

13th July 2020

Dear LED Client Name

Thank you for ordering a document from **LegalEDocs**, a pre-eminent provider of Australian electronic form trust documents.

This document contains the following components:

1. Section One

Section one contains instructions for establishing the Declaration of Custody Trust

2. Section Two

Section Two contains the following documents:

- i. Consent to act as trustee
- ii. Declaration of Custody Trust
- iii. Schedule for the Declaration of Custody Trust

The Declaration of Custody Trust is not formed until the instructions for establishing this have been completed.

If you have any queries about your documents or our service, please email them to info@legaledocs.com.au or ring our office on (03) 8516 5363 during normal business hours 9am to 5pm weekdays.

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Yours sincerely

The Team at LegalEDocs

SECTION ONE

1. Instructions for making the Declaration of Custody Trust

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INSTRUCTIONS FOR MAKING THE DECLARATION OF CUSTODY TRUST

In order for the attached Declaration of Custody Trust to be properly made, the following instructions should be implemented.

1. Printing of documents

The following documents should be printed:

- Consent to act as trustee;
- Declaration of Custody Trust; and
- Schedule;

These documents appear in section two of this document.

2. Consent to act

Before the Declaration of Custody Trust is signed, the trustee/s must consent to act. To do this, the document titled 'Consent to Act as trustee' should be signed by each trustee. The signed consent documents should be retained with the original documents of the trust.

3. Signing of the Declaration of Custody Trust

The trust deed should be signed by an appropriate officer of the company.

4. Stamping

Declarations of Custody Trust must be stamped by and a duty paid to the relevant State or Territory Government revenue office. The contact points for the relevant state or territory government office are as follows:

| State or Territory | Postal Address | Telephone | Web Address |
|------------------------------|---|----------------|--|
| Australian Capital Territory | GPO Box 293 Civic Square ACT 2608 | (02) 6207 0028 | www.revenue.act.gov.au |
| New South Wales | GPO Box 4042 Sydney NSW 2001 | (02) 9689 6200 | www.osr.nsw.gov.au |
| Queensland | GPO Box 2593 Brisbane Qld 4001 | 1300 300 734 | www.osr.qld.gov.au |
| South Australia | GPO Box 1353 Adelaide SA 5001 | 1800 637 778 | www.revenuesa.sa.gov.au |
| Tasmania | GPO Box 1374 Hobart Tas 7001 | 1800 001 388 | www.treasury.tas.gov.au |
| Victoria | GPO Box 1641 Melbourne Vic 3001 | 13 21 61 | www.sro.vic.gov.au |
| Western Australia | GPO Box T1600 Perth WA 6845 | (08) 9262 1400 | www.osr.wa.gov.au |

The signed Declaration of Custody Trust must be sent to the relevant state or territory revenue office, along with the required stamp duty in that state or territory.

5. Storage of Signed Documents

The Custodian should ensure that signed copies of the Declaration of Custody Trust and other documents are stored along with all other permanent records required to be kept for the trust.

SECTION TWO

1. Consent to act;
2. The Declaration of Custody Trust;
3. The Schedule to the Declaration of Custody Trust;

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CONSENT TO ACT

**Sample Custodian Trust
12 Sample Street
Suburb
VIC, 3000**

Dear Sir/Madam,

CONSENT TO ACT AS TRUSTEE

I hereby consent to act as Trustee of the trust and provide the following information:

Trustee: **Trustee 1 name**
Address: **12 Sample Street**
Suburb
VIC, 3000

Yours faithfully

Trustee 1 Name

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CONSENT TO ACT

**Sample Custodian Trust
12 Sample Street
Suburb
VIC, 3000**

Dear Sir/Madam,

CONSENT TO ACT AS TRUSTEE

I hereby consent to act as Trustee of the trust and provide the following information:

Trustee: **Trustee 2 name**
Address: **12 Sample Street**
Suburb
VIC, 3000

Yours faithfully

Trustee 2 name

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DECLARATION OF CUSTODY TRUST

**Known as
Sample Custodian Trust
for the
Sample Superannuation Fund**



YourLogoHere

Prepared for:

Business Name

12 Business Street
Suburb, VIC 3193

Telephone: 03 9000 0000

Email: client@lclient.com.au

TMC Legal Pty Ltd

PO Box 209

Black Rock, VIC, 3193

Telephone: (03) 8516 5363

Email: info@tmclegal.com.au

www.tmclegal.com.au

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THIS DECLARATION OF CUSTODY TRUST is executed at the location and on the date set out in the Schedule of this Deed ("the Schedule").

BETWEEN:

- 1 The SMSF described in the Schedule; and
- 2 The Custodian described in the Schedule.

RECITALS:

- A. The SMSF is a regulated superannuation fund within the meaning of section 19 of the Act and a 'complying superannuation fund' within the meaning of Part 5 of the Act.
- B. The SMSF wishes to borrow in a form that complies with the provisions set out in section 67A of the Act for the dominant purpose of enhancing the provision of retirement benefits to its members and certain ancillary purposes permitted under the Superannuation Law.
- C. In particular the SMSF wishes to borrow:
 - on a limited recourse basis whereby the lender's recourse is limited to a Single Acquirable Asset bought by the SMSF using the loan provided by the lender;
 - to buy a Single Acquirable Asset which is not an in-house asset and which is not otherwise prohibited under the Superannuation Law; and
 - to buy a Single Acquirable Asset which will be held on trust by the Trustee whereby the SMSF has the beneficial entitlement to the asset and a right to legally acquire the asset from the Trustee on the payment of a final instalment.
- D. The Custodian agrees to act as the third party to hold legal title to the Investment Asset on behalf of the SMSF.
- E. By executing this Deed the Custodian and the SMSF record their agreement and their consent to this Deed's terms and conditions, and the Custodian declares that it will hold the benefit of the Custody Fund on trust for the SMSF under this Deed

NOW BY THIS DEED IT IS DECLARED AND WITNESSED as follows:

1. INTERPRETATION

In this Deed unless the context otherwise requires:

- (i) a reference to a law, statute or rule, or to any provision of a law, statute or rule shall include a reference to that law, statute, rule or provision as amended, replaced or substituted from time to time;
- (ii) a reference to a party shall include the successors and assigns of that party;
- (iii) a reference to the singular number shall include the plural number and vice versa;
- (iv) a reference to one gender shall include the other gender;

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- (v) each clause in this Deed is severable. If a Court determines a particular clause is unenforceable, illegal or invalid that clause shall be deemed to be severed from the Deed. Such severance shall not affect the other provisions of this Deed.

2. DEFINITIONS

The following words have the following meanings:

- (i) "the Act" means *Superannuation Industry (Supervision) Act 1993* (Cth) or its successor, as amended from time to time;
- (ii) "Custody Fund" means the Investment Asset together with the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of the Investment Asset:
- (a) all right, title and interest of the Custodian from time to time in the Investment Asset;
 - (b) all income and other proceeds generated from the holding of the Investment Asset; and
 - (c) all other income, accumulations, capital, accretions, proceeds or accruals attributable to the Trust;
- (iii) "Deed" means this Deed as added to, altered or deleted from time to time;
- (iv) "net income" "Income" or "income" of the Custody Fund or the Trust means, unless otherwise determined by the Custodian, the net income of the Trust as determined according to ordinary accounting principles.
- (v) "Investment Asset" means the asset (described in the Schedule to this deed) held on trust for the SMSF by the Custodian under this Deed provided that such asset is permitted to be so held without breach of the Superannuation Law and without the SMSF ceasing to be a complying SMSF under the Superannuation Law;
- (vi) "Single Acquirable Asset" has the meaning given to that term under the Superannuation Law;
- (vii) "SMSF" means the self-managed superannuation fund specified in the Schedule;
- (viii) "Superannuation Law" means the *Superannuation Industry (Supervision) Act 1993* (Cth) and all regulations made under that Act and all other legislation and regulations relating to self-managed superannuation funds in Australia that must be complied with if the SMSF is to be a complying SMSF, as amended from time to time;
- (ix) "Tax" includes any income tax or similar charge and includes additional taxes and penalty taxes;
- (x) "Tax Law" means the *Income Tax Assessment Act 1936* (Cth) as amended the *Income Tax Assessment Act 1997* (Cth) as amended from time to time, and any other legislation which succeeds either or both those Acts.
- (xi) "Custodian" means the person described as Custodian in the Schedule and includes any additional or replacement Custodian appointed under clause 9; and
- (xii) "Trust" means the custody trust created by operation of this Deed

3. SUPERANNUATION LAW

- 3.1 The SMSF and the Custodian declare that this Deed is intended to be interpreted in a manner that is consistent with the SMSF complying with the conditions that must be met for a superannuation fund to be a complying superannuation fund under the Superannuation Law.

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3.2 Any provision of this Deed which may cause the SMSF to breach the Superannuation Law is deleted from this Deed to the extent necessary to remedy the breach and to ensure the SMSF complies with the Superannuation Law.

4. NAME OF THE CUSTODY TRUST

For ease of reference, the name of the Custody Trust will be as stated in the Schedule.

5. CUSTODY TRUST

5.1 The Custodian declares that it will hold the benefit of the Custody Fund on trust for the SMSF under this Deed, with effect from the date:

- (a) that the Custodian purchases the Investment Asset as described in the Schedule; or
- (b) on which the Custodian receives any property to be applied or held in accordance with the Trust.

5.2 The SMSF must provide all funds necessary to enable the Custodian to purchase the Investment Asset identified in the Schedule. When these funds are provided by the SMSF, the SMSF will be taken to have requested the Custodian to purchase and take legal title to the Investment Asset under this Deed, and the Custodian will be taken to have agreed to this.

5.3 The Custodian must hold the Investment Asset on trust for the SMSF and must not deal with the Investment Asset in any way that is inconsistent with holding the Investment Asset on trust for the sole benefit of the SMSF in accordance with Superannuation Law.

5.4 All parties agree that the Trust is established and is to be maintained so that it complies with the limited recourse arrangement as described in section 67A of the Act. This sub-clause is a paramount clause, and in interpretation of this Deed, if there is a conflict with this sub-clause with other provisions of this Deed, this sub-clause shall prevail.

5.5 The Custodian, or the Custodian's successor, will effect the transfer of the Investment Asset to the SMSF for nil consideration, as and when directed by the SMSF, following the making of one or more payments by the SMSF after acquiring the beneficial interest in the Investment Asset, as required by section 67A (1) (c) of the SIS Act.

6. NET INCOME OF THE TRUST

6.1 The SMSF will be presently entitled to the net income of the Trust including any net capital gain as calculated under the provisions of the Tax Law.

6.2 No other person will be presently entitled to the net income of the Trust including any net capital gain as calculated under the provisions of the Tax Law.

7. CAPITAL OF THE TRUST

7.1 The SMSF will be presently and solely entitled to the capital of the Trust.

7.2 No other person will be presently entitled to the capital of the Trust.

8. CUSTODIAN'S POWERS

The Custodian must only act in accordance with the directions of the SMSF and, subject to that requirement:

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- 8.1 The Custodian will have the powers, authorities and discretions conferred on trustees by law to undertake any business, transaction and dealing in relation to this Trust.
- 8.2 The Custodian may account for any Taxes by withholding and setting aside such amounts from any income or capital, including any unrealised gains, which the Trustee determines appropriate.
- 8.3 The Custodian may determine the character, nature and source of any particular item or amount of income, capital, loss, deduction, tax credit or rebate.
- 8.4 The Custodian may determine whether:
- (i) any money or property received or paid out is received or paid out as income or capital of the Custody Fund; and
 - (ii) any item or amount of income, expense, credit or rebate relates to any particular class of income or capital.
- 8.5 The Custodian may account for different items or classes of income, expense, credit or rebate separately. The Custodian may make such allocations and apportionments of same which the Custodian considers appropriate in determining the amount of any item or class of income, expense, credit or rebate generally or in respect of any item or class of income or capital.
- 8.6 In the event of any ambiguity, the provisions of this Deed concerning the powers, authorities and discretions of the Custodian will be construed broadly so as not to restrict the powers, authorities and discretions of the Custodian and to ensure the SMSF retains its status as a complying superannuation fund under the Superannuation Law.
- 8.7 The Custodian must, at the request of the SMSF, provide a guarantee, to indemnify, and to mortgage or charge the Investment Asset in support of a guarantee and indemnity, by executing the necessary legal instruments to secure the borrowings by the SMSF, made under and in accordance with, section 67A of the SIS Act.
- 8.8 The Custodian must, at the request of the SMSF, grant a mortgage over the Investment Asset and execute the necessary legal instruments to secure the borrowings by the SMSF, made under and in accordance with section 67A of the SIS Act.

9. POWER TO AMEND THE DEED

- 9.1 Subject to the succeeding provisions of this clause the Custodian may, with the prior written consent of the SMSF:
- (i) add to, delete, vary, resettle or absolutely revoke all or any of the trusts created by this Deed; and
 - (ii) add to, delete, vary, resettle or absolutely revoke all or any of the powers, authorities and discretions conferred on the Custodian by this Deed;

provided that such amendment would not cause the Custody Fund or any income of the Custody Fund to vest or for the SMSF to lose its status as a complying superannuation fund under the Superannuation Law.

- 9.2 The Custodian may only exercise the powers conferred by the above clause by deed or otherwise in writing recorded in the books of the Custodian.

10. RETIREMENT REMOVAL AND APPOINTMENT OF CUSTODIANS

- 10.1 The Custodian may retire as custodian and trustee of the Trust at any time by giving written notice of its intention to do so to the SMSF. This is provided the Custodian may not retire without having first notified the SMSF in writing giving sufficient notice to enable the SMSF to ensure this Trust has at least one custodian and trustee at all times.
- 10.2 A corporation may act as Custodian notwithstanding that corporation or any director or shareholder or other related person may benefit under this Deed.
- 10.3 The Custodian may exercise all powers and discretions under this Deed and by law notwithstanding that it or any related person may have an interest in the result of exercising such power or discretion or may benefit therefrom.
- 10.4 The SMSF may by deed or written notice remove a Custodian as custodian and trustee of the Trust and may appoint another person to act as a custodian and trustee of the Trust.
- 10.5 A person may only accept an appointment as a custodian and trustee or remain a custodian and trustee if that person agrees in writing to be bound by the provisions of this Deed as if that person were a party to it.

11. CUSTODIAN NOT TO BENEFIT FROM TRUST

- 11.1 The Custodian may not benefit as a beneficiary under this Deed.
- 11.2 The Custodian may not receive professional fees for work done for the Custodian or the SMSF.

12. CORPORATE CUSTODIAN

- 12.1 A corporate custodian may exercise any power conferred on the Custodian by a resolution of its Board of Directors.
- 12.2 A corporate custodian's discretion will be deemed to be exercised when a resolution of the Custodian exercising its discretion on behalf of the directors has been recorded in the Custodian's minute book relating to the Trust.

13. ACCOUNTS, AUDITS AND REIMBURSEMENT OF COSTS

- 13.1 The Custodian must cause proper accounting and other records to be kept for the Custody Fund to comply with the Tax Law and any other relevant law.
- 13.2 The Custodian must promptly after June 30 each year arrange a written accounting report, including an income statement, balance sheet and such other financial statements or reports as required. These reports must be prepared in accordance with normally accepted accounting principles for each year ending June 30.
- 13.3 The Custodian may appoint a duly qualified accountant to audit the books and records of the Custodian relating to the Custody Fund. The cost of such an audit will be borne by the SMSF.
- 13.4 The Custodian may at its election be reimbursed by the SMSF for all of its costs and it may direct in writing that the SMSF pay all its costs directly to third parties.

14. GOVERNING LAW

The governing law of this Deed will be the law of the State described in the Schedule.

15. EXECUTION AS A DEED

This document has been executed as a Deed on the date set out in the Schedule.

EXECUTED BY THE CUSTODIAN

Signed by:).....
Trustee 1 name)Trustee
(as trustee for Sample Custodian Trust) in the).....
presence of:)Witness

Signed by:).....
Trustee 2 name)Trustee
(as trustee for Sample Custodian Trust)).....
in the presence of:)Witness

EXECUTED BY THE SMSF

Sample SMSF Pty Ltd (ACN: 456 789 123) pursuant to s127(1) of the Corporations Act 2001 (Cth) by being signed by a sole director who is also a secretary, two directors or a director and a secretary:

Director 1 Name).....
Director/ Secretary

Director 2 Name).....
Director

SCHEDULE

| Item | Specific Details |
|-------------------------------|--|
| Location of execution of deed | 12 Sample Street, Suburb, VIC, 3000 |
| Date of execution of deed | 13 th July 2020 |
| Details of the SMSF | Sample SMSF Pty Ltd (ACN: 456 789 1237) as trustee for Sample Superannuation Fund |
| Name of the Custody Trust | Sample Custodian Trust |
| Name of the Custodian | Trustee 1 name and Trustee 2 Name |
| Investment Asset | 12 Investment asset street, Suburb, Vic 3000 |
| Governing Law | VIC |