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Discretionary Trust

Discretionary Trust Deed

Prepared for

Reckon Docs Pty Ltd

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Discretionary Trust

Discretionary Trust Deed

Prepared by:

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Document Version: HH-1.06

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Trust Deed

THIS DEED is made on the date specified in the Schedule.

PARTIES

The person named and described in the Schedule as the Settlor (the “Settlor”)

The person or persons, entity or entities named and described in the Schedule as the Trustee (the “Trustee”)

BACKGROUND

- A.** The Settlor has paid to the Trustee the Initial Sum referred to in the Schedule to be held by the Trustee upon the trust set out in this Deed.
- B.** The Trust will be known by the name, if any, stated in the Schedule.

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AGREED TERMS AS FOLLOWS:

1. INTERPRETATION

1.1. Definitions

In this Deed unless the context indicates otherwise:

Accounting Period means:

- (a) each period of twelve months ending on the 30th day of June;
- (b) the period commencing on the date of this Deed and ending on the 30th day of the following June; and
- (c) the period commencing on the first day of July prior to the Vesting Day and ending on the Vesting Day.

Applicable Law means the law of the State or Territory referred to in the Schedule provided that if this specification may not lawfully be made or will not be given effect to by any Court before which this Deed would come in question the applicable law will be the law which such Court determines.

Bankrupt Principal means a Principal who becomes bankrupt or makes any arrangement or composition with the Principal's creditors in accordance with the applicable Bankruptcy legislation.

Beneficiaries mean and include:

- (a) the persons named in the Schedule;
- (b) the grandparents, parents, brothers, sisters, spouses, widows, widowers, children and remoter issue and next of kin of the persons named in the Schedule and the spouses, widows, widowers, children and grandchildren of such parents, brothers and sisters, spouses, children and remoter issue and next of kin;
- (c) any person (not being the Settlor) appointed by the Trustee to be a beneficiary for the purposes of this Deed under clause 5.3;
- (d) the trustee of any other trust of which the Trustee (as Trustee of this Trust) is a beneficiary (whether fixed, discretionary or otherwise) or holds an interest (subject to there being no infringement of the Rule against Perpetuities);
- (e) the trustee of any other trust of which any one or more of the persons referred to in the preceding paragraphs (a) to (c) of this definition is a beneficiary (whether fixed, discretionary or otherwise) or holds an interest (subject to there being no infringement of the Rule against Perpetuities);
- (f) any other legal entity being an entity in which a share or beneficial interest, whether present or contingent, is held or owned by any one or more of the persons referred to in the preceding paragraphs (a) to (c) of this definition; and
- (g) any Charitable body or Religious body;

provided that notwithstanding the above, no person, trustee, partnership, or any other legal entity will be, become, remain or be appointed as a Beneficiary for the purposes of this Deed if and while that person is, becomes, or remains an Excluded Person.

Capital Profits means the capital profits arising from a disposal of any part of the Trust Fund.

Charitable Body means any corporation, unincorporated association, trustee of any settlement or any other entity established for charitable purposes.

Child includes an adopted, ex-nuptial or foster child or a step-child.

Clause means a clause of this Deed.

Corporation includes any statutory corporation, corporation sole or company formed or incorporated according to Corporations Law.

Corporations Law means the Corporations Act 2001 (Clth), including any replacement, amendment, modification or supplement to that Act.

Distribute means to pay, apply or set aside.

Excluded Person has the meaning given by Clause 5.2(c).

Foreign Income means foreign income as defined in Section 6AB(1) of the Tax Act.

Franked Dividends means dividends the whole or part of which are taken to have been franked under Part 3-6 of the Tax Act.

Income means Trust Income.

Initial Sum means the initial sum referred to in the Schedule.

Net Income means the net income of the Trust determined in accordance with Section 95(1) of the Tax Act.

Pay includes transfer, assign and convey.

Perpetuity Period means the perpetuity period applicable to dispositions effected by this Deed under the rule of law known as the rule against perpetuities (as modified by statute - which rule as so modified is called in this Deed "the Rule against Perpetuities") and that period is the period commencing on the date of this Deed and terminating on the earliest to occur of the following dates:

- (a) the 80th anniversary of the date of this Deed;
- (b) the date calculated by reference to the law relating to perpetuities which may from time to time be applicable to the Trust; and
- (c) any other date the Trustee may at any time in the absolute discretion of the Trustee determine to be the Vesting Day.

Primary Production Income means income from primary production under the Tax Act.

Principal means:

- (a) the person or persons jointly or successively named in the Schedule and the person or persons nominated by the person so named in the Schedule and acting as Principal for the time being in writing inter vivos or (in the case of the sole or last surviving such person) by will to succeed the person named in the Schedule during his lifetime (and from the date so nominated) or upon his death as the Principal; or
- (b) the entity or entities jointly or successively named in the Schedule and the entity or entities nominated by the entity so named in the Schedule and acting as Principal for the time being in writing) to succeed the entity named in the Schedule during its existence (and from the date so nominated) or upon its liquidation as the Principal; or
- (c) if no such person shall be so nominated then upon the death of the person or the last of the persons (if more than one) named in the Schedule, the legal personal representatives of such person; or
- (d) if no such entity shall be so nominated then upon liquidation of the corporate entity the liquidator of the corporate Principal; and
- (e) in the case of two or more persons named or nominated as the Principal, no power or authority or direction by the Principal shall be valid or effective unless the same is jointly exercised by all such persons unless otherwise specified in the Schedule or in such nomination.

Property includes real, personal, movable or immovable property of any description and any location including (without limiting the generality hereof) policies of assurance or endowment, cash and choses in action.

Religious body means any corporation or unincorporated association, trustee of any settlement or any other entity established for religious purposes, of any faith.

Set aside in relation to a Beneficiary includes placing sums to the credit of such Beneficiary in the books of the Trust Fund.

Spouse includes:

- (a) a de-facto spouse, being a woman living with a man as his wife or a man living with a woman as her husband (as the case may be) on a bona fide domestic basis, although not legally married to each other; and
- (b) a person who is living with another person on a bona fide domestic basis in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

Tax Act means either or both of the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 (as the case may be), including any replacement, amendment, modification or supplement to those Acts.

Trust means the trust constituted by this Deed.

Trust Fund means:

- (a) the Initial Sum;
- (b) any further or additional Property donated to, assigned to, transferred to or vested in or caused to be vested in the Trustee to be held upon the trusts and subject to the powers and provisions of this Trust;

- (c) the proceeds of sale, redemption or other dealing with the Initial Sum or other property;
- (d) any accumulation of Income directed or empowered to be made in this Deed;
- (e) money lent to or advanced to the Trustee pursuant to this Deed;
- (f) all accretions to, or the income, profits or gains of, any of those things referred to in paragraphs (a) to (e) of this definition; and
- (g) Property of every description for the time being and from time to time representing the property referred to in paragraphs (a) to (f) of this definition.

Trust Income means income produced from:

- (a) the investment of the Trust Fund;
- (b) property of the Trust Fund; or
- (c) any other income producing activity

after allowing for the expenses of the Trust calculated in accordance with the law of trusts, standard accounting procedures for trusts and the administrative powers in this deed and may include any realised or unrealised Capital Profits if so determined by the Trustee.

Trustee means:

- (a) the person or persons named as such in this Deed or;
- (b) the trustee for the time being and from time to time of this Trust whether original, additional, surviving, alternate or substituted and whether the same be a natural person or persons, companies, corporations or otherwise or one or more classes of them severally.

Unfranked Dividends means dividends, (including dividends that are not frankable dividends) the whole or part of which has not been franked under Part 3-6 of the Tax Act.

Untaxed Amount means an amount not subject to tax under the Tax Act.

Vesting Day means the date of the expiration of the Perpetuity Period.

1.2. Context

In this Deed, unless the context indicates otherwise:

- (a) the singular will mean and includes the plural and vice versa and any gender will means and includes all other genders.
- (b) headings in this Deed are for convenience only and will not affect the interpretation of this Deed.
- (c) references to persons will include a Corporation partnership or any other entity having separate legal personality.
- (d) references to a person will include the legal personal representatives, successors and assigns of that person.
- (e) reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, rewrites, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- (f) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile, e-mail and other forms of technological advancing transaction.
- (g) references to authorities and bodies, whether statutory or otherwise, will deem to include references to the delegates of those authorities and bodies whether appointed by statute or otherwise.
- (h) the expression the **Beneficiaries** includes persons, Corporations and the trustee or trustees of trusts who or which, from time to time until the Vesting Day, come within the definitions contained in this Deed or within any description in this Deed notwithstanding that such persons, Corporations, trustee or trustees may not have been born or be in existence or have come into the defined categories at the date of this Deed and, in the case of such trustee or trustees notwithstanding that the trust or settlement of which he, she or it is a trustee or they are trustees have not been formed or come into existence or do not fall within the defined category at the date of this Deed, providing that there is no infringement of the Rule against Perpetuities.

2. SETTLOR DECLARATION

2.1. The Settlor declares and directs (and the Trustee acknowledges and accepts such declaration) that:

- (a) no part of the Trust Fund or the Income will ever revert to or be held in trust for the Settlor or the Settlor's estate;
- (b) the Trustee will hold the Trust Fund upon the trusts with, and subject to, the powers and provisions contained in this Trust; and
- (c) the Trustee will have power at any time, and from time to time, until the Vesting Day, in the absolute discretion of the Trustee, to accept such additional Property as may be donated to, assigned to, transferred to or vested in it to be held upon and subject to the trusts contained in this Deed.

3. TRUST FUND INCOME AND CAPITAL

3.1. Determination and Classification

- (a) The Trustee will in each Accounting Period determine the Income.
- (b) The Trustee may classify the income or capital of the Trust into one or more such classes, whether by reference to source nature of otherwise, as it may in its absolute discretion determine and may account separately for each such class or part thereof. Without limiting the generality of the foregoing in such determination, the Trustee may identify and account separately for:
 - (1) any unrealized or realized gains relating to the revaluation of assets;
 - (2) any Capital Profits;
 - (3) the amount of any Franked Dividends;
 - (4) the amount of any Unfranked Dividends;
 - (5) any Untaxed Amount;
 - (6) any Primary Production Income;
 - (7) any Foreign Income
 - (8) any difference between Trust Income and Net Income before tax; and
 - (9) any amount to which a separately identifiable taxation consequence or benefit may attach.

3.2. Distribution of Income

- (a) The Trustee may, at any time prior to the expiration of any Accounting Period (or such other time as the Commissioner of Taxation may allow for the purposes of the Tax Act), determine with respect to all or any parts of the Income for that Accounting Period, to do all or any of the following:
 - (1) distribute the same or any part to all or one or more of the Beneficiaries living or in existence at the time of the determination; and
 - (2) accumulate the same or any part.
- (b) The following rules apply to any determination made pursuant to Clause 3.2(a):
 - (1) any distribution of Income will, unless otherwise specified by the Trustee, be deemed to have firstly been made out of Net Income;
 - (2) any determination to accumulate Income will be conditional upon the law in force in relation to this Deed giving effect to such determination at the end of the Accounting Period but, except as provided in this Clause 3.2(b), each such determination will be irrevocable;
 - (3) if at the end of any Accounting Period:
 - (A) the amounts proposed to be distributed under Clause 3.2(a) exceed the Income for the Accounting Period, the Trustee may apply the difference from any capital account of the Trust Fund including accumulated income;

- (B) the amounts in respect of which determinations have been made pursuant to Clause 3.2(a) exceed the Income for the Accounting Period then:
- (i) these excess amounts will firstly be deducted from the amounts (if any) which the Trustee has determined to accumulate and only the balance of such amount or amounts (if any) would, from that time on, be accumulated; and
 - (ii) if, after such deduction, the amounts in respect of which determinations have been made pursuant to Clause 3.2(a) still exceed the Income for the Accounting Period, then the Trustee will be deemed to that extent to have applied the capital of the Trust Fund pursuant to Clause 3.3 pro rata across the accounts in respect of which determinations have been made;
- (4) the Trustees may in its discretion determine and identify which Income or which part of the Income or which class of Income (whether by reference to source nature or otherwise) of the Trust Fund is the subject of any particular determination or determinations and the Income the subject of any such determination shall be treated for all purposes as being distributed or accumulated as the case may be from the Income or part or class so identified.
- (5) if at the end of an Accounting Period the Trustee has not made determinations under clause 3.2(a) in respect of the whole of the Income for such Accounting Period then the balance of such Income shall be accumulated.
- (6) a determination to Distribute any amount for any Beneficiary may be made by, among other things:
- (A) placing such amount to the credit of the Beneficiary in the books of the Trust Fund;
 - (B) drawing a cheque in respect of such amount, made payable to, or for the credit or benefit, of the beneficiary; and
 - (C) paying the same in cash to or for the benefit of the Beneficiary;
- (7) the Trustee will have complete discretion as to the making of any determination and will not be bound to assign any reason for the determination; and
- (8) in making any determination to Distribute any amount, the Trustee may:
- (A) exclude any Beneficiary; and
 - (B) determine to Distribute such amount between the Beneficiaries in such proportions and in such manner as the Trustee in the absolute discretion of the Trustee will deem fit.
- (c) The amount of any accumulation will be dealt with as an accretion to the capital of the Trust Fund, but so that the Trustee may at any time or times resort to all such accumulations and distribute the whole or any part or parts of those accumulations, as if they were Income.

- (d) Any amount set aside for any Beneficiary or held by the Trustee in trust for a Beneficiary pursuant to Clause 3.2(a) will not form part of the Trust Fund but will be held by the Trustee as a separate trust fund upon trust for the Beneficiary absolutely, with power to the Trustee, pending payment of the amount to such Beneficiary, to invest or apply for the benefit of such Beneficiary or deal with such fund or any resulting income from such fund or any part thereof in the manner provided for in this Deed in relation to the Trust Fund.
- (e) It is declared that each of the Beneficiaries in whose favour the Trustee Distributes the Income for an Accounting Period or, failing the exercise of the Trustee's discretion to Distribute or Accumulate, who are entitled to share in the Income for that Accounting Period will have an immediate and indefeasible vested interest in that part of the Income for that Accounting Period to which that Beneficiary is entitled, it being the express intention of the Settlor (as the Trustee acknowledges) that such of the Beneficiaries in whose favour the Trustee would Distribute the Income, or failing the exercise of the Trustee's discretion to Distribute or Accumulate who are entitled to share in the Income, will be presently entitled to his or her share of Income.
- (f) Any Income to which a Beneficiary becomes entitled or which the Trustee determines is to be Distributed to the Beneficiary may (inter alia) be Paid or applied in any one or more of the following ways:
- (1) to the Beneficiary;
 - (2) to a bank account in the name of the Beneficiary; and
 - (3) where the Beneficiary has not attained the age of 18 years:
 - (A) to the Beneficiary's parent, guardian or other person or persons for the time being having the care and custody of the Beneficiary; and
 - (B) to a bank account in the name of the Beneficiary or in the Beneficiary's name and the name of the parent, guardian or other person or persons for the time being having the care and custody of the Beneficiary;

and the receipt of such Beneficiary, parent, guardian or other person or persons or banker will be a good and sufficient discharge and receipt to the Trustee in that behalf and the Trustee will not be bound to see to the proper application of the amount so paid.

3.3. Capital of Trust

- (a) Until the Vesting Day the Trustee will have the power from time to time to Distribute such part or parts of the capital of the Trust Fund as the Trustee may in its absolute discretion deem fit to or for the benefit of the Beneficiaries or such one or more of them exclusive of the others and in such shares or proportions as the Trustee in its absolute discretion may determine. Without limiting the foregoing, the Trustee will be entitled to Distribute any part of the capital of the Trust Fund to a Beneficiary where the income to which the Beneficiary becomes presently entitled as a consequence of a determination by the Trustee under clause 3.2(a) is less than the share of the Net Income on which the Beneficiary is liable to tax under the Tax Act.

- (b) On and from the Vesting Day the Trustee will stand possessed of the Trust Fund or so much thereof as is then remaining in trust for the Beneficiaries then living or such one or more of them exclusive of the other or others of them and in such shares and proportions as the Trustee in its absolute discretion may determine prior to the Vesting Day.
- (c) In default of any determination by the Trustee under Clause 3.2(a):
- (1) the Trust Fund will be held by the Trustee upon trust for such of the surviving Children of the Beneficiaries named in the Schedule, in equal shares as tenants in common provided that if any Child of the Beneficiaries named in the Schedule has died prior to the Vesting Day leaving a Child or remoter issue of such deceased Child living on the Vesting Day, then such Child or remoter issue or both in equal shares will take the share which such deceased Child would have taken had he or she been living on the Vesting Day;
 - (2) if on the Vesting Day there is no Child or remoter issue of the Beneficiaries named in the Schedule surviving, then upon trust for any other Beneficiaries living and, if more than one, then in equal shares; and
 - (3) if on the Vesting Day there are no Beneficiaries surviving, then upon trust for such (Charitable Body or Bodies) and in such proportions as the Trustee in its discretion determines on or prior to the Vesting Day.
- (d) Where any Beneficiary chosen by the Trustee has not attained the age of 18 years the Trustee may Pay or apply the proportion of the Trust Fund appointed to that infant Beneficiary, inter alia, in any one or more of the following ways:
- (1) to the Beneficiary;
 - (2) to the Beneficiary's parent, guardian or other person or persons for the time being having the care and custody of the Beneficiary; and
 - (3) to a bank account in the name of that Beneficiary or in the Beneficiary's name and the name of the parent, guardian or other person or persons for the time being having the care and custody of the Beneficiary, and
- (e) The receipt of such Beneficiary, parent, guardian, or other person or persons or banker will be a good and sufficient discharge and receipt to the Trustee in that behalf and the Trustee will not be bound to see to the proper application of any amount so Paid or applied.

3.4. Trustee Power of Payment or Application for Beneficiaries' Benefit

Notwithstanding any other provision in this Deed, the Trustee may in its absolute discretion and from time to time:

- (a) prior to the Vesting Day pay or apply the whole or any part of the capital, Income or accumulated income of the Trust Fund towards the maintenance, advancement, benefit or education of all or any one or more exclusively of the others of the Beneficiaries then living or in existence and in such proportions or manner as the Trustee would in the absolute discretion of the Trustee from time to time deem fit.

- (b) without limiting or restricting any express trust declared in this Deed pay or apply the whole or any part of the Income towards the maintenance advancement benefit or education of any infant Beneficiary who is absolutely entitled to such Income.
- (c) in paying or applying capital or Income or any part thereof to or for the benefit of any Beneficiary (whether an infant or not) the Trustee may, without being responsible for any loss, pay the same to a savings deposit or loan account in any Bank or Building Society and may open an account for such purpose.
- (d) where any Beneficiary chosen by the Trustee pursuant to Clause 3.4(a) has not attained the age of 18 years, the Trustee may Pay or apply the amount of capital, Income or accumulated income of the Trust Fund appointed to that infant Beneficiary, inter alia, in any one or more of the following ways:
 - (1) to the Beneficiary;
 - (2) to the Beneficiary's parent, guardian, or other person or persons for the time being having the care and custody of the Beneficiary; and
 - (3) to a bank account in the name of the Beneficiary or in the Beneficiary's name and the name of the parent, guardian or other person or persons for the time being having the care and custody of the Beneficiary,as the Trustee in the absolute discretion of the Trustee deems fit and the receipt of such Beneficiary, parent, guardian or other person or persons or banker will be a good and sufficient discharge and receipt to the Trustee in that behalf and the Trustee will not be bound to see to the proper application of any amount so Paid or applied.
- (e) at any time, allow any Beneficiary to occupy, have custody of or use any immovable property or chattels which, at the relevant time, form part of the Trust Fund, on such terms or conditions as to inventories, repair, replacement, insurance, outgoings or otherwise as the Trustee determines.
- (f) appropriate any part of the Trust Fund in the actual condition or state of investment at the time of appropriation in or towards satisfaction of the share of any person in the Trust Fund, as the Trustee may deem just and reasonable.

3.5. Expenses of Trust

- (a) Subject to Clause 4.4, the expenses in connection with the administration of this Trust including the remuneration and charges of the Trustee (if any) provided for in this Deed and of the investment and re-investment of any part of the Trust Fund and the collection of Income and other sums derivable from the Trust Fund will be charged against the income of the Trust Fund but, if such income is insufficient for the purpose, then the same will be charged against the capital of the Trust Fund as may be required in addition to the income for the purpose.
- (b) Any Trustee being a Corporation authorised by the laws of any State or Territory of Australia to take in its own name a grant of probate of the will of a deceased person may charge and be paid as an expense of the Trust Fund remuneration in accordance with its scale of fees from time to time in force, and may without accounting for any resultant profit act as banker and perform any service on behalf of the Trust and on the same terms as would be made with a customer.

- (c) Any Trustee (not being a Corporation referred to in Clause 3.4(b)) may charge and be paid as an expense of the Trust Fund such remuneration as the Trustee in its absolute discretion would consider reasonable, provided that the total remuneration paid to the Trustee will not exceed:
- (1) the aggregate 10% of the gross income of the Trust Fund received during any Accounting Period; and
 - (2) 5% of the value of any portion of the Trust Fund that the Trustee may during any Accounting period that has paid to or applied to or for the advancement or benefit of or vested in any of the Beneficiaries under the provisions of this Deed or in or towards satisfaction of a share in the Trust Fund

provided further that a Trustee being a solicitor or chartered or public accountant may in respect of any such Accounting Period elect to charge and be paid as an expense of the Trust Fund usual professional and other charges for all business transacted, time spent and acts done by that Trustee or that Trustee's firm in connection with the powers, provisions and requirements of this Trust in that Accounting Period including the acts which a Trustee, not being a solicitor or chartered or public accountant, could have done personally.

- (d) The Trustee will not be required to give bond or security for the due and faithful administration of the trust or for the discharge of the trusts provided in this Deed.

4. POWERS AND DUTIES OF TRUSTEE

The Trustee will have power to make or vary or sell any investment and to engage in any transaction or dealing on behalf of the Trust, as the Trustee could do if the Trustee were the beneficial owner of the Trust Fund absolutely entitled to, the assets comprising the Trust Fund and any increments in the value of those assets.

4.1. Trustee – Additional Powers

- (a) Without prejudice to the generality of Clause 4 and to the intent that the authority conferred by Clause 4, will not in any way be restricted or limited, the Trustee, in addition to the powers otherwise conferred upon trustees by law, will have the following powers:
- (1) to apply and invest all moneys at any time forming part of the Trust Fund in any such investments whether involving liabilities or not or upon personal credit with or without security and upon such terms and conditions as the Trustee shall, in its absolute discretion, think fit;
 - (2) to the intent that the Trustee shall have the same power in all respects as if it was the absolute owner beneficially entitled to such moneys including, without diminishing the generality of the foregoing:
 - (A) the subscription for the taking up on allotment and the purchase of any share stocks bonds mortgages debentures obligations or securities of any government authority or company incorporated in any part of the world;
 - (B) the taking of and the purchase or acquisition of the whole or any part or share or interest in (including a minority part or share or interest in) any business or partnership and its goodwill and assets;

- (C) the purchase or acquisition of the whole, share or part of any real or personal property in any part of the world, notwithstanding that the same may not be income producing or be of a speculative nature; and
 - (D) to exercise all rights and privileges and perform all direct and incidental duties and obligations;
- (3) to make or purchase any such investments for cash or in consideration of an annuity or otherwise and upon such terms and conditions as the Trustee will in its absolute discretion think fit;
 - (4) the Trustee may make or purchase any such investment for a sum greater than the amount of the Trust Fund for the time being;
 - (5) the Trustee may agree to pay for any such investment wholly or in part from any future moneys which may come into the Trust Fund including dividends, profits, interest or other income paid or payable in respect of any such investments;
 - (6) to raise or borrow or obtain as at any time any money or financial accommodation (including by way of bill facility) required for the purposes of this Deed on any terms as to repayment of principal and repayment of interest (if any) as the Trustee in its absolute discretion thinks fit;
 - (7) the Trustee may, for this purpose, mortgage or charge in favour of the lender the whole or any part of the Trust Fund or any interest in it, and such mortgage or charge will not be invalid by reason of any error or omission on the part of the Trustee;
 - (8) the Trustee may borrow or raise money to be used in deriving income or gain for the Trust Fund, notwithstanding that the Trust Fund may already be wholly invested or applied, or that the money to be borrowed or raised may exceed the sum or value of the Trust Fund;
 - (9) it is expressly declared that all money and other property borrowed or raised by the Trustee will become part of the Trust Fund, and the Trustee may invest the same and the resulting income in any of the property and investments authorised with all powers, authorities and discretions with respect to those investments and properties as are set out in relation to the Trust Fund in this Deed;
 - (10) to advance and lend money to any person, firms, trusts, companies, corporations or governmental or municipal bodies on any terms and with or without security or interest as the Trustee thinks fit;
 - (11) the Trustee is expressly empowered to join with any person, trust or corporation in executing any mortgage or other document for the purpose of securing the payment of money to the Trustee jointly with any person, trust or corporation;
 - (12) to either alone or jointly with any other person, guarantee, indemnify, secure or undertake in any way including:
 - (A) the giving of mortgages or charges over the whole or any part of the Trust Fund;

- (B) the payment or repayment of money, including interest previously or subsequently lent or advanced or which may at any time or from time to time be lent or advanced to any Beneficiary; and
 - (C) any existing or future debts, liabilities or obligations incurred or which may at any time or from time to time be incurred by any Beneficiary.
- (13) to vary or transpose any investments into or for any other or others of any nature whatsoever and to vary the terms of or property comprised in any security;
- (14) to hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal Property and in particular with shares, debentures or securities of any company and with or without deferred, restricted, qualified or special rights;
- (15) to purchase or acquire any:
 - (A) reversionary or deferred Property or rights of any description;
 - (B) life or life endowment or sinking-fund or term or other policy; and
 - (C) policies of insurance of whatsoever nature at, or subject to, any premium or premiums, whether single or payable periodically, and with, or subject to, any options, rights, benefits, conditions or provisions whatsoever and

to pay out of the income or capital of the Trust Fund as the Trustee, in its absolute discretion thinks fit, all sums payable from time to time for premiums or otherwise for the effecting or maintenance of any policy or policies of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit thereunder and any surrender of any such policy or policies will for all the purposes of this Deed be deemed to be a sale;

- (16) to pay out of the Trust Fund all costs, charges and expenses incidental to the management of the Trust Fund or to exercise any power, authority or discretion contained in this Deed or in carrying out or performing the trusts contained in this Deed, which the Trustee may at any time incur, including (without limitation):
 - (A) All income tax or other taxes payable in respect of the Trust Fund;
 - (B) Costs in any way connected with the preparation and execution of this Deed; and
 - (C) All moneys which the Trustee may be required to pay as settlement, probate, estate, gift, stamp, financial institutions or settlement duties payable in respect of the Trust Fund or on this Deed.

- (17) to exercise all rights and privileges and perform all duties and to do all acts, matters and things which belong to any shares, stock or debentures in any Corporation for the time being, subject to the trusts contained in this document; as the Trustee could do if the Trustee was the beneficial owner of the shares, stock or debentures or was personally interested or concerned in the Corporation and (without limitation):
- (A) to assent to any arrangements modifying those rights, privileges or duties;
 - (B) to agree to any scheme or arrangement for the reconstruction, increase or reduction of the capital of any Corporation;
 - (C) to make any agreement in respect of, or in the course of, the winding up of any Corporation; and
 - (D) to deposit, surrender or exchange, or pay any calls, contributions or other necessary expenses in connection with, any of those shares, stock or debentures or the title to them;
- (18) to employ or retain or consult any person in connection with any trade or business carried on by the Trustee or in connection with anything required to be done pursuant to the provisions of this Deed including:
- (A) the receipt and payment of money to delegate to any such person any power, authority or capacity of the Trustee;
 - (B) to decide the remuneration to be allowed and paid to such person; and
 - (C) to create or arrange and contribute to any superannuation, retirement, benefit or pension scheme for the benefit of any person so employed;
- (19) to partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other Property which, or any interest in which, may for the time being be part of the Trust Fund and to pay any moneys by way of equality for partition;
- (20) to open any account or accounts with any bank or banks or other financial institutions and to operate in all usual ways any such account or accounts;
- (21) to give effectual receipts and discharges for any moneys received by or on behalf of the Trustee or otherwise relating to any of the acts, matters and things provided for in this Deed;
- (22) to take such action as the trustee will think fit for the adequate protection of any part or parts of the Trust Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed;

- (23) to take and act upon the opinion (given in writing) of a professional adviser practising in any country where the Trust Fund, or any part thereof, may for the time being be invested in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of this Trust, without being liable to any of the Beneficiaries in respect of any act done by the Trustee in accordance with such opinion (provided that nothing in this provision will prohibit or impede the Trustee from applying to any Court if the Trustee deems fit, or prohibit any of the Beneficiaries from so doing);
- (24) to remunerate any Beneficiary who is at any time employed by the Trustee to the same extent and in the manner as if the Beneficiary so employed were not a Beneficiary, and all bona fide payments made by the Trustee to that Beneficiary in or on account of expenses in connection with such employment (including without limitation out-of-pocket expenses or fringe benefit taxes) will not be or be deemed to be payment to the Beneficiary of or on account of the Beneficiary's share in the Trust Fund or the Income;
- (25) to permit any asset of the Trust to be held or registered in the name of any nominee of the Trustee and to deposit securities belonging to or related to the Trust Fund with any bank or other financial institution;
- (26) to determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, petition or winding up of the Trust Fund and to make all relevant elections provided for under the Tax Act;
- (27) to conduct farming operations, take on a lease, and grant a lease of all or any part of the Property forming part of the Trust Fund;
- (28) to institute and defend proceedings at law and to proceed to the final end and determination thereof, or compromise the same as the Trustee will consider advisable;
- (29) to incorporate or promote the incorporation of any Corporation in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability and to sell to any such Corporation the whole or any part of the Trust Fund and so that the consideration for the sale of the Trust Fund, or any part thereof, to any such Corporation may consist wholly or partly of securities of such Corporation which may be credited as fully paid and may be allotted to, or otherwise vested in, the Trustee and be capital moneys in the Trustee's hands.
- (30) the following further powers will apply to any such incorporation or sale:
- (A) all or any part of the expenses in connection with such formation or formations and sale or sales may be paid out of the Trust Fund;

- (B) the Trustee may become a director or servant of any such Corporation and may receive the remuneration attaching to such office without being liable to account for the same and that any Trustee may become qualified as a director (if the relevant clauses of the Corporation's Constitution permit) by the holding, in the Trustee's own name, of shares forming part of the Trust Fund provided that the Trustee executes a declaration of trust in favour of this Trust and delivers to any other Trustee the certificates (if any) of such shares and that the Trustee accounts to this Trust for all dividends and bonuses payable in respect thereof;
- (C) the consideration for any such sale or sales may comprise, in such proportion as the Trustee may think fit, all or any of either cash, debentures, or debenture stock, preference (redeemable or otherwise) or ordinary or deferred shares (whether fully or partly paid) and with such rights attaching thereto including without limiting the generality of the foregoing the right to convert from time to time from one to the other as the Trustee may think fit; and
- (D) the price for any sale or sales will be fixed in such manner as the Trustee may determine;
- (31) to deposit the securities or documents of title to Property of the Trust with a bank, trust company, investment broker or like institution in any part of the world and to delegate to such bank, trust company, investment broker or other like institution such of the trusts and powers hereby or by law vested in the Trustee with reference to the Property the subject of the securities or documents of title so deposited as the Trustee may consider expedient so to delegate, and the Trustee will not be liable or responsible for any loss not caused by the Trustee's own fraud;
- (32) to establish and support out of the Trust Fund any associations, institutions, funds, schemes or other trusts calculated to benefit the Beneficiaries or the employees or ex-employees of this Trust or of any Corporation, partnership, association, union of interest or syndicate in which this Trust may be interested, or the dependants or associates of such persons, and to grant pensions and allowances and to make payments towards insurance;
- (33) to make out of this Trust from time to time to any person or persons or to any associations or institutions or Corporations or [charities] [Charitable Bodies or Religious Bodies], except the Settlor and the Settlor's estate or any corporation or Trust in which the Settlor or the Settlor's estate has any actual or contingent beneficial interest, such gifts or advances as the Trustee in its absolute discretion may think fit, whether such gifts or advances will be for religious, charitable or benevolent purposes or objects or not;
- (34) to exchange Property for other Property of a like or different nature and for such consideration and on such conditions as the Trustee may consider advisable;

- (35) to compromise and settle or compound for such consideration and upon such terms and conditions as the Trustee may consider advisable all or any actions, suits, proceedings, differences, demands or matters relating to the Trust or to the Trust Fund and all such compromises and settlements will be binding on all the Beneficiaries and others who at any time acquire any interest in this Trust;
- (36) To carry on any business, which the Trustee may in the absolute discretion of the Trustee deem fit either alone or in association with any other person, Corporation or trust or in partnership including (without restricting the generality hereof):
- (A) associations or partnerships with the Trustee either in the Trustee's own right or in the capacity of Trustee;
 - (B) in any other capacity or with a Corporation or Corporations in which the Trustee is directly or indirectly interested either in the Trustee's own right or in the capacity of Trustee; and
 - (C) in any other capacity and for such purpose to retain and employ the whole or any part of the Trust Fund

and also to advance for the purposes of the same such further moneys forming part of the Trust Fund as the Trustee will think proper and to expend any moneys forming part of the Trust Fund in managing and carrying on the same including the purchase or acquisition of any Property and, if the Trustee considers necessary, in the course of such management or carrying on the same to borrow and raise moneys and to mortgage and give security over any property forming part of the assets of such venture with priority (if the Trustee thinks fit) over any charge hereby created and generally to act in all matters relating to the said venture as if the Trustee were beneficially entitled thereto and it is further provided that if an associate or partner of any such venture dies the Trustee may carry on that venture in association or partnership with the estate of the deceased associate or partner for so long as the Trustee and the legal personal representatives of the deceased associate or partner think fit and it is further provided that the Trustee may, in its absolute discretion, employ in any such venture as manager, overseer, workman or other necessary employee any of the Beneficiaries;

- (37) to draw, make, accept, endorse, discount, execute, guarantee, issue and be a party in any way to promissory notes, bills of exchange, letters of credit, hypothecations, bills of lading, warrants, debentures and other negotiable or transferable instruments or facilities involving the raising, borrowing or lending of moneys by or to the Trustee and to enter into any option agreement relating to any such facility or instrument;
- (38) to enter into alone or with others any agreement or arrangement for obtaining credit upon such terms 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;

- (39) to delegate the exercise of all or any of the powers, authorities or discretions (including a power which the Trustee has a duty to exercise) hereby conferred on the Trustee to any person on such terms and conditions as it thinks fit and to execute any Power of Attorney or other instrument intended to effectuate such purpose. The Trustee may revoke any such delegation and may exercise any such power itself concurrently with or to the permanent or temporary exclusion of a delegate;
- (40) to generally exercise or concur in exercising all the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that any person being a Trustee or any person being a director or shareholder of a Trustee hereof (being a company) has or may have a direct or personal interest (whether as trustee of any other settlement or in his person capacity or a shareholder or director or member or partner of any company or partnership or as a unit holder in any Unit Trust or beneficiary of any Discretionary Trust or otherwise howsoever) in the mode or result of exercising such power 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;
- (41) to give any guarantee or indemnity for payment of moneys or the performance of any contract obligation or undertaking by any person firm company corporation or association upon such terms with or without security as the Trustee shall deem fit and to secure any such guarantee or indemnity by mortgaging or charging (by a fixed or floating charge or otherwise) any undertaking of the Trustee or all or any part of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it will form part of the Trust Fund and the rights of the mortgagee or chargee shall take priority in all respects over the rights of the beneficiaries and all other persons whatsoever;
- (42) to enter into any derivatives contract or purchase or sell or deal in any derivatives product and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agents in any market in any part of the world and to give and execute any mortgage, charge or security over all or any part or parts of the assets of the Trust as may be required to secure the payment or the performance of any contract obligation under or in connection with any of these types of transactions; and
- (43) to exercise such other powers (if any) as the Principal and the Trustee may agree on in writing.
- (b) Without prejudice in any way to the generality of Clause 4.1(a), when a Corporation, the shares, notes or debentures or other securities of which are included in the Trust Fund, offers to the Trustee rights to subscribe for new shares notes or debentures or other securities the Trustee may, in the discretion of the Trustee, do any of the following things:
- (1) sell the whole of such rights and treat the proceeds as part of the Income for the Accounting Period in which such proceeds were received;

- (2) sell some of such rights and use the proceeds or part of the proceeds to subscribe for the shares, notes or debentures or other securities covered by the remainder of such rights in which case the new shares, notes or debentures or other securities subscribed for will be part of the investments of the Trust Fund; and
 - (3) raise out of the Trust Fund such sum as is required to subscribe for such new shares, notes or debentures or other securities and apply it accordingly, in which case also the new shares, notes or debentures or other securities will be part of the investments of the Trust Fund.
- (c) Notwithstanding any other provision in this Deed, the Trustee may:
- (1) sell, transfer, hire lease or dispose of any Property of the Trust;
 - (2) buy, take a transfer, acquire, hire or lease any Property or borrow any moneys; and
 - (3) carry on or carry out any profit-making undertaking or scheme in partnership to, from or with (as the case may be).
 - (A) the Trustee in its personal capacity or as trustee of any other trust fund or otherwise;
 - (B) any Corporation or partnership even if the Trustee is a shareholder, director or member of that Corporation or partner of that partnership; or
 - (C) a Spouse or Child of any Trustee;
 - (4) sell to the Trustee, in its capacity as trustee of any other Trust Fund, either for cash or upon terms, any assets being Corporation shares or joint or undivided interest in Property where other shares in the same Corporation or another joint or undivided interest in the same Property are held by the Trustee in that other capacity;
 - (5) divide assets in specie between the Trust Fund and any other trust fund in any manner that the Trustee determines; and
 - (6) generally deal with the Trustee in its personal capacity in all respects as if there were two separate persons to the dealings even if the Trustee may be entitled to any benefit pursuant to this Deed.
- (d) Without limiting Clause 4.1(c)
- (1) any Trustee or a director of any Trustee may become a director, officer or shareholder of a Corporation or a trustee, beneficiary or unit holder in any trust or a partner or proprietor of any business in which any part of the Trust Fund is from time to time invested and may receive the remuneration attaching to such position without being liable to disclose that interest or to account to the Trustee or to the beneficiaries;
 - (2) any Trustee may exercise or concur in exercising all powers vested in, and discretions conferred on, the Trustee even though the Trustee or a director of the Trustee has or may have a direct or personal interest in, or receives or may receive any benefit from, the mode or result of exercising such power or discretion;

- (3) no contract, arrangement, mortgage, charge, security, loan facility, credit accommodation, guarantee, indemnity or other transaction entered into or contracted for by the Trustee will be voidable by reason of a direct or personal interest or any benefit arising to any Trustee or a director of any Trustee, directly or indirectly, as a result of the exercise of any power or discretion; and
 - (4) no Trustee having any direct or personal interest or receiving any benefit pursuant to Clause 4.1(c) and 4.2(d)(2) will be liable to disclose that interest or to account to the Trustee or to the beneficiaries for that benefit.
- (e) The Trustee will have power from time to time and at any time before the Vesting Day by any irrevocable deed or resolution (but so as not to infringe the Rule against Perpetuities) to appoint that the whole or any part of the income or capital of the Trust Fund will thenceforth be held upon the trusts and with and subject to the powers and provisions of any other trust ("eligible trust") under which any of the Beneficiaries is at that time a beneficiary and the property of which other trust must vest before the Vesting Day and which is approved by the Trustee, and upon such appointment being made to transfer to the trustees or trustee for the time being of the said eligible trust the property comprised in the said appointment whereupon the trusts herein declared concerning such property shall cease and determine and the said property shall for all purposes be subject to the trusts powers and provisions contained in the said eligible trust.
- (f) The Trustee will have the following powers:
- (1) to treat receipts of capital as receipts of income;
 - (2) to treat receipts of Income as receipts of capital;
 - (3) to treat any receipt or any appreciation in the value of property as income or capital;
 - (4) to reclassify distributions of capital as distributions of Income;
 - (5) to reclassify distributions of Income as distributions of capital;
 - (6) to allocate expenses against capital or Income; and
 - (7) to fund losses either from current year profits or from capital as the Trustee determines.

4.2. Trustee – Special Powers and Discretions

- (a) Every discretion or power hereby conferred upon the Trustee will be exercisable by the Trustee in the absolute and uncontrolled discretion of the Trustee.
- (b) The Trustee and any officer of any Trustee which is a corporation:
 - (1) will be indemnified out of the Trust Fund from and against any liabilities incurred by them in the execution of or attempted execution of or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions conferred on them by this Deed by virtue of being the Trustee hereof or any expense and liability that may be incurred in prosecuting, defending or intervening in any action or suit in respect of the provisions of this Deed, except where the same arises out of any act of fraudulent or wilful default or breach of trust by the Trustee or officer charged to be liable;

- (2) will not incur any liability to anyone in respect of doing or performing or failing to do or perform any act or thing which, by reason of any provision of any present or future law of any State or Territory or the Commonwealth of Australia or any ordinance rule regulation or by-law made pursuant thereto or of any decree order or judgment of any court of competent jurisdiction either the Trustee is required to do or perform or is hindered prevented or forbidden from doing or performing;
 - (3) will not incur any liability to anyone in consequence of the Trustee relying in good faith on information provided to the Trustee by any Beneficiary or any other person on behalf of a Beneficiary which proves to be incorrect;
 - (4) will not be liable to account to a Beneficiary, or the legal personal representative of a Beneficiary, for any payments made by the Trustee in good faith to any duly empowered fiscal authority for taxes imposts or other charges made upon or in respect of the Trust or with respect to any transaction involving the Trust, notwithstanding that any such payment ought, or need, not have been made except to the extent that such payments may be attributable to the Trustee's own act of deceit, neglect or default;
 - (5) may act upon information obtained from Beneficiaries or the opinion advice of or information obtained from barristers or solicitors being persons independent of the Trustee and instructed by the Trustee and upon any statement of or information obtained from any bankers accountants or other persons appointed by the Trustee being persons independent of the Trustee and believed by the Trustee in good faith to be the expert in relation to the matters upon which they are consulted and the Trustee is not liable for anything done or suffered by it in good faith in reliance upon any such opinion advise statement or information;
 - (6) will not be responsible for any misconduct mistake oversight error of judgment forgetfulness or want of prudence on the part of any auditor, actuary, approved valuer, attorney, banker, receiver, receiver and manager, barrister, solicitor, agent or other person acting as agent or adviser of the Trustee except to the extent that such loss is attributable to the Trustee's own act of deceit, neglect or default;
 - (7) will not be liable for any action taken or thing suffered by the Trustee in reliance upon any notice, resolution, direction, consent, certificate, receipt, affidavit, statement, holding out, certificate for stock, plan of re-organisation, application or other paper or document reasonably believed by the Trustee to be genuine and to have been possessed, produced, passed, signed or endorsed by the proper parties where liability, but for this indemnity, would attach by reason solely that such paper or document was not, in fact, genuine or so possessed produced passed signed or endorsed.
- (c) save and except in the case of fraudulent or willful default or breach of trust in no event will the Trustee or officer of any Trustee which is a corporation be bound to make any payment to Beneficiaries or the legal personal representatives of Beneficiaries, except out of the Trust Fund, or be liable to Beneficiaries or the legal personal representatives of Beneficiaries to any greater extent than the moneys and assets of the Trust Fund vested in or received by the Trustee in accordance with this Deed.

- (d) should the Trustee purchase or otherwise acquire any authorised investment in regard to which there is liability, the Trustee will have a right of indemnity out of the Trust Fund in respect of that liability, except to the extent that such liability may be attributable to the Trustee's own act of deceit, neglect or default.
- (e) in the event that the Trustee has incurred a liability as Trustee and the Trustee is entitled under the terms of this Deed or as otherwise allowed by law to be indemnified in respect of such liability out of the Trust Fund, the Trustee may claim such indemnity from the Trust Fund but the Trustee will not be entitled to be indemnified for that liability by any Beneficiary unless by a separate agreement with that Beneficiary.
- (f) where there is more than one Trustee, neither will be bound to take proceedings against the other for any breach or alleged breach of trust.
- (g) all persons claiming any beneficial interest over, or upon, the Property of this Trust will be deemed to take with notice of, and subject to, the protection hereby conferred upon the Trustee.
- (h) the Trustee shall have no claim of any nature against any Beneficiary, nor shall any Beneficiary have any liability of any nature for or in respect of any liabilities incurred by the Trustee in the execution of or attempted execution of or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions conferred on the Trustee by this Deed.

4.3. Trustee – Determinations

- (a) Any determination or exercise by the Trustee of any power discretion or authority conferred on the Trustee by this Deed may be made:
 - (1) by oral declaration of the Trustee or resolution of the Trustee recorded in the records or minutes of the Trustee; or
 - (2) in writing signed by the Trustee.
- (b) Any Trustee which is a Corporation may exercise or concur in exercising any discretion or power conferred on the Trustee by this Deed by a resolution of the Corporation 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 members of its board of directors or governing body appointed from time to time by the board of directors or governing body for that purpose and such a resolution will be effective whether the resolution was properly recorded in minutes or not.
- (c) Once a determination has been made in a manner authorised by Clause 4.3(a) or 4.3(b) it will be irrevocable insofar as the determination is a decision to distribute Income.

4.4. Trustee – Appointment and Removal – Appointment of Successor

- (a) The provisions of this Deed regarding the method of appointment and removal of Trustees will have effect notwithstanding any inconsistent applicable legislative provisions, to the extent permitted by the law.
- (b) The power of appointing a new Trustee is vested in the Principal.

- (c) Subject to Clause 4.4(d), the Principal may at any time and from time to time without the consent of any person by deed or instrument in writing remove any Trustee from the office of Trustee and may also at any time and from time to time and without the consent of any person by deed or instrument in writing appoint any person or Corporation to be a Trustee either alone or jointly with any continuing Trustee. A purported exercise of the Principal's power under Clauses 4.4(b) and 4.4(c) is ineffective and void if the Principal purports to:
- (1) appoint the Settlor as a Trustee; or
 - (2) remove a sole Trustee or all the Trustees without appointing a replacement Trustee or Trustees;
- (d) If the Principal becomes bankrupt or makes any arrangement or composition with the Principal's creditors in accordance with the applicable Bankruptcy or Corporations legislation:
- (1) in the case where there is a sole Principal - the Bankrupt Principal will by deed appoint any person or Corporation to be a replacement Principal; or
 - (2) in the case where two or more persons are named or nominated in accordance with Clause 4.3 as the Principal - the Bankrupt Principal need not appoint a replacement Principal and the office and powers of the Bankrupt Principal will vest in the remaining Principal(s). The Bankrupt Principal will cease to be a Principal and the powers conferred upon a Principal under this Deed will cease to be exercisable by the Bankrupt Principal; and
 - (3) in the case of a corporate Principal the power to appoint a replacement Principal shall vest in the Liquidator of the corporate entity.
- (e) Any Trustee may at any time resign by deed on giving not less than 30 days written notice to the Principal and will then be discharged from its obligations under this Deed.
- (f) The office of a Trustee will ipso facto be determined and vacated if the Trustee being an individual dies or is found to be of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health or if the Trustee becomes bankrupt or makes any arrangement or composition with the Trustee's creditors generally or if the Trustee being a Corporation has a receiver appointed or enters into official management or has a petition for its winding up presented to the Court or passes a resolution for its winding up or enters into a scheme of arrangement (not being merely for the purpose of amalgamation or reconstruction).
- (g) If at any time it appears to the satisfaction of the Trustee that it would be desirable so to do, the Trustee may resign by deed and appoint a successor by deed as the Trustee and transfer to such Trustee the Trust Fund.
- (h) The following will apply to the exercise by the Principal of any power conferred under Clause 4.4:
- (1) if there is more than one Trustee and any Trustee resigns or vacates the office of a Trustee in accordance with Clauses 4.4(e) to 4.4(h), the Principal need not appoint a replacement Trustee; and

- (2) if a sole Trustee resigns or vacates the office of a Trustee, or all of the Trustees resign or vacate their office, then, pending the effective appointment by deed of one or more replacement Trustees by the Principal, the Principal will, by deed, appoint an interim Trustee or Trustees of the Trust. The appointment as interim Trustee or Trustees will terminate when an effective appointment by deed is made by the Principal of one or more replacement Trustees.
- (i) Upon the appointment of a new Trustee of the Trust Fund and except in so far as the Trust Fund vests in the new Trustee or in the new and continuing Trustee by operation of law the persons who were the Trustee immediately prior to the appointment of the new Trustee shall at the cost and expense of the new Trustee or new and continuing Trustee (which cost and expense they shall be entitled to be paid or retain out of the Trust Fund) take all such steps and do all such acts and execute all such documents as may be necessary to convey or vest the Trust Fund to or in the new Trustee or the new and continuing Trustee.

4.5. Carry Forward of Losses

If the Trustee in any Accounting Period makes a loss in carrying on any business pursuant to this Deed the loss will not be required to be met out of the capital of the Trust Fund but may be carried forward and met out of the Income of future Accounting Periods.

4.6. Rule Against Perpetuities

The exercise of the Trustee's discretion under this Deed will be subject in all respects to the rule of law known as the Rule against Perpetuities to the intent that no part of the capital of the Trust Fund or the Income will be paid or be capable of being paid by the Trustee to the trustees of any other trust unless the persons entitled to the capital of that other trust attain vested interests within the period allowed by law.

4.7. Amendment of Deed

Subject to clause 5.1, any Trustee may by deed or resolution at any time revoke, add to, release, delete or vary all or any of the trusts or powers declared in this Deed or any trusts or powers declared by any revocation, addition, release, deletion or variation made to this Deed from time to time and may by the same or any other deed or resolution declare any new or other trusts or powers concerning the Trust or parts or part of the Trust Fund provided that:

- (a) the rule against perpetuities is not infringed; and
- (b) the revocation, addition, release, deletion or variation will not be in favour of the Settlor or the Settlor's estate or any Corporation or trust in which the Settlor or the Settlor's estate has any actual or contingent beneficial interest; and
- (c) the revocation, addition, release, deletion or variation will not affect the beneficial entitlement of any Beneficiary to any amount to which the Beneficiary became entitled under this Deed prior to the date the revocation, addition, release, deletion or variation is effected.

Subject to clause 5.1, any other person or persons upon whom any power is conferred by this Deed may release and revoke any power or powers so conferred on that person or persons and upon the exercise of any release or any revocation pursuant to this Clause 4.7 the power or trust so released and revoked will be absolutely and irrevocably determined. The expression "trusts or powers" where used in this Clause 4.7 will be deemed to include all the provisions of this Deed or of any other deed or resolution revoking, adding to, releasing, deleting or varying this Deed.

4.8. Applicable Law

In addition to the express powers conferred on the Trustee by this Deed, the Trustee will be entitled to exercise in respect of the Trust Fund wherever situate all or any of the powers, authorities and discretions conferred on trustees by the Applicable Law and the rights and liabilities of the Trustee and of the Beneficiaries and every question arising under or in relation to this Deed and the Trust will be regulated by the Applicable Law.

5. EXCLUSIONS AND ADDITIONS

5.1. Exclusion from Benefits

It is declared that the Settlor and the Settlor's estate, any Corporation or trust in which the Settlor or the Settlor's estate has any actual or contingent beneficial interest and in the event of the removal or retirement of the first Trustee (or where there is more than one, any one of them), any continuing or subsequent Trustee, is specifically excluded from all or any benefits whatsoever under this Trust. Provided, however that the Trustee is entitled to receive fees, charges and remuneration in accordance with Clause 3.4 of this Deed. This clause may not be varied or revoked unless and until subsection 54(3) of the Duties Act 1997 (NSW) is repealed and not replaced by any legislation similar in effect to that subsection.

5.2. Exclusion of Beneficiaries

- (a) The Trustee may at any time and from time to time declare by instrument in writing or resolution that any person or class of persons shall be excluded as Beneficiaries for the purpose of this Deed and such instrument or resolution shall specify the date on which the same is to take effect (and if not so specified shall be deemed to take effect from the date of the instrument or resolution) and whether such person or class of persons is or are to be permanently excluded as Beneficiaries or for a fixed period only or until such declaration is revoked by the Trustee and in the last mentioned case the Trustee shall have power to revoke any such declaration.
- (b) Any person being a Beneficiary may by oral declaration recorded in the minutes or records of the Trustee or by written notice to the Trustee at any time exclude himself or herself from the class of Beneficiaries and no further sums whether of Income or of capital will be allocated or set aside or paid to or otherwise applied to or for the benefit of such person provided however that any such notice will not affect the beneficial entitlement to any amount set aside for such Beneficiary or amount held in trust for such Beneficiary prior to the date of such notice.
- (c) A person is an Excluded Person if:
 - (1) an election made by the Trustee for the Trust to be treated as a family trust for the purposes of Schedule 2F of the Tax Act is in force;
 - (2) the person is not a member of the relevant family group for the purposes of the election; and

- (3) a distribution of income or capital from the Trust to the person would give rise to a liability to pay family trust distribution tax for the purposes of the Tax Act.
- (d) Any Income or capital of the Trust Fund paid to, applied or set aside for the benefit of any Excluded Person will be returned to the Trustee.

5.3. Appointment of Additional Beneficiaries

The Trustee may at any time by instrument in writing or resolutions appoint a person as an additional Beneficiary for the purposes of this Deed provided however that any trustee of any trust so appointed will only be appointed if the dispositions of property under such trust must vest by the Vesting Day.

6. GENERAL PROVISIONS

6.1. Payment to Charity

The Trustee may pay any sum to which any charitable body and any religious body may become entitled or to which the Trustee desires to make any payment to the secretary or honorary treasurer of such body for the time being without being bound to see to the further application thereof.

6.2. Investment in Name of Nominee

It will not be necessary for the title to any property forming part of the Trust Fund to be registered in the name of the Trustee but the same may, in the discretion of the Trustee, be registered in the name of a nominee of the Trustee or any other name.

6.3. Accounts, Records, Information and Documents

- (a) The Trustee will keep complete and accurate records of all receipts and expenditures on account of the Trust Fund.
- (b) Promptly after the close of each Accounting Period, the Trustee will prepare a written accounting report (prepared in accordance with the accounting practices and standards generally accepted in Australia) for that Accounting Period consisting of a:
 - (1) statement of income and expenditure; and
 - (2) list of assets and liabilities at the close of that Accounting Period.
- (c) Without prejudice to any right of the Trustee to refuse disclosure of any document, the Trustee will not be bound to disclose to any person:
 - (1) a document disclosing:
 - (A) the deliberations of the Trustee as to the manner in which the Trustee should exercise a power vested in, or discretion conferred on, the Trustee by this Deed; or
 - (B) the reasons for a particular exercise of or failure or refusal to exercise, a power or discretion by the Trustee, or the material upon which those reasons were or might have been based; or
 - (2) any other document relating to the exercise or proposed exercise of a power or discretion conferred by the Trustee (not being legal advice obtained by the Trustee as an expense of the Trust Fund).

Schedule

Date of this Deed:/...../.....

Name of Trust: Discretionary Trust

State or Territory: New South Wales

Settlor: Jack Smyth
Ground Floor, 35 Saunders Street Pymont NSW 2009

Initial Sum: \$10.00

Trustee: Sample Company Pty Ltd ACN 001 002 003 of Ground Floor, 35
Saunders Street Pymont NSW 2009

Beneficiaries: John Smith
Jane Smith

Principal: John Smith and any other person who may be appointed by a written instrument but in absence of any other appointment or nomination then on his or her death Jon Smith and or any other person appointed by a written instrument but in the event of a failure of such appointment or nomination and on his or her death the legal personal representative of the survivor of them.

Sample only

Sample only

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Execution

EXECUTED AS A DEED

SIGNED SEALED and DELIVERED by Jack Smyth as Settlor

in the presence of:

.....
Jack Smyth

.....
Please Print Name of Witness

.....
Signature of Witness

EXECUTED by Sample Company Pty Ltd ACN 001 002 003 as Trustee in accordance with section 127 of the Corporations Act 2001, by its Directors or Director and/or Secretary:

.....
Please Print Name of Director/Sole Director*

.....
Signature

.....
Please Print Name of Director/Secretary*

.....
Signature

*Delete as appropriate

Sample only

Sample only

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