

# Svigos Family Superannuation Fund Amending Deed





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## Amending Deed

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# Svigos Family Superannuation Fund

## Amending Deed

Parties	
<b>Full name</b>	John Michael Svigos and Esther Svigos
<b>Short name</b>	Trustees
<b>Address</b>	424 Carrington Street, Adelaide SA 5000
<b>Full name</b>	Dr. J. Svigos Pty Ltd ACN 008 041 361 and Svigos Nominees Pty Ltd ACN 007 861 672
<b>Short name</b>	Principals
<b>Address</b>	c/- 424 Carrington Street, Adelaide SA 5000

- A The Fund was established by the Trust Deed.
- B Clause 47 of the Trust Deed gives the trustees of the Fund the power to vary the provisions of the Trust Deed, with the Principals' consent.
- C The Trustees are the current trustees of the Fund.
- D The Trustees, with the Principals' consent, now wish to revoke and vary the Trust Deed in the manner contained in this Deed, with effect on and from the Amendment Date.

1. REPLACEMENT OF TRUST DEED PROVISIONS

(a) In exercise of the power in clause 47 of the Trust Deed, the Trustees vary the Trust Deed by:

(i) revoking all of the provisions of, and any schedules to, the Trust Deed; and

(ii) replacing them with the New Deed.

(b) The variations to the Trust Deed effected by this Deed take effect on and from the Amendment Date.

(c) The Trust Deed, as amended by this Deed, will remain in full force and effect in all respects.

(d) The Trustees acknowledge that they hold and will continue to hold all property comprising the Fund on behalf of all the Members in accordance with the Trust Deed, which will comprise the New Deed

on and from the Amendment Date.

(e) The Principals:

(i) consent to the variation of the Trust Deed effected by this Deed; and

(ii) acknowledge that, as a result of the variation effected by this Deed, they will no longer enjoy the same rights and powers they previously had under the Trust Deed.

2. MEMBERS BOUND BY NEW PROVISIONS

Any Member of the Fund as at the Amendment Date will continue to be bound by the Trust Deed, which will comprise the New Deed on and from the Amendment Date.

3. GENERAL

(a) Nothing in this Deed will be deemed to create a new trust or to be a resettlement of the Fund.

(b) This instrument is intended to be, and shall take effect as, a deed notwithstanding any lack of formality in its form, execution or attestation.

4. INTERPRETATION

In this Deed:

**Amendment Date** means the date of this Deed.

**Fund** means the Svigos Family Superannuation Fund, governed by the Trust Deed.

**New Deed** means the provisions that are contained in the Annexure to this Deed

**Trust Deed** means the deed establishing the Fund dated 2 July 1999, including any schedules, as amended from time to time.

**1. THE FUND**

**1.1 Establishment**

- (a) The Svigos Family Superannuation Fund was established by the Deed.
- (b) The Fund is vested in the Trustee and will at all times be held controlled and managed by the Trustee subject to the provisions of the Deed and in accordance with Superannuation Law.

**1.2 Superannuation Law requirements**

Notwithstanding any other provision of the Deed:

- (a) each Prescribed Requirement is deemed to be included in the Deed for so long as is necessary and will override any express provision of the Deed to the extent of any inconsistency;
- (b) the Trustee may do or refrain from doing such acts and things as the Trustee considers may be necessary or desirable in order to comply with or satisfy any provision or requirement of Superannuation Law or of the Regulator; and
- (c) the Trustee may elect that any Superannuation Law is to apply in relation to the Fund.

**2. TRUSTEES**

**2.1 Requirements**

- (a) The trustee of the Fund must be either:
  - (i) a Constitutional Corporation or
  - (ii) two or more Individual Trustees.
- (b) Notwithstanding any other provision in the Deed, during any period where there are Individual Trustees, the sole or primary purpose of the Fund must be the provision of Old-Age Pensions.

**2.2 Appointment, removal, resignation etc.**

- (a) Subject to Superannuation Law:
  - (i) the Members may at any time by deed signed by all of them:
    - (A) remove any Trustee and appoint another person in that Trustee's place; and
    - (B) appoint a person as an additional or replacement Trustee.
  - (ii) if a Member dies, his or her legal personal representative may exercise the powers conferred by this clause 2.2.
- (b) A Trustee:
  - (i) may, at any time, resign as Trustee by giving 30 days (or such shorter period to which the Members may agree) written notice to the Members; and
  - (ii) must immediately retire by written notice to the Members if the Trustee becomes a Disqualified Person.
- (c) A Trustee immediately vacates office if the Trustee:
  - (i) is removed, replaced or resigns in accordance with clause 2.2(a) or (b);
  - (ii) becomes bankrupt or insolvent; or
  - (iii) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health.
- (d) If the office of a Trustee becomes vacant for any reason, then if required by Superannuation Law, the Members must, by deed, appoint another person or persons to act as Trustee in its place.
- (e) On ceasing to be a Trustee, the outgoing Trustee must deliver all documents, records and other books to, and do everything necessary to vest the Fund in the new or continuing Trustee or Trustees.

2.3	<b>Remuneration</b>	<p>(a) The Trustee is not entitled to receive any salary or remuneration from the Fund in respect of its services as Trustee.</p> <p>(b) Nothing in the Deed will preclude any firm, corporation or partnership of which the Trustee or any directors of a Trustee is a partner, director, shareholder, related body corporate (as defined in the <i>Corporations Act 2001</i> (Cth)) or employee from being paid out of the Fund any proper fees or remuneration for professional or other services rendered by such firm, corporation or partnership in connection with the Fund.</p>
2.4	<b>Validity of acts of Trustees</b>	<p>If it is discovered that:</p> <p>(a) there was a defect in the appointment of a person as a Trustee; or</p> <p>(b) a person appointed as a Trustee was disqualified,</p> <p>all acts of the person as Trustee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.</p>
3.	<b>INDEMNITIES AND LIABILITY</b>	<p><b>3.1 Indemnity of Trustees and directors</b></p> <p>(a) A person acting (or who formerly acted) as a Trustee or as a director of a Trustee will:</p> <p>(i) be indemnified out of the Fund against all liabilities, losses, costs and expenses (excluding any liability for a monetary penalty under a civil penalty order imposed under SIS) incurred in the exercise or purported or attempted exercise or failure to exercise of the trusts, powers, authorities and discretions vested in them by the Deed or at law; and</p> <p>(ii) have a lien on and may use the moneys forming part of the Fund for the purposes of this indemnity and generally for the payment of all legal and other costs charges and expenses of administering or winding up the Fund and otherwise of performing their duties under the deed.</p> <p>(b) For the avoidance of doubt, no Member or Beneficiary is personally liable to indemnify the Trustee or any director of a Trustee or any other person claiming through or against the Trustee or director.</p> <p><b>3.2 Trustees and directors not liable for loss</b></p> <p>(a) A person acting (or who formally acted) as a Trustee or as a director of a Trustee will not be liable for any loss or breach of trust whatsoever other than:</p> <p>(i) loss attributable to the person, in relation to a matter affecting the Fund, failing to act honestly or intentionally or recklessly failing to exercise the degree of care and diligence that the person was required to exercise; or</p> <p>(ii) liability for a monetary penalty under a civil penalty order made against the person under SIS.</p> <p>(b) A Trustee is not required to take proceedings against a former Trustee or former director of a Trustee for breach of Trust.</p>
4.	<b>TRUSTEE MEETINGS</b>	<p><b>4.1 Rules and procedures</b></p> <p>(a) The Trustee or Trustees may establish their own rules and procedures for Trustees' meetings as they see fit.</p> <p>(b) If the Trustee is a Constitution Corporation, then the rules and procedures contained in the Trustee's Constitution for Directors' meetings will apply to the directors of the Trustee.</p> <p>(c) During any period where there are individual Trustees and the Trustees have not established their own rules and procedures for Trustees' meetings, then the rules in clause 4.2 will apply to Trustees' meetings.</p>



(d) The Trustee must keep all minutes and registers required by the Deed and Superannuation Law.

#### 4.2 Individual Trustees' meetings

During any period where there are individual Trustees and the Trustees have not established their own rules and procedures for Trustees' meetings, then the following rules will apply to Trustees' meetings:

(a) A Trustee may at any time convene a Trustees' meeting by giving 14 days written notice to the other Trustees. However, Trustees may unanimously agree on a shorter notice period.

(b) For the avoidance of doubt, the Trustees need not all be physically present in the same place for a Trustees' meeting to be held. A Trustees' meeting may be held by the Trustee communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.

(c) The Trustee are entitled to invite professional advisers or consultants to attend a Trustees' meeting or a meeting of a committee of the Trustee. These invitees are entitled to speak, but not vote, at the meetings they attend.

(d) A quorum of any Trustees' meeting is two individual Trustees.

(e) Questions arising at a Trustees' meeting are to be decided by a majority of Trustees present and voting. Each Trustee has one vote. The chairman of a meeting does not have a casting vote in addition to his or her deliberative vote.

(f) If all the Trustees who are eligible to vote on a resolution have signed a document (or two or more identical documents) stating that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is deemed to have been passed at a Trustees' meeting held on the day on which the document was last signed by a Trustee.

#### 5. TRUSTEE'S POWERS

##### 5.1

#### General powers

Subject to Superannuation Law, the Trustee has the power to:

(a) manage, administer and deal with the Fund and all proceedings matters and things connected with the Fund in such manner as it considers fit; and

(b) do all acts and things, and to enter into and execute all contracts, deeds and documents and to do all such matters and things as it considers expedient for the purpose of carrying out the trusts, authorities, powers and discretions conferred upon the Trustee by the Deed or at law with power, subject to the other provisions of the Deed, to give such undertakings and incur all such obligations relating to the Fund as the Trustee thinks fit,

and such further powers as specified in this clause 5 or as may be necessary, ancillary or incidental to the Deed.

##### 5.2

#### Investment powers

(a) Subject to Superannuation Law, so much of the moneys forming part of the Fund from time to time as is not required immediately for the payment of Benefits or other amounts authorised by the Deed may be invested by the Trustee in any investment whatsoever as the Trustee considers appropriate, including, but without limitation:

(i) any investment for the time being authorised or permitted by the laws of the Commonwealth of Australia or any State or Territory for the investment of trust funds;

(ii) any mortgage on freehold property situated in Australia or elsewhere even though the amount of the loan may exceed two-thirds of the value of the property and whether or not a report or valuation has been obtained on the value of the property;

(iii) on deposit with or on loan to any bank building society or other financial institution;

(iv) on deposit with or on loan to any person or organisation whatsoever with or without security and at such rate of interest and upon such terms as the Trustee may deem reasonable notwithstanding that the Trustee may have a direct or indirect interest in the borrowing or may benefit directly or indirectly therefrom;

- (v) the purchase or acquisition in any way of shares of any class or description or of any type of bond mortgage debenture note option or other like security in any company or trust fund, society, unincorporated association or other entity in any part of the world whether or not carrying on business in Australia and whether the shares be fully or partly paid up and whether secured or unsecured, registered or unregistered;
- (vi) any Policy or Annuity whether by proposal purchase or otherwise and any choses in action interest for life or any lesser term or in reversion or howsoever arising;
- (vii) the purchase or acquisition of any interest in real or personal property and the improvement or extension thereof;
- (viii) the purchase or acquisition of or subscription for any unit or sub-unit in any unit trust established or situated anywhere in the world whether individually or jointly and whether such units or sub-units are fully paid up or whether their issue involves any contingent or reserve liability;
- (ix) the discounting of loans mortgages contracts hire purchase agreements or leases; and bills of exchange, promissory notes or other negotiable instruments.
- (b) The Trustee will have power as it sees fit to sell any investments and to vary and transpose any investments into other investments authorised by the Deed.
- (c) The Trustee may (but is not bound) from time to time, in its absolute discretion, allow a Member or Members to give directions to the Trustee in relation to the investment of a portion of the Fund's assets representing the Member's Member Accounts on such terms as the Trustee may determine in its absolute discretion.

### Additional specific powers

5.3

- In addition to the powers which it has by law and which are otherwise granted to it by the Deed the Trustee will have the following powers:
- (a) to settle compromise or submit to arbitration any claim matter or thing relating to the Deed or the Fund or to the rights of Members former Members or any other persons claiming to be paid a benefit pursuant to the Deed;
- (b) to commence carry on or defend proceedings relating to the Fund or to the rights of Members former Members or other persons claiming to be entitled to be paid a benefit from the Fund;
- (c) subject to any restrictions contained in Superannuation Law, to borrow or raise any financial accommodation and to assign, pledge, mortgage or charge any of the Fund's assets as security for any such financial accommodation to the extent permitted by the Superannuation Law;
- (d) subject to any restrictions contained in Superannuation Law, to lend, advance money and give credit or financial accommodation to any person in any manner and upon any terms with or without security which the Trustee may consider advisable;
- (e) to insure or reinsure any risks contingencies or liabilities of the Fund;
- (f) to retain the services of and to appoint professional or other advisers or agents in relation to the management administration or investment of the Fund and to pay out of the Fund all expenses of and incidental to the management and administration of the Fund including the fees of any advisers or agents and the remuneration of persons appointed pursuant to the Deed and to revoke any such appointment;
- (g) to delegate to any one or more persons firms or companies on such terms as the Trustee may think fit any of the authorities powers and discretions conferred upon the Trustee and execute any powers of attorney or other instruments necessary to effectuate such purpose;
- (h) to appoint from time to time such one or more persons firms or companies as the Trustee may think fit to act either as custodian or investment manager or both subject to such terms as the Trustee may from time to time determine.
- (i) to indemnify or undertake to indemnify any person company government or institution in respect of any claim matter or thing relating to the Fund or to the rights of Members, former Members or other persons entitled in respect of the Fund.

The Trustee may convene and conduct meetings of Members by such rules as the Trustee may establish.

**6.3 Meetings of Members**

- (e) If requested by the Trustee, a Member or Beneficiary must provide the Trustee with such information as the Trustee considers necessary for the purposes of, or in connection with, the administration of the Fund. If a person fails to comply with the Trustee's request, the Trustee may, subject to Superannuation Law, refuse to accept any Contributions, or withhold any benefit, in respect of that person until that person does comply.
- (d) The Trustee must provide a new Member with any information required by Superannuation Law.
- (c) A Member is bound by, and entitled to the benefit of, the Deed.
- (iii) if the Trustee does not set a date, the date on which the Trustee received the Applicant's Membership Application.
- (i) the date set by the Trustee; or
- (b) If the Trustee accepts the Membership Application, or does not reject it within 28 days of receipt, the Applicant will be admitted to membership with effect on and from:
- (a) The Trustee may, in its absolute discretion and without giving reasons, accept or reject any Membership Application.

**6.2 Admission to membership**

Any person (Applicant) who is permitted by Superannuation Law to be admitted to membership of the Fund may apply for membership by application in writing to the Trustee (Membership Application).

**6.1 Application for membership**

**6. MEMBERS**

- (b) A Trustee (or a director or officer of the Trustee) may exercise any power under this Deed or at law despite the fact that the Trustee (or director or officer of the Trustee) has a direct or indirect interest in the exercise of that power, or may benefit directly or indirectly from its exercise including as a director, officer, shareholder, partner, unitholder or beneficiary of a third party.
- (i) enter into any contract or arrangement with the Trustee;
- (ii) be appointed to and hold any office or place of profit under the Trustee, other than the Auditor; and
- (iii) act in a professional capacity, other than as Auditor, for the Trustee,
- and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Trustee or connected with a Trustee.
- (a) A Trustee and any firm, body or entity in which a Trustee has a direct or indirect interest may in any capacity:

**5.6 Trustees' interests**

The Trustee may act on the advice or opinion of any accountant, actuary, barrister, solicitor, medical practitioner, professional adviser or expert whether or not the Trustee has obtained such advice.

**5.5 Trustee may act on advice**

obligations under the Deed. absolute discretion considers appropriate in the administration of the Fund and the performance of its powers authorities and discretions and will have power generally to do all such things as the Trustee in its have an absolute and unfettered discretion and may from time to time exercise or enforce all or any of such in the exercise of the authorities powers and discretions vested in it pursuant to the Deed, the Trustee will

**5.4 Trustee's discretion**

- (i) to open any account or accounts with any financial institution and to operate such account or accounts 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.

6.4 Cessation of Membership

A person ceased to be a Member when:

- (a) all of that person's entitlements from the Fund have been paid or transferred;
- (b) that person dies; or
- (c) as required by Superannuation Law.

7. FUND ACCOUNTS

7.1 Member Accounts

- (a) The Trustee must establish and maintain one or more Member Accounts for each Member.
- (b) Subject to Superannuation Law, a Member's Member Account will be credited with:

- (i) any Contributions accepted by the Trustee in respect of that Member;
- (ii) any amounts transferred into the Fund from another Superannuation Fund in respect of that Member;
- (iii) any amount transferred into the Fund or from another Member of the Fund in respect of that Member that comprises a transfer from, or in connection with, that Member's spouse or former spouse;

- (iv) the proceeds of any Policy taken out by the Trustee in respect of that Member or on account of that Member;
- (v) an amount equal to such portion of the Fund Earnings (if positive) as the Trustee determines in accordance with clause 13; and

- (vi) any other amounts that the Trustee determines will be credited to the Member Account.

- (c) Subject to Superannuation Law, a Member's Member Account will be debited with:

- (i) any Benefit paid to, or in respect of, that Member;
- (ii) an amount equal to the whole or any part of any Contribution refunded under clause 9.4;
- (iii) any amounts transferred out of the Fund to another Superannuation Fund in respect of that Member;
- (iv) any amount transferred out of the Fund or to another Member of the Fund that comprises a transfer to or for the benefit of that Member's spouse or former spouse;
- (v) the costs of any Policy taken out by the Trustee in respect of that Member or on account of that Member;
- (vi) any amount equal to such portion of the Fund Earnings (if negative) as the Trustee determines in accordance with clause 13;
- (vii) an amount equal to such portion of the Fund Expenses and Tax (including any Excess Contributions Tax) as the Trustee determines; and
- (viii) any other amounts that the Trustee determines will be debited to the Member Account.

7.2 Fund Account

- (a) The Trustee must establish and maintain the Fund Account.
- (b) The amount standing to the credit of the Fund Account at any time will be equal to the value of the Fund less the sum of the amounts credited to all of the Member Accounts and any other accounts which may be established pursuant to clause 7.3.
- (c) The Trustee may from time to time credit and debit the Fund Account with such amounts as the Trustee may determine and Superannuation Law allows.

**7.3 Additional accounts**  
 In addition to Member Accounts and the Fund Account, the Trustee may establish and maintain such other accounts (including reserve accounts and forfeiture accounts) as the Trustee may determine and Superannuation Law allows.

**8. FUND RECORDS**  
**8.1 Availability of deed**  
 A copy of the Deed must be made available for inspection by any Member on the request of that Member.  
**8.2 Records and accounts**  
 The Trustee must:  
 (a) keep full and complete records books and accounts having regard to the requirements of Superannuation Law; and  
 (b) prepare, or have prepared, accounts and statements in relation to the Fund as at the end of the Financial Year, and have those accounts and statements audited by the Auditor, in accordance with Superannuation Law.

**8.3 Auditor**  
 The Trustee:  
 (a) must appoint an Auditor on such conditions as the Trustee determines; and  
 (b) subject to Superannuation Law, may remove the Auditor at any time and appoint another Auditor in his or her place.

**9. CONTRIBUTIONS**  
**9.1 Source**  
 (a) Subject to Superannuation Law, any person, corporation or government body may contribute to the Fund in respect of a Member.  
 (b) Subject to Superannuation Law or any agreement, no Member, Employer nor any other person is required to contribute to the Fund in respect of a Member.

**9.2 Form of Contributions**  
 (a) Subject to Superannuation Law, Contributions may be made either in cash or by transfer to the Fund of an asset in kind.  
 (b) If a Contribution is made by the transfer to the Fund of an asset in kind:  
 (i) the amount of the Contribution will be the market value of that asset at the time of its transfer; and  
 (ii) the transfer will be undertaken on such terms and conditions as are determined or agreed by the Trustee.

**9.3 Acceptance of Contributions**  
 The Trustee:  
 (a) may accept Contributions in respect of a Member to the extent permitted by Superannuation Law; and  
 (b) must not accept any Contribution if, in the opinion of the Trustee, the acceptance of the Contribution would not be permitted by Superannuation Law.

**9.4 Refund of Ineligible Contributions**

If Superannuation Law requires or allows the whole or any part of any Contribution to be refunded, the Trustee may refund the whole or part of that Contribution, less a reasonable portion of the Fund Expenses and Taxes attributable to dealing with that Contribution or the refund of it and debit the Member's Member Account accordingly.

**9.5 Contributions Splitting**

- (a) A Member may give a Contributions Splitting Application to the Trustee.
- (b) Subject to Superannuation Law, the Trustee may (but is not bound to) accept a Contributions Splitting Application from a Member.
- (c) If the Trustee accepts a Contributions Splitting Application, the Trustee must give effect to the Contributions Splitting Application in accordance with the requirements prescribed by Superannuation Law.
- (d) The Trustee may accept from any other Superannuation Fund any money or assets received by the Trustee for the benefit of a Receiving Spouse who is a Member.
- (e) In this clause 9.5:

**Contributions Splitting Application** means an application by a Member to the Trustee, requesting the Trustee to roll over, transfer or allot an amount of the Splittable Contributions made by, for, or on behalf of that Member for the benefit of that Member's Spouse, which application must be in such form, and contain such information, as may be prescribed by Superannuation Law or as the Trustee may from time to time accept.

**Receiving Spouse, Splittable Contribution and Spouse** all have the same meaning as in the Superannuation Law.

**10. TRANSFERS**

**10.1 Transfers from other Superannuation Funds**

- (a) Where a Member is or was at any time a member or beneficiary under any other Superannuation Fund, the Trustee may (but is not bound to) receive money or assets in respect of the Member's interest in the other Superannuation Fund from the trustee of the other Superannuation Fund (**Received Amount**).
- (b) Upon receipt of the Received Amount, the Trustee will:
  - (i) hold the Received Amount as part of the Fund; and
  - (ii) will credit the particular Member's Member Account as the Trustee determines to take account of the Received Amount.

**10.2 Transfers to other Superannuation Funds**

- (a) Subject to Superannuation Law:
  - (i) where a Member is, or is eligible to become, a member of another Superannuation Fund; and
  - (ii) the Member requests that the whole or part of the Member's interest in the Fund be transferred to the other Superannuation Fund (**Transferred Amount**);

the Trustee may, subject to such conditions and indemnities as the Trustee may require, pay to the trustee of the other Superannuation Fund the Transferred Amount or transfer investments of the Fund of equivalent value to the Transferred Amount.

- (b) The Trustee will debit the Member's Member Account as the Trustee determines to take account of the Transferred Amount and a reasonable portion of the Fund Expenses and Taxes in relation to that transfer.

- (c) The receipt of the Transferred Amount by the trustee of the other Superannuation Fund will be a complete discharge to the Trustee of all liabilities in respect of, and the Trustee will have no responsibility to see to the application of, the Transferred Amount.

11. BENEFITS

11.1 When Benefits payable

- (a) If Superannuation Law requires or permits the Member's benefit to be cashed, a Benefit equal to the Member's Account Balance (or such part of it as the Superannuation Law requires or permits to be cashed) becomes payable in respect of a Member.
- (b) If Superannuation Law requires or permits only part of a Member's Benefit to be cashed, then the Trustee may only cash that part of the Benefit as Superannuation Law requires or permits to be cashed.

11.2 Form and manner of payment

- (a) Subject to clause 11.2(b), the Trustee may, in its absolute discretion, pay part or all of a Member's Benefit to the Member (or to a Beneficiary) in such manner and on such conditions as may be permitted by the Superannuation Law, including in the form of one or more Pensions or one or more lump sums or a combination thereof.
- (b) During any period where there are Individual Trustees, but subject to clause 11.2(c), a Member's Benefit must be paid by the Trustee by way of pension.
- (c) Subject to Superannuation Law, the Trustee may, at the request of a Member (or Beneficiary) commute the whole or any part of:
  - (i) a lump sum into one or more Pensions; or
  - (ii) a Pension into one or more lump sums (unless the terms of that Pension prohibit it from being so commuted).
- (d) A request under clause 11.2(c) must be made in such a form and within such time as the Trustee may in its absolute discretion determine.
- (e) The Trustee may, with the consent of a Member (or Beneficiary) to whom a Benefit is payable transfer investments of the Fund (including any Policy) of equivalent value to that Member (or Beneficiary) in lieu of paying the whole or part of the amount otherwise payable.

11.3 Death Benefit

- (a) Subject to clauses 11.3(c) and 11.3(d), where any Death Benefit becomes payable in respect of a Member or former Member, the Trustee must pay or apply the Death Benefit to or for the benefit of any one or more of:
  - (i) the Member's Dependents; and
  - (ii) the Member's legal personal representatives,
- as determined by the Trustee in its absolute discretion in such proportions between them and in the manner, at the times and by the instalments (including in the form of one or more pensions or one or more lump sums or a combination thereof) as the Trustee determines in its discretion.
- (b) For the avoidance of doubt, the Trustee may take into account, but is not bound by, any Non-Binding Nomination of the Member or former Member.
- (c) If a deceased Member or former Member was in receipt of a Pension from the Fund as at the date of his or her death and the terms of that Pension specify a reversionary pensioner, then unless Superannuation Law prohibits that Pension from being paid to the reversionary pensioner, the Trustee must pay that Pension to the reversionary pensioner.
- (d) Where:
  - (i) the Member has completed a Binding Nomination; and
  - (ii) the Trustee has received that Binding Nomination prior to paying or applying the Death Benefit,

the Trustee must pay or apply the Death Benefit to or for the benefit of the person or persons, and in the manner, set out in that Binding Nomination unless doing so would be contrary to Superannuation Law, in which case the Trustee must pay or apply the Death Benefit in accordance with clause 11.3(a) as if the Binding Nomination were a Non-Binding Nomination.

11.4 **Retention of Benefit and payment to others**

(e) If the Member or former Member has no Dependents and no legal personal representative has been appointed within 12 months of the date of death of the Member or former Member or within such shorter period as the Trustee in its absolute discretion considers reasonable, the Trustee must, subject to Superannuation Law, pay the Death Benefit to any one or more of the Relatives of the Member or former Member in such proportions between them (if more than one) as determined by the Trustee in its absolute discretion.

(f) If a Death Benefit becomes payable to any one or more of the Dependents or legal personal representatives of a deceased Member or former Member under this clause 11.3, the Trustee may, in its absolute discretion, increase the Death Benefit by an amount equivalent to the value of the advantage that would accrue to the Fund if a deduction were allowed under section 295-485 of the Tax Act (or its successor provision) in respect of the payment.

11.5 **Unclaimed Benefits**

The Trustee may deal with any unclaimed money in the manner specified in Superannuation Law.

(a) If any Beneficiary is under the age of 18 years and either the Trustee considers it to be in the best interests of that Beneficiary or a Beneficiary requests, the Trustee may:

(a) retain the Benefit in the Fund until the Beneficiary attains 18 years of age or the Trustee is satisfied that the Benefit should be paid to the Beneficiary; or

(b) pay all or part of the Benefit to any other person for application on behalf of that Beneficiary.

12. **FORFEITURE OF BENEFITS**

(a) Subject to Superannuation Law and unless the Trustee determines otherwise, a Member or Beneficiary automatically forfeits their entitlement to all of their Benefit if he or she:

(i) assigns, charges or conveys all or any part of any Benefit (or attempts to do so); or

(ii) becomes bankrupt or insolvent.

(b) Any amounts forfeited under this clause will be dealt with in such manner as the Trustee determines and Superannuation Law allows, including transferring such amounts to a Forfeiture Account or other account established under clause 7.

13. **FUND EARNINGS**

(a) The Trustee must:

(i) collect and receive all interest, dividends, rent and other gross income and profits of the Fund; and

(ii) pay out of such gross income and profits (and where that is insufficient, the capital of the Fund) all Fund Expenses and Taxes.

(b) The Trustee will as soon as reasonably practicable after the end of the Financial Year (or at such other times as the Trustee may determine) credit (if the Fund Earnings are positive) or debit (if the Fund Earnings are negative) the Member Accounts in respect of all Members, the Fund Account and any other accounts established under clause 7 on such basis as the Trustee considers equitable and in accordance with any requirements of Superannuation Law.

14. **TAXES**

(a) The Trustee must pay any Taxes which are due and payable by the Fund.

(b) The Trustee may make provision in such manner as it considers appropriate to allow for any anticipated or future liability for Taxes.



- (c) Notwithstanding any other provision of the Deed, but subject to Superannuation Law, the Trustee may:
  - (i) debit one or more of a Member's Member Account, the Fund Account and any other account established under clause 7 in such manner as it considers appropriate to reflect the payment of, or the making of any provision for, any Taxes.
  - (ii) deduct Taxes from any Benefit and a Beneficiary is only entitled to the net Benefit after such deduction.
- 15. TERMINATION
  - (a) Subject to Superannuation Law, the Trustee may resolve to terminate the Fund from a date determined by the Trustee (**Termination Date**), if:
    - (i) there are no Members in the Fund;
    - (ii) the Members, by unanimous resolution, ask the Trustee to terminate the Fund;
    - (iii) it appears to the Trustee that the Fund is insolvent; or
    - (iv) for any other reason the Trustee thinks is appropriate.
  - (b) As and from the Termination Date:
    - (i) no further Members will be admitted;
    - (ii) no further Contributions will be accepted; and
    - (iii) the Trustee will hold the Fund (after payment or allowance for any Fund Expenses and Taxes) on trust for each Member pro-rata to each Member's Account Balance as at the Termination Date, on such terms as the Trustee determines and Superannuation Law allows. There is no resulting trust to any Employer.
  - (c) As soon as practicable after the Termination Date, the Trustee must:
    - (i) give notice of the termination of the Fund to each Member;
    - (ii) pay all Benefits under the Deed or, where required by Superannuation Law, transfer all Benefits to another Superannuation Fund on account of the Members in accordance with clause 10.2.
- 16. GENERAL
  - 16.1 Amendments
    - Subject to Superannuation Law, the Trustee may, by Deed, amend, delete, replace or add to any provision of the Deed (including this clause) with immediate, prospective or retrospective effect from time to time.
  - 16.2 Governing law
    - The Deed will be governed and construed and will take effect in accordance with the laws of South Australia. The rights of the Trustee, Beneficiaries, Members, former Members and their Dependents and legal personal representatives must accept the jurisdiction of the Courts of that State. Section 35b of the *Trustee Act 1936* (SA) has no application to the Deed.
  - 16.3 Notices
    - A notice to be given by a person under the Deed must be:
      - (a) in writing and signed by that person (or its agent); and
      - (b) may be served personally, by post, facsimile or electronically to the last known physical address, facsimile number or electronic address of the addressee.

- (a) If any provision of the Deed is void, voidable, unenforceable or illegal in accordance with its terms, but would not be void, voidable, unenforceable or illegal if it were read down and is capable of being read down, the provision must be read down accordingly.
- (b) If notwithstanding clause 16.4(a), a provision of the Deed would still be void, voidable, unenforceable or illegal:
- (i) if the provision would not be void, voidable, unenforceable or illegal if a word or words were omitted, that word or those words must be omitted; and
- (ii) in any other case, the whole provision must be severed;
- and the remainder of the Deed will be of full force or effect.

17. INTERPRETATION

17.1 Definitions

In the Deed:

**Account Balance** means, in respect of a Member, the total amounts standing to the credit of the Member's Member Accounts.

**Annuity** has the same meaning as in SIS.

**Auditor** means the appropriately qualified auditor for the time being appointed pursuant to clause 8.3 of the Deed.

**Beneficiary** means any person (including a Member or former Member) who may become entitled to be paid a benefit from the Fund.

**Benefit** means an amount paid or payable out of the Fund to or for the benefit of a Member or Beneficiary.

**Binding Nomination** means a document substantially in the form set out in Schedule 1, or in such other form that expressly states that it is intended to be binding on the Trustee. For the avoidance of doubt, the Binding Nomination need not comply with any requirements of SIS in relation to binding death benefit nominations.

**Child** has the same meaning as in SIS.

**Complying Superannuation Fund** means a fund that is a complying superannuation fund for the purposes of Superannuation Law.

**Constitutional Corporation** has the same meaning as in SIS.

**Contribution** includes any contribution accepted by the Trustee pursuant to clause 9 of the Deed.

**Death Benefit** means a Benefit in respect of a Member or former Member who is not alive when the benefit is to be paid.

**Deed** means the deed establishing the Fund dated 2 July 1999, including any schedules, as amended from time to time.

**Dependant**, in relation to a Member or former Member, has the same meaning as in SIS.

**Disqualified Person** has the same meaning as in SIS.

**Employer** means a person or company by whom a Member is employed, and in relation to a particular Member means the employer of that Member.

**Excess Contributions Tax** has the same meaning as in the Tax Acts.

**Financial Year** means a period of 12 months ending on 30 June, or such other period ending on such other date as the Trustee from time to time determines.

**Fund** means the Svigos Family Superannuation Fund and, where relevant in the context, all of the assets from time to time held by the Trustee on the trusts of the Deed.

**Fund Account** means the account referred to in clause 7.2(a).

**Fund Earnings** means the net earnings of the Fund as determined by the Trustee.

**Fund Expenses** means a cost or expense of or incidental to establishing, operating, managing, administering or investing the Fund, excluding Taxes.

**Individual Trustee** means a natural person.

**Member** means a person who has been admitted to membership of the Fund who has not ceased to be a Member and includes (for the avoidance of doubt) a person in receipt of a Pension from the Fund.

**Member Account** means, in relation to a Member each account established pursuant to clause 7.1.

**Non-Binding Nomination** means a document substantially in the form set out in Schedule 2 or in such other form as is acceptable to the Trustee.

**Old-Age Pensions** has the same meaning as in SIS.

**Pension** has the same meaning as in SIS.

**Policy** means any policy of assurance including a policy on the life of a Member for any one or more of the death, endowment, term, disablement, accident or sickness of the Member, effected either as an individual policy or as a group policy.

**Prescribed Requirement** means any provision of Superannuation Law that must be included in the Deed from time to time in order for the Fund to be a Complying Superannuation Fund.

**Regulator** means, as the context requires, the Federal Commissioner of Taxation or the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission or any other regulatory body which has responsibility for the supervision of the conduct of superannuation funds.

**Relative** in relation to a Member or former Member means:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, cousin, grandchild or great-grandchild of the Member;
- (b) any Spouse of any of the persons specified in paragraph (a);
- (c) any Child of any of the persons specified in paragraph (a) or (b); or
- (d) any other natural person selected by the Trustee to whom the Trustee considers it appropriate to pay a benefit in respect of the Member.

**SIS** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (as amended, modified or replaced).

**Spouse** has the same meaning as in SIS.

**Superannuation Fund** means a superannuation fund (including an approved deposit fund, eligible rollover fund or retirement savings account) which, in the opinion of the Trustee, in the relevant year of income, will be a Complying Superannuation Fund.

**Superannuation Law** means any requirement under any law, including SIS and the Tax Acts (as modified in its application to the Fund by any subsisting declaration, modification or exemption granted by the Regulator) that:

- (e) is imposed on the Trustee or the Fund, or
- (f) the Trustee considers a prerequisite for, or in any way assist the Fund, to be a Complying Superannuation Fund in relation to each year of income.

**Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) (as amended, modified or replaced).

**Tax** includes income tax (including capital gains tax, tax on termination payments, tax on Contributions and Excess Contributions Tax) payroll tax, land tax, stamp duty, surcharge, levy, impost, other tax, advance instalment of tax, penalty or interest.

**Trustee** means the Trustee or trustees, as the case may be, for the time being of the Fund whether original, additional or substituted.

- (a) In the Deed, reference to:
  - (i) one gender includes the other gender;
  - (ii) the singular includes the plural and vice versa;
  - (iii) a person includes a body corporate;
  - (iv) a statute, regulation or provision of a statute or regulation (Statutory Provision) will be construed as a reference to that Statutory Provision as amended or re-enacted from time to time and includes any statute, regulation or provision enacted in replacement of that Statutory Provision;
  - (v) a clause or schedule is a reference to a clause or schedule of the Deed (unless the context otherwise requires);and
- (b) headings are for convenience only and do not affect the interpretation of the Deed.
- (c) If a dispute arises on the interpretation of a provision of this Deed or as to the rights and obligations of a Beneficiary, then (except to the extent otherwise expressly provided in this Deed) the decision of the Trustee is final and binding.

**17.3 Interpretation rules**

Unless the context indicates a contrary intention, words and expressions used in the Deed will have the meanings assigned to them in Superannuation Law.

**17.2 Words & expressions defined in Superannuation Law**

# Svigos Family Superannuation Fund

## Binding nomination

Member's details	
Full Name	[Member's Name]
Address	[Member's address]
Binding nomination	
<p>I revoke any previous nomination (whether binding or non-binding) that I have made in relation to my interest in the Fund.</p> <p>Subject to law and the Fund's governing rules, I direct the Fund trustee(s) to deal with any benefit payable to or in respect of me from the Fund in the event of my death (<b>Death Benefit</b>) in accordance with the following directions:</p> <p>[insert directions]</p> <p>It is my intention that the above directions will be binding upon the Fund trustee(s) unless and until I revoke or vary them in accordance with the Fund's Trust Deed.</p> <p>I acknowledge that if the above directions are contrary to law at the time for payment of the Death Benefit, then the directions (to the extent that they are contrary to law) will not be binding on the Fund trustee(s), but the Fund trustee(s) may take them into account in exercising any discretion as to how the Death Benefit will be paid or applied.</p>	
Member's signature	
Date	
X	Sample only – not to be signed
Witness 1's signature	
X	Sample only – not to be signed
Witness 2's signature	
X	Sample only – not to be signed
Witness 1's full name (print)	
Witness 2's full name (print)	
Signed by the Member in our joint presence and by us in the Member's presence	

# Svigos Family Superannuation Fund

## Non-Binding nomination

Member's details	
Full Name	[Member's name]
Address	[Member's address]
Binding nomination	
<p>I revoke any previous nomination (whether binding or non-binding) that I have made in relation to my interest in the Fund.</p> <p>Subject to law and the Fund's governing rules, I direct the Fund trustee(s) to deal with any benefit payable to or in respect of me from the Fund in the event of my death (<b>Death Benefit</b>) in accordance with the following directions:</p> <p>[insert directions]</p> <p>It is my intention that the above directions <b>will not be binding</b> upon the Fund trustee(s), but the Fund trustee(s) may take them into account in exercising any discretion as to how the Death Benefit will be paid or applied.</p>	
Member's signature	Date
<p>X</p> <p>Sample only – not to be signed</p>	

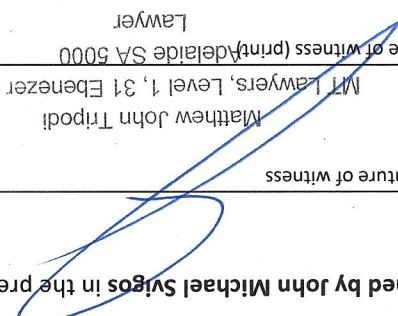
Executed as a deed

Date 4 July 2013

Signed by John Michael Svigos in the presence of

X

Signature of witness



Matthew John Tripodi  
MT Lawyers, Level 1, 31 Ebenezer Place

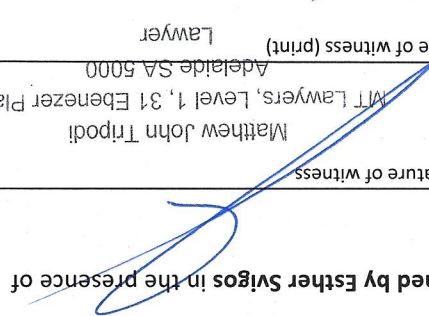
Name of witness (print) Adelaide SA 5000

Lawyer

Signed by Esther Svigos in the presence of

X

Signature of witness



Matthew John Tripodi  
MT Lawyers, Level 1, 31 Ebenezer Place

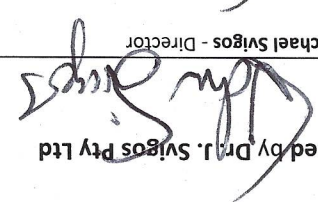
Name of witness (print) Adelaide SA 5000

Lawyer

Executed by Dr J. Svigos Pty Ltd

X

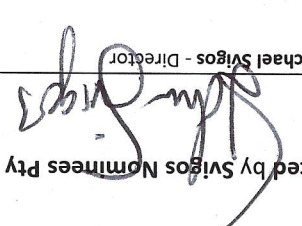
John Michael Svigos - Director



Executed by Svigos Nominees Pty Ltd

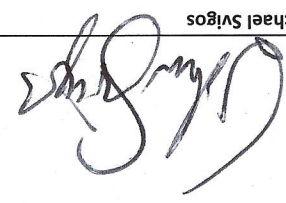
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John Michael Svigos - Director



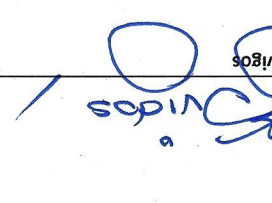
John Michael Svigos

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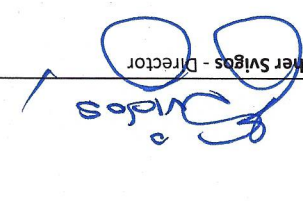
Esther Svigos

X



Esther Svigos - Director

X



Esther Svigos - Director

X

