

Release Agreement

Between Charter Financial Planning Limited (ABN 35 002 976 294), Robert Shannan, Rebecca Orchard (nee Tran) and Shannan Tran Pty Ltd as trustee for Shannan Tran



AGREEMENT dated

2020

BETWEEN Robert Shannan (the First Releasor)

of 34 Simmons Drive, Seaholme, VIC 3018

AND Rebecca Orchard (nee Tran) (the Second Releasor)

of 34 Simmons Drive, Seaholme, VIC 3018

AND Shannan Tran Pty Ltd as Trustee for Shannan Tran Superannuation Fund

(the Third Releasor)

of 34 Simmons Drive, Seaholme, VIC 3018

(collectively the Releasors)

AND CHARTER FINANCIAL PLANNING LIMITED (ABN 35 002 976 294) (Charter)

of 33 Alfred Street, Sydney, NSW 2000

INTRODUCTION

- A. David Rhys Heycock (the Adviser) was at all material times authorised to provide financial services on behalf of Charter as its representative.
- **B.** Between December 2011 and 24 June 2014, the Adviser provided advice and services to the Releasors in relation to their financial affairs (**Advice and Services**).
- C. The Advice and Services included advice relating to the establishment of a self-managed superannuation fund to be known as Shannan Tran Superannuation Fund (the **SMSF**) and investment into the SMSF by the First Releasor and the Second Releasor.
- D. As a result of the Advice and Services, the First Releasor and the Second Releasor appointed Shannan Tran Pty Ltd as the trustee of the SMSF (Trustee). The SMSF invested in two National Rental Affordability Scheme properties at 2 Richfield Court, Deeragun, QLD 4818 and at 13 Millbrae Street, Deeragun, QLD 4818 (collectively the SMSF NRAS Properties).
- E. On 14 September 2011, the First Releasor and the Second Releasor committed to purchase a NRAS property at 4 Richfield Court, Deeragun, QLD 4818 and on 15 September 2011, the First Releasor and the Second Releasor committed to purchase two NRAS properties at 12 Richfield Court, Deeragun, QLD 4818 and at 24 Millbrae Street, Deeragun, QLD 4818 (collectively the Personal NRAS Properties).
- F. On 3 February 2020, the First Releasor and the Second Releasor accepted Charter's offer of \$5,000 each for non-financial loss on the condition that they will make no further request for compensation in respect to the Personal NRAS Properties they purchased when the Advisor was not an authorised representative of Charter.
- **G.** The Releasors have required Charter to review the Advice and Services and make a claim against it for financial loss suffered by the Releasors as a result of the Advice and Services (**Claim**).
- H. Charter has reviewed the Advice and Services to determine whether they were appropriate and, if not, whether the Releasors have suffered any financial loss in relation to the Advice and Services and the Releasors have participated in that review.
- Charter has made an offer of remediation to the Releasors set out in the letters dated 20 September 2018, 4 February 2020 (Tranche 1 Compensation Offer) and 4 September 2020 (Tranche 2

Compensation Offer) (collectively the **Remediation Offer**), copies of which are annexed to this Release Agreement as "Annexure A".

J. Without admission of liability, the parties to this Release Agreement agree to compromise the Claim and any dispute that has or may arise between them in connection with the Claim or the Advice and Services on the terms outlined in this Release Agreement.

IT IS AGREED

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Release Agreement:

- (a) Advice and Services has the meaning set out in recital B;
- (b) Adviser has the meaning set out in recital A;
- (c) Business Day means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (d) CGT means capital gains tax;
- (e) Claim has the meaning set out in recital G;
- (f) Letters of Offer means the letters from Charter to the Releasors informing the Releasors of the outcome of Charter's review of the Advice and Services dated 20 September 2018, copies of which are annexed to this Release Agreement;
- (g) Personal NRAS Properties has the meaning set out in recital E;
- (h) Release Agreement means this document, including any schedule or annexure to it;
- (i) Related Body Corporate has the meaning given in section 9 of the Corporations Act 2001;
- (j) Releasee means Charter;
- (k) Remediation Offer has the meaning set out in recital I;
- (I) **Settlement Sum** is AUD\$816,539.64;
- (m) SMSF has the meaning set out in recital C;
- (n) SMSF NRAS Properties has the meaning set out in recital D;
- (o) Tranche 1 Compensation Offer has the meaning set out in recital I;
- (p) Tranche 2 Compensation Offer has the meaning set out in recital I; and
- (q) Trustee has the meaning set out in recital D.

1.2 Interpretation

- (a) Reference to:
 - (i) one gender includes the other;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (iv) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
 - (v) where there are two or more persons bound or to be bound an agreement or obligation binds those persons severally and any two or more of them jointly;
 - the Adviser includes the Adviser's successors, permitted assigns, directors, agents, officers, employees and any Related Body Corporate;
 - (vii) Charter includes its successors, permitted assigns, directors, agents, officers, employees and any Related Body Corporate;
 - (viii) a statute, regulation, code or other law or a provision of any of them includes:
 - (A) any amendment or replacement of it; and
 - (B) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (ix) any monetary amount is in Australian dollars unless otherwise stated;
- (b) "Including" and similar expressions are not words of limitation;
- (c) Headings and any table of contents or index are for convenience only and do not form part of this Release Agreement or affect its interpretation;
- (d) A provision of this Release Agreement must not be construed to the disadvantage of Charter merely because it was responsible for the preparation of the Release Agreement or the inclusion of the provision in the Release Agreement;
- (e) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

2 SETTLEMENT

- 2.1 Charter will pay the Settlement Sum on the date of receipt by Charter of this Release Agreement, duly executed by the Releasors and the annexed Bank Account Nomination Forms and Superannuation Payment Nomination Forms completed by the First Releasor and the Second Releasor.
- 2.2 On payment of the Settlement Sum, Charter and the Releasors agree to be bound by the terms of the Release Agreement even if the Release Agreement has not been executed by Charter as at the date of payment of the Settlement Sum or the date on which the first instalment of the Settlement Sum is paid.
- 2.3 The Releasors direct and authorise Charter to pay the Settlement Sum as follows:

- (a) AUD\$283.94 in accordance with the annexed Bank Account Nomination Form completed by the First Releasor.
- (b) AUD\$277,283.29 in accordance with the annexed Superannuation Payment Form completed by the First Releasor.
- (c) AUD\$245.04 in accordance with the annexed Bank Account Nomination Form completed by the Second Releasor.
- (d) AUD\$538,727.37 in accordance with the annexed Superannuation Payment Form completed by the Second Releasor.
- 2.4 In addition to the Settlement Sum, Charter will pay the following amounts to the Releasors:
 - (a) The reasonable costs of each Releasor to obtain new and current financial advice, within 15 business days of receipt of a tax invoice.
 - (b) The reasonable costs of each Releasor to obtain tax and accounting advice regarding the wind up of the SMSF, including SMSF compliance, tax returns, and any tax liability payable by Charter under clause 6.1, within 15 business days of receipt of a tax invoice.
 - (c) Any expenses incurred as part of the closure of the SMSF and the corporate trustee, including all ASIC and ATO fees and all reasonable adviser fees to effect the wind up, within 15 business days of receipt of a tax invoice.
 - (d) The reasonable costs and expenses of the Releasors to undertake any outstanding SMSF compliance, audit and tax returns, within 15 business days of receipt of a tax invoice.

3 RELEASE AND INDEMNITY

Subject to payment by Charter of all amounts payable under this Release Agreement, the Releasors each release and discharge Charter and its Related Bodies Corporate and the Adviser from any claims, liabilities, demands, actions, damages, losses, costs and expenses, whether known or unknown to the parties (and if known by a party whether or not it is disclosed to the others) at the date of this Release Agreement, which they had or may have against Charter or the Adviser arising out of or in connection with the Claim or the Advice and Services.

4 OTHER BENEFICIARIES

To the extent that the release in clause 3 is a persons and entities other than Charter, Charter has sought and obtained that release as agent for and on behalf of those persons and entities and holds the benefit of that release as trustee. It is further agreed that Charter may enforce that release for and on behalf of those persons and entities and for their benefit and that those persons and entities may plead that release in an answer to any claim made by the Releasors against them to the extent that the claim comes within the released matters described in clause 3.

5 ENTIRE AGREEMENT

- 5.1 To the extent permitted by law, in relation to the subject matter of this Release Agreement, and subject to any variation, this Release Agreement:
 - embodies the entire understanding of the parties, and constitutes the entire terms agreed on by the parties; and
 - (b) supersedes any prior written or other agreement between the parties.
- 5.2 For avoidance of doubt, the terms of the Remediation Offer are included in and form part of the Release Agreement.

6 TAX AND STAMP DUTY

6.1 In the event that the wind up of the SMSF or receipt of the Settlement Sum result in a tax liability, upon the provision of proof of debt from the Australian Tax Office, Charter agrees to pay for that liability within 30 days of receiving such proof, or such short period stated in the proof of debt.

7 CONFIDENTIALITY AND NON-DISPARAGEMENT

- 7.1 The Releasors will not disclose this Release Agreement (or its contents) to anyone, except to their legal adviser, their accountant, their financial adviser or the Australian Securities and Investments Commission, unless they need to do so to enforce it, or unless they are required to do so by law.
- 7.2 The Releasors will not make any adverse statements, publicly or otherwise, whether oral or in writing about or in relation to Charter or any of its employees or the Adviser, excluding any statements any of the Releasors may make to any regulatory or government authority as part of an investigation or inquiry being undertaken by that body.

8 SEVERABILITY

8.1 If anything in this Release Agreement is unenforceable, illegal or void then it is severed, and the rest of this Release Agreement remains in force.

9 FURTHER ASSURANCE

9.1 The Releasors will promptly and at their own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to this Release Agreement.

10 WARRANTY

- 10.1 The Releasors each warrant that they are the only persons with an interest in the Advice and the Services.
- 10.2 The Releasors each warrant and represent that they have obtained, or have had a full and proper opportunity to obtain, or have been offered and encouraged to obtain:
 - (a) Their own independent advice relating to the terms and effect of this Release Agreement from a professional services firm (for example, from a solicitor or accountant) including in accordance with the offer made by Charter to pay the invoiced cost of obtaining such independence advice from JRT Partnership Pty Ltd and which offer they have accepted; and
 - (b) new financial advice relating to matters arising from Charter's assessment of the Advice and Services from a Charter or non-Charter financial adviser.
- 10.3 The Releasors each warrant and represent that they have read, are aware of and understand the terms and effect of this Release Agreement.
- Each party acknowledges that (except as specifically set out in this Release Agreement) they enter into this agreement with the intention of settling on a final basis according to the provisions of this Release Agreement, all claims in relation to Advice and Services which now exist, or may exist or have ever existed between the parties notwithstanding that any party may become aware of or come into possession of new information.

11 VARIATION

11.1 An amendment or variation to this Release Agreement is effective if it is in writing and signed by the parties.

12 WAIVER

- 12.1 A person's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 12.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 12.3 A waiver is not effective unless it is in writing.
- 12.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

13 ENFORCEMENT OF AGREEMENT

13.1 Nothing in this Release Agreement prevents any party or any person who is entitled to the benefit of this Release Agreement, taking action to enforce their rights under this Release Agreement.

14 GOVERNING LAW AND JURISDICTION

- 14.1 The law of Victoria governs this Release Agreement.
- 14.2 Charter and any person claiming rights under this Release Agreement must submit to the exclusive jurisdiction of the courts of Victoria.

15 EXECUTION OF COUNTERPARTS

15.1 This Release Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same document.

16 NO MERGER

16.1 The rights and obligations of the partiers under this Release Agreement do not merge on payment of the Settlement Sum and those provisions that are intended to operate after payment of the Settlement Sum shall continue to survive. $\ensuremath{\mathsf{EXECUTED}}$ as an agreement on the date shown on the first page.

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Executed by CHARTER FINANCIAL PLANNING LIMITED (ABN 35 002 976 294) by its undersigned Attorneys who have not received notice of the revocation of the Power of Attorney dated 29 May 2019 under the authority of which this instrument has been signed in

8/10/2020
2020

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FAttorney

Yvonne Chong

Name of Attorney in full

Docusigned by:
Claine Machin
9885E7F88E68428

Signature of Attorney

Claire Machin

Name of Attorney in full

ANNEXURE A - Charter's letters dated 20 September 2018

ANNEXURE A – Charter's Tranche 1 Compensation Offer Letter dated 4 February 2020

ANNEXURE A – Charter's Tranche 2 Compensation Offer Letter dated 4 September 2020

ANNEXURE B - Bank Payment Nomination Forms

ANNEXURE B - Superannuation Payment Nomination Forms