

TRUST DEED AUSTRALIAN SIKH CHARITABLE TRUST 2021 -

THE AUSTRALIAN SIKH ASSOCIATION LIMITED ACN: 613 350 548

Date: _____ 2021

Parties

The Australian Sikh Association Limited ACN: 613 350 548 a company duly incorporated in the State of New South Wales and having its registered address at 4 Meurants Lane Glenwood in the said State

(“Trustee”)

[Settlor] of [Address] in the said State

(“Settlor”)

General terms

1. Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Account Bank means the Eligible Bank at which the Project Account is opened.

ACNC Act means the Australian Charities and Not-for-profits Commission Act 2012 (Cth) and any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not for-profit sector, and includes:

- a. any regulations made under that Act or any other such legislation; and
- b. any rulings or requirements of the Commissioner of the Australian Charities and Not-for profits Commission under that Act, or any commissioner or body under any other such legislation, having application to this charity.

Advisory Committee means a committee established under clause 10.

Assets means all the Trustee’s rights, property and undertaking which are the subject of the Trust:

- a. of whatever kind and wherever situated; and
- b. whether present or future.

Authorised Officer means, in respect of a party:

- c. a director or company secretary of that party, or an officer or employee of the party whose title contains the word “treasurer”, “director”, “chief”, “head”, “manager” or “counsel” or a person performing the functions of any of them; or
- d. any person nominated by that party as an Authorised Officer of that party for the purposes of a Trust Document.

Board means all or some of the Directors acting as a board.

Business Day means a day (not being a Saturday, Sunday or public holiday in that place) on which banks are open for general banking business in Sydney.

Chair means the chair of the Board from time to time appointed pursuant to clause 19.1(a).

Class means a class of Member of the Trust.

Commissioner means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97.

Committee means a committee established by the Board in accordance with this Constitution for the purpose of exercising delegated authority.

Community means the Sikh Community and any other community as agreed from time to time by the Trustee.

Community Projects is as set out in this Trust Deed.

Constitution means the constitution of The Australian Sikh Association Limited as amended from time to time.

Corporations Act means the Corporations Act 2001 (Cth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Director means a person appointed to the Board in accordance with clause 10.

Eligible Bank means an Australian authorised-deposit taking institution, acting through a permanent establishment located in Australia.

Government Agency means:

- a. any body politic or government in any jurisdiction, whether federal, state, territorial or local; and
- b. any minister, department, office, commission, instrumentality, agency, board, authority or organisation of any government or in which any government is interested; and
- c. any corporation owned or controlled by any government.

GST and **GST Law** have the respective meanings given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Initial Charitable Member means The Australian Sikh Association Limited ACN: 613 350 548.

A person is **Insolvent** if:

- a. it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- b. it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined in the Corporations Act) appointed to its property; or
- c. an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- d. it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

- e. it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which it may be reasonably deduced it is so subject); or
- f. it is otherwise unable to pay its debts when they fall due; or
- g. or something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

ITAA 97 means the *Income Tax Assessment Act 1997* (Cth).

Material Adverse Effect means a material adverse effect on:

- a. the ability of the Trustee to comply with its obligations under this deed or any other Trust Document; or
- b. the rights and remedies of any Relevant Party under this deed or any other Trust Document; or
- c. the effectiveness or priority of this deed or any other Trust Document or the value of any collateral under that document; or
- d. the validity or enforceability of this deed or any other Trust Document.

Member means a person registered as a Member of the Trust in the register of Members kept by or on behalf of the Trustee.

Member Register means the register of Members in the Trust to be established and maintained under clause 8 ("Member Register").

Project Account means the account opened with the Account Bank in the name of the Trustee and designated as the project account for the Trust.

Public ancillary fund means a trust that is a public ancillary fund as described in section 426-102 of schedule 1 to the TAA 53 and endorsed by the Commissioner as a deductible gift recipient under Subdivision 30-BA of ITAA 97.

Public ancillary fund guidelines means the Public ancillary fund guidelines, as in force from time to time, made under section 426-103 of Schedule 1 to the TAA 53.

Related Entity has the meaning it has in the Corporations Act.

Relevant Party means each party to a Trust Document other than the Trustee.

Settlor means the person so described in the Parties to this Deed.

TAA53 means the *Taxation Administration Act 1953* (Cth).

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the overall net income of any Relevant Party.

Trust means the trust established by this deed.

Trust Objects means those objects or objectives set out in clause 2.5 ("Trust Objects").

Trust Documents means:

- a. this deed; and
- b. any other relevant document in relation to the Trust.

Trustee means the person so described in the Parties to this Deed.

Wilful Default means, in respect of the Trustee, any intentional failure to comply with or intentional breach by the Trustee of any of its obligations under this deed or any other Trust Document, other than a failure or breach:

- a. which arose as a result of a breach by a Relevant Party or by any other person (other than the Trustee) of any of its obligations under this deed or any other Trust Document, in each case, as contemplated by clause 12.3(d) (“Limitation of Trustee’s liability”);
- b. which is in accordance with a lawful court order or direction or required by law; or
- c. which is in accordance with an instruction or direction given to it by any person in circumstances where that person is entitled to do so by this deed or any other Trust Document or at law.

1.2 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this deed, the following applies:

- a. the singular includes the plural and vice versa;
- b. a reference to a document or an agreement (including this deed or any other Trust Document) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated;
- c. the meaning of general words is not limited by specific examples introduced by “including”, “for example” or “such as” or similar expressions;
- d. a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- e. the word “person” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- f. a reference to a time of day is a reference to Sydney time;
- g. a reference to “dollars”, “\$” or “A\$” is a reference to the currency of Australia;
- h. a reference to the word “law” includes common law, principles of equity and legislation (including regulations);
- i. a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- j. a reference to the word “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- k. the word “directive” includes a treaty, an official directive, request, guideline or policy (whether or not having the force of law) with which responsible persons generally comply in carrying on their business;
- l. an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- m. a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- n. a reference to any thing (including an amount) is a reference to the whole and each part of it;

- o. a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;
- p. a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards;
- q. the reference to “person” in the definition of “Insolvent”, when used in respect of the Trustee, is a reference to the Trustee:
 - i. in its personal capacity; and
 - ii. in respect of the Trust, in its capacity as Trustee of the Trust,
- r. but not the Trustee in its capacity as Trustee of any other trust. Any non-payment of any amount owing by the Trustee as a result of the operation of clause 12.3 (“Limitation of Trustee’s liability”) will not result in the Trustee being Insolvent; and
- s. a reference to “close of business” on a day is a reference 5.00 pm on that day.

1.3 Perpetuity period

There is no perpetuity period applicable to the dispositions and trusts contained in this deed unless agreed otherwise by the Trustee.

1.4 Capacity – Trustee

In each Trust Document, except where expressly provided to the contrary a reference to:

- a. the Trustee is a reference to the Trustee in its capacity as Trustee of the Trust, and in no other capacity; and
- b. the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as Trustee of the Trust only, and in no other capacity.

2. Declaration of Trust

2.1 Establishment of Trust

The Settlor has upon execution of this deed transferred to the Trustee the sum of \$10 and directs that the Trustee is to, and the Trustee hereby declares that it will:

- a. act as Trustee of the Trust; and
- b. hold the Assets as a public charitable trust and shall have the Trust Objects set out in clause 2.5 (“Trust Objects”) of this deed.

2.2 Furtherance of Trust Objects

In performing its obligations under this deed, the Trustee shall direct its efforts towards furthering the Trust Objects.

2.3 Name of Trust

The Trust is called “Australian Sikh Charitable Trust 2021” or by such other name as the Trustee determines from time to time.

2.4 Duration of Trust

The Trust ends on the earlier of:

- a. the date specified by the Trustee, as the date of termination of the Trust; or
- b. the date on which the Trust terminates in accordance with clause 1.3 ("Perpetuity period") or another provision of this deed or by law; or
- c. the winding up of the Trust; or
- d. it ceasing to be a Public ancillary fund; or
- e. the revocation of the Trust's endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97.

2.5 Trust Objects

- a. The Trust is established and must be maintained exclusively for public charitable purposes for the Sikh Community or any other Community as agreed from time to time.
- b. Without limiting this clause 2.5, the Trust is established exclusively for public charitable purposes for the objects of provision of funding for the youth, seniors, infrastructure, women and general charitable activities of the Community living at the date of this Deed and their descendants. Without limiting the generality of the foregoing, and by way of illustration and example, the Trust may pursue any of the following core purposes:
 - i. seek to bring lasting and tangible benefits to the Community;
 - ii. improve the housing, living conditions, economic circumstances, health and general standards of living of the Community;
 - iii. fund, administer, or otherwise assist in the development and implementation of Community Projects for the benefit of the Community by providing community aid for the construction, maintenance, modification or operation of dwellings, schools, hospitals, community centres, aid posts, communication centres, education facilities and the like;
 - iv. provide for and undertake the education, training or advancement of people in the Community through such measures as the provision of financial assistance for education, scholarships, mentorships or grants of other appropriate assistance;
 - v. to relieve poverty and to encourage and assist any individual or group of the Community to become financially independent by promoting business and employment opportunities for them, or by helping them to acquire or establish economic enterprises;
 - vi. improve the lifestyle and health of the Community by providing clinics, medical facilities and services, sporting and recreational facilities and the like;
 - vii. foster self-respect and pride among the Community by protecting and promoting their law, language and culture;
 - viii. assist the Community in the acquisition, establishment and development of Community facilities;
 - ix. invest portions of the Trust for the long-term benefit of the Community so as to enable the Trust to provide benefits to the Community for many years to come.
- c. The Trustee may also do all such other things that are incidental or conducive to furthering the core purpose of the Trust in clause 2.5b.

Without derogating from the generality of the objects described above, the Trust may solicit donations, gifts and bequests of money or property and other forms of financial assistance to, or for the benefit of, the objects of the Trust, including by conducting fundraising initiatives.

The Trustee may apply capital as well as income of the Trust for the charitable purposes of the Trust.

2.6 Holding of Assets

- a. It is intended that money will be raised from members of the public, which, together with any additional property, and all investments and property representing that money and property and any accretions or additions to it from time to time shall be held as Assets by the Trustee and applied in accordance with the terms of this deed and the other Trust Documents.
- b. The Trustee must identify the Assets as property and rights of the Trust in its records.

2.7 Sub-funds

- a. The Trustee may maintain a management account in respect of money raised from a particular donor or group of donors.
- b. The management account may be used to record receipts from a donor or group of donors, money received because of those contributions and payments or applications from the management account.
- c. The donor or group of donors (or persons nominated by the donor or group of donors) may make requests or indicate preferences, as to the name of the management account, and as to the payments or applications from the account.
- d. The Trustee is under no obligation to comply, and the Trustee may not agree or give an assurance that it will comply, with any request or preference.
- e. The management account forms part of the Trust and is not a separate fund.
- f. The management account may not be separately invested or be separately accounted for in the statutory financial statements of the Trust.
- g. The Trustee may at any time cease to maintain the management account and account for the money and investments in the general accounts for the Trust.
- h. The Trustee may provide reports of the investments and application of the management account to the donor or group of donors but is not under an obligation to do so.
- i. The Trustee may formulate rules and policies relating to the maintenance of the management account provided they are not contrary to this Trust Deed or any requirements of any Government Agency.

3. Membership

3.1 Initial Member

The Trust will initially have the Initial Charitable Member as its sole Member.

3.2 Classes of Membership

- a. There may only be a single Initial Charitable Member, who shall be the sole Initial Charitable Member.
- b. The Trustee may, with the consent of the Initial Charitable Member:

- i. establish any new Class and define the rights, restrictions and obligations of Members in that Class;
 - ii. prescribe (and revoke or amend) the criteria for membership of a Class and appoint Members in that Class in accordance with such criteria; and
 - iii. vary or cancel the rights, restrictions and obligations of Members in any new or existing Class.
- c. All Members will rank *pari passu* amongst themselves, except to the extent:
 - i. specified in this deed; or
 - ii. that there is more than one Class of Member, in which case Members in each Class will rank *pari passu* with all other Members of that Class.
- d. At the time of establishing a separate Class of Member, the Trustee must identify the Class (if any) to which the Members belong and maintain that information in the Member Register.

4. Income and property of the Trust

4.1 Limitation on purpose

The Trust must not be carried on for the purpose of the profit or gain of any Member of the Trust (other than the Initial Charitable Member).

4.2 Limitation on income and property of the Trust

- a. The income and property of the Trust shall be applied solely in furtherance of the Trust Objects.
 - b. Subject to other payments contemplated, permitted or required under any other document in relation to this Trust, in respect of amounts that are available to be distributed by the Trustee as permitted under the Trust Deed or any other relevant document in relation to this Trust, the Trustee must distribute, all such amounts in the following order:
 - i. first, *pari passu* and rateably:
 - (A) any Taxes payable in relation to the Trust; and
 - (B) subject to clause 15.2 ("Trust Expenses"):
 - aa. the Trustee's Costs incurred in connection with its role as Trustee of the Trust; and
 - bb. any Costs of the Trust incurred and payable,
- as and when such amounts fall due to be paid.

4.3 Limitation on the power of the Trust

Subject to clause 4.5 ("Permitted powers of the Trust"), the Trustee does not have the power to issue units in the Trust of any kind.

4.4 Use of surplus funds

The Trustee may apply any surplus funds of the Trust to further the charitable objects of the Initial Charitable Member or any other added Member to the extent consistent with the Trust Objects.

4.5 Permitted powers of the Trust

The restriction in clause 4.3 (“Limitation on the power of the Trust”) does not prevent the payment in good faith of:

- a. fees in respect of the Trust as provided for in clause 15 (“Fees”);
- b. interest on moneys lent to the Trust by a Member of the Trust; and
- c. property rent, remuneration or return for any premises of a Member occupied by the Trust.

5. Perpetuities and accumulations

5.1 Perpetuities

No power or discretion conferred on the Trustee by this deed is capable of being exercised outside the perpetuity period specified in clause 1.3 (“Perpetuity period”).

5.2 Accumulations

No power of accumulation conferred on the Trustee by this deed allows accumulation in breach of, or for a period in excess of that permitted by the law restricting excessive accumulations.

6. Liability of Members limited

6.1 Liability Limited

Except as expressly provided in this deed, no Member of the Trust is liable to:

- a. indemnify the Trustee in respect of any liability in connection with the Trust;
- b. contribute to the Assets; or
- c. discharge any liability in connection with the Trust.

7. Cessation of membership

7.1 Cessation of Membership

A Member ceases to be a member of the Trust if:

- a. the Member resigns in writing (the resignation being effective on the date the resignation is first received by the Trustee unless another date is stated in the resignation notice); or
- b. the continued membership of the Member would, as determined by the Trustee, no longer further the Trust Objects, or would have a material adverse effect on the attainment of those objects; or
- c. the member being an individual dies or if a corporate entity goes into liquidation or becomes insolvent.

8. Member Register

8.1 Establishment and maintenance of Member Register

The Trustee agrees to establish and maintain a Member Register for the Trust.

8.2 Location of Member Register

The Member Register must be located in Sydney (or any other place in Australia as the Trustee may determine from time to time).

9. General powers, rights and responsibilities of the Trustee

9.1 Appointment

The Trustee agrees to act as Trustee of the Trust in connection with the Trust Documents and to exercise its rights and comply with its obligations under the Trust Documents.

9.2 Extent of obligations

The Trustee has no obligations except those expressly set out in the Trust Documents to which it is a party.

9.3 Binding nature of relationship

Each Member is:

- a. bound by the provisions of this deed;
- b. deemed to acknowledge that the Trust is subject to the provisions of this deed and the other Trust Documents; and
- c. bound by anything properly done or not done by the Trustee in accordance with this deed and the other Trust Documents.

9.4 Excluded roles and duties

The appointment as Trustee does not mean that the Trustee:

- a. is a Trustee for the benefit of; or
- b. is a partner of; or
- c. has a fiduciary duty to, or other fiduciary relationship with,

any Member, Relevant Party or any other person, except as expressly provided in any Trust Document to which it is a party.

9.5 Exercise of rights and compliance with obligations

The Trustee has all the powers of a natural person and corporation in connection with the exercise of its rights and compliance with its obligations in connection with the Trust Objects.

The Trustee may exercise its rights and comply with its obligations in connection with the Trust Objects in any manner it thinks fit.

10. The Trustee

10.1 Dealing in different capacities

The Trustee and any of its Related Entities may:

- a. engage in any kind of banking, trust or other business with the Members, any Relevant Party or any of their respective Related Entities; and
- b. accept fees and other consideration from the Members, any Relevant Party or any of their respective Related Entities for services in connection with any Trust Document or any other arrangement,

as if the Trustee were not the Trustee of the Trust and without having to account to the Members for any income they derive in doing so.

The Trustee and its Related Entities are released from any obligation they might otherwise have to the Members in relation to these matters.

10.2 Separate entities

In acting as Trustee of the Trust and in each other capacity in which it may act under the Trust Documents, the relevant division or department of the Trustee is to be regarded as a separate entity from any other of its divisions or departments.

If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is not taken to have notice of it.

10.3 Knowledge of the Trustee

The Trustee will only be considered to have knowledge, notice or awareness of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual knowledge, notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trustee's obligations under this deed or any other Trust Document.

10.4 Powers

The Trustee must invest money of the Trust only in a way in which Trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia and may, to the extent consistent with the Public ancillary fund guidelines and, where relevant, consistent with the Trust's investment strategy:

- a. change an investment for any others or vary the terms and conditions on which an investment is held;
- b. sell or otherwise dispose of the whole or any part of the investments or property of the Trust;
- c. borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- d. take and act on the opinion of a barrister practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- e. take any action for the adequate protection or insurance of any part of the Trust;

- f. purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- g. subject to the trusts of this deed, generally:
 - i. perform any administrative act; and
 - ii. whether or not the Trustee is under any legal obligation to make the payment, pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses:
 - (A) of or incidental to the Trust or its management, winding up, ceasing to be a public ancillary fund, or revocation of endorsement as a deductible gift recipient under Subdivision 30BA of the ITAA 97; or
 - (B) in connection with the preparation, execution, stamping and amending of this deed;
- other than a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53;
- h. employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- i. engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- j. accept as part of the Trust any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust under this deed;
- k. decline or otherwise refuse to accept as part of the Trust any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- l. manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Member to occupy the property on the terms and conditions the Trustee thinks fit; and
- m. do all other things incidental to the exercise of the Trustee's powers under this deed.

10.5 Powers are supplementary

The powers and discretions in clause 10.4 are to be treated as supplementary or additional to the powers vested in Trustees by law.

10.6 Compliance

- a. Before exercising a discretion or power vested in the Trustee under any provision of this deed or by law, the Trustee must ensure that the proposed exercise is in accordance with the public ancillary fund guidelines.
- b. The Trustee must comply with all relevant Australian laws, all legally binding directions given to the Trustee by any Government Authority and all requirements contained in the public ancillary fund guidelines.

10.7 Returns

If required by law or by the Commissioner to do so, the Trustee must give to the Commissioner a return for each financial year within the period required by the Commissioner.

10.8 Requirements about giving material to the Commissioner

The Trustee must comply with the requirements about giving material to the Commissioner required by Subdivision 388 of Schedule 1 to the TAA 53 and the Public ancillary fund guidelines.

10.9 Valuation

The market value of the assets of the Trust must be estimated as required by the Public ancillary fund guidelines.

10.10 Trustee to keep accounts

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust and of all dealings connected with the Trust and must comply with the record keeping obligations of deductible gift recipients required by Subdivision 382-B of Schedule 1 to the TAA 53 and the Public ancillary fund guidelines.

10.11 Financial statements

As soon as practicable after the end of each financial year the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Trust at the end of that financial year in accordance with the accounting standards.

10.12 Audit or Review

- a. Each financial year, the Trustee must arrange for an audit of the financial statements and compliance with the Public ancillary fund guidelines by the Trust and the Trustee by a person registered as a company auditor in accordance with the Public ancillary fund guidelines.
- b. Notwithstanding subclause 10.12(a), if permitted by the Public ancillary fund guidelines for a particular financial year, the Trustee may instead of an audit arrange for a review of the financial statements and compliance with the Public ancillary fund guidelines by the Trust and the Trustee by a registered company auditor or an individual who is taken to be a registered company auditor for the purposes of section 324BE of the Corporations Act 2001.
- c. The audit or review must be finalised before the date on which the Trustee is required to give a return to the Commissioner for the relevant financial year.

10.13 Receipts

- a. The Trustee may receive capital and other money and give valid receipts for all purposes (even if the Trustee is a sole Trustee) including:
 - i. those of any statute; and
 - ii. the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land;
- b. The Trustee must issue a receipt for each receipt of money upon request.
- c. Receipts must state the information required by section 30-228 of the ITAA 97 and the Public ancillary fund guidelines.

10.14 Investment strategy

- a. The Trustee must prepare and maintain an investment strategy in a written form which enables the Trustee, an auditor or the Commissioner to determine whether the Trustee has complied with and is complying with the Public ancillary fund guidelines and other Australian laws.
- b. The Trustee must implement the investment strategy and make investment decisions in accordance with the investment strategy.

- c. The Trustee must review the investment strategy at least once per every year.

10.15 Advisory Committees

- a. The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- b. Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- c. The functions of each Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, will be to advise the Trustee on how payments or applications of income and capital should be made.
- d. The Trustee may specify:
 - i. the manner in which proceedings of each Advisory Committee are to be conducted;
 - ii. the matters which the Advisory Committee must have regard to in carrying out its functions; and
 - iii. any other matters concerning the Advisory Committee or its functions that the Trustee decides.

11. Delegation and reliance on advice

11.1 Power to delegate

- a. Subject to clauses 11.1(b) and 11.1(c), the Trustee may employ agents and attorneys and may delegate any of its rights or obligations as Trustee without notifying any other person of the delegation.
- b. The Trustee is not responsible or liable to any Member for any act or omission of any delegate appointed by the Trustee if:
 - i. the delegate is a clearing system; or
 - ii. the Trustee is obliged to appoint the delegate pursuant to an express provision of a Trust Document or pursuant to an instruction given to the Trustee in accordance with a Trust Document; or
 - iii. the Initial Charitable Member consents to the delegation in accordance with clause 11.1(c).
- c. The Trustee agrees that it will not:
 - i. delegate a material right or obligation or a material part of its rights or obligations under this deed; or
 - ii. appoint any Related Entity of it as its delegate,unless it has received the prior written consent of the Initial Charitable Member.

11.2 Trustee may rely on communications and opinions

In relation to any Trust Document, the Trustee may rely:

- a. on any communication or document it believes to be genuine and correct and to have been signed or sent by the appropriate person; and

- b. as to legal, accounting, taxation or other professional matters, on opinions and statements of any legal, accounting, taxation or other professional advisers used by it or any other party to a Trust Document; and
- c. on the contents of any statements, representation or warranties made or given by any party other than itself pursuant to this deed, or direction from any person permitted to give such instructions or directions under the Trust Documents; and
- d. on any calculations made by a Relevant Party under any Trust Document (including without limitation any calculation in connection with the assets of the Trust).

11.3 Dispute or ambiguity

If there is any dispute or ambiguity in relation to any matter connected with the Trust Documents, the Trustee may (but need not) do one or both of the following:

- a. obtain and rely on advice from its legal, accounting, taxation or other professional advisers or any person referred to in clause 11.2(b) (“Trustee may rely on communications and opinions”); or
- b. apply to a court for any direction or order the Trustee considers appropriate.

As long as the Trustee is using reasonable endeavours to resolve any ambiguity, the Trustee may (but need not) refuse to do anything in relation to matters affected by the ambiguity.

12. Indemnity and limitation of liability

12.1 Indemnity

The Trustee is indemnified out of the Assets against any liability or loss arising from, and any Costs properly incurred in connection with, complying with its obligations or exercising its rights under the Trust Documents.

To the extent permitted by law, this indemnity applies despite any reduction in value of, or other loss in connection with, the Assets as a result of any unrelated act or omission by the Trustee or any person acting on its behalf.

This indemnity does not extend to any liabilities, losses or Costs to the extent that they are due to the Trustee’s fraud, negligence or Wilful Default.

12.2 Legal Costs

The Costs referred to in clause 12 (“Indemnity”) include all legal Costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis.

These legal Costs include any legal costs which the Trustee incurs in connection with proceedings brought against it alleging fraud, negligence or Wilful Default on its part in relation to the Trust. However, the Trustee must repay any amount paid to it in respect of those legal Costs under clause 12 (“Indemnity”) if and to the extent that a court determines that the Trustee was fraudulent, negligent or in Wilful Default in relation to the Trust or the Trustee admits it.

12.3 Limitation of Trustee’s liability

- a. The Trustee enters into this deed and each Trust Document only in its capacity as Trustee of the Trust and in no other capacity. Notwithstanding any other provisions of this deed (other than the below paragraphs of this clause 12.3) or any other Trust Document, a liability arising under or in connection with this deed or any other Trust Document is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the Assets out

of which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this deed (other than the below paragraphs of this clause 12.3) or any other Trust Document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed or any Trust Document.

- b. The parties other than the Trustee may not sue the Trustee in any capacity other than as Trustee of the Trust, including seeking the appointment of a receiver (except in relation to the Assets), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the Assets).
- c. The provisions of this clause 12 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under this deed or by operation of law there is a reduction in the extent of the Trustee's indemnification out of the Assets as a result of the Trustee's fraud, negligence or Wilful Default in relation to the Trust.
- d. It is acknowledged that the Relevant Parties are responsible under this deed and the other Trust Documents for performing a variety of obligations relating to the Trust. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed or any other Trust Document) will be considered fraud, negligence or Wilful Default of the Trustee for the purpose of paragraph (c) of this clause 12.3 to the extent to which the act or omission was caused or contributed to by any failure by any Relevant Party or any other person to fulfil its obligations relating to the Trust or by any other act or omission of any Relevant Party or any other person.
- e. No attorney, agent, receiver or receiver and manager appointed in accordance with this deed or any other Trust Document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or Wilful Default of the Trustee for the purpose of paragraph (c) of this clause 12.3.
- f. The Trustee is not obliged to do or refrain from doing anything under this deed or any other Trust Document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in this clause 12.

12.4 Liability must be limited and must be indemnified

The Trustee is not obliged to do or not do anything in connection with the Trust Documents (including enter into any transaction or incur any liability) unless:

- a. the Trustee's liability is limited in a manner which is consistent with clause 12.3 ("Limitation of Trustee's liability"); and
- b. it is indemnified against any liability or loss arising from, and any Costs properly incurred in connection with, doing or not doing that thing in a manner which is consistent with clause 12 ("Indemnity").

For the avoidance of doubt, the Trustee is not obliged to use its own funds in performing its obligations under any Trust Document (including this deed) other than in the circumstances set out in clause 12.3(c) ("Limitation of Trustee's liability").

12.5 Exoneration

Neither the Trustee nor any of its directors, officers, employees, agents or attorneys will be taken to be fraudulent, negligent or in Wilful Default for the purposes of clause 12.3(c) ("Limitation of Trustee's liability") because:

- a. any person other than the Trustee does not comply with its obligations under the Trust Documents; or

- b. of the financial condition of any person other than the Trustee; or
- c. any statement, representation or warranty of any person other than the Trustee in a Trust Document is incorrect or misleading; or
- d. of the lack of effectiveness, genuineness, validity, enforceability, admissibility in evidence or sufficiency of the Trust Documents or any document signed or delivered in connection with the Trust Documents; or
- e. of acting, or not acting (unless it has been instructed in accordance with the Trust Documents to act), in accordance with instructions of:
 - i. any person permitted to give instructions or directions to the Trustee under the Trust Documents; or
 - ii. any person to whom a person described in clause 12.5(f)(i) has delegated any of its rights or obligations that permit it to give instructions or directions to the Trustee under the Trust Documents, as notified to the Trustee,

(or, in either case, instructions or directions that the Trustee reasonably believes to be genuine and to have been given by an appropriate officer of any such person).

For the avoidance of doubt:

- (A) for the purpose of clause 12.5(f)(i), the Trustee will be able to rely on a direction from the relevant person even if it has received notice of delegation by the person of any of its rights or obligations;
- (B) for the purpose of clause 12.5(f)(ii), the Trustee is not required to investigate the scope of any such delegation or whether the delegate giving the instructions is entitled to give such instruction to the Trustee under the terms of its delegation;

- f. of acting, or not acting (unless it has been instructed in accordance with the Trust Documents to act) in good faith in reliance on:
 - i. any communication or document that the Trustee believes to be genuine and correct and to have been signed or sent by the appropriate person;
 - ii. as to legal, accounting, taxation or other professional matters, on opinions and statements of any legal, accounting, taxation or other professional advisers used by it or any other party to the Trust Documents;
 - iii. on the contents of any statements, representation or warranties made or given by any party other than the Issuer pursuant to this deed, or instructions or directions from any person permitted to give such instructions or directions under the Trust Documents of any Trust; or
 - iv. on any calculations made by a Relevant Party under any Trust Document (including without limitation any calculation in connection with the Assets);
- g. it is prevented or hindered from doing something by law or order;
- h. of any payment made by it in good faith to a fiscal authority in connection with Taxes (including Taxes assessed on the income of the Trust) or other charges in respect of the Trust even if the payment need not have been made; or
- i. of a failure by the Trustee to check any calculation, information, document, form or list supplied or purported to be supplied to it by a relevant person under this deed, under any Trust Document, or any other person.

12.6 No supervision

Except as expressly set out in the Trust Documents, the Trustee has no obligation to supervise, monitor or investigate the performance of any relevant person or any other person.

12.7 Cleared funds

The Trustee is only taken to be in receipt of funds in relation to the Trust to the extent that those funds are cleared funds. Without limiting any other provision of any Trust Document, the Trustee will not be taken to be fraudulent, negligent or in Wilful Default for the purpose of clause 12.3(c) ("Limitation of Trustee's liability") as a result of a failure to make any payments in accordance with a Trust Document due to it not being in receipt of cleared funds at the time of payment. For the avoidance of doubt, such amounts will continue to be due and payable in accordance with the Trust Documents.

13. Change of Trustee

13.1 Mandatory retirement

The Trustee must retire as Trustee of the Trust if:

- a. the Trustee becomes Insolvent;
- b. required by law;
- c. the Trustee ceases to carry on business as a professional Trustee; or
- d. the Trustee merges or consolidates with another entity, unless:
 - i. that entity assumes the obligations of the Trustee under the Trust Documents; and
 - ii. the Initial Charitable Member approves the merger or consolidation (such consent not to be unreasonably withheld).

In addition, the Initial Charitable Member may request the Trustee to, and the Trustee must (if so requested), retire as Trustee of the Trust if (1) the Trustee does not comply with a material obligation under the Trust Documents and, (2) if the non-compliance can be remedied, the Trustee does not remedy the non-compliance within 30 days of being requested to do so by the Initial Charitable Member.

13.2 Voluntary retirement

The Trustee may retire as Trustee of the Trust by giving the Members at least 90 days' (or such shorter period as the Members and the Trustee may agree) notice of its intention to do so.

13.3 When retirement takes effect

Subject to clause 13.4 ("Appointment of successor trustee"), the retirement of the Trustee as Trustee of the Trust takes effect when:

- a. a successor Trustee is appointed for the Trust; and
- b. the successor Trustee obtains title to, or obtains the benefit of, this deed and each other Trust Document to which the Trustee is a party as Trustee of the Trust; and
- c. the successor Trustee and each other party to the Trust Documents to which the Trustee is a party as Trustee of the Trust have the same rights and obligations among themselves as they would have had if the successor Trustee had been party to them at the dates of those documents.

13.4 Appointment of successor Trustee

If the Trustee retires as Trustee of the Trust, the Trustee agrees to use its best endeavours to ensure that a successor Trustee acceptable to the Initial Charitable Member is appointed for the Trust as soon as possible. If no successor Trustee is appointed within 90 days after notice of retirement or removal is given, the Trustee may appoint a successor Trustee or apply to the court for a successor Trustee to be appointed.

13.5 Costs of retirement

If the Trustee retires (other than in the case of clause 13.1 (“Mandatory retirement”)), everything it is required to do under clause 13.6 (“Trustee to deliver documents”) and its costs in entering into the retirement and appointment document under clause 13.7 (“Further steps”) is at the Trustee’s own expense. If the Trustee retires because it is required to do so by law, everything it is required to do under this clause 13 is an expense of the Trust.

13.6 Trustee to deliver documents

If the Trustee retires as Trustee of the Trust, it agrees to deliver to the successor Trustee:

- a. all original documents in its possession relating to the Trust and the Assets; and
- b. any transfers, requests, notices of assignment or other documents to record the transfer of the Assets to the successor Trustee which the successor Trustee reasonably requests.

13.7 Further steps

Without limiting clause 13.6 (“Trustee to deliver documents”), if the Trustee retires as Trustee of the Trust, it agrees to do anything the successor Trustee reasonably asks (such as obtaining consents, and signing, producing and delivering documents including a retirement and appointment document) to give effect to the retirement and the appointment of the successor Trustee.

13.8 Discharge of further obligations

When a successor Trustee is appointed as Trustee of the Trust, the retiring Trustee is discharged from any further obligation under the Trust Documents. However, this discharge does not affect any accrued rights or obligations.

14. Project Account and trust segregation

14.1 Project Account

As soon as practicable after the execution of this deed, the Trustee must open the Project Account with an Eligible Bank.

14.2 Transfer of Project Account

If the Account Bank at which the Project Account is held ceases to be an Eligible Bank, upon becoming aware of the occurrence of that event, the Trustee must immediately establish a new Project Account with an Eligible Bank and transfer the funds standing to the credit of the old Project Account to the new Project Account.

14.3 Allocation to Trust

The Trustee must account for the Assets and liabilities of the Trust separately from the assets and liabilities of any other trust. The Trustee must ensure that all of the Assets and liabilities of the Trust are separately allocated in the records of the Trust from the Assets and liabilities of any other trust.

15. Fees and expenses

15.1 Fees

The Trustee is entitled to a fee for performing its obligations under this deed.

15.2 Trust Expenses

- a. pay, or reimburse the Trustee for, reasonable expenses incurred as Trustee of the Trust;
- b. but may not apply the Trust for a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53.

16. Variation of Trust Documents

16.1 Variation of Trust Documents

The Trustee may agree to a variation of a Trust Document without the consent of any other party if in the reasonable opinion of the Trustee, the variation is:

- a. necessary or advisable to comply with any law or the requirement of any Government Agency; or
- b. necessary to correct an ambiguity, an obvious error, or is otherwise of a formal, technical or administrative nature only; or
- c. desirable for any reason, provided that such variation will not have a Material Adverse Effect.

17. General Meetings

17.1 Annual General Meeting

A general meeting to be called the **Annual General Meeting** must be held at least once in each calendar year and within five (5) months after the end of the Trustee's financial year. All meetings of the Members, including the Annual General Meeting, shall be called General Meetings.

17.2 Requisition by Board and Members

- a. The Board may, whenever it considers it appropriate, call a General Meeting.
- b. The Board must, on the requisition in writing of not fewer than two (2) Members made in accordance with clause 17.2(c), call a General Meeting.
- c. A requisition of Members for a General Meeting:
 - i. must state the purpose or purposes of the meeting;
 - ii. must be signed by the Members making the requisition;
 - iii. must be lodged with the Secretary; and
 - iv. may consist of several documents in a similar form, each signed by one (1) or more of the Members making the requisition.

17.3 General Meeting by requisition of Members

If the Board fails to call a General Meeting within one (1) month after the date when a requisition of Members for the meeting made in accordance with clauses 17.2(b) and 17.2(c) is lodged with the Secretary, any one (1) or more of the Members who made the requisition may call a General

Meeting to be held not later than three (3) months after that date.

17.4 Notice of General Meetings

Subject to clause 17.5, at least twenty one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying:

- a. the place, date and time for the General Meeting;
- b. the general nature of the General Meeting's business; and
- c. if a special resolution is to be proposed at the General Meeting, the intention to propose the special resolution and the terms of the proposed resolution,

shall be given to such persons as are entitled to receive such notices from the Trustee.

17.5 Short notice

The Trustee may call on shorter notice:

- a. an Annual General Meeting if all the Members entitled to attend and vote at the Annual General Meeting agree in writing beforehand; and
- b. any other General Meeting if Members with at least 75% of the votes that may be cast at the General Meeting agree beforehand.

17.6 Special resolutions

A special resolution means a resolution:

- a. of which notice as set out in section 17.4(c) has been given; and
- b. that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

17.7 Technology meeting of Members

- a. A General Meeting may be called or held at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- b. The Members need not all be physically present in the same place for a General Meeting to be held.
- c. A General Meeting held solely or partly using technology is treated as being held at the place at which the greatest number of Members present at the meeting is located or, if there is an equal number of Members located at two (2) or more places, at the place where the chair of the General Meeting is located.
- d. The following provisions apply to a technology meeting:
 - i. each of the Members taking part in the meeting must be able to hear and be heard by each of the other Members taking part in the meeting;
 - ii. at the commencement of the meeting each Member must announce his or her presence to all the other Members taking part in the meeting; and
 - iii. a Member who participates in a meeting held in accordance with this clause 17.7 is taken to be present and entitled to vote at the meeting.
- e. If the Secretary is not present at a technology meeting one (1) of the Members present or another person nominated by them present at the meeting must take minutes of the meeting.

- f. For the purposes of this clause 17.7, a reference to a Member shall be taken to include the representative of the Member appointed to attend the General Meeting on behalf of the Member in accordance with clause 18.8.

18. Proceedings at General Meetings

18.1 Quorum required

No business shall be transacted at any General Meeting unless a quorum of Members is present when that item of business is being considered. Subject to clause 18.2, five (5) Members present shall be a quorum.

18.2 Effect on meeting if quorum not present

If within half an hour from the time appointed for the General Meeting a quorum is not present, the meeting, if convened on the requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the Board may determine. If, at the adjourned General Meeting, a quorum is not present within half an hour from the time appointed for the General Meeting, the Members present (being not less than two (2)) shall constitute a quorum.

18.3 Chair at General Meetings

The Chair shall preside as chair at each General Meeting of the Charity. If the Chair is not present within 15 minutes after the time appointed for the holding of the General Meeting, or is unwilling to act, then the Members present shall elect one (1) of their number to be the chair of the General Meeting.

18.4 Chair may adjourn meeting

The chair of a General Meeting may, with the consent of a majority of Members present at a General Meeting at which a quorum is present (and shall, if so directed by a majority of the Members), adjourn the General Meeting from time to time and from place to place, but no business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place. When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned General Meeting shall be given as in the case of an original General Meeting. It shall not otherwise be necessary to give any notice of an adjournment for the business to be transacted at an adjourned meeting.

18.5 Resolutions to be decided by show of hands unless poll demanded

At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded:

- a. by the chair of the General Meeting; or
- b. by at least three (3) Members present.

18.6 When a poll may be demanded

A poll may be demanded in accordance with clause 18.5:

- a. before a vote is taken;
- b. before the voting results on a show of hands are declared; or
- c. immediately after the voting results on a show of hands are declared.

The demand for the poll may be withdrawn by the person or persons who made the demand.

18.7 Chair may declare resolution on show of hands

Unless a poll is so demanded, a declaration by the chair of the General Meeting that a resolution has on a show of hands been carried, carried unanimously or by a particular majority, or lost, and

an entry to that effect in the book containing the minutes of the proceedings shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18.8 Members to appoint representatives

- a. A Member may appoint a representative to attend the General Meeting on its behalf.
- b. The appointment of a representative may:
 - i. set out restrictions on the representative's powers; and
 - ii. may be a standing one.
- c. If the appointment is not a standing one, notice of the appointment must be given to the Secretary not less than one week before the date fixed for the General Meeting.
- d. If the appointment is a standing one, notice of the appointment must be given to the Secretary not less than one week before the date fixed for the first General Meeting at which the representative will attend on behalf of the Member.
- e. Notice of the appointment of a representative given in accordance with clause 18.8(c) or 18.8(d) is prima facie evidence of a representative having been validly appointed.
- f. The chair of a General Meeting may permit a person claiming to be a representative to exercise the Member's powers even if:
 - i. the chair of the General Meeting has not received notice in accordance with clause 18.8(c) or 18.8(d); or
 - ii. he or she has not produced satisfactory evidence of his or her appointment.

18.9 Poll

If a poll is duly demanded it shall be taken in such manner and time as the chair of the General Meeting directs, but a poll demanded on the election of a chair or on a question of adjournment shall be taken immediately. The result of the poll will determine whether the resolution on which the poll was taken is won or lost. .

18.10 Entitlement to vote

The Members are entitled to cast one (1) vote each.

19. Board

19.1 Composition of Board

Subject to clause 19.4, the Board shall consist of the following persons:

- a. **Chair:** one (1) person appointed by the Board in accordance with clause 19.3, such person being the 'Chair';
- b. **Ordinary Directors:** up to seven (7) persons appointed by the Members in accordance with clause 19.2, such persons being 'Ordinary Directors'.

19.2 Ordinary Directors

- a. The Ordinary Directors shall be appointed in accordance with the Trustee Constitution.
- b. Each Ordinary Director (other than an Ordinary Director appointed to fill a casual vacancy) shall be appointed for a term of two (2) years and, on expiration of their term, shall be eligible for re-

appointment provided that no person may serve more than six (6) years in total as an Ordinary Director.

- c. Each Ordinary Director appointed by a Member to fill a casual vacancy may be appointed for a term of up to twelve (12) months and, on expiration of their term, shall be eligible for reappointment provided that no person may serve more than six (6) years in total as an Ordinary Director.

19.3 Chair and Deputy Chair

- a. The Board shall appoint:
 - i. as Chair, a person who has not been a director of any Member in the preceding five (5) years; and
 - ii. one (1) of their number (other than the Chair) as Deputy Chair.
- b. The Chair shall be appointed for a term of two (2) years and on expiration of their term shall be eligible for re-appointment, provided that no person may serve more than nine (9) years in total in holding the office of Director or Chair. Otherwise, the Board shall specify the terms of each appointment.
- c. The Deputy Chair shall be appointed for a term of one (1) year and on expiration of their term shall be eligible for re-appointment as Deputy Chair (but shall not by virtue only of expiration of their office as Deputy Chair cease to hold office as a Director), provided that no person may serve more than three (3) years in total as Deputy Chair. Otherwise, the Board shall specify the terms of each appointment.
- d. The Chair, or in the Chair's absence, the Deputy Chair shall preside at all meetings of the Board, subject to the terms of this Deed and the Constitution. The Chair shall also preside at General Meetings unless the Members at such a General Meeting elect someone else to be chair of the General Meeting pursuant to clause 18.3.

19.4 Removal of Director by resolution

The Trustee may by ordinary resolution passed at a General Meeting of the Members remove any Director.

19.5 Vacancy

- a. The office of a Director shall become vacant if the Director:
 - i. ceases to be a Director by virtue of the Corporations Act;
 - ii. becomes bankrupt or makes any arrangement or composition with his or her creditors;
 - iii. becomes ineligible to be a Director under the Corporations Act or becomes prohibited from being a director of a company by reason of any order or disqualification made under the Corporations Act;
 - iv. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - v. resigns his or her office by notice in writing to the Trustee;
 - vi. is absent without permission of the Board from two (2) consecutive meetings of the Board;
 - vii. is directly or indirectly interested in any contract or proposed contract with the Trustee or a Member and fails to declare the nature of the interest in the manner required by s191 of the Corporations Act (or as would be required under s191 of the Corporations Act if the Trustee were not a Registered Entity); or

viii. becomes ineligible to be a Director under the ACNC Act while the charity is a Registered Entity.

b. Any such vacancy may be filled as contemplated in these clauses.

20. Directors' interests

20.1 Prohibition on being present or voting

Except where permitted by the Corporations Act (or where it would be permitted by the Corporations Act if the charity were not a Registered Entity), a Director who has a material personal interest in a matter that is being considered at a meeting of the Board:

- a. must not be counted in a quorum;
- b. must not vote on the matter; and
- c. must not be present while the matter is being considered at the meeting.

20.2 Notice of interest

- a. A Director who has an interest in a matter shall give the other Directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and regardless of whether or not the matter relates to the affairs of the charity at the time the notice is given.
- b. A notice under clause 20.2(a) may be given:
 - i. at a Board meeting (either orally or in writing); or
 - ii. to the other Directors individually in writing.
- c. The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

21. Proceedings of Committees

21.1 General

Except as provided in a direction of the Board, the meetings and proceedings of Committees must be governed by the charter for the Committee approved by the Board.

21.2 Composition of Committees

Subject to clause 21.3, a Committee must include at least one Director and may include other persons determined by the Board.

21.3 Chair of Committees

The Board will appoint a chair of each Committee who is a Director. If at any meeting the Committee chair is not present within fifteen (15) minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chair of the meeting.

21.4 Meetings of Committees

- a. A Committee may meet and adjourn as it thinks proper. A resolution on a matter before a committee arising at any meeting of the Committee shall be determined by a majority of votes of the committee members present, and in the case of an equality of votes the Committee chair of the relevant Committee meeting shall have a second or casting vote.

- b. The Committee chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- c. The quorum necessary for the transaction of business by a committee shall be a majority of the members of the Committee.

22. Validity of acts

If it is discovered that:

- a. there was a defect in the appointment of a person as a Director or member of a Board Committee; or
- b. a person appointed to one of those positions was disqualified from the office of Director, all acts of the Directors or of the Board and its Committees before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

23. Written resolutions

- a. The Directors may pass a resolution in respect of a matter without a Board meeting being held provided a majority of all Directors entitled to vote on the resolution consent to the resolution in accordance with the manner described in clause 23(e).
- b. Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- c. The outcome of a resolution that is passed in accordance with clause 23(a), will be included for noting in the minutes of the next meeting of the Board.
- d. Any document referred to in this clause may be in the form of a facsimile transmission, electronic notification, or produced by other electronic or mechanical means.
- e. A Director may consent to a resolution by:
 - i. signing a document containing the resolution (or a copy of the document);
 - ii. sending the consent in any document produced under the name of the Director with the Director's authority;
 - iii. delivering to the registered office of the Trustee a written document addressed to the Secretary or the Chair, signifying assent to the resolution and either setting out its terms or otherwise clearly identifying the resolution; or
 - iv. telephoning the Secretary or the Chair and signifying assent to the resolution and clearly identifying its terms. In such a case, the Secretary should make a contemporaneous file note that the assent has been received by telephone and the Director should promptly confirm the assent by email to the Secretary (but failure by the Secretary or Director to do so shall not invalidate the assent).
- f. The resolution is passed when the last of the required number of Directors, as set out in clause 23(a), consents to the resolution in accordance with clause 23(e).
- g. The provisions applying to Directors in this clause 23 (relating to written resolutions of the Board) apply in the same manner to members of Committees for the purposes of Committees effecting written resolutions.

24. Secretary

The Secretary shall be appointed by the Board for such term, at such remuneration and on such conditions as the Board thinks fit and any Secretary so appointed may be removed by the Board.

25. Audit

- a. Subject to the Corporations Act, a registered company auditor must be appointed.
- b. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

26. General

26.1 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

26.2 Governing law and jurisdiction

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

27. Notices and other communications

27.1 Service of process

Without preventing any other method of service, any document in a court action in connection with this deed may be served on a party by being delivered to or left at that party's address for service of notices in accordance with this clause 27.

27.2 Form - all communications

Unless expressly stated otherwise in the Trust Document, all notices, certificates, consents, approvals, waivers and other communications in connection with a Trust Document must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified in the Trust Document or, if the intended recipient has notified otherwise, marked for attention in the way last notified.

27.3 Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 27.2 ("Form - all communications"). However, the email must state the first and last name of the sender.

Communications sent by email are taken to be in writing and signed by the named sender.

27.4 Delivery

Communications in connection with a Trust Document must be:

- a. left at the address of the intended recipient set out or referred to in the Trust Document; or
- b. sent by prepaid ordinary post (airmail, if appropriate) to the address of the intended recipient set out or referred to in the Trust Document; or

- c. sent by email to the address of the intended recipient set out or referred to in the Trust Document; or
- d. given in any other way permitted by law.

However, if the intended recipient has notified a changed address or fax number, then any communication must be to that address or number.

27.5 When effective

- a. Communications take effect from the time they are received or taken to be received (whichever happens first) unless a later time is specified in them.
- b. Communications are taken to be received:
 - i. if sent by post, 3 days after posting (or 7 days after posting if sent from one country to another); or
 - ii. if sent by email:
 - (A) when the sender receives confirmation of receipt from the intended recipient or an automated message confirming delivery; or
 - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,whichever happens first.
- c. Despite clauses 27.5(a) and 27.5(b), if communications are received or taken to be received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified in them.

28. Other interests and dealings

28.1 Other interests and dealings

- a. The Trustee may exercise all its powers even if it, any Related Entity of it or any director, shareholder or officer of any of them may have an interest in the manner or result of exercising the power or may benefit directly or indirectly as a result.
- b. Provided it acts in good faith, and subject to the relevant Trust Documents, a corporation may act as a Trustee or manager of the Trust even if its Related Entities or directors, officers or shareholders of any of them are the Trustee, a Member or a Relevant Party or interested as directors, shareholders, officers, partners, or otherwise stand in a fiduciary or beneficial relationship to any person:
 - i. with whom Assets may be invested;
 - ii. with whom the Trustee, any Member or any Relevant Party may deal; or
 - iii. who may be legally or beneficially interested in or entitled to any interest in the Trust.
- c. Provided it acts in good faith, and subject to the relevant Trust Documents, the Trustee may sell assets from, lend money to, borrow or raise money from, and otherwise deal with:
 - i. itself whether on its own behalf or in any other capacity;

- ii. any Related Entity;
- iii. any director, officer or member of itself or any Related Entity; and
- iv. any other person referred to in clause 28.1(b),

in all ways as if it was not the Trustee and shall not be liable to account for any profit or commission derived as a result.

29. GST

29.1 Construction

In this clause 29, words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law.

29.2 Consideration GST exclusive

Unless expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

29.3 Payment of GST

If GST is payable on any supply made under this deed, for which the consideration is not expressly stated to include GST, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

29.4 Timing of GST payment

The recipient will pay the amount referred to in clause 29.3 ("Payment of GST") in addition to and at the same time that the consideration for the supply is to be provided under this deed.

29.5 Tax Invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 29.3 ("Payment of GST"). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

29.6 Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this deed, the amount payable by the recipient under clause 29.3 ("Payment of GST") will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

29.7 Reimbursements

Where a party is required under this deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- a. the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and
- b. if the payment or reimbursement is subject to GST, an amount equal to that GST.

30. Procedure on termination

30.1 Expiration

Subject to clause 30.2 (“By the Trustee”), the Trust will terminate on the day prior to the expiration of the perpetuity period determined in accordance with clause 1.3 (“Perpetuity period”).

30.2 By the Trustee

Upon full and complete discharge of each of its obligations under the this Trust Deed and any other relevant documents, the Trustee may terminate the Trust, and the Trust will terminate on the date specified by the Trustee as the date of termination of the Trust in a notice given to the Initial Charitable Member.

30.3 Realisation of Assets

Following termination of the Trust, the Trustee must realise the Assets.

30.4 Distribution following termination

The net proceeds of realisation, after making allowance for all liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in accordance with clause 31 (“Winding up of Trust”).

30.5 Trust deed applies until date of final distribution

The provisions of this deed continue to apply from the date of termination until the date of final distribution under clause 31.2 (“Distribution of assets”).

31. Winding up of Trust

31.1 Rights of Members on winding up

If the Trust is wound up or dissolved, the Members (other than the Initial Charitable Member) have no right to participate in any distribution or payment of the assets or property of the Trust unless approved by the Trustee or Initial Charitable Member.

31.2 Distribution of assets

- a. Subject to clause 31.2(b) if on the winding up or dissolution of the Trust there remains, after satisfaction of all its debts and liabilities, any property, the property must be given or transferred to some other entity or entities:
 - i. having objects similar to the objects of the Trust; and
 - ii. whose constituent document prohibits the distribution of its income and property to an extent at least as great as that imposed on the Trust.
- b. If the Trust is endorsed as a deductible gift recipient for the purposes of Australian taxation laws and regulations, and either:
 - i. the Trust is wound up or dissolved; or
 - ii. the Trust’s endorsement as a deductible gift recipient is revoked;then:
 - iii. where clause 31.2(b)(i) applies, any property that remains after the satisfaction of all of the Trust’s debts and liabilities; or

iv. where clause 31.2(b)(ii) applies, any property of the trust,

in either case that is:

v. gifts of money or property for the Trust Objects; or

vi. contributions made in relation to an eligible fundraising event held for the Trust Objects; or

vii. money received by the Trust because of such gifts and contributions,

shall be transferred to some other entity or entities to which Australian income tax deductible gifts can be made.

- c. The Initial Charitable Member may receive any such property under clauses 31.2(a) or 31.2(b) to the extent it meets the applicable description of an entity eligible to receive transfer of that property under those provisions.

EXECUTED as a deed

Signing page

Settlor

[Execution block]

Founder

[Execution block]

Trustee

[Execution block]