

**Deed of Amendment  
Somerset Financial Services  
Superannuation Fund**

Drawn by:

**Redchip Lawyers**  
redchip.com.au  
redchip@redchip.com.au  
P (07) 3223 6100

Solicitors for:

**Acis**  
acis.net.au  
acis@acis.net.au  
P 1800 773 477

**THIS DEED** is made on the Deed Date.

**BETWEEN**                The parties named in Item 2 in the Schedule.

## **RECITALS**

- A.     The Fund was established by the execution of the Trust Deed.
- B.     Each Member is a member of the Fund.
- C.     The Resigning Trustee wishes to resign as Trustee of the Fund.
- D.     The Resigning Trustee wishes to appoint the New Trustee as Trustee of the Fund.
- E.     The parties wish to record the amendment in accordance with the terms of the Trust Deed and the parties have entered into this Deed accordingly.

## **OPERATIVE PART**

### **1. DEFINITIONS & INTERPRETATION**

#### **1.1 Definitions**

In this Deed, unless the context or subject matter require otherwise:

**Act** means the Superannuation Industry (Supervision) Act 1993;

**Appointment Clause** means the provision of the Trust Deed authorising the appointment of a Trustee which is listed in Item 5 in the Schedule;

**Deed Date** means the date of this Deed specified in Item 1 in the Schedule;

**Fund** means the superannuation fund described in Item 3 in the Schedule;

**Resignation Clause** means the provision of the Trust Deed authorising the resignation of a Trustee which is listed in Item 4 in the Schedule;

**Trust Deed** means the deed establishing the Fund.

#### **1.2 Interpretation**

- (a)     Each party to this Deed will be referred to in this Deed by the description against their name in Item 2 in the Schedule.
- (b)     In the interpretation of this Deed, unless the context or subject matter require otherwise, references to:
  - (i)     **singular** words include the **plural** and vice versa;
  - (ii)    any **gender** include every gender;

- (iii) a **person** include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, associations, partnerships, government authorities, and other legal entities and includes successors and assigns;
  - (iv) **writing** include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) **signature** and **signing** mean due execution of a document by a person, corporation or other relevant entity and include signing by an agent or attorney or representative (if a body corporate);
  - (vi) **months** mean calendar months;
  - (vii) **statutes** include statutes amending, modifying, rewriting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
  - (viii) **sections** of statutes or terms defined in statutes are to corresponding sections or defined terms in amended, consolidated or replacement statutes;
  - (ix) an **agreement** or **document** (including the Trust Deed and this Deed) mean that agreement or document as amended, novated or supplemented and includes all recitals, schedules, appendices and exhibits to it;
  - (x) a **party** include that party's executors, administrators, substitutes, successors and assigns;
  - (xi) **clauses** or **schedules** are references to the clauses or schedules of this Deed.
- (c) The following rules apply unless the context or subject matter require otherwise:
- (i) **headings** are used for convenience only and will be disregarded in the interpretation of this Deed;
  - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
  - (iii) if a word or phrase is given a **defined meaning in the Trust Deed**, that word or phrase will have the same meaning in this Deed unless another meaning is given in this Deed.

## 2. RESIGNATION OF TRUSTEE

### 2.1 Resignation of Trustee

The Resigning Trustee resigns as Trustee of the Fund in accordance with the Resignation Clause.

### 2.2 Waiver of Notice

The Member waives any notice period required by the terms of the Trust Deed and consent to the resignation of the Resigning Trustee becoming effective on the Deed Date.

### **3. APPOINTMENT OF TRUSTEE**

#### **3.1 Appointment**

The Resigning Trustee appoints the New Trustee as Trustee of the Fund in accordance with the Appointment Clause.

#### **3.2 Confirmation**

- (a) The parties agree and declare that the New Trustee will, from the Deed Date, hold the property of the Fund as Trustee upon the same trusts, powers, discretions and obligations as those contained and conferred under the Trust Deed.
- (b) The New Trustee accepts the appointment and agrees and declares that it will undertake and carry out the trusts and exercise the rights, powers, privileges and discretions and that it will observe and be bound by the restrictions and limitations imposed upon the Trustee of the Fund as set out in the Trust Deed.
- (c) The New Trustee confirms and acknowledges that the New Trustee has read the terms and conditions in the Trust Deed and fully understands the duties and obligations of a Trustee under the Trust Deed and the Relevant Law.

### **4. TRUSTEE DISCHARGED**

Upon the appointment of the New Trustee:

- (a) the property of the Fund vests in the New Trustee; and
- (b) the Resigning Trustee will be discharged from the obligations and office of trustee of the Fund to the extent allowed by law from the Deed Date; but
- (c) without affecting any liability or obligation of the Resigning Trustee which has accrued, or may accrue, because of any thing done, or omitted to be done, by the Resigning Trustee prior to the Deed Date; and
- (d) without affecting any liability or obligation of the Fund, or any liability of the Fund, arising under any agreement or other instrument, to which the Fund is a party, or is bound, and entered into prior to the resignation of the Resigning Trustee.

### **5. MISCELLANEOUS**

The parties confirm that the Trust Deed, other than to the extent that it has been amended or varied in accordance with this Deed remains in full force and effect.

### **6. EFFECTIVE DATE**

All of the changes effected by this Deed take effect on the Deed Date, or if no date is completed as the Deed Date, on the date on which the last party to sign this Deed does so.

### **7. SECRETARIAL**

The parties must promptly do all acts, matters and things necessary to give effect to the provisions of this Deed and to effect the transfer or assignment of the property of the Fund to the New Trustee.

## **8. MULTI CAPACITY**

- (a) Where a person being a party to this Deed is named more than once or in more than one capacity in Item 2 in the Schedule, it is only necessary that the person execute and deliver this Deed once. The initial execution and delivery will bind that person in all such capacities.
- (b) If a party named in Item 2 in the Schedule consists of more than one person, those persons enter into this Deed jointly and severally.

## **9. CONSENT GIVEN**

Where a party to this Deed is required by the Trust Deed to consent to the doing of a thing or act by another party, the consent of that party is given by their execution of this Deed.

## **10. COUNTERPARTS**

This Deed may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.

## **11. LIMIT ON AMENDMENTS**

Regardless of anything contained in this Deed to the contrary, this Deed does not and will not:

- (a) alter the objects of the Fund;
- (b) reduce the benefits and entitlements payable to Members;
- (c) alter the rights and benefits of existing Members in a manner such that, on the whole, equity between Members is not maintained; or
- (d) offend the provisions of any relevant Act or Regulation as they exist, from time to time, or any amendment or variation of any relevant Act or Regulation made after the Deed Date.

## **12. SEVERANCE**

This Deed will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable or not permitted or required by the Act or results in a re-settlement of the Fund:

- (a) that provision will, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation;
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of this Deed will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability; or
- (c) that provision will, be read down or severed to the extent that it may be necessary to ensure that it does not result in a re-settlement of the Fund.

## SCHEDULE

X Item 1. Deed Date:

14, 8, 17

Item 2. New Trustee:

Going Hiking Pty Ltd ACN 620 594 809

Resigning Trustee:

Somerset Financial Services Pty. Ltd. ACN 058 152 337

Members:

Ian Frazer Somers  
Janice Beryl Somers

Item 3. Fund:

Somerset Financial Services Superannuation Fund established  
by the Trust Deed dated 10/03/1993.

Item 4. Resignation Clause:

Rule 4.3(a)

Item 5. Appointment Clause:

Rule 4.4(a)

Executed as a Deed.

**EXECUTED AS A DEED** by Going Hiking Pty  
Ltd ACN 620 594 809.



**Ian Frazer Somers**  
Director

Janice Beryl Somers  
Director

Janice Beryl Somers  
Director

**EXECUTED AS A DEED** by Somerset  
Financial Services Pty. Ltd. ACN 058 152 337.



**Ian Frazer Somers**  
Director

Janice Beryl Somers  
Director

Janice Beryl Somers  
Director

**SIGNED SEALED AND DELIVERED** by Ian  
Frazer Somers in the presence of:

JM Dard

Witness:

Name (printed): Melen Darden



Ian Frazer Somers

**SIGNED SEALED AND DELIVERED** by Janice  
Beryl Somers in the presence of:

U. M. Daud

Witness:

Name (printed): Melvin Dendon

Janice Beryl Somers

Janice Beryl Somers