



# DISCRETIONARY TRUST DEED

VARIATION OF THE SMITH FAMILY TRUST TO  
STRATEGIC DISCRETIONARY TRUST

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# DEED OF FOR THE SMITH FAMILY TRUST

**THIS DEED IS DATED:** 16 November 2020

## **PARTIES:**

- I. **TRUSTEE:** SMITH NOMINEES PTY LTD ACN 214 547 878 of 5 Smith Street, Sydney, NSW 2000 ATF THE SMITH FAMILY TRUST ("**the Trustee**").
- II. **APPOINTOR:** John Smith of 5 Smith Street, Sydney New South Wales 2000 ("**the Appointor**").

## **RECITALS**

1. The Trustee established a Trust known as THE SMITH FAMILY TRUST ("the Fund") on 1 August 1999.
2. The Appointor and the Trustee have agreed to vary the trust deed.
3. The variation of the Trust's Rules from the Substituted Trust Deed Rules to the Replacement Rules meets the Commissioner's determination on varying a discretionary trust without a new trust or resettlement arising - TD 2012/21 - Income tax: does CGT event E1 or E2 in sections 104-55 or 104-60 of the Income Tax Assessment Act 1997 happen if the terms of a trust are changed pursuant to a valid exercise of a power contained within the trust's constituent document, or varied with the approval of a relevant court.

## **PROVISIONS:**

1. **Recital Inclusion as Operative Provision:** The above Recitals are included as part of the operative provisions of this Deed.
2. **Replacement of Deed Rules:** The Substituted Trust Deed Rules are replaced with the Replacement Deed Rules as detailed below, pursuant to 5.1 of the Substituted Trust Deed Rules.
3. **No Resettlement at Law:** The replacement of the Substituted Trust Deed Rules, with the Replacement Trust Deed Rules, does not constitute a resettlement of the Discretionary Trust.
4. **Vesting Date:** The Trust is to keep the same vesting date.

## **THIS DEED WITNESSES:**

### **1. Definitions and interpretation**

In this deed the terms and words hereunder shall have the following meanings unless otherwise indicated by the context:

‘the Act’ means the Income Tax Assessment Act, 1936 or 1997 or any successor act or acts and any section referred to herein is also a reference to any similar section in any successor act.

‘appointor’ is the person who has been nominated as appointor of the Trust and includes future appointors if and when they are appointed as appointors.

‘beneficiary’ means a person who may become entitled to income or capital of the trust fund.

‘category’ in relation to income or capital of the trust fund means that part or those parts of the income or capital which the trustee has separately identified, characterised, and recorded in the books of account of the trust so that it may be separately distributed or dealt with as provided in clause 6.

‘child’ means any child of the primary beneficiary.

‘financial year’ means the period from the date of this deed to midnight 30 June next, and thereafter each period of 12 months ending at midnight on 30 June, and if the termination date is not 30 June in any year, the last financial year shall be the period commencing on 1 July prior to the termination date and ending on the termination date.

‘grandchild’ means any child (whether adopted or ex-nuptial) of a child.

‘great grandchild’ means any child (whether adopted or ex-nuptial) of a grandchild.

‘income’ of the Trust means that amount as determined by the trustee, including accounting income, and if the trustee makes no such determination, ‘income’ means all profits or gains less expenses taken into account in calculating the net income of the Trust, and exempt income, as defined in Section 95(1) of the Act, notwithstanding that the whole or any part thereof may otherwise constitute capital of the Trust.

‘minor’ means a person under the age of 18 years.

‘primary beneficiary’ means John Smith of 5 Smith Street, Sydney, NSW 2000 and Max Smith of 100 Sydney Road, Fairlight, NSW 2095 .

‘person’ includes a company, legal entity or body of persons.

'relatives' includes relative of an individual mean the following:

- a) a parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child of the individual or of his or her spouse;
- b) a spouse of the individual or of any other individual referred to in paragraph (a).

'settlor' means that person who established the Trust.

'tax' means any income tax, capital gains tax, fringe benefits tax, consumption tax, value added tax, provisional tax, additional tax, penalty tax, stamp duty, fine for late payment, tax on deposit or withdrawal of funds from any account or other tax or imposition payable to any government or government instrumentality.

'termination date' means the date upon which the Trust is wound up in accordance with this deed.

'the Trust' means the settlement created by this deed.

'the trustee' means the Trustee or any subsequent trustee for the time being of the Trust.

'the trust fund' means:

- a) the money paid by the Settlor to the Trustee to establish the Trust; and
- b) all other money and property which becomes subject to the rights and obligations of this deed.

Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

A reference to a statutory enactment shall be a reference to such enactment as amended from time to time.

Headings shall not be taken into account in the construction of this deed.

The Trust shall be governed by, and this deed shall be construed in accordance with, the laws of New South Wales.

## **2. Prior Establishment of the Trust**

2.1 The Trustee acknowledges having received from the Settlor an amount to establish the Trust on 1 August 1999.

2.2 The Trust is known as THE SMITH FAMILY TRUST.

### 3. Beneficiaries

3.1 The beneficiaries of the Trust shall comprise:

- a) the primary beneficiary and their spouse;
- b) any child, grandchild or great grandchild of the primary beneficiary;
- c) any other relative of the primary beneficiary born before the termination date;
- d) Corporations: any company, whether now existing or hereinafter incorporated in which a director, or a person who beneficially owns a share carrying a right to vote at general meetings, is a beneficiary by reason of a preceding paragraph of this sub-clause;
- e) Secondary trust: The trustee or any trustees of any trust, whether now existing or hereinafter created, of which a beneficiary or discretionary object hereunder is a beneficiary of the Trust;
- f) Superannuation Fund: The trustee or trustees of any superannuation fund including a self-managed superannuation fund where the primary beneficiary or any beneficiary is a member;
- g) Benevolent objects: The trustee of any charitable trust, and any person, officer or governing body of an association in its capacity as such of any society, authority, institution, church, religious order or person or entity which at the time a distribution of income or capital of the Trust is to be made is exempt from income tax under the provisions of the Act, or if at such time a gift of money thereto is deductible against assessable income of the donor by virtue of the Act.

3.2 Additional beneficiaries

- a) A natural person who is not a beneficiary under clause 3(1) may become a beneficiary where the trustee, with the consent of the appointor in writing, so determines and appoints, provided that any such appointment shall not be contrary to any express provision of this deed and neither the Settlor, that person who is then the appointor, or any person whose appointment would result in infringement of any rule or law against perpetuities or vesting which may apply to the trust, shall then be appointed as a beneficiary.
- b) Additional beneficiaries may be appointed in accordance with the procedures for amending the terms of this deed as contained in clause 11.

### 3.3 Deletion of beneficiaries

- a) A beneficiary shall cease to be a beneficiary:
  - i) if by deed expressed to be irrevocable the beneficiary not being a minor unconditionally declares that he is no longer a beneficiary of the Trust and serves a properly executed copy of such deed on the trustee; or
  - ii) if by where the trustee with the consent of the appointor by resolution or deed declares that a person or a class of persons is no longer to be included as a beneficiary and the deed or resolution is expressed to be irrevocable.
- b) The provisions of sub-paragraph (ii) of paragraph (a) of this sub-clause shall be effective to exclude as a beneficiary a person under a legal disability, or more than one beneficiary, but shall not be effective where the same would result in there being less than two natural persons the beneficiaries of the Trust.
- c) A person who ceases to be a beneficiary shall not thereby be excluded from subsequently being re-appointed or becoming a beneficiary.
- d) Nothing in this sub-clause contained shall affect the rights of a person who has ceased to be a beneficiary to income or capital of the Trust to which such person became entitled prior to such cessation.
- e) A beneficiary may only cease to be a beneficiary where a variation of this deed to such effect is made in accordance with the provisions of clause 11 and where there will remain at least one beneficiary.

## 4. Income of the trust fund

### 4.1 Discretionary distribution

The trustee shall stand possessed of the income of the trust fund of a financial year which is available for distribution upon trust to pay, apply or set aside the same or any part or parts thereof to or for the benefit of the beneficiaries, or any one or more of them exclusive of the other or others who shall be living or which shall be in existence at the time of payment, application or setting aside of such income is made, in such shares or proportions and from such category or categories of income as the trustee in its discretion may determine. The trustee may refuse to disclose to any person the reason why the trustee exercised that discretion as the trustee did and may refuse to disclose to any person those materials referred to by the trustee in the exercise of that discretion.

## 4.2 Accumulation

- a) The trustee may in its discretion before the end of a financial year resolve to accumulate the whole or any part of the income of that financial year whereupon such accumulation shall be subject to paragraph (c) of this sub-clause to form part of the capital of the trust fund.
- b) A resolution to accumulate may be in respect of the whole or any part of one or more categories of income of the trust fund.
- c) The trustee shall pay tax in respect of an accumulation out of the same or out of the capital of the trust fund.
- d) To the extent to which the trustee fails to exercise his discretion pursuant to clause 4(1) above to trustee shall be deemed to have resolved to accumulate the remainder of the income of the Trust of that financial year.

## 4.3 Manner of allocation

The payment application or setting aside of income of the trust fund may be effectively made as follows:

- a) For a beneficiary who is not under a legal disability:
  - (a.1) by paying the same to the beneficiary or to such person, trust, superannuation fund or company on behalf of the beneficiary as the beneficiary may authorise or direct; or
  - (a.2) by setting the same aside to a separate account in the books of the Trust in the name of the beneficiary whereupon such moneys shall constitute a loan at call and shall not bear interest unless the trustee and the beneficiary otherwise agree.
- b) For a beneficiary who is a minor or otherwise under a legal disability:
  - (b.1) by payment to an account with a bank or permanent building society in the name of the beneficiary or in the name of a person, who may be a trustee, operating such account on behalf of or in trust for the beneficiary;
  - (b.2) by payment to such parent or guardian of the beneficiary as the trustee may decide to be applied for the benefit of the beneficiary;
  - (b.3) by payment as the trustee may decide to any person to be applied directly for or towards the benefit in any way whatsoever of the beneficiary;



- (b.4) by setting aside income to a separate account in the books of the Trust in the name of the beneficiary on which shall accrue interest at such rate or rates (if any) as the trustee may from time to time decide; or
- (b.5) by paying the same to any person who by law is entitled to receive monies on behalf of or to administer the property of the beneficiary.
- c) Payment may be made to a beneficiary not being a natural person notwithstanding that such beneficiary may have a liquidator including a provisional liquidator, receiver, manager or receiver and manager appointed to it or in respect of its assets.
- d) The trustee may unless otherwise precluded by law pay from an account referred to in sub-paragraph (b.4) of paragraph (b), or an account in the name of the trustee under sub-paragraph (b.1) of that paragraph, monies which are to be applied for the maintenance, education or advancement of the beneficiary for whom the account is held.
- e) The trustee may effect a distribution of income to a beneficiary by one or partly by any other of the methods of allocation provided in paragraphs (a) or (b).

#### 4.4 Effect on trustee

- a. The payment, application or setting aside of income to or for a beneficiary under a legal disability in accordance with the provisions of this clause, shall be effective and constitute a full and final discharge therefore to the trustee whether the same is made with or without the obtaining of a receipt.
- b. Where monies are paid or set aside in accordance with the provisions of this clause, the trustee shall not be bound to see to the application thereof.
- c. Where monies are invested on behalf of a beneficiary who is under a legal disability in accordance with this clause, such investment shall without more constitute a discharge to the trustee in relation to such monies from the trusts of this deed other than such as are stated to expressly apply to such investment.

#### 4.5 Method of allocation

- a) The payment application or setting aside of income of the Trust to or for the benefit of a beneficiary may be by a determination or resolution of the trustee and upon such determination or resolution being made the beneficiary shall have an immediate vested indefeasible interest in and to that part or parts of the income of the trust fund so paid, applied or set aside for the financial year to which the termination or resolution relates.
- b) Any such determination or resolution may specify a category and the amount of income from that category to which a beneficiary is entitled and such determination or resolution may provide to pay, apply or set aside income of the trust fund by reference to a specific sum or to a percentage of the income or any category of income of a financial year.

4.6 A trust declared or effective in respect of income paid, applied or set aside for a beneficiary shall not be affected by the subsequent exercise of any power of revocation or amendment of this deed.

4.7 Determinations or resolutions of the trustee allocating income as hereinbefore in this clause provided shall be irrevocable and the income of the trust fund shall be dealt with as required by such determination or resolution.

#### 4.8 Tax

- a) Where the trustee is required by law to pay tax in respect of income of the Trust allocated or distributed to a beneficiary or to any entitlement or benefit of a beneficiary out of the trust fund or monies held by the trustee on trust for the beneficiary pursuant to the provisions of this deed, the trustee may pay the same out of income or capital to which the beneficiary is presently entitled or may deduct the same out of monies which may then or thereafter come into the hands of the trustee or over which the trustee has control and to which the beneficiary is or becomes entitled.
- b) Where the trustee is liable to pay tax on accumulation of income, it may pay the same out of such income or from capital of the trust as it may decide.

### 5. Capital

#### 5.1 Meaning of capital

In this clause 'capital' means so much of the trust fund as does not constitute income of the Trust.

#### 5.2 Distribution of capital

Until the Trust is wound up, the trustee shall stand possessed of the capital of the Trust for the beneficiaries as follows:

- a) on or prior to the termination date the whole or any part of the capital or of any category thereof shall be held for such one or more of the beneficiaries to the exclusion of the others as are then living or in existence and if more than one in such shares or proportions as the trustee in its discretion shall at any time or times determine in the manner provided in this clause. The trustee may refuse to disclose to any person the reason why the trustee exercised that discretion as the trustee did and may refuse to disclose to any person those materials referred to by the trustee in the exercise of that discretion.
- b) on termination of the Trust, the capital available for distribution as shall not have been the subject of an effective determination of the trustee pursuant to paragraph (a) of this sub-clause, shall be held for the beneficiaries named or described in sub-paragraphs (d.1) and (d.2) of clause 14(2) and if more than one, equally, and if there shall be no such persons, then for the beneficiaries described in sub-paragraph (d.3) of clause 14(2)(d).

### 5.3 Determination of the trustee

A determination of the trustee pursuant to paragraph (a) of sub-clause 2 of this clause shall be either:

- a) a written declaration, instrument or resolution of the trustee which if not expressed to be irrevocable shall be irrevocable; or
- b) a written declaration, instrument or resolution of the trustee made prior to the termination date and expressed to be revocable during a period which expires prior to the termination date. Such determination shall become effective upon the expiration of the relevant period and the trustee failing to revoke the same. The period expressed in such revocable determination may be expressed as a fixed period by reference to the occurrence of an event or by reference to the life of a person or the last survivor of the joint lives or two or more persons.

### 5.4 Manner of distribution

Capital to be distributed by way of determination or to a beneficiary pursuant to the provisions of this clause may be effected:

- a) in any manner in which income of the fund is able to be paid, applied or set aside in accordance with the provisions of this deed; or

- b) by the transfer in specie of any asset comprised in the trust fund at a valuation determined by or acceptable to the trustee.

#### 5.5 Effect of determination

Once a determination of the trustee in favour of a beneficiary becomes irrevocable, the beneficiary shall have an immediate vested indefeasible interest in the capital the subject of such determination and where the same continues to be held by the trustee it shall be held on a separate trust for the beneficiary.

#### 5.6 No resulting trust

A determination of the trustee pursuant to this clause shall not be effective to the extent to which the same creates a resulting trust in favour of:

- a) the Settlor;
- b) a person who has transferred property to the trustee for other than full consideration;
- c) a person who has gifted money to the trustee by way of accretion to the trust fund; or
- d) where the resulting trust would result in a liability arising at any time under any applicable law on account of death or estate duties or an imposition or tax arising by reference to the death of a person.

#### 5.7 Tax

Where the trustee becomes liable to pay tax in respect of or arising out of a distribution of capital, it may deduct and pay the same out of such distribution, and to the extent to which the same may be insufficient to fully discharge such liability, the trustee may pay the same from other monies or property which may be in or come to its possession or control as it may decide.

### 6. Categories of income

6.1 The trustee may in the books of account and records of the Trust separately record each of the following categories of income received into the trust fund:

- a) dividends which under the Act:
  - are fully franked;
  - are unfranked;

- to which a foreign tax credit offset attaches; or
- any other separately identifiable taxation consequence or benefit is attached or arises.

b) income, including capital gains, which under the Act:

- has an Australian source;
- has a foreign tax offset attached;
- is exempt or otherwise liable not to be taxed;
- has or gives rise to any other separately identifiable taxation consequences or benefit.

6.2 The trustee may identify and separately record and maintain in the books of account and records of the Trust, income or capital having, or in respect of which there is attached, individual or unique characteristics other than as referred to in the preceding sub-clause as the trustee by resolution shall determine including non-assessable and non-exempt accounting income.

6.3 A resolution of determination of the trustee by which income of the trust fund is distributed or accumulated pursuant to the provisions of clause 4, may separately deal with the whole or part of the income of a category so that the same or any part thereof may be specifically paid, applied or set aside for the benefit of any one or more of the beneficiaries exclusive of the other or others or accumulated to the extent to which income of the Trust is permitted to be accumulated by this deed and become part of the capital of the trust fund; and

The whole or any part of the capital of a category may at the discretion of the trustee be distributed in accordance with the provisions of clause 5.

6.4 The trustee Expenses and outgoings of the trust fund may at the discretion of the trustee be allocated against and deducted from income or capital of any one or more categories in such manner as the trustee may see fit.

6.5 The trustee In the event that the trustee shall not exercise its discretion as provided in the preceding sub-clause in respect of a financial year, outgoings and expenses of the trust fund for that year shall be allocated firstly against and deducted from income which is not income of a category and to the extent to which the same is not sufficient to absorb all such expenses and outgoings, then the part thereof which is not so absorbed shall be allocated in such manner as the trustee may decide against income of a category or categories to which a tax credit or rebate does not attach, and thereafter against the remaining income of the trust fund.

- 6.6 The trustee Income or capital of the trust fund to which a beneficiary becomes entitled and which can be identified from the books and records of the Trust as being of a category, shall retain its separate identity when the same passes to or is received by the beneficiary or when the beneficiary otherwise becomes entitled thereto.

## **7. Appointment and removal of trustee**

- 7.1 The power to appoint a new trustee in the place of an existing trustee or in addition to and jointly with an existing trustee and the power to remove a trustee shall subject to the following provisions of this clause be vested in:
- a) during the lifetime of the appointor the appointor;
  - b) on and from the date of death of the appointor such other person or persons including joint appointors as nominated in the definition of appointor in clause 1 and if none as the appointor may by deed or will have nominated;
  - c) if no person has been appointed an appointor pursuant to clause 7 (1) above or if any such person so appointed has died or ceased to be in existence or is unwilling to act as an appointor of this Trust in the trustee for the time being;
- 7.2 The power and authority vested in an appointor by this clause may be at any time relinquished by notice in writing given to the trustee in which event the appointor upon giving the notice shall cease to be and hold office as appointor, and the following provisions shall then apply:
- a) subject to paragraph (b) of this sub-clause, where there are joint appointors, the survivor or survivors shall be the appointor or appointors as the case may be; or
  - b) an appointor who holds office as appointor and wishes to relinquish such power may by written instrument on or prior to such relinquishment appoint another in his place and such appointee shall be the appointor or a joint appointor during the lifetime of the appointor giving the notice or until the appointee relinquishes such power of appointment and an appointee upon being so appointed may exercise the power given to his appointor hereunder.
- 7.3 If at any time no person shall have the power to appoint a new trustee or an additional trustee, the power shall be vested in the trustee or trustees for the time being of the Trust.
- 7.4 Where a trustee or an additional trustee is appointed pursuant to the power of appointment contained in this clause, the trust fund shall at that time vest

in the person or jointly in the persons who shall thereupon be the trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance.

- 7.5 The power to appoint a new trustee as in this clause contained shall not be exercised in favour of the Settlor, the person exercising the power of appointment, a person who has transferred property to the trustee other than for full consideration to be held on the trusts of this deed, or a person who has gifted moneys to the trustee to be held as an accretion to the trust fund.
- 7.6 The power to appoint or remove a trustee may be exercised by memorandum under hand or by deed, and where the trustee is a corporation shall be approved by resolution of its directors. A corporation or person may be so appointed as a trustee no matter where resident.
- 7.7 Upon the registration, retirement or removal of a trustee, the trustee shall hand to the new trustee all books, records, documents and other material pertaining to the Trust.

## **8. Provisions relating to trustee**

- a. More than one person being a trustee

If more than one person is trustee, decisions shall be made by the majority of the trustees except that if there is no majority, the decisions of the trustees must be unanimous.

- 8.2 Restrictions on receipt of income

Notwithstanding anything to the contrary in this deed, income or capital of the Trust, other than remuneration permitted under clauses 8(2) and (3), shall not in any circumstances be paid or transferred beneficially to, or applied for the benefit of, the trustee or any persons who at any time has been a trustee. No discretion or power conferred by this deed shall be exercised or capable of being exercised and no provision of this deed shall operate so as to confer or be capable of conferring a direct or indirect benefit in or out of the Trust on the trustee or any person who at any time has been a trustee other than remuneration properly payable to the trustee.

- 8.3 Remuneration

The trustee shall, if the trustee so requires, be entitled by way of remuneration for the trustee's services to such sum out of the income or capital of the Trust whether by way of periodical fee, salary, commission or otherwise as shall be determined by the appointor.

- 8.4 Administration expenses

The trustee may pay all costs, charges and expenses of administering the Trust out of the trust funds whether from capital or income as the trustee may determine. Any trustee being an accountant, solicitor or other person engaged in any profession shall, in addition to any entitlement under these provisions, be entitled to charge and be paid, from time to time, all usual professional charges for business transacted, time expended and acts done by the trustee or any employee or partner of the trustee in connection with the trusts of this deed including any acts which the trustee not being in any profession could have done personally.

#### 8.5 Indemnity

A trustee or advisor to the trustee, including a person providing advice as to the establishment of the Trust acting in good faith, shall be entitled to be indemnified out of the trust fund in respect of all liabilities incurred by that person relating to the execution of any powers, duties, authorities or discretions vested in that person by virtue of the provisions of this deed and/or in respect of all actions, proceedings, costs, claims and demands in relation to any matter or thing done or omitted to be done concerning the Trust.

#### 8.6 Exercise of powers by company trustee

A trustee being a company, may exercise or concur in exercising any discretion or power conferred by this deed by a resolution of its members in general meeting or by a resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more of its board of directors or governing body for that purpose and may by majority resolution of its directors terminate any such delegated authority.

#### 8.7 Release of power

Unless a power or discretion which may be exercised by the trustee is by the terms of this deed required to be irrevocable, the trustee may release or revoke any power conferred upon it by this deed. Any other person upon whom any power is conferred by this deed may release or revoke any power conferred upon them.

Upon the exercise of any release or revocation pursuant to this paragraph the power to release or revoke shall be absolutely and irrevocably determined.

#### 8.8 Unfettered power

Where in this deed the trustee is entitled to exercise a power or a discretion, such power or discretion shall be an absolute unfettered power or discretion and no beneficiary or other person, except as expressly herein provided, shall



be entitled to call into question the exercise of such power or discretion or the failure to exercise such power or discretion. The trustee shall not be required to assign any reason for its exercise of such power or discretion or failure to exercise such power or discretion.

#### 8.9 Professional advice

The trustee may take and act upon the opinion of from a legal firm with a solicitor of at least five years standing who has continuously during that time practised in the jurisdiction where interpretation of the provisions of this deed or any document or statute, or any matter concerning the administration of the Trust is to be determined without being liable to any beneficiary in respect of any act done by the trustee in accordance with such opinion but nothing in this clause shall prohibit or impede the trustee from applying to any court if the trustee shall think fit.

#### 8.10 Manager

The trustee shall not be bound to act personally and may employ a manager or other person to transact all or any business required to be done or performed by the trustee, including the receipt and payment of money. The trustee may determine the remuneration to be paid to any such person.

#### 8.11 Vacation of office

The office of trustee shall ipso facto be determined and vacated if the trustee being an individual shall be found to be of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health or if the trustee shall become bankrupt or make any arrangement or composition with creditors generally or if the trustee being a company shall enter into liquidation whether compulsory or voluntary (not being a voluntary liquidation for the purposes of amalgamation or reconstruction) or have a receiver or official manager or receiver and manager appointed.

#### 8.12 Custodian trustee

It shall not be necessary for property, including a security being part of the trust fund, to be registered in the name of the trustee but the same may at the discretion of the trustee be registered in the name of a nominee without the necessity of disclosing that the nominee holds such property as nominee for and on behalf of the trustee. The trustee shall have the same powers and discretions in respect of such asset as if it were registered in its own name.

#### 8.13 Documents of title

The trustee may from time to time deposit the documents of title to property or securities for the time being subject to the Trust with a solicitor, accountant, bank, trust company, investment or stock broker or like institution in any part of the world in which the trust fund is invested or situated. The trustee shall not be liable or responsible for any loss not caused by its own fault, which may in any manner occur in relation thereto or by reason thereof.

## **9. Investment powers**

### **9.1 General power of investment**

Subject to the provisions of this deed, the trustee shall have all the powers over and in respect of the trust fund and the investments thereof which it could exercise if it were the absolute and beneficial owner. The trustee shall exercise that diligence and prudence as an ordinary prudent man of business would exercise in conducting his own affairs.

### **9.2 Specific powers of investment**

The trustee shall have the power to apply or invest any monies requiring or available to be invested under this deed in any investment of whatsoever kind or nature as the trustee in its discretion shall think fit notwithstanding that any such investment is not by law authorised for the investment of trust monies or that the investment does not produce income or that no dividend or interest is payable in respect thereof and whether or not the investment shall involve waste or be subject to liability with or without security and otherwise upon and subject to any terms or conditions as the trustee shall in its absolute discretion think fit. In particular, without restricting the generality of the foregoing, the trustee shall have the power to apply or invest any monies requiring or liable to be invested under this deed either alone or in partnership or co-ownership with any person or persons:

- a) Authorised investments: in any one or more of the investments from time to time sanctioned by law in any State or Territory of Australia for the investment of trust moneys;
- b) Real and personal property: in the acquisition of real or personal property or any interest therein and without limiting the generality thereof of any patent, copyright, design, formula, secret process, concession, trademark and other like right or privilege in Australia or in any other country and although the acquisition is not made primarily for the production of income;
- c) Property development: in developing and turning to account any real or personal property or any interest therein, or any property right or interest which is or may be subject to these trusts and without limiting such generality by constructing, reconstructing, maintaining or improving any

buildings or by laying out and preparing land for subdivision, conversion to strata or similar title and for buildings;

- d) Shares: in the acquisition of fully or partly paid shares including redeemable, preference or redeemable preference shares, stock debentures, debenture stock bonds, units, securities or obligations or any interest, with or without deferred, restricted, qualified or special rights relating thereto and whether or not there is or is not a liability in respect of any such shares, units, securities or interests, of or in any public proprietary or no liability company, association, firm, mutual fund or unit trust wherever incorporated or formed, whether carrying on business in Australia or in any other country, or in giving any guarantee or otherwise becoming a proprietor of a company limited by guarantee;
- e) Option and rights: in the acquisition of options, entitlements or rights to any of the securities mentioned in paragraph (d) of this sub-clause;
- f) Deposit: on fixed deposit or at call with any bank, savings bank, building society, company, corporation or firm wherever incorporated or situated and wherever carrying on business and any deposit may be made free of interest to any company or corporation or firm in which a beneficiary shall be a shareholder or in which any part of the fund is invested in its shares;
- g) Business: in acquiring and carrying on any manufacturing, trading, primary production or other business in Australia or elsewhere;
- h) Insurance: in the acquisition of any policy of assurance or insurance of any kind whatsoever;
- i) Loans: in making loans to any person or company whether executor, trustee or otherwise with or without interest and whether secured or unsecured and for any period whatsoever fixed or otherwise;
- j) Precious objects: in the purchase of gold, silver, works of art, coins, stamps, furniture, ornaments, precious objects, jewellery and antiques;
- k) Commodity contracts: in the acquisition of foreign currencies, hedging contracts, commodity contracts and also options or future contracts of any kind which are quoted on a recognised stock exchange;
- l) Permanent building society: in the lodgement of monies with a permanent building society wherever situated by taking up shares therein or depositing funds therewith;
- m) Deferred property: in the acquisition of any reversionary or deferred property or rights of any description;

- n) Digital currency: in the acquisition of any form of digital currency including Bitcoin.

### 9.3 Power to vary

The trustee shall have the power, which it may exercise from time to time in its discretion, to change or vary any investment for the time being forming part of the trust fund made by it pursuant to the provisions of this deed or authorised by law.

## 10. General powers

10.1 In the administration of the trusts declared by this deed and in the exercise of the powers, authorities and discretions conferred by this deed or by law, the trustee shall have the following powers. These powers shall be in addition to the powers, authorities and discretions vested in it by another provision of this deed or by law and which shall not limit or be limited by, or be construed so as to limit or be limited by the powers, authorities and discretions otherwise by this deed or by law vested in the trustee that is to say:

- a) Generally deal with fund: to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, or otherwise deal with or dispose of or transfer any item or asset comprising the whole or part of the trust fund or otherwise held by the trustee under the terms of the Trust for such consideration and on such terms as in its discretion it may think fit;
- b) Real property: to acquire, dispose of, exchange, mortgage, sub-mortgage, lease, sub-lease, let, grant, release or vary any right or easement or otherwise deal with real property of any estate or interest therein;
- c) Personal property: to acquire, dispose of, exchange, hire, lease, let, mortgage or otherwise deal with personal property (including aircraft) or any estate or interest therein;
- d) Derivatives: to acquire, dispose of, exchange, hire, lease, let, mortgage or otherwise deal with any derivative which term is taken to include but not be inclusive of any interest rate swaps, currency swap, currency option, interest rate option, swap option, smart forward, money market transaction, foreign exchange transaction, margin foreign exchange transaction, futures transaction, forward rate agreement, forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodities option, credit derivative, or an equity derivative;
- e) Lease: to rent premises from any person, acquire the interest of any lessee in any lease, purchase, hire, take on lease, grant leases, sub-leases,

tenancies or rights of any nature whatsoever in and to any realty or estate or interest therein, motor vehicles, computer hardware and software, fixtures and fittings, furniture, utensils, plant and equipment and other property of any other description;

- f) To let: to lease and let property forming part of the trust fund or held by the trustee pursuant to the provisions of this deed for such period at such rental and to those persons and upon such terms and conditions in all respects as the trustee may decide, to accept surrenders from, and to make allowances to and arrangements with a lessee or tenant with or without consideration as the trustee may think fit;
- g) Employment: to engage or employ persons including a person having an interest in or who is the holder of an office in the trustee, or obtaining other assistance as the trustee may deem requisite, to provide staff, amenities and to vary and terminate any contract of employment;
- h) Engage experts: to employ or engage agents or professionals in the execution of the trusts and powers and instead of acting personally from time to time to employ or engage and pay out of the trust fund such managers, agents, advisers, solicitors, barristers, auditors, accountants, brokers, surveyors or other persons, to transact any business or to do any act required to be done in connection with the administration of the trusts declared in this deed, and to act upon the opinion or advice of any such person without being responsible for any loss or damage occasioned by acting in accordance therewith;
- i) To lend: to lend and advance monies forming part of the trust fund or give credit to any person on such terms as may seem expedient; in particular, without limiting the generality of the foregoing, to any person having an interest in or the holder of any office in the trustee and any such lending or giving of credit may be made at call or for a period of time and may be made at a rate of interest or at no interest and may involve taking of security in any form whatsoever or without security;
- j) To borrow: to raise or borrow monies either alone or jointly with another or others, from any person, firm or company, either bearing or free of interest and on such terms and conditions and for such purposes as the trustee may decide to secure the repayment of any such moneys or other indebtedness of the trustee by mortgage, charge, or other security or encumbrance over the whole or any part of the trust fund, as the trustee in its discretion may decide, or to have the repayment secured over property of a third party which may include property of a trustee or beneficiary whether such third party collateral security is given alone or jointly with property of the trust fund including the giving of any guarantee or security as authorised by paragraph (x) below. No lender shall be concerned to enquire as to whether the necessity of any such borrowing

has arisen or to the purpose for which it is required to the application of the monies borrowed;

- k) Commercial bills: to draw, endorse, accept, guarantee or be a party in any way to a commercial bill, or other bill of exchange, promissory note, letter of credit, hypothecation or any other facility whatsoever involving the raising, borrowing or lending of monies by or to the trustee of the Trust;
- l) Credit to enter into alone or with others any agreement or arrangement for obtaining credit upon such terms and conditions as the trustee may see fit including but not limited to obtaining upon deferred terms as to payment, goods, trading stock or other property or services of any nature whatsoever;
- m) Attorney: to appoint any person as the representative or attorney of the trustee for the purpose of executing any document which the trustee is permitted or authorised to execute by this deed or by law and to revoke any such appointment;
- n) Service entity: to act as a service entity in providing office supplies and services, including professional or other employees, office furniture and equipment of all types, stationery, telephone and electricity services, management, administration and consultancy services and anything incidental thereto;
- o) Bank accounts: to open in the name of the Trust or in the name of any person or corporation as nominee of the trustee, or in the joint names of the trustee and another, any cheque, savings or other bank account with any bank or financial institution wherever situated, as the trustee thinks fit, with full power to operate on any such account including but without limiting the generality of the foregoing, power to sign, draw and endorse cheques and other negotiable or transferable instruments on any account and to close the same;
- p) Management expenses: to pay out of the trust fund or the income thereof all costs charges and expenses incidental to the management of the trust fund or to the exercise of any power authority or discretion herein contained or in carrying out or performing the trusts of this deed which the trustee considers appropriate;
- q) Pay general expenses: to pay insurance premiums, rates, taxes, rents, and outgoings in connection with any real or personal property of the trust fund and to manage such property and effect repairs as the trustee may consider necessary or advisable. Where the trustee is unable to charge such capital expenditure against income of the fund it shall be at liberty to resort to capital;

- r) Corporate securities: with respect to any company in which the trustee holds shares, stocks, debentures, options, convertible notes or is otherwise interested or concerned (“securities”) to exercise the following powers in addition to powers conferred by law:
- to pay calls on securities or to permit securities to be forfeited and sold;
  - to purchase securities and to take up securities of a new issue;
  - to attend meetings personally or by proxy, attorney or representative and vote at the discretion of the trustee;
  - to sell securities at such price and upon such terms with or without security as the trustee thinks fit;
  - to assent to or to join in any arrangement relating to the sale, transfer or exchange of any securities, or modifying any rights, privileges or interests in relation to the securities, to agree to any scheme or arrangement for the increase or reduction of the value or amounts of any shares or stock or of the capital of any company in which any securities form the whole or any part of the trust fund, or by which any such securities are substituted or given in exchange, either wholly or partly for other securities, whether in the same company or not, for any such purpose to deposit, surrender or exchange any scrip or documents of title relating to the securities and to pay out of the capital of the trust fund or property held in trust pursuant to the provisions of this deed or the income thereof any contribution or incur any expense in connection with such scheme or arrangement and generally to manage and deal with any securities as if the trustee owned them beneficially; and
  - to agree in respect of a winding up with the liquidator of the company or any member of such company or any other person, in all things as the trustee shall think fit, for the division or partition in kind or specie of the assets or property of whatsoever nature of the company and to accept any of the assets and property in payment or satisfaction of any interest of the trustee in the company with power to pay any moneys by way of equality of division or partition;
- s) Unit trust interests: to acquire units or sub-units of any fixed or flexible unit trust whatsoever either by way of application, purchase or by way of settlement by the trustee in the establishment of such unit trust and to exercise all rights including voting rights and perform all obligations as a holder of any units in such trust and to accept all distributions by the trustee of such unit trust as income or capital of the trust fund;

- t) Franchises: to acquire by means of purchase or otherwise and to sell, dispose, relinquish or otherwise deal in franchises, franchise agreements, licences or things of like nature relating to subject matters of all kinds;
- u) Subdivision of property: to partition or agree to the partition of or to subdivide or agree to the subdivision of property of any kind which, or any interest in which, may for the time being be subject to these trusts and to pay moneys by way of equality or partition;
- v) Development of property: to enter into any contract, agreement or arrangement with any person for or with respect to the development and turning to account of any real or personal property or any interest therein and any other right, privilege or interest for the time being subject to these trusts or with respect to the construction of any buildings, laying out or preparing any land for building purposes or in developing or turning to account any such real or personal property or any rights privileges or interests;
- w) Promotion of companies: to establish, promote or acquire any company or join in the promotion or establishment of any company and to do anything which a person not being a trustee is authorised or empowered to do under any law relating to or governing any such company;
- x) Maintain property: to maintain and preserve in good and substantial order and condition any real or personal property of the trust fund or otherwise held by the trustee under the terms of this deed and to pay or defray those costs;
- y) Guarantees and indemnities: whether with or without security and whether alone or jointly or severally or both jointly and severally with any other person to guarantee, indemnify, secure by way of mortgage, charge or otherwise over the whole or part of the trust fund or undertake in any way the payment or repayment of money or debts (including any interest whether existing or to accrue) previously or then lent or to be advanced or any existing or future duties, undertakings, liabilities or obligations incurred, or which may at any time hereafter be incurred, by any person whether a beneficiary or not and to guarantee, indemnify or secure, with or without security, the due performance of any contract, agreement, covenant or obligation of any person whether a unit holder or not;
- z) Power to set aside: to set aside out of the income or capital of the trust fund from time to time such money as may in the opinion of the trustee be sufficient to meet any debt or obligation due or accruing;
- aa) Superannuation and bonuses: to pay bonuses, gratuities or retirement benefits or to establish and support or aid in the establishment and support of schemes providing superannuation, death and retirement benefits or



any one or more of such benefits in respect of employees or ex-employees of the trustee including in the case of a corporate trustee directors or other holders of any office of the company and the dependants of any of such persons and for the benefit of employees and their dependants of any company or person associated with the trustee;

- bb) Future contracts and options: to engage brokers and commission agents and vary and determine the terms of any such engagement and either directly or through any broker or agent in any market in any part of the world buy sell, open, close-out or otherwise deal in futures contracts of all kinds, to enter into, vary, exercise, abandon or sell any put or call option or rights, or to place bids, make offers, hedge and effect orders including buying, selling, straddle, switch and stop-loss order, to tender and take delivery of commodities and currencies which are the subject of any futures contract or option, and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange;
- cc) To mix funds: to mix the trust fund including its income and any other monies held from time to time by the trustee pursuant to the trusts created by this deed or under any other trust with other monies whether held by the trustee pursuant to any provision of this deed or not, to invest the monies so mixed in any investment, property, interest, arrangement or business or in any other mode or manner in which the trustee may by law or by this deed be empowered to invest the trust fund, to exercise all powers, authorities and discretions with respect to the mixed fund which the trustee is authorised by this deed or by law to exercise with respect to the monies and their investment with any other person as the trustee would be authorised or empowered by law or pursuant to this deed to make or enter into;
- dd) Trustee's power to deal with itself: notwithstanding any rule or law or equity to the contrary, to acquire as property of the trust fund real or personal property the legal and beneficial interest in which is at the date of such acquisition the absolute property of the trustee PROVIDED THAT any property so acquired is acquired for a consideration being not greater than the current market value of the property and upon which such acquisition the beneficial interest in and to the property shall be held by the trustee upon the trusts contained in this deed;
- ee) Policies: to effect or acquire policies of life assurance of any kind on the life of any person or in respect of sickness, disability or accident to any person; to pay premiums transfer, surrender, change the status of and deal with these policies in any manner whatsoever, whether or not these policies are individual policies on the life of one person or a group policy on the lives of two or more persons; to purchase or enter into insurance or investment

bonds whether or not the bonds are linked to a policy over the life of any person;

- ff) Determination between capital and income: to determine whether real or personal property, or any increase or decrease in amount, number or value of any property, or any receipts or payments from, for or in connection with real or personal property, shall be treated as and credited or debited to capital or to income of the trust fund. Generally, to determine all matters as to which any doubt, difficulty or question may arise under or in relation to the execution of the Trust and powers of the Trust. Every determination of the trustee in relation to any of these matters, whether upon a question formally or actually raised or implied in any of the facts or proceedings of the trustee in relation to the trust fund, shall bind all interested parties and shall not be objected to or questioned on any ground whatsoever;
- gg) Partnerships and joint ventures: to enter into partnership or joint ventures with any person on such terms and conditions as the trustee shall think fit and to vary the terms of or terminate and be party to the partition of assets of any such partnership or joint venture;
- hh) To permit a unit holder to use Trust property: to permit a beneficiary to reside in any house, flat, strata title lot, or other residential unit or to use any personal property which or the proceeds of sale of which, may for the time being be subject to the Trust, with or without consideration and generally upon such terms as the trustee in its discretion shall think fit;
- ii) Agency and licences: to apply for, purchase and hold any permit, agency or licence which may be desirable or required to enable or facilitate the carrying on of any business which the trustee is empowered to engage in and to surrender, relinquish, sell, vary or assign the same;
- jj) Choses-in-action: to acquire choses-in-action including debts and obligations of all kinds for value or by way of gift or at a discount or at a premium and to assign, release, vary, relinquish or otherwise deal with the choses-in-action in any way whatsoever on such terms and conditions as the trustee may see fit;
- kk) Advertise: to adopt such means of making known and advertising any business which the trustee is empowered to carry on or in pursuing any power herein as may seem expedient or desirable;
- ll) Make gifts and donations: to make gifts or donations out of the trust fund for any charitable, scientific or educational purpose;
- mm) Receive gifts: to receive property by gift inter vivos or by will or under the provisions of any other trust or otherwise from any person as an

addition to the trust fund, whether subject to liabilities or not and to hold these gifts upon the trusts in this deed and to administer such additions under these provisions;

- nn) Disclaim gifts: to disclaim any gift whether made inter vivos or by will or under the provisions of any other trust or otherwise from any person as an addition to the trust fund;
- oo) Legal proceedings: to institute, join in and defend proceedings at law or by way of mediation or arbitration and to proceed to the final end and determination of, or to compromise the same and to compromise and settle any such dispute or proceedings for such consideration and upon the terms and conditions as the trustee may decide;
- pp) Intellectual property: to apply for, purchase or otherwise acquire and to sell patents, patent rights, copyrights, trademarks, designs, formulae, licences, concessions, know-how and the like, conferring any exclusive or non-exclusive or limited right to use of any other intellectual property rights and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired;
- qq) Power to appropriate trust fund in specie: to appropriate in specie any portion of the trust fund or any investment representing the same to or towards the share or entitlement of a beneficiary under this deed and to charge any such share or entitlement with such sum of money by way of equality as the trustee may think fit. For such purposes the trustee may fix the value of any real or personal property forming part of the trust fund and every such appropriation, charge and valuation shall be binding on all persons who may at any time be entitled to any interest in the trust fund;
- rr) Release of powers: by irrevocable deed to renounce and release any power conferred on the trustee under the Trust in respect of the whole or any part of the trustee or the income or any part thereof. Upon such renunciation and release any power or powers shall be deemed to be at an end and no longer exercisable by the trustee to the extent of the renunciation and release;
- ss) Incidental powers: to do all such other things as may be incidental to the exercise of the powers, rights, discretions and authorities hereby conferred on the trustee;
- tt) Carry on business: from time to time to carry on alone or jointly with another or others any business or an interest in any business and use the trust fund or any part thereof or any assets included for the time being in the trust fund in carrying on such business as the trustee may decide. The trustee has power to charge against or pay or retain out of the trust fund all debts, costs, expenses or other outgoings incurred in carrying on such

business or for the purpose of carrying it on or for the purpose of establishing a proposed business. Without limiting the generality of the foregoing, the trustee shall have the following powers exercisable from time to time and at any time or times:

- to investigate and determine the feasibility or desirability of establishing or carrying on or acquiring any business or an interest in any business which the trustee proposes or considers establishing or carrying on or acquiring. The trustee shall be entitled to incur expenses in or in connection with any investigation and determination and to pay or incur such expenses out of the trust fund or out of the income whether or not pursuant to that investigation and determination the trustee proceeds to establish or carry on that business;
- to establish any business;
- to acquire the whole or part of the goodwill of any existing business;
- to acquire the assets or an interest in the assets of or used in any business;
- to undertake to meet liabilities or contingent liabilities incurred or to be incurred by any person in or about the establishment or carrying on or acquisition of the whole or part of an existing business, the goodwill and assets of which or any of which are proposed to be acquired by the trustee and to give indemnities for or enter into guarantees or such liabilities and contingent liabilities or any of them;
- to acquire or join in acquiring chattels and stock in trade for use in or in connection with any business carried on or proposed to be carried on by the trustee or in which the trustee may acquire an interest;
- to make payments or incur expenses or liabilities (including donations) which the trustee considers to be for the benefit of any business carried on by or proposed to be carried on by the trustee or in which the trustee may have an interest or which the trustee considers will promote or facilitate such business notwithstanding that the trustee may be under no legal or enforceable obligation to make such payments or incur such expenses or liabilities and notwithstanding that such payments or the incurring of such expenses or liabilities do not produce any direct benefit to the fund;
- to sell the goodwill of any business;
- to enter into any covenant or agreement in restraint of trade;

- to enter into contracts for importing or exporting goods and to enter into contracts for the shipping or other transportation of goods;
- to carry on any business in the same manner and with the same powers and rights as the trustee would have if it were carrying on the business in its own right and not as trustee. It is expressly declared that the trustee shall have power in its discretion in the course of, or in connection with, the carrying on of any business to transfer title with or without consideration to any property which it holds as trustee notwithstanding any limitation on such power which might otherwise by operation of law or under any other provisions of this deed prevent the title being effectually or validly transferred by reason of it being a trustee or the transferee having notice that it is a trustee. Any person dealing with the trustee in, or in connection with, such business may contract with and make payments to the trustee without being required to enquire as to whether the trustee has power to deal with them under this deed or whether the trustee is properly exercising any power it may have in so dealing. No such person shall be obliged to enquire as to the proper application by the trustee of any payment so made or shall be accountable for the non-application of the payment notwithstanding that such person was on notice that the trustee was carrying on such business as a trustee. The title of any person to whom property is transferred by the trustee whether with or without consideration in the course of or in connection with the carrying on of the business shall not be affected by any notice that the trustee held title to the property as a trustee. The receipt of the trustee shall be an absolute discharge for any payment made to the trustee;
- to settle trusts.

#### 10.2 Power to act as a director

A trustee who is a natural person may become a director of any company in which any monies forming part of the trust fund are from time to time invested and may receive the remuneration attached to such office without being liable to account for it.

#### 10.3 Power to act notwithstanding personal interest

The trustee may exercise or concur in exercising all powers and discretions given under this deed or by law notwithstanding that it or any person being a director or shareholder of the trustee has or may have a direct or indirect interest in the result of exercising such powers or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the trustee for the time being is the sole trustee.

## **11. Amendment**

At any time and from time to time prior to the termination date, the trustee with the written consent of the appointor (if any) for the time being may by deed:

- 11.1 alter, vary or revoke any trust or provision hereunder other than this clause and clauses 7 and 8 (1) (but not so as to benefit the Settlor); or
- 11.2 appoint and resettle the trust fund (except to the benefit of the Settlor) or any part thereof and the income to arise therefrom in the manner and upon trust, subject to the conditions and in the proportions and with such powers and to such ends, intents and purposes, to or among such one or more of the beneficiaries as the trustee may from time to time think fit.

## **12. Accounts**

- 12.1 The trustee shall:
  - a) establish and maintain proper accounts in book or computer form which shall accurately record all receipts and outgoings in relation to the trust fund;
  - b) separately record income and capital of different categories as are provided by this deed as the trustee may decide.
- 12.2 The trustee from time to time shall at the request of the appointor provide a copy or in the case of computer recording a hard copy, of such financial statements certified as provided in sub-clause (1) of this clause and shall also give such information and explanations as the appointor may require.
- 12.3 The appointor may by notice in writing to the trustee given at any time, require the financial statements of the trust fund to be audited by an auditor nominated by the trustee and approved by the appointor. The costs of such auditor shall be paid out of the trust fund. If the trustee shall fail to nominate an auditor within 14 days of the giving of a notice or has within 28 days of the giving of such notice failed to nominate an auditor who is approved by the appointor, the appointor may at any time thereafter appoint an auditor who shall continue to hold such office until removed by the trustee with the consent of the appointor.

## **13. Notices and service**

### **13.1 Notices**

Subject to the provisions, if any, of this deed for any notice or demand given under this deed to be otherwise made, it shall be in writing and where the notice or demand is given by an individual it shall be signed by such party

personally or by any solicitor acting for such party or by any agent or attorney authorised in writing and where the notice or demand is given by a company it shall be executed under seal or by a director of the company or by any solicitor acting for the company or by any agent or attorney authorised in writing.

### 13.2 Service

Service of a notice or demand shall be sufficient and effective if:

- a) Where service is to be made on a company, the notice or demand is:
- delivered to the registered office of that company;
  - served personally upon any director of that company;
  - delivered posted by ordinary prepaid post or by security mail in an envelope addressed to the company at its registered office or place of business last known to the person serving the notice or demand in which event the notice or demand shall be deemed to have been received on the second business day following the date upon which the envelope containing the same was posted;
- b) Where service is to be made upon a natural person, the notice or demand may be:
- served personally upon that person;
  - delivered to the home or place of business of that person;
  - posted by ordinary prepaid post or by security mail in an envelope addressed to the party at his place of residence or business last known to the person serving the notice or demand in which event the notice or demand shall be deemed to have been received on the second business day following the date upon which the envelope containing the same was posted;
  - served sent electronically by facsimile or email to the last known facsimile or email address of that person.

### 13.3 Reservations regarding service

Notwithstanding the provisions of the two previous sub-clauses:

- a) Service of a notice or document on any one of several joint unit holders shall be deemed effective service on the other joint holders.

- b) Any notice or document delivered at or posted to the registered address of a unit holder shall, notwithstanding that such unit holder be dead and whether or not the trustee has notice of his death, be deemed to have been duly served and such service shall be deemed a sufficient service on the legal personal representative of the deceased unit holder and all persons (if any) registered as joint unit holders with him in respect of the units.
- c) A notice or document shall not be deemed to be have been served upon a person by facsimile or email if the person serving that document should have had formed the view that it would be unlikely that the facsimile or email would be received by that first mentioned person.

## **14. Winding-up Trust**

### **14.1 Termination date**

The Trust shall be wound-up and terminate on the first to occur of:

- a) the date which the trustee with the written consent of the appointor determines; or
- b) 80 years from the date of this deed unless a State law allows otherwise including South Australia.

### **14.2 Procedure on termination**

Subject to any provision of this deed that limits or restricts distributions of capital of the trust fund, the trustee shall at the termination date:

- a) pay out or otherwise discharge and satisfy all debts and liabilities in relation to the Trust;
- b) distribute or otherwise deal with the income of the Trust in any manner expressly provided by this deed and any income not so dealt with shall form part of the capital of the Trust;
- c) distribute or otherwise deal with the capital of the Trust in any manner expressly provided in clause 5; and
- d) to the extent to which the capital of the Trust shall not have been so distributed or dealt with, the trustee shall stand possessed of so much as remains of beneficiaries as shall then be living and if more than one in equal shares as tenants in common:

(d.1) the primary beneficiary;



(d.2) in the event of the primary beneficiary dying before the termination date, leaving issue living on that date, such issue shall each take an equal share of that amount which the primary beneficiary would otherwise have been entitled pursuant to clause 14 (2) (d) (d.1) above;

(d.3) in the event of the whole or any part of the trust fund failing to vest in any one or more beneficiaries as aforesaid, the trustee shall hold the same upon trust for the following charity: RSPCA NSW. The appointor can by direction to the trustee substitute at any time any charity or charities in lieu of that charity. The receipt of the treasurer, secretary or other officer of the administrative body of such charitable object shall be a sufficient discharge to the trustee.

14.3 On the winding up of the Trust the trustee may distribute property comprised in the trust fund in specie in satisfaction of any part of the trust fund to which a beneficiary may be entitled.

14.4 Termination On the winding up of the Trust, the trustee shall have prepared financial statements as at the termination date and if at that time there shall be an appointor, it shall make available to such appointor a signed and certified copy of such financial statement which shall include particulars of all distributions of capital, and if there is no appointor, a copy of all such statements and particulars shall be made available to each beneficiary entitled to receipt of income or capital of the Trust on the winding up.

