

# SUPERANNUATION DEED

## Whittaker Superannuation Fund

Version: November 2013

Document provided by

**TOWNSENDS BUSINESS & CORPORATE LAWYERS**

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**THIS SUPERANNUATION DEED** is made on the Date set out in the Reference Schedule by the Party or Parties named in the Reference Schedule as the Initial Trustee or Trustees ("Trustee")

## **RECITALS**

- A. The Trustee wishes to establish a Superannuation Fund for the sole purpose of providing superannuation benefits for or in respect of the Members of the Superannuation Fund.
- B. The Trustee intends that the Superannuation Fund will be a self managed superannuation fund and will be taxed as a complying superannuation fund.

## **OPERATIVE PART**

### **1. Establishment of superannuation fund**

#### **1.1 Establishment**

The Trustee declares that it will hold any money or property received as contributions for or to the Superannuation Fund as the trust fund of the Superannuation Fund and will hold the trust fund pursuant to the trusts, powers and discretions of this Superannuation Deed for the benefit of the Members and their Dependants.

#### **1.2 Indefinitely continuing**

The Superannuation Fund will be an indefinitely continuing fund which will provide individual personal benefits, pensions or retiring allowances for the Members and their Dependants.

#### **1.3 Name**

The Superannuation Fund will be known by the name set out in the Reference Schedule or by such other name as the Trustee determines.

#### **1.4 Initial Members**

Each of the persons identified in the Reference Schedule as an Initial Member is admitted as a Member of the Superannuation Fund on the establishment of the Superannuation Fund.

### **2. Amendment powers**

#### **2.1 Powers**

- (a) The Trustee may by deed amend, alter, delete or replace any or all of the provisions of the Superannuation Deed or of the Governing Rules applying to the Superannuation Fund.
- (b) Super Governing Rules Pty Limited ACN 117 737 381 ("SGR") may by deed amend, alter, delete or replace any or all of the provisions of the SUPERCentral Governing Rules.

- (c) Any amendment, alteration, deletion or replacement may:
  - (i) be retrospective and apply from a date preceding the date on which the amendment is made;
  - (ii) be prospective and apply from a date following the date on which the amendment is made; and
  - (iii) operate by way of complete replacement of all of the current provisions with new provisions.

## 2.2 Limitation to the scope of amendments

The amendment powers:

- (a) at any time when the Trustee consists of one or more natural persons – cannot be used to change the primary purpose of the Superannuation Fund from the provision of old-age pensions;
- (b) at any time when the primary purpose of the Superannuation Fund is not the provision of old-age pensions – cannot be used to remove the requirement that the Trustee of the Superannuation Fund be a constitutional corporation;
- (c) cannot be used to reduce the amount standing to the credit of the benefit accounts of a Member unless that Member has consented to the reduction or the reduction is permitted by Superannuation Law, by the Regulator or by Court Order;
- (d) in the case of the power conferred on the Trustee – cannot be exercised until the amendment power conferred on SGR has been terminated in accordance with either clause 2.5 or 2.6; and
- (e) cannot be used to amend this clause 2.2.

## 2.3 Trustee and Members bound by amendments to SUPERCentral Governing Rules

The Trustee and each Member of the Superannuation Fund is bound by any amendment made pursuant to this clause in the same manner as if the amendment had been made immediately before the Member joined the Superannuation Fund.

## 2.4 Trustee may request amendment made by SGR not to apply

- (a) The Trustee may by notice to SGR request that an amendment (“current amendment”) made by SGR to the SUPERCentral Governing Rules not apply to the Superannuation Fund.
- (b) For the request to be effective, the notice must be in writing and be given to SGR within 14 days of the Trustee being notified of the current amendment.
- (c) Where the Trustee makes an effective request for the current amendment not to apply to the Superannuation Fund, then SGR will by deed revoke the current amendment so far as it applies to the Superannuation Fund and the current amendment will be taken never to have applied to the Superannuation Fund.

## **2.5 Repatriation of amendment power**

Where SGR at the request of the Trustee has revoked an amendment made to the SUPERCentral Governing Rules then the following provisions apply:

- (a) the amendment power conferred on SGR terminates; and
- (b) amendments previously made by SGR to the SUPERCentral Governing Rules continue to apply to the Superannuation Fund despite the fact that the amendment power conferred on SGR has terminated.

## **2.6 Release of amendment power**

SGR may by deed or written notice to the Trustee release the power conferred by clause 2.1 (b) in which event:

- (a) the amendment power conferred on SGR terminates; and
- (b) amendments which have been previously made by SGR to the SUPERCentral Governing Rules continue to apply to the Superannuation Fund despite the fact that the amendment power conferred on SGR has terminated.

## **3. Deed, schedule & SUPERCentral governing rules**

### **3.1 Deed includes schedule and rules**

This Superannuation Deed includes the Reference Schedule to this Deed and the SUPERCentral Governing Rules.

### **3.2 Incorporation of SUPERCentral Governing Rules**

For the purposes of Clause 3.1, the SUPERCentral Governing Rules are expressly incorporated into this Superannuation Deed as if they had been set out at length in this Superannuation Deed.

### **3.3 Inconsistency between parts of deed**

Where any provision of the SUPERCentral Governing Rules is inconsistent with the Superannuation Deed then, to the extent of the inconsistency, the provision of the Superannuation Deed shall take precedence

## **4. Identification of SUPERCentral governing rules**

### **4.1 The SUPERCentral Governing Rules are:**

- (a) where the date of this Superannuation Deed falls within a Governing Rules Update Notice Period then:
  - (i) in respect of the balance of the Update Notice Period – the SUPERCentral Governing Rules made by SGR which apply as at the date of this Superannuation Deed; and
- (b) from the end of the Update Notice Period - the SUPERCentral Governing Rules made by SGR and which apply on and from the end of the Update Notice Period;

- (c) where (a) does not apply – the SUPERCentral Governing Rules made by SGR which apply as at the date of this Superannuation Deed,

as those Rules are, in either case, subsequently amended from time to time by SGR pursuant to clause 2.1(b).

For the purposes of this provision, the Governing Rules Update Notice Period is the period commencing on the date on which SGR executes a deed replacing the then current version of the SUPERCentral Governing Rules with a new version of the SUPERCentral Governing Rules and ending on the date on which the new version of the SUPERCentral Governing Rules replaces the then current version.

## **5. Notification of amendments**

- (a) SGR must notify the Trustee of each exercise of the amendment power conferred by clause 2.1(b) and such notification may be by electronic means (email or publication on such website as SGR considers appropriate).
- (b) If SGR notifies the Trustee by email then SGR may use the email address details of the Trustee which has been provided for this purpose by or on behalf of the Trustee.
- (c) If SGR notifies the Trustee by a notice on a website, the notice must be on a publically viewable page on that website which is notified to the Trustee and to which the Trustee has access.
- (d) For the purposes of this clause, notification is received by the Trustee:
  - (i) if the email is sent or the notice is published prior to 5pm Australian Eastern Standard Time or Australian Eastern Standard Daylight Saving Time (whichever applies) on the day on which the email is sent or the notice is published; and
  - (ii) if the email is sent or the notice is published on or after 5pm Australian Eastern Standard Time or Australian Eastern Standard Daylight Saving (whichever applies) on the next following day.
- (e) Despite the preceding provisions of this clause:
  - (i) the inadvertent failure to notify the Trustee;
  - (ii) the use by SGR of an out-of-date address for the Trustee (so long as SGR reasonably believes that the address used is the current address for the Trustee);
  - (iii) notification to one or more but not all Trustees or one or more but not all directors of a company acting as Trustee;
  - (iv) notification to a former Trustee where there has been no effective notification to SGR of the change in Trustee (including electronic contact details of the new Trustee or its agent for this purpose),does not affect the validity and effectiveness of the exercise of the amendment power.
- (f) For the avoidance of doubt SGR may at its absolute discretion but is not required to and need not provide notification to the Trustee by personal service, mail or other non-electronic means.

**REFERENCE SCHEDULE – Whittaker Superannuation Fund**

**Date of Superannuation Deed**

18/06/2014

**Name of Initial Trustee or Trustees**

R&S Whittaker Pty Ltd ACN 600 167 486  
E444 Princes Highway , Yatte Yattah, NSW 2539

**Name of Superannuation Fund**

Whittaker Superannuation Fund

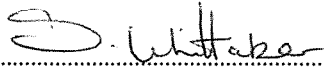
**Names and addresses of Initial Member or Members**

Sharon Winnifred Whittaker of E444 Princes Highway, Yatte Yattah, NSW 2539

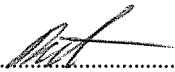
Russell Durras Whittaker of E444 Princes Highway, Yatte Yattah, NSW 2539

**EXECUTED AS A DEED**

Executed by R&S Whittaker Pty Ltd ACN 600 167 486  
in accordance with s 127 of the *Corporations Act 2001*

  
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Signature of Sharon Winnifred Whittaker – Director

  
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Signature of Russell Durras Whittaker – Director

