquiring assets from related parties under section 66 of SISA;
  - 4.3.5 the borrowing restrictions under section 67 of SISA;
  - 4.3.6 the in-house assets rules under Part 8 of SISA; and
  - 4.3.7 the arm's length investment requirement under section 109 of SISA.

## **5 The Trustee's Duties and Covenants**

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- 5.1 In addition to the duties set out in this Deed, the Trustee covenants to and must:
- 5.1.1 act honestly in all matters concerning the Fund;
  - 5.1.2 exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as a prudent superannuation trustee would exercise in relation to a fund of which it is trustee and on behalf of the beneficiaries of which it makes investments;
  - 5.1.3 perform the Trustee's duties and exercise the Trustee's powers in the best interests of the Members;
  - 5.1.4 where there is a conflict between the duties of the Trustee to the Members, or the interests of the Members, and the duties of the Trustee to any other person or the interests of the Trustee or an associate of the Trustee:
    - (a) to give priority to the duties to and interests of the Members over the duties to and interests of other persons; and
    - (b) to ensure that the duties to the Members are met despite the conflict; and
    - (c) to ensure that the interests of the Members are not adversely affected by the conflict; and
    - (d) to comply with the prudential standards in relation to conflicts;
  - 5.1.5 keep the Assets of the Fund separate from any money and other assets, respectively:
    - (a) that are held by the Trustee personally; or
    - (b) that are money or assets of a standard employer-sponsor, or an associate of a standard employer-sponsor, of the Fund;

- 5.1.6 not to enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- 5.1.7 formulate, review regularly and give effect to one or more Investment Strategy as set out in Clause 6.1.

## **6 Management of Trust Funds**

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### **6.1 Investment Strategy**

- 6.1.1 From the date of this Deed the Trustee must formulate, review regularly and give effect to an Investment Strategy for the whole of the Fund, and for each investment option offered by the Trustee, having regard to:
  - (i) the risk involved in making, holding and realising, and the likely return from, the investments covered by the Investment Strategy, having regard to the Trustee's objectives in relation to the Investment Strategy and to the expected cash flow requirements in relation to the Fund; and
  - (ii) the composition of the investments covered by the Investment Strategy, including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification; and
  - (iii) the liquidity of the investments covered by the Investment Strategy, having regard to the expected cash flow requirements in relation to the Fund; and
  - (iv) whether reliable valuation information is available in relation to the investments covered by the Investment Strategy; and
  - (v) the ability of the Fund to discharge its existing and prospective liabilities; and
  - (vi) the expected tax consequences for the Fund in relation to the investments covered by the Investment Strategy; and

- (vii) the costs that might be incurred by the Fund in relation to the investments covered by the Investment Strategy; and
- (viii) any other relevant matters.

6.1.2 The Trustee may at any time create a separate Investment Strategy for a particular Member or Members, and subject to the Superannuation Laws and the Fund maintaining its complying SMSF status, the Trustee may transfer Assets between Investment Strategies.

6.1.3 Subject to the Superannuation Laws and the Fund maintaining its complying SMSF status the Trustee may at any time alter the Investment Strategy for the Fund or a Member.

## **6.2 Proviso for Making Investments**

6.2.1 The Trustee may acquire Assets and invest them in Australia or any other country as if the Trustee were the absolute beneficial owner of the Assets, provided that the Trustee:

- (a) invest the Assets in accordance with the Investment Strategy;
- (b) make all investments on an arm's length basis;
- (c) exercise due diligence in developing, offering and reviewing regularly each investment option;
- (d) ensure the investment options offered to each Member allow adequate diversification;
- (e) ensure the investment options comply with the Superannuation Laws; and
- (f) ensure the investment options will enable the Fund to retain its status as a Complying SMSF.

## **6.3 Authorised Investments**

Subject to the requirements of Clause 6.2, the Trustee may acquire, subscribe for and/or invest in any of the following investments of the Fund:

- 6.3.1 any investment from time to time authorised by the Superannuation Laws and under applicable Trust Law for the investment of trust funds;
- 6.3.2 shares or stock and related investments including foreign currencies, hedging contracts, commodity contracts, options, futures, bonds, mortgage, installment warrant, or other like security or arrangement, and without limiting the generality of the foregoing, whether preference or ordinary and whether fully paid or contributing and whether secured or unsecured, registered or unregistered;
- 6.3.3 any real estate of any tenure whether situated in Australia or any other country;
- 6.3.4 any direct and/or listed property;
- 6.3.5 any personal property including intellectual property rights or privileges in Australia or any other country;
- 6.3.6 a deposit with or on loan to any person or entity, either at interest or otherwise and either with or without security;
- 6.3.7 a deposit with or on loan to any banking or financial institution and any type of account, either with or without security;
- 6.3.8 any policy of insurance of any kind or annuity and any choses in action and any interest for life or any lesser term or in reversion whatsoever and wherever made;
- 6.3.9 separately managed accounts, managed investments, any unit trust or other type of trust;
- 6.3.10 a loan to any person or company, except to Members or a relative of a Member;
- 6.3.11 discounting of loans, contracts, hire purchase agreements or leases;
- 6.3.12 foreign exchange, gold and silver, other precious metals or currency of any country;
- 6.3.13 bank operating accounts, cash, bonds, installment warrants, fixed term deposits and term deposits;

- 6.3.14 collectibles and works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques, or any other similar objects;
- 6.3.15 a lease, licence or option of real or personal property or any interest in respect thereof;
- 6.3.16 any business, including any direct or indirect interest in any business, and to the extent permitted by the Superannuation Laws, carry on the business or employ, contract, engage persons to carry on the business on behalf of the Trustee;
- 6.3.17 other authorised by the Superannuation Laws investments as the Trustee may in their absolute discretion think fit whether involving liabilities or not and whether in possession or reversion and whether producing income or not and with or without security and upon such terms as the Trustee thinks fit.

**6.4 Prohibited Investments and Dealings with Assets**

Except when permitted by the Superannuation Laws, the Trustee must not:

- 6.4.1 acquire assets or any insurance policy from a Member, an employer, a related trust or a related party of the Member or the employer;
- 6.4.2 make a loan or give any financial assistance using the Fund's resources to a Member, an employer, a related trust or a related party of the Member or the employer;
- 6.4.3 invest in a related trust of the Fund or a related party of the Member or the employer;
- 6.4.4 lease of a Fund Asset to a Member, an employer, a related trust or a related party of the Member or the employer; or
- 6.4.5 borrow money or maintain an existing borrowing of money or use assets of the Fund as security, unless allowed by the installment warrant exception under SISA.

## **6.5 Segregation of Investments**

- 6.5.1 The Trustee may isolate and assign Assets to a particular Member (“segregation”) for any reason or period of time as the Trustee thinks fit.
- 6.5.2 If an Asset or Assets are segregated, the Trustee must hold them as separate asset pools that are specific to a particular Member.
- 6.5.3 All transactions, earnings from the Assets, any taxes and losses, receipts, expenses or outgoings attributable to each segregated Asset must be kept separate and must be allocated to the particular Member.

## **6.6 Powers of the Trustee**

In addition to the powers, authorities and discretions conferred on the Trustee by another provision of this Deed, and subject to the prohibitions, limitations or provisions of the Superannuation Laws and the Fund maintaining its Complying SMSF status, the Trustee has the following absolute powers and discretions which may be exercised in any way that the Trustee thinks fit and as if the Trustee were the absolute beneficial owner of the Assets:

### **6.6.1 Advice**

To engage, obtain or employ, pay for and act upon professional or other assistance, advice, opinion or information, including, without limiting the generality of the foregoing, assistance, advice, opinion or information obtained from any lawyer, accountant, financial adviser, valuer, surveyor, broker or auctioneer, in relation to the Fund Assets, transactions, undertakings, acquisitions or disposals by the Trustee as the Trustee deems necessary or expedient for or in connection with the discharge of its rights, powers, duties or obligations and the Trustee shall not be responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with any such assistance, advice, opinion or information;

**6.6.2 Appropriation in Specie**

To appropriate any part or parts of the Fund in its actual condition or state of investment in or towards the satisfaction of payment of a Benefit or in or towards the satisfaction of any sum that the Trustee may determine to pay or apply to or advance to or for the benefit of any Member pursuant to the provisions of this Deed and provided such appropriation by the Trustee is in accordance with the Superannuation Laws and the Fund maintaining its Complying SMSF status;

**6.6.3 Assets**

- (a) To sell, call in, collect and convert the same into money at such time or times and in such a manner as the Trustee shall think fit with power to postpone the sale, calling in or conversion of the whole or any part or parts of the Fund Assets, grant options or rights to purchase, mortgage, charge, sub-charge or otherwise deal with or dispose of or transfer any item or Asset comprising the whole or any part or parts of the Fund;
- (b) to receive from, create, pay or transfer any item or Asset to another SMSF with the same or substantially the same terms, Members and the same or different Trustee;
- (c) to receive any item or Asset from a Member or any related party provided such receipt is in accordance with the Superannuation Laws and the Fund maintaining its Complying SMSF status;

**6.6.4 Attorney**

To appoint any attorney to execute any deed, agreement or document or to perform any act on behalf of the Trustee that the Trustee consider necessary for the exercise of those powers;

**6.6.5 Banking**

To open in the name of the Trustee as Trustee for the Fund any account with any bank, financial institution or managed fund wherever situated as the Trustee shall think fit, and to operate by and in all usual ways any such account and to draw, make, accept, endorse, discount, issue or otherwise deal with any promissory note, bill of exchange, bill of lading, cheque or other negotiable or transferable instrument and to give any bill, indemnity, guarantee or security for payment of money or for the performance of any contract,

obligation or undertaking by any person and to renegotiate or renew from time to time any such bill, indemnity, guarantee or security, or close any such account as required from time to time;

**6.6.6 Benefits**

To pay a Benefit to a Member or Beneficiary when such payment is permitted by the Superannuation Laws;

**6.6.7 Borrowing**

Provided and to the extent the Superannuation Laws allow it and as long as it is in accordance with the Investment Strategy and the Fund maintaining its Complying SMSF status, to borrow funds or an Asset or obtain financial assistance or maintain an existing borrowing of funds or use Assets of the Fund as security;

**6.6.8 Borrowing by Entering Into Installment Warrants**

To borrow funds and enter into arrangements of the type described in or permitted by section 67A of SISA (as the case may be including any replacement, amendment or supplement) provided the Trustee borrows funds on a limited-recourse basis in relation to the acquisition of a single acquirable asset which is held on trust for the Trustee by a custodian, bare trustee or nominee until the borrowed funds have been repaid; and the Trustee may enter into, undertake, perform, cancel or dispose of any such arrangement;

**6.6.9 Carrying on Business**

To carry on any trade or business which the Trustee in its absolute discretion thinks fit, provided that the trade or business operated for the sole purpose of providing retirement benefits for the Members;

**6.6.10 Choses in Action**

To acquire choses in action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses in action in any way on such terms and conditions as the Trustee think fit;

**6.6.11 Contracts and Undertakings**

To enter into any contracts, arrangements, undertakings or transactions on behalf of the Fund for the benefit of the Fund and its Members;

**6.6.12 Contributions**

To accept any contributions made on behalf of a Member or a Spouse of a Member by any person, entity or government body provided the acceptance by the Trustee of that contribution is in accordance with the Superannuation Laws and the Fund maintaining its Complying SMSF status;

**6.6.13 Custodian, Bare Trustee or Nominee**

To appoint of a custodian, bare trustee or nominee to hold or register the legal title of any Asset which has been acquired or is to be acquired by the Trustee on such terms as the Trustee think fit;

**6.6.14 Dealing with Itself**

Notwithstanding any rule of law or equity to the contrary, and provided the in-house assets rules under Part 8 of SISA are complied with, to acquire, as property of the Fund interest in real or personal property which is, at the date of acquisition, the absolute property of the Trustee or held by the Trustee on trust for another trust, fund or person, provided that any property so acquired is acquired for a consideration not greater than the current market value of the property and upon such acquisition the beneficial interest in and to the property must be held by the Trustee according to this Deed; to dispose of any beneficial interest in property of the Fund to itself; or to lease any real or personal property of the Fund to itself;

**6.6.15 Debt**

To set aside out of the Fund such money as the Trustee think fit be necessary to meet any liability, debt or obligation which is or will be due or accruing or is expected to become payable;

**6.6.16 Delegation of Power, Discretion and Authority**

To delegate to any banker, stockbroker, solicitor, accountant, manager, custodian, investment manager or other person any of the powers, authorities and discretions conferred upon the Trustee on

such terms as the Trustee may from time to time consider necessary or expedient to so delegate;

**6.6.17 Derivatives or Options**

To enter into any option or derivative (being a listed security or otherwise) agreement relating to any lending or financing facility, agreement or transaction, or into derivatives contract or purchase or sell or deal in any derivatives product and otherwise to do and perform all things so as to operate, utilize or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world;

**6.6.18 Engaging Agent**

To authorise any agent to enter into or execute any agreement or document or to perform any act on behalf of the Trustee in any place;

**6.6.19 Expenses**

To pay out of the Fund all costs, charges and expenses incidental to the establishment and management of the Fund and the exercise of any of the Trustee's discretion or power, which the Trustee may at any time incur, including insurance premiums, rates, taxes, rents and other expenses and outgoings in relation to any Asset or its management, improvement or repair as the Trustee think fit; as well as to pay income tax or other taxes payable in connection with the Fund and all monies which the Trustee may be required to pay as settlement, probate, estate, gift, stamp or revenue duties;

**6.6.20 Franchises**

To acquire, sell or otherwise deal with franchises, franchise agreements, licences as the Trustee in its absolute discretion thinks fit;

**6.6.21 Gifts or Transfer**

To accept any gift whether by gift inter vivos or by distribution under a Will, donation or transfer to the Trustee with the intention that the property or money the subject thereof will be added to and form part of the Fund upon such terms and conditions as the Trustee in its absolute discretion thinks fit;

**6.6.22 Indemnities**

To provide indemnities to or on behalf of any person that the Trustee think fit.

**6.6.23 Insurance Policies and Premiums**

- (a) To effect or acquire policies of life assurance of any kind on the life or permanent disablement of any Member or in respect of sickness, disability or accident to any Member of such amount and of such kind as the Trustee in its absolute discretion thinks fit with any insurance entity;
- (b) to pay premiums, transfer, surrender, change the place of and deal with the insurance policies in any way whatsoever, to purchase or enter into insurance or investment bonds whether or not the bonds are linked to a policy over the life of any person;
- (c) to effect or acquire policies and pay all insurance premiums in connection with carrying on of any business, workers compensation insurance and other insurances necessary to comply with any lease;
- (d) to pay out of the Fund as the Trustee in its absolute discretion thinks fit all sums payable from time to time for premiums or otherwise for the effecting or maintaining of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any investment bond, option, right or benefit under any insurance;

**6.6.24 Insuring Trust Assets**

To insure the whole or any part of the Trust Fund upon such terms and conditions as the Trustee in its absolute discretion thinks fit;

**6.6.25 Intellectual Property**

To develop, apply for, purchase or otherwise acquire and to sell intellectual property such as patents, patent rights, copyrights, trademarks, designs, formulas, licences, concessions, trade secrets, know-how, confidential information and the like, grant any exclusive or non-exclusive or limited right to use any intellectual property and use, develop or grant licenses in respect of any intellectual property;

**6.6.26 Investments and Dealing with Investments**

- (a) To acquire, subscribe for and/or invest in any of the investments of the Fund as outlined in Clause 6.3 (and without limiting the generality of the foregoing);
- (b) to hold, use, hire or take on hire purchase, obtain a lease, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, demise, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, re-convey, release or discharge or otherwise deal with any real or personal property (including rights in action and other intangible property) with or without deferred, restricted, qualified or special rights;
- (c) to change, transpose or vary any investments or property from time to time forming part of the Fund for other investments or property;
- (d) to invest and deal in any contracts traded on any futures or stock exchange and to take, grant and exercise options over those contracts and options over options over those contracts;
- (e) to exercise all rights, powers and privileges and perform all duties and obligations relating or incidental to the making of or the holding of any interest in any investment including assenting to any arrangement and modifying the rights, powers, privileges, duties and obligations attaching to any investment;

**6.6.27 Real and Personal Property**

- (a) To purchase, acquire, dispose of, take on bailment, lease, sub-lease, exchange, hire, maintain, or otherwise deal with or acquire any real and personal property and in particular (without limitation) any chattels, machinery, plant and stock-in-trade;
- (b) to manage, use and let, to erect, pull down, rebuild and repair buildings and erections, to carry out improvements of any nature, to make allowances to and arrangements with tenants, to grant or acquire easements or other rights, strata title, subdivide, mortgage, sub-mortgage, charge, vary or

revoke and generally to deal with any real property or interest or to join in dealing with the same as if the Trustee entitled thereto without being responsible for loss;

- (c) to apply the whole or any part of the Fund in or towards payment of any liability undertaken by the Trustee in relation to the acquisition of property intended to form part of the Fund;

**6.6.28 Lending**

Provided and to the extent the Superannuation Laws allow it and the Fund maintaining its Complying SMSF status, to lend all or any part of the Fund, advance moneys and provide financial assistance on such terms and conditions with or without interest or with or without security as the Trustee thinks fit;

**6.6.29 Letting**

To lease, licence or let any real or personal property owned by the Fund or held by the Trustee pursuant to the provisions of this Deed upon such terms and conditions as the Trustee thinks fit, to accept a surrender from, and to make arrangements with a lessee, tenant, user or occupier as the Trustee thinks fit;

**6.6.30 Licencing**

To acquire, sell or transfer any licence or permit which the Trustee sees fit to engage or facilitate any business which the Trustee are permitted to under this Deed or SISA;

**6.6.31 Legal Proceedings and Disputes**

To institute, join in and defend any legal proceedings by way of mediation, conciliation, arbitration or other dispute resolution process and to proceed to the final end and determination of those proceedings or to discontinue, compromise or settle those proceedings or any other claim or demand upon such terms and conditions as the Trustee in its absolute discretion thinks fit;

**6.6.32 Partition**

To partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property and to pay any monies by way of equality of partition;

**6.6.33 Renting**

Provided and to the extend the Superannuation Laws allow it and the Fund maintaining its Complying SMSF status, to rent premises from any person, acquire the interest of any lessee in any lease or right of use or occupancy, hire, take subject to lease, grant leases, sub-leases, tenancies or rights of any nature;

**6.6.34 Shares or Stocks**

To exercise all rights and privileges and perform all duties appertaining to any shares or stocks for the time being, with liberty to assent to any arrangement modifying such rights, privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any company and for any such purpose to deposit, surrender or exchange any of the shares or stock and to pay any calls or contributions or other necessary expenses in connection with any shares or stock or any title;

**6.6.35 Unit Trust and Managed Investments**

To acquire interests in separately managed accounts, managed investments, any unit trust or other type of trust whether by way of application or purchase or by way of settlement by the Trustee in the establishment of such managed accounts, managed investments or unit trust and to exercise all rights and perform all obligations and receive all distributions as a holder of any interest in such investments or trusts;

**6.6.36 To Do All Acts and Things**

To do all acts and things over and in respect of the Assets of the Fund and exercise all powers which it could do if the Trustee was the absolute and beneficial owner of the Assets and to do all such other things as are or may seem to the Trustee in its absolute discretion to be incidental or conducive to the furthering of the interests of the Members conferred on the Trustee by this Deed.

**6.7 Scope and Exercise of Trustee's Discretion**

6.7.1 Subject to the prohibitions, limitations or provisions of the Superannuation Laws and the Fund maintaining its Complying SMSF status, the Trustee has absolute powers and uncontrolled discretion or power which shall be absolutely binding on the Members.

- 6.7.2 The Trustee discretions may be exercised as if the Trustee were the absolute beneficial owner of any Asset of the Fund.
- 6.7.3 Unless expressly required by the Superannuation Laws the Trustee is not bound by any direction or anyone's wishes when exercising any discretion vested in it under the provisions of this Deed as to the appointment, dealing with Contributions, Assets, payment of any Benefit, application of the income or capital of the Trust Fund and any act of the Trustee whatsoever.
- 6.7.4 Unless required by this Deed or the Superannuation Laws, the Trustee is not bound to give any reasons or explanations for its acts or omissions, including without limitation in relation to exercising or omitting from exercising any power, decision or discretion.
- 6.7.5 The decision of the Trustee in relation to any dispute whether regarding interpretation of this Deed or the rights of Member or without limitation in relation to exercising or omitting from exercising any power, decision or discretion shall be deemed final, conclusive and binding upon all interested parties.

## **7 Trustee Meetings and Decision Making**

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### **7.1 Meetings**

- 7.1.1 The Trustee may convene a meeting of the Trustee at any time by giving written or oral fourteen days notice of it to all Trustees or directors of the Trustee, informing the place, date, time and general reason for the meeting.
- 7.1.2 The Trustee may adjourn and regulate their meetings as they see fit.
- 7.1.3 The Trustee may communicate by discussion at the meeting, telephone, mail, facsimile or email transmission.
- 7.1.4 If an individual Trustee or director of corporate Trustee is able to attend the meeting through a communication link established by telephone, audio or visual communication device, all decisions made at the meeting will be valid and effective as if that person was physically present.

**7.2 Trustee Decision Making**

Subject to any requirements by the Superannuation Laws:

- 7.2.1 Each individual acting as Trustee or each director of the corporate Trustee will have one vote.
- 7.2.2 If there are two individual Trustees or two directors of the corporate Trustee, the decision of the Trustees must require both persons to make or agree on the decision.
- 7.2.3 If there more than two individual Trustees or directors of the corporate Trustee, the decision of the Trustees must require a majority of the persons to make or agree on the decision.
- 7.2.4 Any decision made by the Trustee at the meeting will be deemed to be a resolution that has been unanimously passed at a duly conducted meeting of the Trustee and such resolution will take effect when passed by a majority of votes of those who are present at the meeting and who are entitled to vote.
- 7.2.5 The Trustee must keep minutes of meetings and must record:
  - (a) the names of individual Trustees or directors of the corporate Trustee present at each meeting;
  - (b) all orders, resolutions and proceedings of meetings of Trustee;
  - (c) any matter that the Superannuation Laws require to be recorded in the books of the Fund.
- 7.2.6 Any minutes or written record of a decision made by the Trustee, and any identical copy of such minutes or written record of a decision will be conclusive evidence of that decision provided such minutes or record or its identical copy is signed by all of the individual Trustees or directors of the corporate Trustee.
- 7.2.7 A separate identical copy of any minutes or written record of a decision made by the Trustee if signed separately by one or more individual Trustees or directors of the corporate Trustee shall constitute one document.

## **8 Member Rules**

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### **8.1 Admission to be a Member**

8.1.1 The Trustee has absolute powers and uncontrolled discretion as to who may be admitted as a Member of the Fund.

8.1.2 An individual may become a Member, provided:

(a) the individual:

(i) is 18 years or over;

(ii) is not under a Legal Disability;

(iii) is not a Disqualified Person;

(iv) provides to the Trustee a signed and dated Application for Membership Form in the form of Schedule 2 or in such other form as the Trustee may approve;

(v) consents in writing to act as a Trustee or a director of the corporate Trustee;

(vi) agrees to be bound by this Deed and the constitution (if any) of a corporate Trustee; and

(vii) signs a declaration that they understand their duties as trustee of a SMSF; and

(b) the Trustee accepts the Application for Membership.

8.1.3 An individual will also become a Member if:

(a) the individual or another person makes a Contribution to the Fund on behalf of that individual; and

(b) the Trustee accepts the Contribution; and

(c) the individual satisfies all other requirements set out in Clause 8.1.

**8.2 Membership**

- 8.2.1 Once admitted as a Member, each Member:
- (a) acts as a Trustee or a director of the corporate Trustee;
  - (b) is bound by and must comply with this Deed and or the constitution of a corporate Trustee;
  - (c) must comply with any requirements of the Trustee and the Superannuation Laws.

**8.3 Ceasing to be a Member**

- 8.3.1 A Member of the Fund shall at all time continue to be a Member until that person ceases to be a Member.
- 8.3.2 Subject to the Superannuation Laws requirements, the Trustee has absolute powers and uncontrolled discretion to expel any Member of the Fund.
- 8.3.3 An individual ceases to be a Member upon the earlier to occur of the following:
- (a) Member has died and any LPR of the Member ceases to act as Trustee or director of the corporate Trustee;
  - (b) the Trustee ceases to hold any Benefits for or in respect of the Member;
  - (c) the Member is no longer entitled to receive Benefits from the Fund;
  - (d) the Member is prohibited from being a Trustee under this Deed, SISA or SISR;
  - (e) the Trustee determines that the Member should no longer be a Member;
  - (f) six (6) months for the Fund to comply with the Trustee/Member rules under SISA have elapsed.
- 8.3.4 If a Member ceases to be a Member of the Fund, that person must retire as a Trustee of the Fund or a director of the corporate trustee of the Fund.

- 8.3.5 Where a Member is expelled from or ceases to be a Member of the Fund the balance of the Member's account must be transferred as nominated by the Member within 60 days of the date of the Trustee's Member expulsion notice and if a nomination is not made within that period, to an Eligible Rollover Fund at the discretion of the Trustee.

**8.4 Member's Register and Records**

- 8.4.1 The Trustee must keep the Register and will enter on the Register:
- (a) the name and address of a Member;
  - (b) the Member's Tax File Number;
  - (c) the date at which the name of the Member was entered in the Register in respect of the membership;
  - (d) the Member's marital status;
  - (e) the Member's status of Gainful Employment;
  - (f) the details of the Member's Dependants and/or Beneficiaries;
  - (g) any other matter the Trustee thinks fit but so that no notice of any trust express implied or constructive shall be entered on the Register.
- 8.4.2 The Trustee must keep a record of:
- (a) the Tax Free and Taxable Components of a Member's Account;
  - (b) all Contributions, Earnings, amounts allocated to or from any Fund Reserves;
  - (c) Superannuation Benefits paid and all other amounts credited or debited to a Member's Account;
  - (d) any other matter the Trustee thinks fit.

**8.5 Meetings of Members**

- 8.5.1 The Members may convene a meeting of the Members in such manner as the Members think fit, subject to this Clause 8.5.
- 8.5.2 The Trustee may at any time convene a meeting of the Members upon receiving a written request from a Member.
- 8.5.3 At least ten (10) days' notice must be given of every meeting and the notice must specify the date, place and time of the meeting, the general nature of the business to be transacted and that a proxy may be appointed to vote on behalf of the Member at the meeting.
- 8.5.4 Votes at a meeting of the Members may be given either personally or by proxy. A proxy must be in the usual or common form or in any other form as the Trustee agrees.
- 8.5.5 At a meeting the Members (whether or not a Member or their proxy) shall appoint a Chairman of the meeting.
- 8.5.6 Subject to Clause 8.5.7, each Member is entitled to one vote on each matter to be decided. The Chairman will not have a casting vote (in the event of an equality of votes) in addition to the vote to which he or she is entitled as a Member or as proxy.
- 8.5.7 A Member may require that the vote be cast or recast with each Member having such number of votes corresponding to the amount of the Member's Benefit in the Fund that the Member holds at the time of the vote. In such case, every dollar of the Member's Benefit will equate to one vote.
- 8.5.8 If there are two Members in the Fund, the decision of the Members must require both persons to make or agree on the decision.
- 8.5.9 If there more than two Members, the decision of the Members must require a majority of the persons to make or agree on the decision.
- 8.5.10 The Trustee must oversee the conduct of the meeting of Members and must keep minutes of the meetings.

- 8.5.11 Any decision made by the Members at the meeting will be deemed to be a resolution that has been unanimously passed at a duly conducted meeting.
- 8.5.12 A resolution must be in writing and signed by all Members.
- 8.5.13 Any requirements regarding notifications, convening or conducting a meeting of the Members may be waived by unanimous agreement of the Members.

## **8.6 Non-Member Spouses**

- 8.6.1 The Non-Member Spouse may request the Trustee to create a new interest for the Non-Member Spouse in the Fund.
- 8.6.2 Subject to the Superannuation Laws, the Trustee has absolute discretion or power in relation to creation of a Superannuation Entitlement for a Non-Member Spouse and may refuse such request.

# **9 Contributions**

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## **9.1 Standards and Restrictions on Contributions**

- 9.1.1 When accepting Contributions, the Trustee must comply with requirements under the Superannuation Laws.
- 9.1.2 The Contributions must be:
  - (a) permitted by the Superannuation Laws;
  - (b) in respect of the Member or Spouse of the Member; and
  - (c) made by an Authorised Contributor.
- 9.1.3 The Trustee must not accept Contributions if:
  - (a) the Member's Tax File Number is not provided to the Trustee; or
  - (b) The Trustee is aware that the Contribution will exceed the amount of the Member's Non-Concessional Contribution Cap or compromise the Fund's status as a Complying SMSF.

**9.2 Form and Type of Contributions**

9.2.1 Subject to the restrictions of the Superannuation Laws, the Trustee may accept Contributions made into the Fund in the following form:

- (a) money or money equivalent;
- (b) in specie transfer of an asset;
- (c) increasing value of an existing asset;
- (d) paying (or otherwise reducing) the Fund's liabilities;
- (e) real property;
- (f) a security listed on a stock exchange; or
- (g) any other asset.

9.2.2 The Trustee may accept:

- (a) Concessional Contributions, that may include (without limitation):
  - (i) Mandated Employer Contributions, additional voluntary contributions made by the Employer, or voluntary Employee salary sacrifice contributions;
  - (ii) personal Contributions made by a person who is under 75 years of age and has been Gainfully Employed on at least a part-time basis in respect of the Financial Year in which the Trustee accepts the Contributions;
  - (iii) personal Contributions made by a person who is not Gainfully Employed and is under 65 years of age; or
  - (iv) a transfer from a foreign superannuation fund;
- (b) Non-Concessional Contributions or Non-Mandated Employer Contributions, that may include (without limitation):

- (i) personal Contributions for which no tax deduction is claimed;
  - (ii) Contributions made by an Employer over and above Super Guarantee or award obligations (such as salary sacrifice Contributions); or
  - (iii) Spouse Contributions;
- (c) Other Contributions such as:
- (i) government Co-Contributions;
  - (ii) a Contribution relating to a personal injury or an Insurance;
  - (iii) a Contribution relating to a small business CGT concession roll-over amount; or
  - (iv) a Contribution that is a roll-over superannuation benefit.

### **9.3 Age Restrictions**

The Trustee may accept a Contribution in respect of a Member who is, at the time of the Contribution is made:

- 9.3.1 Under 65 years of age;
- 9.3.2 Aged 65 or over but under 75 when the Member is Gainfully Employed on at least a part-time basis;
- 9.3.3 Turning 75 years of age when the Contribution is received and no later than 28 days after the end of the month that the Member turns 75;
- 9.3.4 Aged 75 or over when the Contribution is a Mandated Employer Contribution or is otherwise permitted by the Superannuation Laws.

### **9.4 Discretion of the Trustee Regarding Contributions**

- 9.4.1 The Trustee has absolute discretion and may reject a Contribution if the Trustee considers that the Contribution will breach Superannuation Laws or compromise the Fund's status as a Complying SMSF.

- 9.4.2 The Trustee may reject a Contribution at the time or immediately after it is given to the Fund.
- 9.4.3 The Trustee will return a Contribution to a contributor once the Trustee becomes aware that the Contribution must be returned in accordance with the Superannuation Laws.

**9.5 Spouse Contributions Splitting**

- 9.5.1 Subject to the Superannuation Laws, the Trustee may, upon receiving a written application from a Member, roll over, transfer or allot to the Members' Spouse an amount equal to an amount of the Splittable Contributions made to the Fund by, for, or on behalf of the Member in:
  - (a) the last Financial Year that ended before the application; or
  - (b) the Financial Year in which the application is made, where the Member is closing the Member's Accumulation Account or otherwise the Member's entire benefit is to be rolled over, transferred or cashed in that Financial Year.
- 9.5.2 Any Splittable Contribution made in accordance with the Member's application, can be transferred by the Trustee to the Spouse's account in the same or another Fund.
- 9.5.3 Superannuation splitting is not mandatory and the Trustee may at its discretion refuse to allow any split of Contributions.
- 9.5.4 The Trustee must not make a Spouse Splittable Contributions if:
  - (a) the Spouse is age 65 or above; or
  - (b) the Spouse would be entitled to immediately access the Benefit because he or she is aged between the relevant Preservation Age and 65 years and has retired.
- 9.5.5 A Spouse Splittable Contributions does not include:
  - (a) a roll-over superannuation benefit;
  - (b) a lump sum paid from a foreign superannuation fund; or
  - (c) a directed termination payment.

## **10 Rollovers or Transfers**

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### **10.1 Rollover or Transfer Into and Within the Fund**

Subject to the Superannuation Laws and Fund retaining its status as a Complying SMSF, the Trustee may accept a Benefit rollover or any superannuation transfer for or on behalf of the Member into or within the Fund.

### **10.2 Rollover or Transfer From the Fund**

- 10.2.1 Subject to the Superannuation Laws, the Family Law Act and the Fund retaining its status as a Complying SMSF, the Trustee at written request of a Member, will make or facilitate a Benefit rollover, any superannuation transfer, and transfer of any money or asset (“Benefit Rollover”) for or on behalf of the Member of all or part of a Member’s Account to another superannuation entity or another Member’s Account.
- 10.2.2 The Trustee has absolute discretion and may refuse to make or facilitate a Benefit Rollover if:
- (a) it is prohibited by the Superannuation Laws;
  - (b) it will cause a breach of the minimum Superannuation Benefit provisions of Division 5.3 of SISR;
  - (c) the Fund’s status as a Complying SMSF would be compromised;
  - (d) the trustee of the recipient superannuation fund believes that the recipient superannuation fund may not be a Complying SMSF.
- 10.2.3 The receipt by the recipient superannuation fund will constitute a complete and valid discharge to the Trustee and it will release the Trustee from any further liability or duty in relation to the facilitated by the Trustee the Benefit Rollover.

## **11 Benefits**

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### **11.1 Types of Benefits**

11.1.1 Subject to the Superannuation Laws, a Benefit to a Member or Beneficiary may be paid as:

- (a) an Account-Based superannuation Income Stream or Pension;
- (b) a Lump Sum;
- (c) an annuity;
- (d) a combination of Lump Sum and Income Stream; or
- (e) a Non-Account-Based or Defined-Benefit Pension.

### **11.2 Form of Benefit Payment**

11.2.1 Subject to the Superannuation Laws, the Trustee may pay a Benefit in the following form:

- (a) money or money equivalent;
- (b) in specie transfer of an Asset which is attributed such value as the Trustee determines appropriate;
- (c) offset against, paying or otherwise reducing any debt or liability owing by the Member or Beneficiary to the Trustee or an Employer; or
- (d) any combination of the above.

### **11.3 Conditions of Release**

11.3.1 When paying out a Benefit to a Member or Beneficiary, the Trustee must comply with requirements under the Superannuation Laws.

11.3.2 The Trustee can only pay a Member's Benefits when:

- (a) the Member reaches their Preservation Age; and/or
- (b) meets one of the conditions of release.

**11.4 Lump Sum Benefit**

Subject to the Superannuation Laws, the Trustee shall pay out a Benefit as a Lump Sum:

11.4.1 to a Member, when the Member:

- (a) has reached their Preservation Age and Retires;
- (b) has reached their Preservation Age and begins a Transition to Retirement Income Stream;
- (c) is 60 years of age or after and ceases Gainful Employment;
- (d) is 65 years of age; or
- (e) becomes Totally and Permanently Incapacitated.

11.4.2 to a Beneficiary in respect of the Member, when the Member has died.

**11.5 Other Member's Benefit**

11.5.1 Subject to the Superannuation Laws, the Trustee may pay out a part of a Member's Benefit (such as Pension or other entitlement) before the Member has reached Preservation Age when a Member:

- (a) becomes Permanently Incapacitated;
- (b) becomes Temporary Incapacitated;
- (c) ceases Gainful Employment;
- (d) experiences severe financial hardship;
- (e) satisfies the criteria of compassionate grounds; or
- (f) experiences Terminal Medical Condition.

**11.6 Transition to Retirement Income Stream**

- 11.6.1 The Trustee may pay a Transition to Retirement Income Stream to a Member when the Member attains their Preservation Age and has not ceased Gainful Employment.
- 11.6.2 A Transition to Retirement Income Stream must be an Account-Based Pension.
- 11.6.3 The amount paid to the Member each Financial Year must meet a specified minimum and must not exceed 10% of the account balance on the commencement of a Transition to Retirement Income Stream for the Financial Year it starts or on 1 July for each subsequent Financial Year.

**11.7 Temporary Incapacity Income Stream**

- 11.7.1 A Member's Benefits can be paid as a Temporary Incapacity Income Stream if the Member suffers from Temporary Incapacity.
- 11.7.2 A Temporary Incapacity Income Stream can be paid for such period and amount as the Trustee determines until the Member no longer suffers from Temporary Incapacity.

**11.8 Severe Financial Hardship**

- 11.8.1 The Trustee may pay Benefits to a Member under severe financial hardship if the Trustee is of the opinion that the Member:
  - (a) cannot meet reasonable and immediate family living expenses; and
  - (b) has been receiving relevant government income support payments for a continuous period of 26 weeks and was receiving that support at the time they applied to the Trustee.

**11.9 Compassionate Grounds**

11.9.1 The Trustee may pay Benefits to a Member on compassionate grounds if:

- (a) a Member does not have the financial capacity to meet an expense; and
- (b) the Department of Human Services determines, in writing, that the release is permitted.

**11.10 Terminal Medical Condition**

11.10.1 A Member's Benefits can be paid if:

- (a) the Trustee is of the opinion that the Member has a Terminal Medical Condition; and
- (b) two medical professionals certify that the Terminal Medical Condition is likely to result in the Member's death in the next 24 months.

**11.11 When Member or Beneficiary is Under Legal Disability**

11.11.1 Subject to the Superannuation Laws, when a Beneficiary of a deceased Member is a minor under 18 years of age or a Member or Beneficiary is a person with a mental disability or is Incapacitated or otherwise is under the Legal Disability, the Trustee in their unfettered discretion thinks fit may pay all or part of a Benefit of that Member or Beneficiary in the following manner:

- (a) to the guardian or the person who is responsible for that Member or Beneficiary; or
- (b) to or towards the advancement, maintenance, education, welfare or benefit in life of the Member or Beneficiary.

11.11.2 The receipt by the guardian or the person recipient of the Benefit pursuant Clause 11.11 will constitute a complete and valid discharge to the Trustee and it will release the Trustee from any further liability or duty in relation to the payment of the Benefit.

## **12 Death of a Member**

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### **12.1 What Happens When a Member Dies**

#### 12.1.1 On the death of a Member:

- (a) the Member's LPR will be appointed as a replacement Trustee or a director of the corporate Trustee, provided that the LPR is eligible to act as Trustee and has consented to act as Trustee;
- (b) the LPR appointment will begin when the Member dies and end when Death Benefits commence to be payable in respect of the Member, after which period the LPR must resign or be removed as a Trustee or a director of the corporate Trustee.

#### 12.1.2 On the death of a Member, the Trustee will hold the deceased's Member's Benefit and the Trustee at their sole discretion, but subject to further provisions in this Clause 12.1, will pay a Benefit to any one or more of the Member's Dependants or the Member's LPR or another person as permitted by the Superannuation Laws, based upon whether:

- (a) there is a valid Reversionary Pension or other valid reversionary Income Stream that was paid to the deceased Member;
- (b) there is a valid Binding Death Nomination, therefore paragraph (a) above does not apply and the Trustee will pay a Benefit pursuant Clause 12.4;
- (c) there is no Binding Death Nomination, therefore paragraph (a) above does not apply and the Trustee will pay a Benefit pursuant Clause 12.3; or
- (d) there is Death Benefit Agreement and based upon the terms of the Agreement the paragraph (a) above may or may not apply pursuant Clause 12.5;

#### 12.1.3 The Trustee may only pay a Benefit to a Non-Dependant where, after making reasonable enquiries, the Trustee has not been able to find the Member's LPR or a Dependant.

## **12.2 Reversionary Pension or Reversionary Income Stream**

If there is a valid Reversionary Pension or other valid reversionary Income Stream (“Pension”) that was paid to the deceased Member, the Trustee may transfer or continue to pay any Pension of the deceased’s Member to such Dependants or the Reversionary Beneficiary of the Member as permitted by the Superannuation Laws to receive the Pension.

## **12.3 Non-Binding Death Benefit Nomination**

- 12.3.1 Prior to their death, a Member may provide a written Death Benefit Nomination to the Trustee, by which the Trustee may, in their discretion, provide the Member’s Superannuation Entitlement to one or more Beneficiaries listed in that Nomination and give direction to the Trustee to act in a particular way upon the Member’s death.
- 12.3.2 A Member may confirm, amend or revoke the Nomination by written notice given to the Trustee.
- 12.3.3 Subject to the Superannuation Laws, the Trustee must accept a Death Benefit Nomination, but the Nomination is not binding upon the Trustee and the Trustee in their unfettered discretion may choose but is not obliged to pay a Death Benefit to persons nominated in that Nomination, or to follow the directions specified in the Nomination.
- 12.3.4 The Trustee must not comply with any Nomination if it is not permitted by the Superannuation Laws or would compromise the Fund’s status as a Complying SMSF.

## **12.4 Valid Binding Death Nomination**

- 12.4.1 Prior to their death, a Member may provide a written Binding Death Nomination to the Trustee, by which the Trustee are bound to provide the Member’s Superannuation Entitlement to one or more Beneficiaries listed in that Nomination or a LPR, and give direction to the Trustee to act in a particular way upon the Member’s death, provided the Nomination is valid and binding at the date of the Member’s death.
- 12.4.2 A Member may confirm, amend or revoke the Nomination by written notice given to the Trustee.

- 12.4.3 A Binding Death Nomination and any revocation or amendment to it must:
- (a) be in writing;
  - (b) require to pay all Member's Superannuation Entitlement to one or more Beneficiaries or a LPR of the Member; and
  - (c) be signed by the Member in the presence of more than one person, each of whom has turned 18 years of age; and neither of whom is a person mentioned in the Binding Death Nomination.
- 12.4.4 Subject to the Superannuation Laws, the Trustee must accept the Binding Death Nomination and the Nomination will be binding upon the Trustee and the Trustee is obliged to pay all Member's Superannuation Entitlement to persons nominated in that Nomination, or to follow the directions specified in the Nomination.
- 12.4.5 A Binding Death Benefit Nomination will continue indefinitely and in full force and effect until the Member has revoked it by written notice to the Trustee or it is lapsed under the terms of the Nomination.
- 12.4.6 The Trustee will not be bound to comply with a Binding Death Nomination if:
- (a) the Binding Death Nomination has been revoked by the Member who made the Nomination prior to their death;
  - (b) the Binding Death Nomination has lapsed either under the terms of the Nomination or as a result of the operation of the Superannuation Laws;
  - (c) the compliance by the Trustee with the Binding Death Nomination would be prohibited by or result in a breach of the Superannuation Laws or cause the Fund to become a Non-Complying SMSF.

## **12.5 Death Benefit Agreement**

- 12.5.1 Prior to their death, a Member may enter into with the Trustee a written Death Benefit Agreement, by which the Trustee agrees to provide the Member's Superannuation Entitlement, upon the Member's death:
- (a) to one or more Beneficiaries listed in that Agreement or a LPR;
  - (b) in a particular way, manner and form that the Member or the LPR directs including whether the Benefit is to be a Lump Sum Benefit, a Reversionary Pension or combination of both.
- 12.5.2 A Member may confirm, amend or revoke the Death Benefit Agreement by written notice given to the Trustee. If the Death Benefit Agreement is amended, the Trustee shall act in accordance with that amended Agreement.
- 12.5.3 The Trustee will not be bound to comply with a Death Benefit Agreement if the compliance by the Trustee would be prohibited by or result in a breach of the Superannuation Laws or cause the Fund to become a Non-Complying SMSF.

## **12.6 Payment of Additional Amounts**

Provided the payment is permitted by the Superannuation Laws, the Trustee may, in their unfettered discretion, pay additional amounts to the deceased Member's Dependents or LPR from a Reserve Account or other account but these amounts would not form part of the deceased Member's Benefit.

# **13 Accounts**

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## **13.1 Member's Accounts**

- 13.1.1 The Trustee may establish and keep more than one account for a Member for the allocation of Fund Assets and Earnings and any other account the Trustee thinks fit, and the accounts may include:

- (a) a Member's Accumulation Account;
- (b) an Income Stream Account or Pension Account;
- (c) a Reserve Account; and
- (d) any other Account the Trustee thinks fit.

13.1.2 The Trustee must maintain and manage Accounts properly and in accordance with this Deed and Superannuation Laws.

### **13.2 Member's Accumulation Account**

13.2.1 The Trustee must establish a separate Member's Accumulation Account for each Member.

13.2.2 Subject to any restrictions imposed by the Superannuation Laws, the Trustee will add to a Member's Accumulation Account the following:

- (a) Contributions received in respect of the Member;
- (b) Positive Earnings allocated by the Trustee to a Member;
- (c) Benefit Rollover or Superannuation entitlement transfer into the Fund on behalf of the Member;
- (d) the proceeds of any Policy;
- (e) any other amount which the Trustee determines will be credited to the Member's Accumulation Account.

13.2.3 Subject to any restrictions imposed by the Superannuation Laws, the Trustee will deduct from a Member's Accumulation Account the following:

- (a) any costs or fees and any other liabilities attributed to the Account;
- (b) tax payable and/or Excess Contributions Tax liability;
- (c) losses of the Fund;
- (d) any Benefits paid to or in respect of a Member or Beneficiary;

- (e) Negative Earnings allocated by the Trustee to a Member;
- (f) Benefit Rollover or Superannuation entitlement transfer out of the Fund or into another Account on behalf of the Member;
- (g) Splittable Contributions;
- (h) Payment Split; and
- (i) any other amount which the Trustee determines will be debited from the Member's Accumulation Account.

**13.3 Income Stream Account or Pension Account**

- 13.3.1 The Trustee may establish and maintain a separate Income Stream Account for each Income Stream payable from the Fund.
- 13.3.2 The Trustee may establish and maintain a separate Pension Account for each Pension payable from the Fund.
- 13.3.3 The Trustee must maintain appropriate records of the Income Stream Account or Pension Account (as the case may be), including records of:
  - (a) the value of the Income Stream or Pension at commencement;
  - (b) the Taxable and Tax-Free Components of the Income Stream or Pension at commencement;
  - (c) the Earnings from Assets set aside to support the Income Stream or Pension; and
  - (d) the Income Stream or Pension payments made.

**13.4 Reserve Account**

- 13.4.1 The Trustee may establish and keep more than one Reserve Account for any purposes permitted under the Superannuation Laws and the Trustee may apply specific rules for any Reserve Account, make applications, add, deduct or allocate amounts to any Reserve Account as the Trustee thinks fit.

- 13.4.2 To operate and maintain a Reserve Account the Trustee must formulate and implement a separate investment strategy for each Reserve Account, which strategy must be consistent with the Fund's Investment Strategy.
- 13.4.3 Subject to the Superannuation Laws, a Reserve Account may be used without limitation and as the Trustee thinks fit to:
- (a) fund Income Stream or Pension;
  - (b) fund payment of any Benefit upon a Member's death or upon a Member satisfying any Condition of Release;
  - (c) pay any expenses or liabilities of the Fund;
  - (d) manage Assets and investments of the Fund;
  - (e) accommodate any other payment which the Trustee determines would not be prohibited by or result in a breach of the Superannuation Laws or cause the Fund to become a Non-Complying SMSF.
- 13.4.4 In making allocation from a Reserve Account the Trustee must take into account Concessional and Non-Concessional Contribution Caps for a particular Member.

### **13.5 Earnings**

- 13.5.1 The Trustee must allocate the Earnings of the Fund to each Member on a proportional basis based on each Member's percentage interest in the Fund.
- 13.5.2 The Trustee will determine the amount of the Earnings of the Fund for all or part of a Financial Year.

## **14 Operation and Administration**

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### **14.1 Accounting Records**

- 14.1.1 The Trustee must keep the accounting records and ensure that the records:

- (a) correctly record and explain the transactions and financial position of the Fund; and
  - (b) are kept in a way that enables to prepare:
    - (i) a statement of financial position;
    - (ii) an operating statement; and
    - (iii) the accounts and statements specified in the Regulations.
- 14.1.2 The Trustee must keep the accounting records of the Fund in a way that enables them to be conveniently and properly audited in accordance with the Superannuation Laws.
- 14.1.3 The Trustee must ensure that:
- (a) the records are retained for at least 5 years after the end of the year of income to which the transactions relate; and
  - (b) the records are kept in Australia; and
  - (c) records are kept:
    - (i) in writing in the English language; or
    - (ii) in a form in which they are readily accessible and readily convertible into writing in the English language.

## **14.2 Annual Return**

The Trustee, at any time during the Financial Year must, within the reporting period specified by SISA prepare and lodge an annual return and any certificate or other documents required to be given to a Regulator for a period as required by the Superannuation Laws.

## **14.3 Annual Audit**

- 14.3.1 The Trustee must for each Financial Year:
- (a) appoint an Auditor to give the Trustee a report of the operations of the Fund for that Financial Year;

- (b) if an Auditor requests in writing, to give to the Auditor within 14 days of the request, a document that is relevant to the preparation of the report.

#### **14.4 Taxation**

- 14.4.1 The Trustee must pay all Taxes in respect of the Fund properly assessed to the Trustee.
- 14.4.2 The Trustee may as it sees fit pay Taxes liable to be paid in respect of any Contributions.
- 14.4.3 The Trustee may as it sees fit deduct and withhold Taxes from:
  - (a) any Benefit paid or payable by the Trustee;
  - (b) any Contribution received by the Trustee;
  - (c) any Income or Earnings of the Fund;
  - (d) any Expenses of the Fund; or
  - (e) any another amount which the Trustee believes may be payable as a consequence of a payment given to a Member.

## **15 Variation and Termination**

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### **15.1 Variation of the Deed**

- 15.1.1 Subject to the compliance with the Superannuation Laws, the Trustee may at any time and from time to time revoke, add to or vary all or any of the provisions of this Deed, or to make from time to time any revocation, variation, alteration or addition to this Deed (“the Variation”).
- 15.1.2 The Variation must be made by:
  - (a) a Deed executed by the Trustee;
  - (b) an oral declaration of the Trustee which is recorded or evidenced by a minute or written resolution; or
  - (c) a written resolution of the Trustee.

15.1.3 The Variation:

- (a) must be permitted by the Superannuation Laws;
- (b) must not affect the Fund's status as a Complying SMSF;
- (c) must not affect the amount of any Benefit of a Member or Beneficiary, unless the Trustee has obtained that Member's or Beneficiary's consent in writing in relation to the Variation;
- (d) must not have the effect or result that the Fund does not have or will not continue to have the sole or primary purpose of providing of old age pensions as provided in this Deed.

**15.2 Termination of the Fund**

15.2.1 The Trustee must terminate the Fund if:

- (a) all Members and or Beneficiaries of a deceased Member request and consent to termination of the Fund;
- (b) the Fund has no Members and has no Beneficiaries of a deceased Member;
- (c) the Fund must be wound up by requirement of the Regulator or Superannuation Laws;
- (d) The Fund has no Trustee for a period of more than ninety (90) days.

15.2.2 The Trustee may terminate the Fund if the Trustee reasonably resolves that the Fund should be wound up and terminated.

15.2.3 On the date of termination of the Fund ("the Termination Date") the Trustee must:

- (a) not accept any further Contributions other than the Contributions due prior to the Termination Date;
- (b) collect any arrears of Contributions;

- (c) dispose of any Assets as the Trustee sees fit to meet any debts, expenses and liabilities of the Fund;
  - (d) pay out or otherwise discharge any outstanding debts, expenses and liabilities of the Fund;
  - (e) not admit any new Member of the Fund;
  - (f) make or facilitate a Benefit Rollover or Superannuation Entitlement Transfer of amounts standing to the credit of the Member's Accounts or Beneficiary's of a deceased Member to the Authorised Recipient of Benefits or Superannuation Entitlements;
  - (g) pay out any Superannuation Entitlements due by the Fund to a Member or Beneficiary of a deceased Member.
- 15.2.4 Any remaining funds after all payments required to be made by virtue of the above provisions or as the result of the termination of the Fund shall be held by the Trustee on trust for the former Members or Dependents or Beneficiaries of a deceased Member in such shares and to one or more to the exclusion of the other or others as the Trustee sees fit in its absolute discretion. The Trustee will retain sole discretion as to where and how those remaining funds are to be paid and must ensure that the payment complies with the Superannuation Laws.

## **16 Governing Law and Superannuation Laws**

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### **16.1 Governing Law**

This Deed is governed by and shall be construed in accordance with the laws of the State or Territory of the Commonwealth of Australia, and the Trustee and Members agree to submit to the non-exclusive jurisdiction of the courts of the State or Territory of the Commonwealth of Australia.

### **16.2 Superannuation Laws**

- 16.2.1 The terms and conditions of this Deed are subject to the provisions of the Superannuation Laws.

16.2.2 Any provision that may affect the Fund's status as a Complying SMSF shall be deemed void and have no force or effect.

16.2.3 If there is a conflict or inconsistency between the terms of this Deed and the provisions of the Superannuation Laws, then the Superannuation Laws shall prevail to the extent of inconsistency so that the Fund maintains its status as a Complying SMSF.

**16.3 Severance**

If any provision of this Deed or its application to any party or any circumstance is or becomes illegal, unenforceable, or invalid then the remaining provisions of this Deed will not be affected but will remain in full force and effect and will be valid and enforceable to the fullest extent permitted by law.

**SCHEDULE 1**

**ITEM 1**

**DATE OF CREATION OF THE FUND:** 01/05/2020

**ITEM 2**

**FOUNDER:** Ashwin Panchal 193A Landsdale Road  
Landsdale Western Australia 6065

**ITEM 3**

**TRUSTEES:** Amir Alam Qureshi, 207C Nollamara Avenue  
Nollamara Western Australia 6061

Hina Alam Qureshi, 207C Nollamara Avenue  
Nollamara Western Australia 6061

Mohmad Vansiwala, 14A Bayley Street  
Dianella Western Australia 6059

**ITEM 4**

**MEMBERS:**

1. Amir Alam Qureshi, 207C Nollamara Avenue Nollamara Western Australia 6061
2. Hina Alam Qureshi, 207C Nollamara Avenue Nollamara Western Australia 6061
3. Mohmad Vansiwala, 14A Bayley Street Dianella Western Australia 6059

**ITEM 5**

**NAME OF THE FUND:** The A & H Qureshi Superannuation Fund

**SMSF Trust Deed**

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**Executed as a Deed**

**A. Execution by Trustee:**

**SIGNED SEALED & DELIVERED**

by the said

.....  
Amir Alam Qureshi

.....  
**(Trustee)** Sign here

in the presence of:

.....  
Witness Sign here

.....  
Name of Witness

**SIGNED SEALED & DELIVERED**

by the said

.....  
Hina Alam Qureshi

.....  
**(Trustee)** Sign here

in the presence of:

.....  
Witness Sign here

.....  
Name of Witness



**SMSF Trust Deed**

© Copyright Oksana. M. Legal 2016

**SIGNED SEALED & DELIVERED** by the  
said Hina Alam Qureshi in the

.....  
Witness

.....  
Hina Alam Qureshi - Sign here

.....  
Name of Witness

**SIGNED SEALED & DELIVERED** by the  
said Mohmad Vansiwala in the

.....  
Witness

.....  
Mohmad Vansiwala - Sign here

.....  
Name of Witness

**APPLICATION FOR MEMBERSHIP OF THE SMSF**

**THE A & H Qureshi SUPERANNUATION FUND**

To: The Trustee of the **A & H Qureshi SUPERANNUATION FUND** (the "Fund")

I, Amir Alam Qureshi

of 207C Nollamara Avenue Nollamara Western Australia 6061

apply for admission as a Member of the Fund established by the Trust

Deed dated 01/05/2020 to be known as the Fund described in the Schedule 1, for the sole purpose of providing superannuation benefits for its Members and their Dependants on the terms and conditions set out in the Trust Deed.

**I agree and undertake** that:

- (a) If I become a Member I have read and agreed as a Member to be bound by the provisions of the Trust Deed.
- (b) I agree and accept responsibilities of a trustee of the Fund or director of a corporate trustee and I acknowledge that I have read and agreed as the trustee or director of a corporate trustee to be bound by the Trust Deed.
- (c) I consent to the Trustee to act as trustee of the Fund.
- (d) I acknowledge that the Trustee may collect my Tax File Number as requested by the Superannuation Industry (Supervision) Act 1993 (Cth) ('SISA');
- (e) I am 18 years of age and over;
- (f) I am of sound mind and not under Legal Disability within the meaning of SISA;
- (g) I had no prior convictions for offences against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
- (h) I am not an insolvent under administration as defined in the SISA;
- (i) I am not the subject of a civil penalty order that has been made under the SISA;

- (j) I am eligible to be a Member of the Fund under the SISA; and
- (k) I undertake that should the above qualifications lapse, I will take appropriate action to comply as soon as practicable with the SISA.

DATED the                      day of

Amir Alam Qureshi

Applicant Name

Witness Name

Applicant Signature

Witness Signature

207C Nollamara Avenue Nollamara Western Australia 6061

Applicant Address

Engineer

Applicant Occupation

11/6/1977

Applicant Date of Birth

405003653

Applicant Tax File Number

**APPLICATION FOR MEMBERSHIP OF THE SMSF**

**THE A & H Qureshi SUPERANNUATION FUND**

To: The Trustee of the **A & H Qureshi SUPERANNUATION FUND** (the "Fund")

I, Hina Alam Qureshi

of 207C Nollamara Avenue Nollamara Western Australia 6061

apply for admission as a Member of the Fund established by the Trust

Deed dated 01/05/2020 to be known as the Fund described in the Schedule 1, for the sole purpose of providing superannuation benefits for its Members and their Dependants on the terms and conditions set out in the Trust Deed.

**I agree and undertake** that:

- (a) If I become a Member I have read and agreed as a Member to be bound by the provisions of the Trust Deed.
- (b) I agree and accept responsibilities of a trustee of the Fund or director of a corporate trustee and I acknowledge that I have read and agreed as the trustee or director of a corporate trustee to be bound by the Trust Deed.
- (c) I consent to the Trustee to act as trustee of the Fund.
- (d) I acknowledge that the Trustee may collect my Tax File Number as requested by the Superannuation Industry (Supervision) Act 1993 (Cth) ('SISA');
- (e) I am 18 years of age and over;
- (f) I am of sound mind and not under Legal Disability within the meaning of SISA;
- (g) I had no prior convictions for offences against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
- (h) I am not an insolvent under administration as defined in the SISA;
- (i) I am not the subject of a civil penalty order that has been made under the SISA;

- (j) I am eligible to be a Member of the Fund under the SISA; and
- (k) I undertake that should the above qualifications lapse, I will take appropriate action to comply as soon as practicable with the SISA.

DATED the                      day of

Hina Alam Qureshi

Applicant Name

Witness Name

Applicant Signature

Witness Signature

207C Nollamara Avenue Nollamara Western Australia 6061

Applicant Address

Medical Practitioner

Applicant Occupation

18/1/1988

Applicant Date of Birth

387698758

Applicant Tax File Number

**APPLICATION FOR MEMBERSHIP OF THE SMSF**

**THE A & H Qureshi SUPERANNUATION FUND**

To: The Trustee of the **A & H Qureshi SUPERANNUATION FUND** (the "Fund")

I, Mohmad Vansiwala

of 14A Bayley Street Dianella Western Australia 6059

apply for admission as a Member of the Fund established by the Trust

Deed dated 01/05/2020 to be known as the Fund described in the Schedule 1, for the sole purpose of providing superannuation benefits for its Members and their Dependants on the terms and conditions set out in the Trust Deed.

**I agree and undertake** that:

- (a) If I become a Member I have read and agreed as a Member to be bound by the provisions of the Trust Deed.
- (b) I agree and accept responsibilities of a trustee of the Fund or director of a corporate trustee and I acknowledge that I have read and agreed as the trustee or director of a corporate trustee to be bound by the Trust Deed.
- (c) I consent to the Trustee to act as trustee of the Fund.
- (d) I acknowledge that the Trustee may collect my Tax File Number as requested by the Superannuation Industry (Supervision) Act 1993 (Cth) ('SISA');
- (e) I am 18 years of age and over;
- (f) I am of sound mind and not under Legal Disability within the meaning of SISA;
- (g) I had no prior convictions for offences against or arising out of a law of the Commonwealth, a State, a Territory or a foreign country, being an offence in respect of dishonest conduct;
- (h) I am not an insolvent under administration as defined in the SISA;
- (i) I am not the subject of a civil penalty order that has been made under the SISA;

- (j) I am eligible to be a Member of the Fund under the SISA; and
- (k) I undertake that should the above qualifications lapse, I will take appropriate action to comply as soon as practicable with the SISA.

DATED the                      day of

Mohmad Vansiwala

Applicant Name

.....

Witness Name

.....

Applicant Signature

.....

Witness Signature

14A Bayley Street Dianella Western Australia 6059

Applicant Address

Engineer

Applicant Occupation

22/6/1983

Applicant Date of Birth

865812298

Applicant Tax File Number







**BINDING DEATH BENEFIT NOMINATION**

To: The Trustee of The A & H Qureshi Superannuation Fund.

I, Amir Alam Qureshi

of 207C Nollamara Avenue Nollamara Western Australia 6061

in accordance with the provisions of Section 59(1A) of the *Superannuation Industry Supervision Act* 1993 and pursuant to all other powers enabling me to do so, hereby nominate the following Beneficiary(ies), if they survive me and is (are) alive at the date of distribution by the Trustee, to receive any Benefits that I have in the Fund payable following my death:

(1) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(2) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(3) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(4) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

**OR**

(a) Otherwise, I nominate my Legal Personal Representative(s) to receive all benefits payable following my death.

DATED the \_\_\_\_\_ day of \_\_\_\_\_  
.....

Signature and Name of Member

**Certificate and Declaration of Witnesses**

We, \_\_\_\_\_ ,

of \_\_\_\_\_

**and**

\_\_\_\_\_ ,

of \_\_\_\_\_

**certify and declare** that:

the said \_\_\_\_\_

has signed this Binding Death Benefit Nomination freely and voluntarily and in our presence;  
and that at the time of signing

the said \_\_\_\_\_

appeared to each of us to have the capacity necessary to make the nomination.

.....

Signature of Witness 1

.....

Signature of Witness 2

**BINDING DEATH BENEFIT NOMINATION**

To: The Trustee of The A & H Qureshi Superannuation Fund.

I, Hina Alam Qureshi

of 207C Nollamara Avenue Nollamara Western Australia 6061

in accordance with the provisions of Section 59(1A) of the *Superannuation Industry Supervision Act* 1993 and pursuant to all other powers enabling me to do so, hereby nominate the following Beneficiary(ies), if they survive me and is (are) alive at the date of distribution by the Trustee, to receive any Benefits that I have in the Fund payable following my death:

(1) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(2) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(3) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(4) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

**OR**

(a) Otherwise, I nominate my Legal Personal Representative(s) to receive all benefits payable following my death.

DATED the \_\_\_\_\_ day of \_\_\_\_\_  
.....

Signature and Name of Member

**Certificate and Declaration of Witnesses**

We, \_\_\_\_\_ ,

of \_\_\_\_\_

**and**

\_\_\_\_\_ ,

of \_\_\_\_\_

**certify and declare** that:

the said \_\_\_\_\_

has signed this Binding Death Benefit Nomination freely and voluntarily and in our presence;  
and that at the time of signing

the said \_\_\_\_\_

appeared to each of us to have the capacity necessary to make the nomination.

.....

Signature of Witness 1

.....

Signature of Witness 2

**BINDING DEATH BENEFIT NOMINATION**

To: The Trustee of The A & H Qureshi Superannuation Fund.

I, Mohmad Vansiwala

of 14A Bayley Street Dianella Western Australia 6059

in accordance with the provisions of Section 59(1A) of the *Superannuation Industry Supervision Act* 1993 and pursuant to all other powers enabling me to do so, hereby nominate the following Beneficiary(ies), if they survive me and is (are) alive at the date of distribution by the Trustee, to receive any Benefits that I have in the Fund payable following my death:

(1) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(2) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(3) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

(4) Full Name \_\_\_\_\_

Address \_\_\_\_\_

Relationship \_\_\_\_\_

% of Total Benefit \_\_\_\_\_

**OR**

(a) Otherwise, I nominate my Legal Personal Representative(s) to receive all benefits payable following my death.

DATED the \_\_\_\_\_ day of \_\_\_\_\_  
.....

Signature and Name of Member

**Certificate and Declaration of Witnesses**

We, \_\_\_\_\_ ,

of \_\_\_\_\_

**and**

\_\_\_\_\_ ,

of \_\_\_\_\_

**certify and declare** that:

the said \_\_\_\_\_

has signed this Binding Death Benefit Nomination freely and voluntarily and in our presence;  
and that at the time of signing

the said \_\_\_\_\_

appeared to each of us to have the capacity necessary to make the nomination.

.....

Signature of Witness 1

.....

Signature of Witness 2