

# **Declaration of Custody Trust for the Sydbane Saunders Super Fund**

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**Joygra Pty. Ltd. ACN 142520894**

and

**Grant Russell Saunders**

**Joy Elaine Saunders**

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**BETWEEN**

Joygra Pty. Ltd. ACN 142520894  
of 14 Scampi Place  
Redland Bay, QLD, 4165  
Australia

(Custodian)

**AND**

**Grant Russell Saunders**  
in the capacity as trustee for the Fund  
of 14 Scampi Place  
Redland Bay, QLD, 4165  
Australia

**Joy Elaine Saunders**  
in the capacity as trustee for the Fund  
of 14 Scampi Place  
Redland Bay, QLD, 4165  
Australia

(together, **Trustee**)

**Background**

- A The Fund is a Regulated Fund and the Trustee is the trustee for the Fund.
- B In limited circumstances, the law allows the trustee of a Regulated Fund to agree to borrow funds to acquire an investment for that Regulated Fund. The relevant law is section 67 of the SIS Act. The section provides, among other things, that for the agreement to be allowed:
- legal title to the investment must be held by a third party on behalf of the trustee of the Regulated Fund; and
  - the lender's rights against the trustee of the Regulated Fund for any default under the borrowing agreement must relate only to the investment for which the trustee will purchase with the money it borrows.
- C The Trustee intends to borrow funds from one or more lenders to acquire the Authorised Investments under one or more arrangements of the nature described in Recital B.
- D The Custodian agrees to act as the third party described in Recital B and to hold title to the Authorised Investments under this Deed.

## **Operative provisions**

### **A Custodian's Declaration of trust**

#### **What does the Custodian hold on trust?**

- 1 The Custodian:
  - 1.1 acknowledges it has received the Initial Sum from the Trustee; and
  - 1.2 declares that it will hold the benefit of the Custody Fund on trust for the Trustee under this Deed.

#### **What information and money must the Trustee provide?**

- 2 The Custodian and the Trustee agree that for each proposed Custody Arrangement the Trustee will:
  - 2.1 give the Custodian a Terms Sheet that the Trustee has executed;
  - 2.2 provide to the Custodian all funds necessary to enable the Custodian to purchase the Authorised Investments identified in the Terms Sheet, or
  - 2.3 tell the Custodian when and where the purchase of the Authorised Investments is to occur. When the Trustee does that, it will be taken to have requested the Custodian to purchase and take legal title to those Authorised Investments under this Deed.

### **B Custodian to hold title**

#### **What title must the Custodian hold?**

- 3 The Custodian agrees that (subject to clause 4):
  - 3.1 it will maintain legal title to the Authorised Investments until the Trustee directs it under clause 6; and
  - 3.2 the Custodian will hold each separate parcel of Authorised Investments identified in a Terms Sheet (and all income and other proceeds generated from the holding of those Authorised Investments) in a manner that ensures they are separately identifiable from any amounts arising out of an Authorised Investment identified in a separate Terms Sheet.

#### **May the Custodian have listed securities held by a CHESSE sponsor?**

- 4 If the Authorised Investments are listed securities, then the Custodian may engage a duly licensed CHESSE sponsor to hold the Authorised Investments — as long as the Custodian first obtains the Trustee's written consent. The Custodian may do that even though it has an obligation to maintain legal title to the Authorised Investments.

### **What bank accounts must the Custodian maintain?**

- 5 The Custodian must establish one or more bank accounts into which it will deposit all income and other proceeds generated from the holding of Authorised Investments (unless otherwise agreed with the Trustee).

## **C Trustee to direct Custodian**

### **What interest does the Trustee have in the Authorised Investments?**

- 6 At all times up to and including the Vesting Date:
- 6.1 the Trustee has a vested and indefeasible interest in the Authorised Investments and any other assets of the Custody Trust; and
- 6.2 is absolutely entitled to the Authorised Investments and the other assets as against the Custodian.

### **How may the Trustee have the Authorised Investments transferred etc?**

- 7 The Trustee may in writing direct the Custodian to transfer, or otherwise deal with, the Authorised Investments and other assets comprising the Custody Fund. The Custodian must do as directed. Despite any other provision of this Deed, the Custodian will not comply with a request from the Trustee to transfer the legal title to the Trustee until after any financial accommodation secured by the Authorised Investments has been repaid in full.

### **What information must the Custodian collect, provide etc?**

- 8 The Custodian will use its best endeavours to obtain information concerning the Authorised Investments. It will communicate all that information to the Trustee as soon as practicable. For example, the Custodian must provide the Trustee with any information it needs to help it exercise a discretion about, say, voting, or about participating in bonus issues, capital reductions, share buy backs, rights plans, and so on.

### **May the Trustee require the Custodian to execute charge documents?**

- 9 The Custodian must execute all documents the Trustee asks it to execute that are necessary to charge the Authorised Investments to secure the Trustee's payment to the Lender of all money owed in respect of those Authorised Investments.

## **D Restriction on Custodian's Discretion**

- 10 Notwithstanding any other provision to the contrary set out in this Deed, the exercise of any Discretion (if any) by the Custodian under this Deed requires the consent of the Trustee in all instances.

## **E Trustee's warranties**

- 11 The Trustee warrants that:

- 11.1 the Fund is a Regulated Fund;
- 11.2 the Fund has a written investment strategy which accords in all respects with Superannuation Law;
- 11.3 the Borrower's investment in the Authorised Investment accords with the Fund's written investment strategy;
- 11.4 the Trustee is the sole trustee of the Fund;
- 11.5 the Trustee has the power and authority to enter into this Deed;
- 11.6 the Trustee has the power and authority to purchase the Authorised Investments; and
- 11.7 this Deed constitutes its legally binding obligations, enforceable against it in accordance with its terms.

## **F Duration of Trust**

### **When does the Trust start and end?**

- 12 The Trust commences on the date of this Deed and terminates on the Vesting Date.

### **What must the Trustee do before the Vesting Date?**

- 13 Before the Vesting Date, the Trustee must ensure:
  - 13.1 that all money the Lender loaned to the Trustee in respect of the Authorised Investments has been repaid; and
  - 13.2 that any security or charge over the Authorised Investments has been discharged in full.

### **What must the Custodian and Trustee do on (or soon after) the Vesting Date?**

- 14 On the Vesting Date (or as soon as practicable after the Vesting Date) the Custodian must either:
  - 14.1 transfer the Authorised Investments and any other assets comprising the Custody Fund to the Trustee; or
  - 14.2 otherwise deal with the Authorised Investments and other assets comprising the Custody Fund as the Trustee may direct in writing.

## **G Replacement or resignation of Custodian**

### **May the Trustee add, remove, or replace the Custodian?**

- 15 At any time, the Trustee may by deed remove the Custodian, appoint a replacement Custodian or appoint an additional Custodian.

### **What must an outgoing Custodian do?**

- 16 The outgoing Custodian must as soon as practicable after being removed or replaced:
- 16.1 sign all documents and do all things necessary to transfer legal title (and any CHES S Sponsorship) to the Authorised Investments to the new or continuing custodian;
  - 16.2 sign all documents and do all things necessary to transfer any charge or security in respect of the Authorised Investments to the new or continuing custodian; and
  - 16.3 if the Trustee asks it to, transfer control of the Cash Account to the new or continuing custodian.

### **What must a continuing Custodian do?**

- 17 If a new Custodian is added, then as soon as practicable the continuing Custodian must sign all documents and do all things necessary to transfer legal title (and any CHES S Sponsorship) to the Authorised Investments, and control of the Cash Account, to the new custodian jointly with the continuing custodian.

### **How may the Custodian resign?**

- 18 The Custodian may resign by providing at least 60 days written notice to the Trustee. During the 60 day period, the Custodian must comply with any reasonable directions of the Trustee concerning completing the steps set out in clauses 16.1 to 16.3.

## **H Trustee indemnifies Custodian**

- 19 The Trustee agrees to indemnify and keep the Custodian indemnified against all liabilities, actions, proceedings, demands, claims, costs, damages, stamp duty, taxes, losses and expenses incurred or sustained by the Custodian or brought or made against the Custodian:
- 19.1 in relation to the purchase of the Authorised Investments;
  - 19.2 by virtue of the Custodian holding legal title to the Authorised Investments; and
  - 19.3 as a consequence of the Custodian complying with any direction of the Trustee under this Deed.

## **I Trustee to pay Custodian's costs**

- 20 The Trustee indemnifies the Custodian against, and will pay the Custodian on demand, the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and Taxes in connection with:
- 20.1 the negotiation, preparation, execution, stamping and registration of this Deed;
  - 20.2 the enforcement or attempted enforcement or preservation or attempted preservation of any rights under this Deed; and
  - 20.3 any amendment to, or consent, waiver or release of or under, this Deed.

## **J Notices to the parties**

21 All notices to be given to or demands to be made under this Deed must be in writing. They may be delivered in person or sent by mail or facsimile to the party's current business address.

22 All notices are to be treated as having been served:

22.1 if posted, 48 hours after the date of posting;

22.2 if delivered personally, on the actual date of receipt; and

22.3 if sent by facsimile, in the normal course of transmission.

## **K General and interpretation**

23 Time is of the essence of all obligations of the Borrower under this Deed.

24 This Deed may only be varied or replaced by a document executed by the parties.

25 Each party must promptly execute and deliver all documents and promptly take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed — including to complete the purchase of Authorised Investments identified in a Terms Sheet.

26 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties. It survives this Deed's termination.

27 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

28 The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion.

29 This Deed is governed by, and interpreted under, the laws of the jurisdiction set in Schedule 1.

30 If a party consists of more than one person, then this Deed binds them jointly and each of them severally.

31 This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.

32 If a payment or other act is required to be made or done on a day which is not a Business Day, then the payment or act must be made or done on the next following Business Day.

33 If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

34 If it is not possible to read down a provision of this Deed in the manner described above, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

35 A reference in this Deed to:

- 35.1 a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;
- 35.2 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 35.3 a person includes the legal personal representatives, successors and assigns of that person;
- 35.4 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the relevant purposes or objects of the first-mentioned body;
- 35.5 this or other document includes the document as varied or replaced regardless of any change in the identity of the parties;
- 35.6 the singular includes the plural and vice versa; and
- 35.7 a gender includes the other genders.
- 36 If a party that is a trustee makes a covenant, agreement, undertaking representation or warranty, then the covenant, agreement, undertaking, representation or warranty is to be construed as having been made in the capacity as trustee of the relevant trust.

## **L Definitions**

37 In this deed unless expressed or implied to the contrary:

**Authorised Investments** means the investments specified in the Terms Sheet.

**Cash Account** means the account established under clause 5.

**Custody Arrangement** means each separate arrangement between the Trustee, the Custodian and a lender as described in a Terms Sheet.

**Custody Fund** means the Initial Sum together with the following assets transferred to the Custodian and other amounts which accrue or are paid in respect of each Custody Arrangement:

- all right title and interest of the Custodian from time to time in the Authorised Investments; and
- all income and other proceeds generated from the holding of the Authorised Investments.

**Custody Trust** means the trust created by operation of this Deed.

**Deed** means this trust deed, including all schedules and appendices.

**Discretion** means a right or power to act in accordance with one's own judgment.

**Fund** means the Sydbane Saunders Super Fund.

**Initial Sum** means the \$10 the Trustee pays to the Custodian on the date of this deed as set out in clause 1.

**Lender** means each person from whom the Trustee is borrowing in order to acquire Authorised Investments, as identified in a Terms Sheet.

**Regulated Fund** means a 'regulated superannuation fund' within the meaning of section 19 of the SIS Act and a 'complying superannuation fund' within the meaning of Part 5 of SIS Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cth).

**Superannuation Law** means any law of the Commonwealth of Australia which deals with any aspect of the superannuation or taxation in relation to superannuation, including the SIS Act and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

**Terms Sheet** means the Schedules and any further document in the form set out in the Schedule identifying:

- the person from whom the Trustee will borrow;
- the amount that lender will loan or make available to the Trustee; and
- the Authorised Investments to be purchased with that money.

**Vesting Date** means either:

- the date which is 80 years from the date of this Deed; or
- any earlier date the Custodian and Trustee jointly determine.

**Execution**

Executed by the parties.

Dated: 17 March 2010

Executed by  
Joygra Pty. Ltd. ACN 142520894, in  
accordance with section 127(1) of the  
*Corporations Act 2001 (Cwth)*:

\_\_\_\_\_  
Grant Russell Saunders, sole director and  
sole company secretary

**Signed sealed and delivered**

by Grant Russell Saunders, in the capacity as  
trustee for the Fund, in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of individual

\_\_\_\_\_  
Name of witness (please print)

**Signed sealed and delivered**

by Joy Elaine Saunders, in the capacity as  
trustee for the Fund, in the presence of:

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Signature of witness

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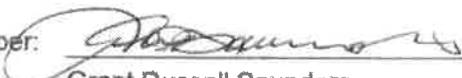
Signature of individual

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Name of witness (please print)

**Execution**

Date: 20 September 2011

Signature of member:   
Grant Russell Saunders

Signature of witness: 

Name of witness: JOHN CAPOLLONE

Date: 20 September 2011

Signature of member:   
Joy Elaine Saunders

Signature of witness: 

Name of witness: JOHN CAPOLLONE

