



DEED OF ESTABLISHMENT
INDIANA SELF MANAGED SUPER FUND

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Ref: 180101

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This DEED is made on the 5th day of MARCH 2018.

BETWEEN: **FLURRY FAMILY SUPERANNUATION PTY LTD (ACN 624 623 427)** of 23B Westborough Street, Scarborough, Western Australia ("the Trustee")

AND **JAMES DANIEL FLURRY** and **AMY JEAN FLURRY** both of 23B Westborough Street, Scarborough, Western Australia (together, "the Members")

RECITALS

The parties wish to establish the **INDIANA SELF MANAGED SUPER FUND** ("the Fund")


PROVISIONS

1. The Fund is to be known as the **INDIANA SELF MANAGED SUPER FUND** and commences when the Trustee has complied with section 19(4) of the Superannuation Industry (Supervision) Act (election to become a regulated superannuation fund).
2. This deed includes the rules attached to it ("**Rules**").
3. The Trustee must hold the assets of the Fund on trust to apply them in the manner set out in the Rules.
4. This deed may be amended in the manner set out in the Rules.
5. The parties acknowledge that although the Rules provide for different types of pensions, the payment of some types of pensions from the Fund may amount to a breach of the Superannuation Industry (Supervision) Act or Regulations. Accordingly, the Trustee undertakes to seek advice before paying any pension.

EXECUTED AS A DEED

SIGNED by
JAMES DANIEL FLURRY
in the presence of

)
)
)

x 
James

x  Amy Jean Flurry
Witness

SIGNED by
AMY JEAN FLURRY
in the presence of

)
)
)

x 
Amy

x  JAMES FLURRY
Witness

Executed by
FLURRY FAMILY SUPERANNUATION
PTY LTD (ACN 624 623 427) in accordance
with section 127 of the Corporations Act)

)
)
)

x 
James Daniel Flurry - Director

x 
Amy Jean Flurry - Director

GOVERNING RULES

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certified) that the Member is unlikely, because of the ill-health, ever again to engage in gainful employment for which the Member is reasonably qualified by education, training or experience.

Rules means these rules.

Shortfall Component has the same meaning as in the Superannuation Guarantee (Administration) Act.

SIS Regulation means Superannuation Industry (Supervision) Regulation.

Spouse in relation to a person includes:

- (a) a man or woman with whom the person is in a registered relationship as defined in the Acts Interpretation Act 1901; and
- (b) another person who, although not legally married to the person, lives with the person on a genuine domestic basis in a relationship as a couple.

Tax includes any duty or government impost.

Temporary Incapacity means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity.

Terminal Medical Condition means:

- (a) 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 after the date of the certification;
- (b) at least one of the practitioners is a specialist practicing in an area related to the illness or injury; and
- (c) for each of the certificates, the certification period has not ended.

Trustee means the Trustee for the time being under rule 7.

2 MEMBERSHIP

Admission

- 2.1 Anyone may apply to the Trustee for admission as a Member or for the admission of a person for whom the applicant intends to contribute.
- 2.2 The Trustee may reject an application.
- 2.3 Before admitting a person as a Member, the Trustee must ensure that the Trustee structure of the Fund meets Government Requirements and may require the person:
 - (a) to be examined by a registered medical practitioner approved by the Trustee; or
 - (b) to give the Trustee any document or information it considers relevant to the administration of the Fund; or
 - (c) to enter into a written agreement with the Trustee, imposing special conditions in respect of the applicant's membership; or
 - (d) any combination of (a), (b) and (c).
- 2.4 If the Trustee admits a person as a Member, membership does not commence until:
 - (a) the person has become a Trustee or (if the Trustee is a Constitutional Corporation) a director of the Trustee; or
 - (b) the Trustee has satisfied itself that when the membership commences, the Fund will meet the definition of self-managed superannuation fund in Government Requirements.

Terms

- 2.5 Each Member is bound by the Deed and Rules.
- 2.6 The Trustee is the Member's attorney to do anything the Trustee considers appropriate to administer the Fund.

- (b) may first make deductions for any liabilities or expenses incurred (and provisions for liabilities and expenses) in relation to the contribution.

- 4.8 If any part of a purported contribution in respect of a Member would be either an “excess concessional contribution” or an “excess non-concessional contribution” under the Income Tax Assessment Act 1997, then:
- (a) the Trustee must not accept that part;
- (b) that part is not included in the Fund’s assets regardless of whether or not it has been mingled with those assets; and
- (c) the Trustee holds that part on a bare trust for the person who made the purported contribution.

Refund of excess contributions

- 4.9 If the Trustee receives a release authority issued under Government Requirements in respect of excess contributions, the Trustee must pay to the Member or to the Commissioner of Taxation in accordance with Government Requirements the least of:
- (a) the amount stated in the authority;
- (b) if the release authority was given by the Member, the amount the Member requests; and
- (c) the Member’s Account Balance; and must notify the Member and the Commissioner of Taxation in accordance with Government Requirements.

5 BENEFITS - ENTITLEMENT

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid.

Request - age 65

- 5.1 If a Member (who has not otherwise become entitled to a benefit under the Rules) requests a benefit at or after age 65, the Member becomes entitled to a benefit equal to the Member’s Account Balance.

Death benefits

- 5.2 If a Member dies the Trustee must pay a benefit equal to the Member’s Account Balance less the balance of the Member Account for any pension that reverts under rule 6.21.
- 5.3 If, in relation to any part of the benefit:
- the Trustee accepted a Binding Death Benefit Nomination;
 - it has not been revoked; and
 - it can be followed under Government Requirements
- then the Trustee must follow the Binding Death Benefit Nomination in relation to that part of the benefit.
- 5.4 If in relation to any part of the benefit:
- the Trustee does not hold a current Binding Death Benefit Nomination; or
 - the relevant nomination cannot be followed for any reason
- the Trustee must pay that part of the benefit to any or all of the Member’s Dependants and legal personal representative in the proportions that the Trustee decides.
- 5.5 If rule 5.4 applies and there is no Dependant or legal personal representative then, if Government Requirements permit, the Trustee may pay that part of the benefit to any other people in proportions the Trustee decides.
- 5.6 Any benefit nomination not expressed to be binding on the Trustee is given for information only and does not affect the Trustee’s discretion in distributing the benefit.
- 5.7 Subject to the instructions in a Binding Death Benefit Nomination as to the manner of payment, the Trustee may pay any part of the benefit as a lump sum or as a pension or in any other form as it considers appropriate including the settlement of a trust for the benefit of any Dependant.
- 5.8 No pension is payable to a person under rule 5 until the person is a Member. However, the Trustee (and not the payee) may determine which provisions of rule 6 apply.

Interest on benefits

- 5.19 The Trustee may credit or debit interest to a benefit paid after the date it becomes payable.

Deductions for Tax

- 5.20 The Trustee must comply with Government Requirements regarding deductions of Tax from benefits and other payments from the Fund.

Trustee's discharge

- 5.21 The Trustee's only obligation in respect of a benefit is to pay it in good faith to or on behalf of a person the Trustee believes is entitled to the benefit. Otherwise, the Trustee is completely discharged by that payment.

Forfeited benefits

- 5.22 A Member forfeits the part of a benefit not attributable to Member contributions if:
- (a) the Member purports to assign, alienate or charge; or
 - (b) any other event occurs that results in another person becoming entitled to all or part of the benefit. However, this rule has no effect to the extent that it is inconsistent with Government Requirements or the Bankruptcy Act.

- 5.23 The Trustee must, if Government Requirements permit, apply a forfeited benefit for the Member and the Member's Dependents in proportions that the Trustee decides.

Splitting of benefits

- 5.24 The Trustee must reduce a Member's Account Balance or the amount of any pension payment to the Member if:
- (a) Government Requirements relating to Non-Member Spouses require the Trustee to do so; or
 - (b) those Government Requirements permit the Trustee to do so and the Trustee elects to do so.
- 5.25 If the Trustee makes a reduction under rule 5.24, the Trustee must apply the amount of the reduction (in the manner required or permitted by, and adjusted as required by,

Government Requirements) for the benefit of the relevant Non-Member Spouse.

- 5.26 To the extent that Government Requirements allow the Trustee any discretion in any of the matters mentioned in rule 5.24 or 5.25, the Trustee may exercise that discretion as it sees fit without regard to the interests of the Non-Member Spouse.

- 5.27 The Trustee may charge fees in respect of those matters to the extent permitted under Government Requirements.

6 BENEFITS - PAYMENT

Rule 5 sets out the circumstances in which a benefit becomes payable from the Fund. Rule 6 deals with when and how the benefit is actually paid. A pension is not payable to anyone (including a reversionary beneficiary) until the person is a Member. The deed or resolution implementing this version of the Rules has preserved the application of previous versions insofar as they deal with the payment of pensions that commenced before this version.

- 6.1 If the Trustee is not a Constitutional Corporation, then the Fund's primary purpose is to provide old-age pensions and the Trustee must pay benefits due to a Member as pensions except to the extent that the Member requests otherwise.

Account based pensions

- 6.2 The Trustee must pay all or part of a benefit as an account based pension if the Member requests.

- 6.3 The Trustee must pay the pension from a Member Account of the Member on terms that the Trustee and Member agree as to the level and frequency of payment. However, the level of the pension must be within the minimum and maximum levels (if any) prescribed by Government Requirements for such a pension and the Trustee must pay the pension at least annually.

- 6.4 Before paying a pension, the Trustee must consult the Member as to whether the commencement of the pension will result in an Excess Transfer Balance for the Member.

(b) a market linked pension is also a “non-commutable pension” then the Trustee must not pay any part of the benefit unless the Trustee is satisfied that the payment is consistent with Government Requirements in relation to such a pension.

Reversionary pensions

- 6.20 A Member may nominate one or more of the Member’s Dependants as reversionary beneficiaries (either successive or concurrent) in relation to any pension payable to the Member as at his or her death. If reversionary beneficiaries are nominated as concurrent, the nomination may indicate the respective portions of the pension that revert to them.
- 6.21 If the Member dies while entitled to the pension:
- (a) to the extent that the Member nominated a reversionary beneficiary in accordance with rule 6.20 the pension reverts to the nominee if payment of the pension to him or her would be consistent with Government Requirements; and
- (b) otherwise, the Trustee must first comply with rule 5.3, and in respect of any part of the Member’s Account Balance remaining, either:
- pay one or more benefits under rules 5.2 to 5.8; or
 - continue paying the relevant pension to any or all of the Member’s Dependants in proportions the Trustee decides, if that would be consistent with Government Requirements.
- 6.22 When a pension or part of a pension payable to a Member who has died (“Deceased”) reverts to a person (“Survivor”):
- (a) the Trustee must pay to the Deceased’s legal personal representative the remainder of any amount that the Trustee owes to the Deceased under rule 6.5 in respect of the Financial Year in which the death occurred;

(b) the pension (or part pension) reverts to the Survivor;

(c) the pension (or part pension) becomes payable to the Survivor on the 30 June in the Financial Year after the Financial Year in which the death occurred (“Payment Date”);

(d) on the Payment Date, the Trustee must pay to the Survivor or Survivors the minimum level of pension payment prescribed by Government Requirements for such a pension for the Financial Year in which that date falls;

(e) the Trustee must consult each Survivor as to whether the reversion of the pension will in the future result in an Excess Transfer Balance for the Survivor; and

(f) to the extent of the forecast Excess Transfer Balance indicated by the Survivor, the Trustee must pay the balance of the relevant Member Account to the Survivor as a lump sum.

Lump sum

- 6.23 If a person entitled to a benefit requests, the Trustee may pay the benefit as a lump sum.

Rollover or annuity

- 6.24 A person entitled to a benefit may direct the Trustee to:
- (a) pay all or part of the benefit to another fund; or
- (b) apply all or part of the benefit to purchase an annuity in the name of the person or, if the person is a Member, in the name of the Member or one or more of the Member’s Dependants.
- 6.25 The Trustee must comply with the direction if the payment complies with Government Requirements.

- 7.9 In dealing with Members, the Trustee may treat any communication as given by a Member if it purports to have been given by or on behalf of the Member.
- Delegation**
- 7.10 The Trustee may delegate any of its powers, duties and discretions to anyone if the delegation complies with Government Requirements.
- Administrators and investment managers**
- 7.11 In particular, the Trustee may appoint anyone to administer the Fund or to manage the Fund's investments or to perform both functions. However, the appointment must be written and must comply with Government Requirements.
- Discretions**
- 7.12 The Trustee is completely unrestricted in the exercise of its powers and discretions.
- 7.13 The Trustee and any of its directors, employees, delegates or agents may be involved in the exercise of the Trustee's powers and discretions even if they have a conflict of interest or duty.
- Remuneration**
- 7.14 The Members may agree a rate of remuneration that the Trustee or its directors may receive from the Fund if that would be consistent with Government Requirements.
- Liability**
- 7.15 The Trustee's liability is limited to its own dishonest acts or omissions and its own intentional or reckless failures to exercise the degree of care and diligence that it is required to exercise.
- Indemnity**
- 7.16 The Trustee, former Trustees, and any of their directors or employees are indemnified in respect of any Tax, loss or expenditure that they incur in relation to the Fund or the administration of the Trustee or a former Trustee unless it results from the person's dishonesty or intentional or reckless failure to exercise the degree of care and diligence which the person was required to exercise.
- 7.17 Rule 7.16 does not apply to the extent that its application is inconsistent with Government Requirements.
- 7.18 A Member must indemnify the Trustee for any loss or liability incurred because (or partly because) the Trustee relies on information which the Member gives to the Trustee.
- 8 ADMINISTRATION**
- Information to Trustee**
- 8.1 Every Member and any other person who claims a benefit must give the Trustee any information or documents it reasonably requires to administer the Fund.
- 8.2 The Trustee may require a Member to be examined by a registered medical practitioner approved by the Trustee. However, in applying for a benefit because of Permanent or Temporary Incapacity or a Terminal Medical Condition, a Member may tender to the Trustee a medical certificate used in applying for a previous benefit.
- 8.3 The Trustee must treat any information it acquires in relation to Members and their Dependants as confidential and may use that information only in the administration of the Fund.
- Information to Members and others**
- 8.4 The Trustee must give information and documents to others as and when required by Government Requirements. For this purpose, the Trustee may determine that a particular group of Members comprises a sub-plan.
- Notices**
- 8.5 Any written communication by or on behalf of the Trustee relating to the Fund is taken to be given to a person if it is:
- (a) handed to the person; or
 - (b) delivered to the person's address last known to the Trustee; or

- (d) the appropriateness of averaging earnings, losses and expenses over several years.

8.18 The Trustee must not distribute investment return in a way that takes any of the Fund's reserve accounts into debit.

Reserves

- 8.19 The Trustee may set up one or more reserve accounts to record:
- (a) earnings or losses of the Fund not recorded in Member Accounts;
 - (b) contributions not yet allocated to Member Accounts;
 - (c) amounts no longer required to pay benefits for Members;
 - (d) any insurance proceeds arising from an event other than the death, Permanent Incapacity or Temporary Incapacity of a Member or a Terminal Medical Condition in relation to a Member if crediting the proceeds to a Member Account would be inconsistent with Government Requirements; and
 - (d) any other insurance proceeds that the Trustee decides not to credit to a Member Account.

- 8.20 The Trustee may use amounts held in the Fund's reserve accounts for any purposes including:
- (a) averaging earnings, losses and expenses over several years;
 - (b) replacing contributions otherwise payable to the Fund; and
 - (c) providing additional benefits. However, the Trustee may apply those amounts only as and when the Members approve and Government Requirements permit.

Insurance proceeds

- 8.21 Despite rule 8.7 the Trustee may credit proceeds of insurance policies to the Fund's reserves and must do so if rule 8.19 requires.

Audit

- 8.22 The Trustee must appoint an auditor (who meets Government Requirements) to audit the Fund's accounts and records and to give the Trustee a written report each year

when Government Requirements so require.

Inquiries and complaints

- 8.23 If Government Requirements so require, the Trustee must take reasonable steps to ensure that arrangements are in force under which:
- (a) any person entitled to a benefit from the Fund may inquire into, or complain about, the operation or management of the Fund in relation to that person; and
 - (b) the inquiry or complaint will be considered and properly dealt with within 90 days after it is made.

9 INVESTMENTS & BORROWING

Powers

- 9.1 The Trustee may invest the Fund assets in any manner, as if it were investing its own property. For this purpose, "invest" includes:
- (a) holding property for capital gain, income or both; and
 - (b) purchasing, acquiring, holding and disposing of real and personal property including without limitation securities.

Strategy

- 9.2 The Trustee must formulate, review regularly and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to:
- (a) the risk involved in making, holding and realising, and the likely return from, the Fund's investments, having regard to its objectives and its expected cash flow requirements;
 - (b) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
 - (c) the liquidity of the Fund's investments, having regard to its expected cash flow requirements;
 - (d) the Fund's ability to discharge its existing and prospective liabilities;

to be consistent with an arm's length dealing.

Collectables and personal use assets

- 9.7 The Trustee must comply with Government Requirements in relation to collectables and personal use assets, and in particular their acquisition, use, storage, disposal, insurance and valuation.

Custodian

- 9.8 The Trustee may appoint a person to perform custodial functions in relation to any of the Fund's assets on terms the Trustee considers appropriate, if the appointment complies with Government Requirements.

Restrictions

- 9.9 The Trustee must comply with Government Requirements when investing the Fund's assets and disposing of assets.

- 9.10 The Trustee must comply with Government Requirements in relation to:
- (a) making loans; and
 - (b) borrowing.

- 9.11 The Trustee may charge the Fund's assets only if Government Requirements permit.

10 DEATH OR INCAPACITY – CONTROL & ESTATE PLANNING

Death - successor Trustees

- 10.1 The Members may by deed appoint a person under rule 7.6 to become a Trustee upon the death of a Trustee named in the appointment. The appointment must be consistent with Government Requirements.

Death - legal personal representative

- 10.2 Where there is no corporate Trustee and a Member dies, the Member's legal personal representative may become a Trustee in place of the Member by making a written declaration to that effect and giving it to the other Trustees (if any).

Incapacity - legal personal representative etc

- 10.3 Where there is no corporate Trustee and a Member is incapable of acting as a Trustee, any one of the following people who meets Government Requirements for a Trustee may become a Trustee in place of the Member by making a written declaration to that effect and giving it to the other Trustees (if any):

- the Member's legal personal representative;
- where the Member is under a legal disability, the trustee of the Member's estate;
- the holder of an enduring power of attorney granted by the Member; or
- an administrator appointed by a State or Territory tribunal to manage the Member's estate.

- 10.4 Despite anything else in the Deed or Rules, a person who becomes a Trustee under rule 10.1, 10.2 or 10.3 may not be removed from office unless remaining in office would breach Government Requirements.

- 10.5 Subject to rules 5.3 and 10.13 to 10.17 (but despite anything else in the Deed or Rules), the Trustee must comply with any direction of a person mentioned in rule 10.1, 10.2 or 10.3 in matters pertaining to payment of the relevant Member's benefits or investment of Fund assets held to provide those benefits.

Fund Guardian

- 10.6 The Members may appoint one or more guardians of the Fund. The appointment of a guardian terminates only if the Members revoke it or if the guardian dies, resigns or becomes incapable of managing financial affairs. A guardian may appoint a successor guardian to take office in any of those events.

- 10.7 An appointment of a guardian must be in writing.

- 10.8 If there is a guardian then despite anything else in the Deed or Rules:
- (a) in acting as trustee of the Fund, the Trustee must comply with any direction of the guardian (or of all

Notice

- 12.3 If the Fund is to be wound up, the Trustee must as soon as practicable notify each Member in writing. However, if the Trustee fails to notify any Member, the winding up is still effective.
- 12.4 As from the date of the Trustee's notice to Members, the Trustee must take reasonable steps to recover contributions then due, but must stop accepting other contributions.

Procedure

- 12.5 The Trustee must determine investment return for each asset portfolio (or if there are none, for the Fund) to be applied to Member Accounts as at the date of the notice to Members. The Trustee must then apply the Fund assets towards:
- (a) satisfying actual and contingent liabilities (except benefits); then
 - (b) providing pro rata for each Member in respect of the benefits then payable for the Member or, if a benefit is not then payable, a benefit equal to the Member's Account Balance; then
 - (c) increasing those benefits with the consent of the Members.
- 12.6 The Trustee must comply with rules 5.2 to 5.8 and 6 regarding benefits payable for Members on winding up.