

MM TRUST

DEED OF ESTABLISHMENT DISCRETIONARY TRUST

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TRUST DEED

PARTIES

SETTLOR: THE PARTY NAMED AS SETTLOR IN SCHEDULE 2

INITIAL TRUSTEE: THE PARTY NAMED AS INITIAL TRUSTEE IN SCHEDULE 2

OVERVIEW

- A On signing this document and paying the Settlement Sum to the Initial Trustee, the Settlor establishes the Trust.
- B The Initial Trustee and the Settlor agree:
 - (i) the Settlor has paid the Settlement Sum to the Initial Trustee;
 - (ii) the Initial Trustee will act as trustee of the Trust; and
 - (iii) the Trust Fund will be held by the Initial Trustee on the terms in this document.

DEFINITIONS

In this document:

Term	Definition	
Act	Means (as the context requires) either or both the <i>Income Tax</i> Assessment Act 1936 (Cth) and the <i>Income Tax Assessment Act</i> 1997 (Cth).	
Asset Sub-Trust	Means any Property of the Trust over which a Principal has appointed a separate Trustee.	
Bankruptcy Act	Means Bankruptcy Act 1966 (Cth).	
Beneficiaries	Means:	
	(a) the Primary Beneficiaries;	
	(b) the Secondary Beneficiaries; and	
	(c) the Tertiary Beneficiaries.	
Business Day	Means a day on which banks are open for general banking in the capital city of the State of the situs of the Trust.	
Capital Gain	Has the same meaning as given to that term in the Act.	
Capital of the Trust Fund	Means all money and Property forming the Trust Fund, including all money and Property accumulated under clause 2.2.	
Children	Means biological and lawfully adopted children and 'Grandchildren' and 'Great-Grandchildren' have the corresponding meanings.	
Corporations Act	Means Corporations Act 2001 (Cth).	

Definition

Declaration

Means:

- (a) a written declaration;
- (b) an oral declaration regardless of whether it is subsequently recorded in writing; or
- (c) where the Trustee or Principal is a company, a decision of its board of directors passed in accordance with the company's constitution.

Default Capital

Means any part of the Capital of the Trust Fund for which the Trustee has not made a determination under clause 4.2 by the Relevant Time.

Default Income

Means any part of the Distributable Income for which the Trustee has not made a determination under clause 2.1 or clause 2.2 by the Relevant Time.

Default Successor

Means with reference to the definition of Event of Disqualification and the clauses thereunder:

- (a) in the case of clause (a), the LPR of the last surviving person's estate:
- (b) in the case of clause (b):
 - (i) the financial attorney of the last remaining person under an enduring power of attorney; or
 - (ii) if no financial attorney is able and willing to act, then the person may be nominated:
 - (A) if there is one Primary Beneficiary by that Primary Beneficiary solely;
 - (B) if there are two Primary Beneficiaries –
 by those Primary Beneficiaries jointly;
 and
 - (C) if there are three or more Primary Beneficiaries – by a majority decision of the Primary Beneficiaries,

or if the Primary Beneficiaries are unable or unwilling to nominate a person as required by this clause, then the person must be appointed as required by any applicable government legislation;

- (c) in the case of clauses (c) to (n) (inclusive):
 - (i) if the person ceasing to act is a natural person, the process for appointing the new person is as set out in item (b)(ii) of this definition; and

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(ii) in all other cases, the person is the shareholder with the largest total shareholding in the disqualified person, or where there are two or more shareholders having the equal largest total shareholding in the disqualified person, those shareholders jointly.

Derivative Transaction

Means any contract or financial instrument that derives its value from an underlying asset, commodity, liability or index.

Determination Date

Means the last day of the Financial Year or any later date permitted:

- (a) under the Act;
- (b) by the relevant statutory authorities charged with enforcing the requirements set out under the Act; or
- (c) at law,

by which the Trustee may make Beneficiaries presently entitled, within the meaning of the Act, to the Distributable Income for that Financial Year.

Distributable Income

Means, in respect of any Financial Year:

- (a) an amount equal to the Net Trust Income; or
- (b) any other amount that the Trustee determines on or before the Determination Date under clause 3.4.

Estate Property

Means Property that has been transferred:

- (a) by a person to the Trust Fund out of Property that passed to that person from the estate of a deceased person; or
- (b) directly to the Trust Fund under a will of a deceased person or otherwise as a consequence of a person dying.

Excepted Trust Income

Has the same meaning as in the Act.

Event of Disqualification

Means:

- (a) death;
- the loss of lawful capacity through age, accident, or illness (evidence of which is by certificate of a registered medical practitioner);
- (c) committing an 'act of bankruptcy' within the meaning of section 40 of the Bankruptcy Act (excluding section 40(b) of the Bankruptcy Act);

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- (d) a sequestration order being made against the person under section 43 of the Bankruptcy Act;
- (e) the person presenting a declaration of their intention to present a debtor's petition under section 54A of the Bankruptcy Act;
- (f) the person presenting a petition against themselves under section 55 of the Bankruptcy Act;
- (g) the person entering into a part X personal insolvency agreement under the Bankruptcy Act;
- (h) the person entering into a part IX debt agreement under the Bankruptcy Act;
- if the person is a director of a company, the company being wound up by order of a court on the grounds of insolvency;
- the appointment of an administrator of the person under section 436A or section 436C of the Corporations Act;
- (k) an order for the winding up of the person being made under sections 233, 459A, 459B or 461 of the Corporations Act;
- (I) a resolution being passed for the winding up of the person under section 491 of the Corporations Act;
- (m) the person being deregistered under sections 601AB or 601AC of the Corporations Act; or
- (n) judgment being entered against the person.

Financial Year

Means:

- in the first year, the period from the date of this document until the first 30 June following the date of this document;
- (b) in the last year, the period from 1 July before the Vesting Day until the Vesting Day; and
- (c) in all other years, each period of 12 months from 1 July until the following 30 June.

income

Has the ordinary meaning attributed to that term.

Income Classes

Means the following classes of income:

(a) all forms of dividend income, including dividends, whether unfranked or franked distributions, any class of income derived from dividends or franked distributions and dividends to which a foreign tax

Definition

credit or any other separately identifiable taxation consequence or benefit attaches or arises;

- (b) a Capital Gain or a Net Capital Gain, or income derived from a Capital Gain or a Net Capital Gain or from any class of Capital Gain or Net Capital Gain;
- (c) income such as interest, royalties or exempt income:
 - (i) of any class; or
 - (ii) derived from such income types;
- income being income of any other class, source or description referred to in the Act or any other legislation; and
- income which under the Act has or gives rise to any other separately identifiable taxation consequence or benefit.

LPR

Has the same meaning as the term 'legal personal representative' in the Act.

Master Agreement

Means any document that:

- (a) sets out the terms of, or otherwise relates to, any Derivative Transaction; and
- (b) is published or prepared by a financial institution of any kind.

Maximum Period

Means the maximum period that a trust may be in existence without contravening the rule against perpetuities in the jurisdiction of the situs of the Trust.

Minor

Means a person who has not attained the age of 18 years or who does not have legal capacity.

Minute of the Trustee or Principal

Means:

- (a) a written minute signed by the Trustee or Principal;
- (b) where the Trustee or Principal is a company, a decision of directors passed in accordance with the company's constitution.

Net Capital Gain

Means an amount assessable as a net capital gain, as that term is defined in the Act.

Net Trust Income

Means the amount calculated as the net income of the Trust under section 95 of the Act (1936), excluding any amount that would otherwise be included pursuant to section 207-20(1) of the Act (1997).

Term	Definition		
Primary Beneficiaries	Has the meaning set out in Schedule 2.		
Principal	Has the meaning set out in Schedule 2.		
Property	Means any real property or any form of personal property including:		
	(a)	intellectual property; and	
	(b)	shares, debentures or securities of any company,	
	with or without deferred, restricted, qualified or special rights relating to them.		
Relevant Time	Means:		
	(a)	in relation to Default Income: 5.00pm on the last day of the relevant Financial Year; and	
	(b)	in relation to Default Capital: $5.00 \mathrm{pm}$ on the Vesting Day.	
Resolution	Means, either with or without retrospective effect, a:		
	(a)	deed revocable or irrevocable;	
	(b)	memorandum in writing;	
	(c)	Declaration; or	
	(d)	Minute of the Trustee or Principal.	
Secondary Beneficiaries	Has the meaning set out in Schedule 2.		
Settlement Sum	Has the meaning set out in Schedule 2.		
Spouse	Means a lawfully married spouse and includes where a person is a widow or widower.		
Subsequent Trustee Criteria	Means satisfying any legislation regulating trusts in the jurisdiction where the situs of the Trust Fund is, except that:		
	(a)	a sole trustee may act; and	
	(b)	a retiring trustee is fully discharged even where only one trustee remains after the retirement.	
Tertiary Beneficiaries	Has the meaning set out in Schedule 2.		
Trust	Means the trust created by this document, known by the name set out in Schedule 2.		
Trustee	Means:		
	(a)	as at the date of this document – the Initial Trustee; or	
	(b)	any other person appointed under this document.	

Definition

Trust Fund

Means:

- (a) the Settlement Sum initially paid to the Trustee;
- (b) any other money or any Property the Settlor or another person gifts, transfers, assigns or vests to the Trustee or otherwise acquired by the Trustee to be held on the terms of this document;
- (c) the investments into which any money or Property may be converted under this document;
- (d) any Capital Gain accumulated by the Trustee under this document; and
- (e) any Distributable Income accumulated under clause 2.2.

Vesting Day

Means:

- (a) the day upon which the Maximum Period, starting on the date of this document, expires;
- (b) whatever day earlier than the date in (a) that the Trustee may in its absolute discretion appoint by Resolution to be the vesting day; or
- (c) if the jurisdiction of the situs of the Trust does not prescribe a Maximum Period then whatever day the Trustee may in its absolute discretion appoint by Resolution to be the vesting day.

AGREED TERMS

1 CREATION OF TRUST

1.1 The Settlor declares, and the Initial Trustee confirms, the Trustee holds the Trust Fund for the benefit of the Beneficiaries until the Vesting Day, in accordance with the terms of this document.

2 DISTRIBUTION OF INCOME

- 2.1 In each Financial Year the Trustee, subject to any earlier decision under clause 2.2, holds the Distributable Income on trust absolutely for the Beneficiaries (or any one or more of them to the exclusion of the other Beneficiaries) in the proportions that the Trustee, with an absolute discretion, decides on or before the Determination Date.
- 2.2 In each Financial Year the Trustee may, on or before the Determination Date, decide to accumulate any part or parts of the Distributable Income and such accumulation forms part of the Capital of the Trust Fund.
- 2.3 At any later time, the Trustee may determine that any amount accumulated under clause 2.2 may be treated as Distributable Income.

- 2.4 At the Relevant Time, the Trustee holds the Default Income on trust absolutely for the Primary Beneficiaries then living, subject to clause 2.5.
- 2.5 If any Primary Beneficiary dies before the last day of a Financial Year in which Default Income arises and the deceased Primary Beneficiary leaves one or more Children:
 - (a) if those Children are living at the Relevant Time then the Children take the share of the Default Income that their parent would have taken under clause 2.4 had the parent been living; and
 - (b) if any of those Children are not living at the Relevant Time, however are themselves survived by one or more Children who are then living, then those surviving Children take the share of their deceased parent.
- 2.6 Notwithstanding any other clause in this document, any person whose inclusion as a beneficiary of the Trust would result in the Trustee of the Trust being a foreign person or foreign purchaser under the legislation outlined in the following clause, is excluded as a beneficiary of the Trust.
- 2.7 For clarity, the Trustee must not make a distribution or do any other action which would cause the Trustee of the Trust to be a:
 - (a) foreign person for the purposes of the following legislation:
 - (i) Duties Act 2001 (Qld);
 - (ii) Duties Act 1997 (NSW); or
 - (iii) Land Tax Act 1956 (NSW); or
 - (b) foreign purchaser for the purpose of the Duties Act 2000 (Vic); or
 - (c) the trustee of a foreign trust for the purposes of the *Stamp Duties Act 1923* (SA).
- 2.8 Clauses 2.6 and 2.7 are irrevocable and must not be varied by the Trustee.

3 **CLASSIFICATION OF INCOME**

- 3.1 In making any determination about the Distributable Income or Capital of the Trust Fund, the Trustee may identify (whether by reference to its source, nature or otherwise and in addition to other powers under this document):
 - (a) which income or capital;
 - (b) which part of the Distributable Income or Capital of the Trust Fund; or
 - (c) which class of Distributable Income or Capital of the Trust Fund,

is the subject of the determination.

- 3.2 The amount identified in the determination in clause 3.1 is treated for all purposes as being held absolutely for a Beneficiary or accumulated, as applicable, from the income or capital or part or class identified.
- 3.3 Without limiting clause 3, the Trustee, when making any determination about Distributable Income or Capital of the Trust Fund, may identify that the whole or any part of any one or more of the Income Classes is to be accumulated under clause 2.2 or held absolutely:
 - (a) for the benefit of any one or more of the Beneficiaries;

- (b) in any proportions as between those Beneficiaries; and
- (c) otherwise in the manner.

that the Trustee determines.

- 3.4 The Trustee may determine that the Distributable Income in any particular Financial Year is any amount whatsoever, including by determining:
 - (a) that specific amounts are to be included or excluded from Distributable Income, including to determine that an amount is to be included in Distributable Income even where it would otherwise be capital under trust law or accounting principles;
 - (b) that amounts included as Distributable Income are taken to be derived as income when received or deemed to be received;
 - (c) that an amount the Trustee anticipates receiving at a later time relating to a transaction or disposal in the particular Financial Year is included in Distributable Income; and
 - (d) whether any amounts of expenses or outgoings are to be included as being, or excluded from being, incurred in connection with deriving income.
- 3.5 The Trustee may make a determination about the whole or any part of the Distributable Income by reference to its character or class in the hands of the Trustee, even if the Trustee incurred expenses in connection with the derivation of it.
- 3.6 The Trustee may determine:
 - (a) whether any amount is capital or income, including to determine that an amount is income even where it would otherwise be capital under trust law or accounting principles and to determine that an amount is capital where it would otherwise be income under trust law or accounting principles;
 - (b) out of what part of the Trust Fund any expenses or outgoings are to be paid;
 - (c) how values are to be determined; and
 - (d) all matters as to which any doubt, difficulty or question may arise under this document.
- 3.7 The Trustee, in exercising its powers under clauses 2 and 3, may:
 - separately account or adopt accounting procedures or records for each class, category or source of the Distributable Income;
 - (b) allocate costs or deductions as between those sources; and
 - (c) make a decision about those components with reference to their sources.

4 CAPITAL

- 4.1 Subject to this document, the Trustee holds the Capital of the Trust Fund or any part of it on trust for the benefit of any one or more of the Beneficiaries either absolutely or on the terms the Trustee decides until the Vesting Day.
- 4.2 On the Vesting Day, the Trustee holds the Capital of the Trust Fund on trust for those of the Beneficiaries then living or in existence:
 - (a) to the exclusion of the other Beneficiaries; and

- (b) in those shares and proportions,
- as the Trustee determines on or before the Vesting Day.
- 4.3 At the Relevant Time, the Trustee holds the Default Capital on trust absolutely for those Primary Beneficiaries then living, subject to clauses 4.4 and 4.6.
- 4.4 If any Primary Beneficiary dies before the Vesting Day and Default Capital arises, leaving one or more Children:
 - (a) if those Children are living at the Relevant Time, then the Children take the share of the Default Capital that their parent would have taken under clause 4.3 had the parent been living on the Vesting Day; and
 - (b) if any of those Children are not living at the Relevant Time, however are themselves survived by one or more Children who are then living, then those surviving Children take the share of their deceased parent.
- 4.5 For clarity, if the recipient of a gift does not satisfy the requirements in clause 4.4(a) or clause 4.4(b) above then that gift fails and does not pass to any of the recipient's Grandchildren or Great-Grandchildren who may be living on the Vesting Day.
- 4.6 If no person attains a vested interest in the Capital of the Trust Fund under clauses 4.2, 4.3 or 4.4 for any reason, then at the Relevant Time the Trustee holds the Default Capital on trust for the same persons (and in the same proportions) as are entitled to the property of the last Primary Beneficiary to die according to the laws then in force in the jurisdiction where the situs of the Trust Fund is.

5 **ENTITLEMENTS**

- 5.1 Any Beneficiary:
 - (a) in whose favour any decision as to Distributable Income or the Capital of the Trust Fund is made; or
 - (b) who becomes entitled to any part of the Default Income or Default Capital;

is absolutely and presently entitled to the relevant Distributable Income, Capital of the Trust Fund, Default Income or Default Capital on and from the earlier of:

- (c) the date the decision under clause 2 in relation to Distributable Income or clause 4 in relation to Capital of the Trust Fund is made; or
- (d) the Relevant Time in relation to any Default Income or Default Capital.
- 5.2 If:
 - (a) Default Income passes to more than one person under clause 2; or
 - (b) Default Capital passes to more than one person under clause 4,

then those people take the Default Income or Default Capital as tenants in common in equal shares.

6 TRUSTEE DECISIONS

- 6.1 Unless expressly provided otherwise in this document:
 - (a) every discretion whether to make (or not to make) a decision, determination, appointment or nomination vested in the Trustee is absolute and unfettered;
 and

- (b) every power vested in the Trustee is exercisable in the Trustee's absolute and unfettered discretion.
- 6.2 Any decision of the Trustee under clauses 2, 3 or 4 must be recorded by a Resolution of the Trustee.

7 POWERS ABOUT DISTRIBUTIONS

- 7.1 Where the Trustee has decided to hold any amount absolutely for a Beneficiary, the Trustee may do any one or more of the following:
 - (a) place that amount to the credit of the Beneficiary in the books of the Trust Fund, other than as a loan by the Beneficiary, so that it will be held on a separate trust for the Beneficiary, although still part of the Trust Fund;
 - (b) with the prior written consent of the Beneficiary, place that amount to the credit of the Beneficiary in the books of the Trust Fund as an at call loan by the Beneficiary;
 - (c) apply the amount towards satisfying money owing by the Beneficiary to the Trustee, or owing to a third person by the Beneficiary;
 - (d) pay the amount by cheque or electronic funds transfer made payable to or for the credit or benefit of the Beneficiary;
 - (e) pay that amount in cash to or for the benefit (via a third person) of the Beneficiary; or
 - (f) make an in specie transfer of Property of the Trust Fund in satisfaction of that amount.
- 7.2 The Trustee may join the Trust Fund with any other trust fund (whether created by the Settlor or any other person) to cause two or more trust funds to become one trust fund.

Intermingling

- 7.3 The Trustee may intermingle amounts that are held absolutely for any Beneficiary (pursuant to a decision by the Trustee) with the Trust Fund.
- 7.4 If there is intermingling of amounts, the Trustee is authorised to deal with the income or gains so arising as:
 - (a) a part of the Trust Fund; or
 - (b) being held for the Beneficiary.
- 7.5 The Trustee is taken to be acting in the best interests of the Beneficiaries when making any determination under this clause.

8 CLASSES OF INCOME

Primary production

- 8.1 If:
 - (a) the Trustee determines to hold the Distributable Income absolutely for more than one Beneficiary; and
 - (b) the relevant amount includes an amount which is a Net Capital Gain or Net Trust Income from primary production,

then the Trustee may determine the proportions as between the Beneficiaries and the manner to hold any part of that Net Capital Gain or Net Trust Income from primary production.

Franked distributions

- 8.2 If:
 - (a) a franked distribution is received in any Financial Year; and
 - (b) a franking credit under the Act is included in the Net Trust Income,

the Trustee may determine that the whole or any part of the franked distribution and the franking credit is to be held:

- (c) for the benefit of any one or more of the Beneficiaries;
- (d) in any proportions as between those Beneficiaries; and
- (e) otherwise as the Trustee determines.

Estate Property

8.3 If any part of the Trust Fund is Estate Property, the Trustee may in relation to the Estate Property ensure it is treated in a manner that complies with division 6AA Part III of the Act, thereby ensuring that the share of the Distributable Income held absolutely for a Beneficiary who is a prescribed person under the Act is Excepted Trust Income.

Carry forward losses

- 8.4 If in any Financial Year a revenue loss or capital loss is suffered then the Trustee may determine whether to meet all or part of the loss out of Distributable Income or the Trust Fund and may also, instead of debiting all or part of that loss to the Trust Fund:
 - (a) carry all or part of the revenue loss or capital loss forward to the next Financial Year; and
 - (b) recoup all or part of the revenue loss or capital loss out of the profits or Capital Gains of any later Financial Year before the distribution of any Distributable Income.

9 **POWERS OF TRUSTEE**

9.1 In addition to all powers at law, the Trustee has the powers listed at Schedule 1.

10 BENEFICIARIES

- 10.1 The Trustee may from time to time pay or apply the whole or any part of the Distributable Income or Capital of the Trust Fund towards the maintenance, education, advancement or other general benefit of any Beneficiary absolutely.
- 10.2 The Trustee may make any payment for the benefit of a Minor Beneficiary under this document to (or as directed by) the guardian (including themselves) or other person having the care or custody of that Minor, without being responsible as to its application and is not liable to recover any moneys so applied if the recipient fails to attain a vested interest.
- 10.3 No Beneficiary is required to personally indemnify the Trustee or a creditor of the Trust or any sub-trust in relation to any liability, loss, damage or expense either incurred or suffered in connection with the Trust.

- 10.4 The Trustee may at any time by Resolution determine that any person or class of persons is excluded as a Beneficiary of the Trust, with effect from the date specified permanently, for a fixed period or until the determination is revoked by the Trustee.
- 10.5 Any Beneficiary may by notice to the Trustee at any time exclude themselves as a Beneficiary of the Trust and no further amounts (whether income or capital) will be applied to them, however any such notice will not affect the beneficial entitlement to any amount set aside for the Beneficiary or amount held in trust for the Beneficiary prior to the date of the notice.

11 CONFLICTS OF INTEREST

- 11.1 The Trustee may:
 - (a) contract with, or sell or grant options to buy any part of the Trust Fund to;
 - (b) purchase Property from;
 - (c) borrow money from; or
 - (d) enter into any share farming or agistment agreement, lease, tenancy or partnership with,

the Trustee in its own or any other capacity, either alone or in conjunction with any other persons or:

- (e) any company or partnership, even if the Trustee, or any shareholder or director of the Trustee, is a shareholder, director, member or partner of that company or partnership; or
- (f) a Spouse or Child of the Trustee.
- 11.2 The Trustee may exercise (or concur in exercising) all of the powers and discretions contained in this document or otherwise conferred by law, even if:
 - (a) the Trustee, or any director or shareholder of a Trustee that is a company:
 - (i) has or may have any direct or personal interest in the mode or result of exercising that power or discretion; or
 - (ii) may benefit either directly or indirectly as a result of the exercise of that power or discretion;
 - (iii) is a party in its personal capacity to the transaction being contemplated; or
 - (b) the Trustee is the sole trustee.
- 11.3 The Trustee may sell, transfer, dispose, divide in specie, hire or lease any part of the Trust Fund to carry on or carry out any profit making undertaking or scheme in partnership with:
 - (a) the Trustee in any capacity (including its personal capacity, or in its capacity as trustee of another trust fund);
 - (b) any company or partnership, even if the Trustee, or any shareholder or director of the Trustee, is a shareholder, director, member or partner of that company or partnership; or
 - (c) a Spouse or Child of the Trustee.

- 11.4 Any Trustee may act as an officer or employee of any company, any shares or debentures of which form part of the Trust Fund and may retain for themselves any remuneration which they may receive as an officer or employee of such a company, even if:
 - (a) any votes or other rights attached to those shares or debentures may have been instrumental (whether alone or in conjunction with other matters or by reason of their non-exercise) in procuring or continuing in the position as an officer or employee; or
 - (b) their qualification for that position may be constituted partly or wholly by the holding of those shares or debentures.
- 11.5 Any Trustee who is a director of a company, the shares or debentures of which form part of the Trust Fund, may:
 - (a) exercise the voting power as a director in any manner; or
 - (b) refrain from exercising that voting power,

without being in any way liable to any Beneficiary in that respect.

12 PROFESSIONAL CHARGING

- 12.1 If any person acting as a Trustee is a trustee company, lawyer, financial adviser or accountant, that person (or any firm of which they are a member) may charge all usual and reasonable professional fees for professional work done in the administration of the Trust, regardless of whether the work performed is within the normal scope of the profession of which the Trustee is a member.
- 12.2 Any Trustee may charge such commission as is reasonable, with reference to that chargeable by a trustee company under the legislation regulating trustee companies in the jurisdiction where the situs of the Trust Fund is, as if a trustee company subject to the relevant legislation were the Trustee.

13 MANNER OF ACTING

- 13.1 Where two or more people are appointed to act as Trustee or Principal, then unless specifically stated to the contrary, if any one or more of those people are unable to act for any reason then the survivor or survivors of those nominated may act.
- 13.2 The Trustee (and any delegate of a Trustee) must act jointly (if at any time there is more than one), other than in exercising the powers given under clause 20.
- 13.3 A Trustee may:
 - (a) delegate the exercise of all or any powers or discretionary authorities conferred on the Trustee; and
 - (b) sign any power of attorney, appointment of agent, nomination of nominee or bare trustee or other document necessary to give effect to a delegation.
- 13.4 Where anything is to be done by deed, it may be done by stating that the power contained in this clause is being exercised.
- 13.5 Any delegation under this clause:
 - (a) must be made in writing;

- (b) may be made solely by one Trustee (regardless of whether there is more than one Trustee), or jointly by some or all of the Trustees, and is an effective delegation for each Trustee making the delegation; and
- (c) is effective regardless of whether any Trustee making the delegation is out of the State of situs of the Trust at any time.
- 13.6 Any Trustee who is a natural person may appoint any person to be an alternative Trustee in their place, with the appointment effective whenever the Trustee is absent from the place where the Trust Fund is being administered.
- 13.7 No mortgage, charge or other security given or created by the Trustee in respect of the Trust Fund or any part of it is invalid by reason of:
 - (a) any error or omission (whether of law or fact) on the part of the Trustee; or
 - (b) by reason of any breach of duty or trust whatsoever,

unless it can be proved to have been committed, made or omitted in deliberate bad faith by the Trustee. All persons claiming any beneficial interest in, over or to the Trust Fund are deemed to have had notice of the provisions of this clause.

- 13.8 No person dealing with the Trustee is required to enquire as to:
 - (a) the adequacy of the powers of the Trustee in relation to that dealing;
 - (b) the proper exercise by the Trustee of any of the powers, authorities and discretions vested in the Trustee by the provisions of this document; or
 - (c) the propriety or regularity of any transaction affecting the Trust Fund.
- 13.9 In the absence of fraud on the part of any person dealing with the Trustee, that dealing will be deemed (so far as the security and protection of that person is concerned) to be within the powers of the Trustee and to be valid and effectual and the receipt of the Trustee discharges them from all liability.

14 RELEASE AND INDEMNITY

- 14.1 A Trustee is not liable:
 - (a) for the consequences of any act, omission, error or forgetfulness whether of law or fact on the part of the Trustee or their legal or other advisers; or
 - (b) generally for any breach of duty or trust,

unless it is proved to have been committed, given or omitted in bad faith, recklessly or grossly negligently by that Trustee.

- 14.2 Any person claiming a beneficial interest in the Property of the Trust is deemed to have notice of and be subject to the protection of the Trustee under this clause.
- 14.3 The Trustee is indemnified out of the Trust Fund against liabilities incurred by it:
 - (a) in the execution, or attempted execution, of this document;
 - (b) because of the failure to exercise any of the trusts, authorities, powers or discretions of this document; or
 - (c) by virtue of being the Trustee,

unless the loss or liability is proved to be caused by any act or omission or fraud or in bad faith, or the wilful misconduct, recklessness or gross negligence of the Trustee.

14.4 Notwithstanding the provisions of any legislation regulating trusts in the jurisdiction where the situs of the Trust Fund is, the Trustee is not bound to perform any review of the performance of trust investments or bound to obtain and consider independent and impartial advice. The Trustee may exercise absolute discretion with respect to the review of the performance of trust investments and the obtaining of independent and impartial advice.

15 RECORD KEEPING AND DISCLOSURE OBLIGATIONS

- 15.1 The Trustee must:
 - (a) keep complete and accurate records of all receipts and expenditures of the Trust Fund; and
 - (b) as soon as commercially practical after the end of each Financial Year, prepare a written accounting report of the Trust Fund, for that Financial Year, consisting of a:
 - (i) balance sheet;
 - (ii) statement of income and expenditure; and
 - (iii) list of the Property of the Trust Fund held at the end of the relevant Financial Year.
- 15.2 The Trustee and Principal are not required to disclose any reasons or deliberations for any decision made or not made under this document.
- 15.3 Any material recording any determination as to an exercise of discretion or obtained for the purpose of making a determination may be treated by the Trustee and Principal as privileged.
- 15.4 No Beneficiary has the right to inspect or take copies of the accounts of or records relating to the Trust Fund unless a decision to distribute Distributable Income or Capital of the Trust Fund has been made in favour of that Beneficiary.
- 15.5 Any disclosure under this document is restricted to:
 - (a) the calculation of that Beneficiary's entitlement; and
 - (b) confirmation of the distribution or investment for that Beneficiary,

or as otherwise required by law, and the Beneficiary requesting the disclosure must pay the Trustee's reasonable costs of responding to any request (including any costs of seeking advice).

16 **EXCLUSION OF SETTLOR**

- 16.1 Regardless of any other provision of this document or at law:
 - (a) the Trust Fund is to be held and enjoyed to the absolute exclusion of the Settlor, the Settlor's Spouse and the Settlor's Children; and
 - (b) no part of the Trust Fund may be:
 - (i) paid or lent to; or
 - (ii) applied for the benefit, either directly or indirectly, of,

the Settlor, the Settlor's Children or any Spouse of the Settlor, in any manner or in any circumstance.

17 VARIATIONS

- 17.1 Subject to this clause, the Trustee in its absolute discretion may by Resolution at any time before the Vesting Day, with the written consent of the Principal alter, amend, vary or absolutely revoke or resettle all or any of the trusts, powers and provisions set out in this document, including any schedules.
- 17.2 Any attempted exercise of the power under this clause 17 is ineffective to the extent that it would otherwise result in:
 - (a) a share of, benefit from or interest in or under the Trust Fund being acquired by or passing to the Settlor, the Settlor's Children or the Settlor's Spouse;
 - (b) a breach of clauses 2.8 or 16 of this document; or
 - (c) a change in the beneficial interest of any Beneficiary in respect of any amounts they have become absolutely entitled in accordance with clause 5.
- 17.3 The Trustee may at any time renounce or release the power of alteration, variation, revocation or resettlement in this clause, either in respect of the whole or any part of the Trust Fund.
- 17.4 Following any renunciation or release under this clause, that power of alteration, variation, revocation and resettlement is deemed to be at an end and is no longer exercisable by the Trustee to the extent of the renunciation or release.

18 POWERS OF PRINCIPAL

- 18.1 The Principal may at any time by Resolution:
 - (a) appoint any other person (including a company) to be a trustee of the Trust with, or in replacement of, the present Trustee; and
 - (b) retire the Trustee of the Trust.
- 18.2 Without limiting the provisions of this clause, the Principal may:
 - (a) appoint a separate trustee in respect of separate assets of the Trust Fund, including any Asset Sub-Trust;
 - (b) remove a trustee appointed and appoint another trustee in their place; and
 - (c) appoint one or more additional trustees to any Asset Sub-Trusts in respect of which a separate trustee has been appointed.
- 18.3 The Principal may exercise the power to appoint a new trustee under this clause in favour of themselves.
- 18.4 In exercising the powers under this clause:
 - (a) any appointment must satisfy the Subsequent Trustee Criteria; and
 - (b) the Principal may not in any circumstance exercise the power in favour of the Settlor.

19 RETIREMENT OF PRINCIPAL

- 19.1 Each Principal may:
 - (a) retire as a Principal at any time;

- appoint a successor or successors at any time, whether in addition to or substitution for themselves;
- (c) specify that a successor's appointment is effective:
 - (i) immediately;
 - (ii) upon the Principal's retirement; or
 - (iii) upon any Event of Disqualification happening to the Principal or another nominated successor: and
- (d) if an appointment of a successor has not become effective, revoke the appointment.
- 19.2 A Principal who wants to retire, or to appoint a successor, under this clause:
 - (a) can do so by Resolution or (if the Principal is a natural person) by will; and
 - (b) must give written notice of the retirement or appointment to the Trustee.
- 19.3 The retirement and appointment of a Principal is effective from the date of the written notice, unless otherwise stated.
- 19.4 The powers of a Principal cease on any Event of Disqualification happening to them.
- 19.5 Unless otherwise provided for under this clause, if all of the Principals have ceased to act before the Vesting Day, then the new Principal is the Default Successor.
- 19.6 Apart from the circumstances set out in this document, the powers of the Principal are personal to the persons nominated and cannot be exercised by any other person, entity or court.

Joint Principals

- 19.7 Each Principal may exercise the power in clause 19.1 severally, so that each Principal may independently appoint their successor but not the successor of another Principal.
- 19.8 Subject to clause 19.7, if there are two or more Principals they must exercise their powers jointly.

Subtrusts

- 19.9 In relation to any Asset Sub-Trust, the provisions of this clause apply separately in relation to each such appointment, such that:
 - (a) a Principal may appoint and remove trustees of an Asset Sub-Trust without altering the appointment for the remainder of the Trust Fund;
 - (b) a Principal may appoint their successor for the purposes of this clause in respect of an Asset Sub-Trust, without impacting any other parts of the Trust Fund; and
 - (c) a Principal may appoint different successors for each Asset Sub-Trust.

20 RETIREMENT OF TRUSTEE

- 20.1 A Trustee who wishes to retire:
 - (a) may do so by Resolution; and

- (b) must give notice of the retirement to the Principal and to any remaining Trustees.
- 20.2 The retirement of a Trustee is effective as at and from the date of the notice, unless otherwise set out in the notice.

21 OFFICE OF THE TRUSTEE

- 21.1 The powers of the Trustee cease on an Event of Disqualification happening to the Trustee.
- 21.2 Subject to this document and the legislation regulating trusts in the jurisdiction where the situs of the Trust Fund is, if all of the Trustees have ceased to act before the Vesting Day, then the new Trustee is the Default Successor.
- 21.3 Apart from the circumstances set out in this document, the powers of the Trustee are personal to the persons nominated and cannot be exercised by any other person, entity or court.
- 21.4 On retirement or removal of a Trustee, the Trustee must:
 - (a) hand over the books, accounts, documents and Property of the Trust to the new trustee:
 - (b) do everything necessary to vest the assets of the Trust in the new trustee;
 - (c) do everything reasonably required by the new trustee to hand over to the new trustee possession and control of any assets registered with third parties; and
 - (d) do all other things reasonably required by the new trustee to inform the new trustee of the arrangements of the Trust.

22 **GOVERNING JURISDICTION**

- 22.1 This document is governed by and is to be construed in accordance with the laws of New South Wales.
- 22.2 The situs of the Trust Fund is deemed to be New South Wales. However the Trustee may at any time determine by Resolution that this settlement takes effect and that the administration of the Trust Fund is to be in accordance with the laws of the state, territory or country in which the Trustee is domiciled, resident or has a place of business.

23 INTERPRETATION

- 23.1 In this document:
 - (a) singular words include the plural, and vice versa;
 - (b) each word suggesting a gender includes all other genders, including neutral gender;
 - (c) a reference to a person includes natural persons, firms, companies and any form of a corporation, trustee, trust, partnership, associations, unincorporated body, government and local authority or agency, or any other entity whether or not it comprises a separate legal entity;
 - (d) a reference to a clause, schedule or annexure are references to this document and references to this document include every clause, the matters set out in the Overview and any schedules or annexures;

- (e) if any person signs this document on behalf of a party pursuant to a power of attorney, they confirm that there is nothing that impacts on their authority to do so;
- (f) a reference to a document or agreement (including a reference to this document) means that entire document or agreement (including all schedules or annexures) as amended, supplemented, novated, varied or replaced;
- (g) a reference to a person includes that person's estate successors, legal personal representatives, executors, administrators, permitted substitutes and permitted assigns;
- (h) where any word or phrase is defined in this document, its other grammatical forms have a corresponding meaning;
- (i) a reference to this document includes the agreement recorded by this document;
- (j) headings and any table of contents are not to be taken into account in the construction of this document;
- (k) a reference to legislation or to a modified, rewritten, consolidated provision or section of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (I) the applicable time zone for any action required under this document is the one applying in the situs of the person responsible for performing the action;
- (m) a reference to writing includes printing, typing, copying, facsimile, and any other method of representing words, symbols, figures or drawings in a visible and tangible manner or electronically;
- (n) if any part of this document is illegal or unenforceable it can be severed, with the remaining clauses (or parts of the clause) remaining in force;
- if any part of this document is illegal or unenforceable in any jurisdiction, it can be severed in the relevant jurisdiction, with the remaining clauses (or parts of the clause) remaining in force;
- (p) unless this document provides for a notice or communication to be given orally, any notice or other communication must be in writing and signed by the person giving the notice and be addressed to the address of the person to whom it is to be given;
- (q) a reference to 'month' means a calendar month;
- (r) if any provision of this document is ambiguous, it is to be interpreted broadly to widen and not restrict the provisions;
- (s) where an expression is defined anywhere in this document, it has the same meaning throughout; and
- (t) a reference to 'dollars' or '\$' is to an amount in Australian currency.

Notices

23.2 A notice or other communication is deemed to be received:

- in the case of a posted letter, on the second Business Day after posting where sent by Australia Post's 'express post' service and if not, then on the seventh Business Day after posting;
- (b) in the case of delivery by generally recognised overnight courier, on the next Business Day after dispatch with that courier;
- (c) in the case of personal delivery, on the date of delivery;
- (d) in the case of facsimile transmission, at the time recorded on the transmission report from the machine from which the facsimile was sent; and
- (e) in the case of transmission by email, on the day of transmission if there is confirmation that the transmission was completed before 5.00pm on a Business Day, and alternatively, on the next Business Day. Email service is effective only if there is confirmation that it was sent in full and without error and the message is not rejected or undeliverable as evidenced by a message to that effect received by the sender.

Counterparts

23.3 This document may be signed in any number of counterparts and all counterparts together make one document.

SCHEDULE 1 - POWERS OF TRUSTEE

A The Trustee may:

Generally deal with Trust Fund

- (1) sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, grant security interests in, carry on business, or otherwise deal with, dispose of or transfer any item or asset comprising the whole or part of the Trust Fund or otherwise held by the Trustee under the terms of the Trust:
 - (a) for such consideration; and
 - (b) on such terms as in its discretion it may think fit as if it were the absolute and beneficial owner of the Trust Fund;

Discretion

- (2) allow all or any part of the Capital of the Trust Fund to be invested as authorised by this document;
- (3) invest or reinvest in any form of investment:
 - (a) authorised by law or not;
 - (b) with or without disclosing the Trust; and
 - (c) whether alone, jointly or in partnership with others including with the Trustee acting in any capacity;
- (4) postpone the sale, calling in, realisation or conversion for any period, even if the asset is wasting, speculative or reversionary in nature;
- (5) vary or transpose investments;

Forms of investment

- (6) invest in any manner the Trustee determines, for example:
 - (a) Property;
 - (b) syndicates of any kind;
 - (c) Derivative Transactions;
 - (d) Master Agreements;
 - (e) crowd sourced funding;
 - (f) bank accounts and investments;
 - (g) debentures and unsecured notes;
 - (h) insurance bonds;
 - (i) shares, units and convertible notes;
 - (j) franchises;
 - (k) government securities; or
 - (I) common fund investments;

Power to lend

- (7) lend moneys forming part of the Trust Fund, or give credit to any person or company (including any company any Beneficiary may own shares in or is a director of) on such terms as the Trustee may decide:
 - (a) at call or for a period of time;
 - (b) at a rate of interest or at no interest; and
 - (c) with the taking of security in any form or without security;

Power to borrow and to provide security

- (8) raise or borrow moneys either alone or jointly with another or others, from any person including a firm or company, either bearing or free of interest and on terms and for purposes as the Trustee may decide;
- (9) secure the repayment of any moneys or other indebtedness by mortgage, charge or other security or encumbrance over the whole or part of the Trust Fund as the Trustee may decide;

Property

- (10) hold, use or buy;
- (11) construct, demolish, maintain, repair, renovate, reconstruct, erect, develop or improve;
- (12) sell, transfer or convey (including by auction, contract, tender or option);
- (13) manage, hire, surrender, let, licence or lease on any terms all or any part of the Property (including, for example, for a period of more than 21 years);
- (14) receive livestock on agistment;
- (15) buy stock, plant, equipment and fittings;
- (16) make allowances to and arrangements with tenants, including where a tenant is a Beneficiary;
- (17) take on lease or exchange:
- (18) take or grant options or rights in, including easements or any other right;
- (19) exchange for other Property, either with or without consideration;
- (20) alienate, mortgage, charge or pledge;
- (21) allow any Beneficiary to occupy, utilise or have custody on whatever terms the Trustee determines, including free of any charge or only requiring reimbursement of expenses;
- (22) reconvey, release or discharge, or otherwise deal with any Property;
- (23) apply for, buy or otherwise acquire any patents, patent rights, copyrights, designs, trademarks, formulas, licences, concessions and anything else conferring exclusive, non-exclusive or limited rights to use any secret or other information about any invention:
 - (a) which may be capable of being used for any of the purposes of the Trust Fund; or

- (b) the acquisition of which may benefit the Trust Fund;
- (24) use, exercise, develop or grant licences in respect of or otherwise turn to account any Property rights or information acquired;
- (25) co-own with any other person, to any degree and on any terms,

any Property;

Commercial bills

(26) draw, endorse, accept, guarantee or be a party in any way to a commercial bill or other bill of exchange, promissory note, letter of credit, hypothecation or other facility involving the raising, borrowing or lending of moneys by or to the Trustee;

Open bank accounts

- (27) open any account with any bank or other financial institution for any of the purposes and deposit money in, withdraw money from and operate the account;
- (28) authorise other persons to operate an account or sign any of the instruments set out above;

Attorney

(29) appoint any person as the representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this document or by law and to revoke any appointment;

Record and value assets

- (30) record as an asset in the books of the Trust any identifiable Property, interest, right or benefit relating to the Trust Fund, regardless of whether it would be recognised as an asset at law or under any relevant accounting standards.
- (31) allocate a value to any identifiable Property, interest, right or benefit recorded as an asset in the books of the Trust;

Delegate

(32) authorise any person to act as its agent, attorney or delegate to hold any investment being part of the Trust Fund as custodian and to perform any act or exercise any discretion within the Trustee's power including the power to appoint in turn its own agent, attorney or delegate. The appointment may be in respect of more than one delegate or severally and may include provisions to protect those dealing with the agent, attorney or delegate;

Guarantees and indemnities

(33) guarantee, indemnify, secure by way of mortgage, charge or otherwise over the whole or part of the Trust Fund or undertake in any way the payment or repayment of money or debts (including any interest whether existing or to accrue) previously or then lent or to be advanced or any existing or future duties, undertakings, liabilities or obligations incurred or which may at any future time be incurred by any person whether a Beneficiary or not and to guarantee, indemnify or secure, with or without security, the due performance of any contract, agreement, covenant or obligation of any person whether a Beneficiary or not, either with or without security and either alone, jointly, severally or jointly and severally;

Agree and settle accounts

- (34) agree and settle accounts with all persons (including the Trustee) liable to account with the Trustee about the Trust Fund;
- (35) sign effectual receipts, releases and discharges;

Insurance

- (36) buy or acquire (with or without any options, rights, benefits, conditions or provisions):
 - (a) any reversionary, deferred proprietary or other rights; or
 - (b) any life, life endowment, sinking fund, term or other policy of insurance or assurance of any nature;
- (37) pay any amount payable, for premiums or otherwise:
 - (a) to effect or maintain any policy of insurance or assurance (whether or not owned by the Trustee); or
 - (b) for the exercise or enjoyment of any option, right or benefit under any policy,

and the surrender of any policy for all purposes may be deemed by the Trustee to be a sale of the policy;

(38) if it is necessary to make any claim under a policy, do all things and sign all documents for the perfection or enforcement of any rights arising from or in connection with any policy;

To mix funds

- (39) mix the Trust Fund including its income and any other moneys held from time to time by the Trustee pursuant to these trusts with other moneys held by the Trustee pursuant to any provision of this document or under any other trust and:
 - to invest the moneys so mixed in any investment, Property, interest, arrangement or business or in any other mode or manner in which the Trustee may by law or by this document be empowered to invest the Trust Fund;
 - (b) to exercise all powers, authorities and discretions with respect to the mixed fund which the Trustee is by this document or by law authorised to exercise with respect to the Trust Fund; and

(c) to make arrangements with respect to the moneys and their investment with any other person as the Trustee would be authorised or empowered by law or by this document to make or enter into:

Lease or hire

- (40) take on lease, hire purchase, or in exchange, and enter into leasing agreements and hire purchase agreements in relation to, using money of the Trust Fund or any Property as it determines;
- (41) sign a surrender of lease of any Property with or without consideration;

Share acquisition

- (42) enter into any contract, agreement or arrangement for the subscription, allotment, issue, purchase or acquisition of shares or other securities of any company or trust registered anywhere in the world;
- (43) agree to or concur in any amendment or variation to the constitution or any scheme of arrangement of any company or trust;

Conflicts of interest

- (44) exercise or concur in exercising all powers and discretions given under this document or by law notwithstanding that:
 - (a) it, or any person being a director or shareholder of the Trustee has or may have a direct or indirect interest in the mode or result of exercising the power or discretion or may benefit either directly or indirectly as a result of the exercise of the power or discretion; and
 - (b) the Trustee for the time being is the sole trustee;

Decide action

- (45) decide or refer to an appropriate court, tribunal, arbitrator or mediator any action, proceeding, dispute, claim or demand;
- (46) settle all claims or accounts relating to the Trust Fund;
- (47) sign releases and do all things determined as appropriate;

Carry on business

- (48) carry on any business, either alone or in partnership, with the same powers as if the business belonged to the Trustee absolutely;
- (49) enter into, vary or terminate any partnership or profit sharing or other similar arrangement with any Trustee in their own capacity or any other capacity, and with or without any other person;
- (50) operate any bank account opened by or on behalf of any business in which the Trustee is concerned or interested;

Establish and support a related entity

- (51) establish and support out of the Trust Fund any company, association, institution or other fund (including a superannuation fund) designed in any way to benefit:
 - (a) any Beneficiary; or

- (b) the employees or ex-employees of any company, partnership, association or syndicate in which the Trust Fund may have invested;
- (52) grant pensions and allowances;

Power to appropriate trust fund in specie

(53) appropriate in specie any portion of the Trust Fund, or any investment to or towards the share or entitlement of a beneficiary and to charge the share or entitlement with a sum of money by way of equality as the Trustee may think fit and for these purposes the Trustee may fix the value of any Property forming part of the Trust Fund and the appropriation, charge and valuation will be binding on all persons who may at any time be entitled to any interest in the Trust Fund;

Pay expenses

- (54) pay out of the Capital of the Trust Fund or the Distributable Income all costs, charges and expenses incidental to the:
 - (a) management of the Trust Fund;
 - (b) exercise of any power, authority or discretion; or
 - (c) carrying out or performing the role of Trustee of the Trust,

which the Trustee incurs in any part of the world, including without limitation all:

- (d) taxes in respect of the Trust Fund;
- (e) liabilities incurred in carrying on any business or owning any Property;
- (f) costs in any way connected with the Trust Fund; and
- (g) amounts by way of penalty, settlement, probate, estate gift, stamp or revenue duty;

Employ

- (55) employ any person (including any Beneficiary or the Trustee) in connection with any activities of the Trustee or in connection with anything required to be done under this document;
- (56) determine the remuneration to be allowed and paid in respect of any employee;
- (57) create or arrange any scheme of superannuation or similar arrangements for the benefit of any employee;
- (58) act personally and charge and be paid from the Trust Fund a reasonable remuneration;
- (59) instead of acting personally, employ at the expense of the Trust Fund any agents, managers, advisers and accountants (including any Beneficiary);

Trustee's power to deal with itself

(60) notwithstanding any rule of law to the contrary, to acquire for the Trust Fund any Property the beneficial interest in which is at the date of acquisition the absolute property of the Trustee in its own right or as trustee of another fund provided that any Property so acquired is acquired for a consideration being not greater than the current market value of the Property and upon acquisition the beneficial interest in the Property will be held by the Trustee upon the trusts contained in this document;

Protection

- (61) take any action for the adequate protection of the Trust Fund;
- (62) take and act upon the opinion of any lawyer practising in any jurisdiction where the Trust Fund or any part of it is invested:
 - (a) about the status or the administration of the Trust; and
 - (b) without being liable to any person for any act done by the Trustee consistent with that opinion (although nothing in this clause prevents the Trustee or any Beneficiary from applying to any court);
- (63) do all other things incidental to the exercise of the powers and authorities conferred on the Trustee;

Hold Property for any other trust

- (64) cease to hold any part of the Trust Fund on the terms of this document;
- (65) start to hold that part of the Trust Fund on any other trust which is on the same terms as the Trust (including a trust which is not a potential beneficiary of the Trust);

Elections

(66) access any concessions, exemptions, roll-overs or other relief that may be available in relation to any duty, costs or tax payable in respect of the Trust Fund, including by making any elections or choices available under the Act. For clarity, this includes making (without limitation) any elections or choices involving family trust elections, interposed entity elections and capital gains tax roll-over choices or elections;

Release of powers

(67) by revocable or irrevocable deed renounce and release any power conferred on the Trustee under the Trust in respect of the whole or part of the Trust Fund or the income and upon the renunciation and release coming into effect, the power is to be taken to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release;

Merger

- (68) concur in the merger or takeover of any company or trust in which shares or other securities forming part of the Trust Fund are held;
- (69) to exercise any rights attaching to shares or units in any company or trust held by the Trustee;
- (70) otherwise consent to or take part in any corporate action;

Nominee

- (71) allow any asset of the Trust Fund to be held or registered in the name of any nominee or agent;
- (72) deposit securities over or titles in the Property of the Trust Fund with any bank or other lender or guarantor;

Directorships

(73) become a director of any company in which any moneys forming part of the Trust Fund are from time to time invested and receive the remuneration attached to the office without being liable to account;

Gift or advance

(74) make out of the Trust Fund to any person any gifts or advances for any reason, even if not for religious, charitable or benevolent purposes or objects;

Power to advance

(75) to advance amounts (including Capital of the Trust Fund) to Beneficiaries for any reason;

Accept gifts

(76) accept, from any person, including via will, from the settlor or from the trustee of another trust (and from the Trustee itself acting in its personal capacity or in its capacity as the trustee of any other trust) any gift, transfer or disposition of any Property to be part of the Trust Fund.

SCHEDULE 2 - KEY DETAILS

	T		
DATE OF THIS TRUST	111	01/2006	
NAME OF THE TRUST	мм т	MM Trust	
SETTLOR	Leigh Paillas of 5 Torquay Street, Greenhills Beach, NSW 2230		
SETTLEMENT SUM	Ten dollars		
INITIAL TRUSTEE	LOIS M HOLDINGS PTY LTD - ACN 117 823 677 of Suite 2, Level 2, 37-39 The Corso, Manly, NSW 2095		
PRINCIPAL	Means:		
	(a) Kevin Hurley; and		
	(b) any other person appointed under this document		
PRIMARY BENEFICIARIES	Means Kevin Hurley.		
SECONDARY BENEFICIARIES	Means:		
	(a) Amanda McMullen;(b) each of the following in relation to a Primary Beneficiary:		
		(i) a Spouse;	
		(ii) any Children, Grandchildren or Great- Grandchildren;	
		(iii) any sibling, niece, nephew, aunt, uncle or cousin;	
	(c) each of the following in relation to the above- mentioned Secondary Beneficiaries:		
•		(i) a Spouse;	
		(ii) any Children; and	
		(iii) any Grandchildren or Great- Grandchildren; and	
	(d) any parent or grandparent of a Primary Beneficiary.		

TERTIARY BENEFICIARIES Means: (e) the trustee of any trust or settlement in existence on or before the Vesting Day in which:

- (i) any of the Primary Beneficiaries or Secondary Beneficiaries is named as a beneficiary or is a member of a class of beneficiaries named in that trust; and
- (ii) none of the capital or income is or may be held for the Settlor;
- (f) any company in existence on or before the Vesting Day in which:
 - any individual Primary Beneficiary or Secondary Beneficiary is a director of;
 - (ii) any one or more of the Primary Beneficiaries or Secondary Beneficiaries is a beneficial owner of shares of any type; or
 - (iii) shares of any type are owned by or on behalf of the trustee of any trust referred to in paragraph (a) of this definition; or
 - (iv) the Trustee owns shares of any type;
- (g) any religious, charitable, educational (primary, secondary or tertiary) or benevolent institution that by Resolution the Trustee appoints;
- (h) any person (including the trustee of any other trust or settlement or superannuation fund in which the Settlor has no right to capital or income) that by Resolution the Trustee appoints;
- (i) the trustee of any unit trust which has as a unitholder the trustee of any trust referred to in paragraph (a) of this definition; and
- (j) the LPR of any of the Primary Beneficiaries or Secondary Beneficiaries.

APPLICABLE LAW

The laws of New South Wales.

EXECUTION

Dated on the date set out in Schedule 2, being the date the last party signed this document **EXECUTED** as a deed

The Settlor

Signed, Sealed and Delivered by Leigh Paillas in the presence of:

Leigh Paillas Settlor

Witness Name / Signature

Amanda McMullen

Director

The Initial Trustee

Signed, Sealed and Delivered by LOIS M HOLDINGS PTY LTD - ACN 117 823 677 by:

Kevin Hurley

Director