

# TURTLES SUPER TRUST

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This Deed is made on the Deed Date.

**BETWEEN:** The parties named in Item 2 in the Schedule.

**RECITALS:**

- A. The Trustee has agreed to hold the Asset or has acquired or agreed to acquire the Asset on behalf of the Beneficiary.
- B. The Trustee has at all relevant times agreed to act as a trustee for the Beneficiary on the terms set out in this Deed.
- C. The Trust created by this Deed will be known by the name in Item 3 in the Schedule.
- D. The parties wish to enter into this Deed to record the arrangements between them.

**OPERATIVE PART:**

**1. DEFINITIONS & INTERPRETATION**

**1.1 Definitions**

In this Deed, unless the context or subject matter requires otherwise:

**Act** means the Superannuation Industry (Supervision) Act 1993;

**Applicable Law** means the law of that place in which the Asset is located;

**Asset** means the property or asset described in Item 4 in the Schedule and all additions and appurtenances to it and/or any Replacement Asset;

**Deed** means this Deed;

**Deed Date** means the date specified in Item 1 in the Schedule;

**Replacement Asset** has the same meaning as in Section 67B(2) of the Act;

**Schedule** means the Schedule included in this Deed;

**Sell** or **Sold** include sell, agree to sell, transfer, lease, assign, grant options and/or any other form of disposing of, or creating an interest in, the thing being considered whether or not consideration passes or is given, and **Buy** or **Purchase** will be interpreted correspondingly;

**Trust** means the Trust established by this Deed.

**1.2 Interpretation**

- (a) Each party to this Deed will be referred to in this Deed by the description against their name in Item 2 in the Schedule.
- (b) In the interpretation of this Deed, unless the context or subject matter requires otherwise, references to:
  - (i) **singular** words include the **plural** and vice versa;
  - (ii) any **gender** include every gender;
  - (iii) **persons** include natural persons, firms, companies, corporations, bodies corporate, trustee, trusts, charities, associations, partnerships, government authorities, and other legal entities. It will include

references to that person's estate, personal representatives, executors, administrators, substitutes, successors and assigns;

- (iv) **writing** include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible or electronic form, in English;
  - (v) **signature** and **signing** means due execution of a document and include signing by an agent or attorney or representative;
  - (vi) **months** mean calendar months;
  - (vii) **statutes** include statutes amending, modifying, rewriting, re-enacting, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws, orders in council and ordinances made under those statutes;
  - (viii) **sections** of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
  - (ix) an **agreement** or **document** (including this Deed) means that agreement or document as varied, amended, novated or supplemented and includes all recitals, schedules, appendices and exhibits to it;
  - (x) **clauses** or **schedules** are references to the clauses or schedules of this Deed.
- (c) The following rules apply, unless the context or subject matter requires otherwise:
- (i) **headings** and the **table of contents** are used for convenience only and must be disregarded in the interpretation of this Deed;
  - (ii) if a word or phrase is given a **defined meaning**, another grammatical form of that word or phrase has a corresponding meaning;
  - (iii) where a person is entitled to **vote** or holds the **right to vote** on any matter under this Deed, the person may vote by proxy or attorney or representative. A reference to a person being present means present in person or by proxy.

## 2. DECLARATION OF TRUST

The Trustee covenants with the Beneficiary and declares and acknowledges that:

- (a) the Trust evidenced by this Deed will arise upon the execution by the Trustee of an agreement for the acquisition of the Asset;
- (b) the Trustee will hold the Asset as trustee for the Beneficiary (who has provided all of the purchase moneys) upon the trust contained in this Deed;
- (c) the Trustee has not and will not provide any of the purchase moneys and the real purchaser of the Asset is the Beneficiary;
- (d) no part of the Asset will ever revert to or be held in trust for any person other than the Beneficiary;
- (e) the Beneficiary is absolutely entitled to the Asset as against the Trustee;
- (f) the Beneficiary is absolutely entitled to the benefit of the Asset together with all earnings, profits or gains accrued or to accrue in respect of the Asset; and
- (g) nothing in this Deed entitles the Trustee to beneficial ownership of the Asset or deprives the Beneficiary of the rights of beneficial ownership (including the right of possession) of the Asset.

## 3. CAPITAL PROVISIONS

The Beneficiary may at any time after the Deed Date, by notice to the Trustee, require the Trustee to transfer the legal title and estate in the Asset to the Beneficiary and the Trustee must transfer the legal title and estate to the Beneficiary but only as allowed under Section 67A of the Act.

#### **4. AUTHORISATION**

The Trustee is directed and authorised by the Beneficiary to complete an agreement for the acquisition of the Asset and the registration of a transfer of the legal title of the Asset to the Trustee as instructed by the Beneficiary including granting any charge or security in relation to the Asset but only to the extent permitted under Section 67A of the Act.

#### **5. EXERCISE OF RIGHTS**

##### **5.1 Beneficiary's instructions**

- (a) The Trustee must comply with the instructions or directions of the Beneficiary in relation to the Asset.
- (b) The Trustee must not deal with the Asset without the prior written direction of the Beneficiary.

##### **5.2 Trustee not to Sell etc.**

The Trustee must not Sell, encumber or otherwise use the Asset or any part of it as security for any obligation except at the direction of the Beneficiary.

##### **5.3 Guarantees and indemnities**

The Trustee is directed and authorised by the Beneficiary to give any guarantee and/or indemnity:

- (a) for the discharge or performance of any obligation or the payment of moneys relating to the Asset;
- (b) given to secure the obligations of the Beneficiary.

#### **6. AMENDMENTS**

The Trustee may, with the prior consent of the Beneficiary, and must if directed by the Beneficiary:

- (a) revoke, add to, release, delete, resetttle or vary all or any of the provisions of this Deed (including this clause);
- (b) revoke, add to, release, delete, resetttle or vary all or any of the provisions contained in any variation, alteration or amendment to this Deed.

#### **7. CHANGING THE TRUSTEE**

##### **7.1 Trustee may resign**

Any Trustee may resign the office of Trustee by giving written notice to the Beneficiary. The Trustee does not have the power to appoint a new Trustee upon resignation.

##### **7.2 Beneficiary may remove**

The Beneficiary has the power to remove any Trustee from office without the consent or approval of any person.

##### **7.3 Beneficiary may appoint**

The Beneficiary has the power to appoint a Trustee:

- (a) as a replacement to any Trustee who resigns or is removed or whose office is vacated for any reason; and/or
- (b) as an additional or continuing Trustee in addition to any other Trustee.

#### **7.4 Simultaneous appointment**

The Beneficiary is not obliged to appoint a new Trustee unless, without an appointment, there would be no Trustee. If the resignation or removal of a Trustee would leave the Trust without a Trustee, then a new Trustee must be appointed immediately upon the resignation or removal of the Trustee.

#### **7.5 Trustee discharged**

- (a) When a Trustee has been removed or has resigned in accordance with this Deed:
  - (i) that Trustee will be discharged from the trusts in this Deed to the extent allowed by law from the effective date of removal or resignation; but
  - (ii) without affecting any liability of the Trustee which has accrued, or may accrue, because of any thing done, or omitted to be done, by the Trustee prior to the effective date of removal or resignation; and
  - (iii) without affecting any obligation of the Trust or any liability of the Trust arising under any agreement or security to which the Trust is a party entered into prior to the removal or resignation of the Trustee.
- (b) Where a sole Trustee is removed or resigns, this clause will be effective to discharge that Trustee only upon the appointment of a new Trustee.

#### **7.6 Trustee may be one or more**

The number of Trustees may be one or more at any time. The number of Trustees may be increased or reduced at any time, provided that there is at all times at least one Trustee. For the avoidance of doubt, two or more Trustees may be replaced with one Trustee, or all Trustees except one may resign or be removed or replaced, and those Trustees that resign or are removed or replaced will be discharged from their obligations under this Deed, to the extent specified in clause 7.5.

#### **7.7 Vest in new Trustee**

- (a) Upon the resignation or removal of a Trustee the Asset will immediately vest in the person or persons holding the office of Trustee following the resignation or removal. Any Trustee resigning or being removed must deliver to the new Trustee all books, documents, records and other property relating to the Asset and must promptly do all acts, matters and things necessary to vest the Asset in the new Trustee.
- (b) Any new Trustee must execute a deed in which the new Trustee undertakes all of the obligations of a Trustee under this Deed as if named originally as Trustee and agreeing to be bound by this Deed.

### **8. INDEMNITY**

- (a) The Trustee will be entitled to be indemnified out of the property of the Trust against all liabilities incurred in the execution of any powers or obligations in relation to this Trust, and/or all actions, proceedings, costs, claims and demands relating to any matter or thing done, or omitted to be done, concerning this Trust or the Asset.
- (b) The indemnity in (a) applies only to the Asset and, for the avoidance of doubt, the Trustee has no right to claim in respect of that indemnity against the Beneficiary except in respect of the Asset.

### **9. JURISDICTION**

This Deed is governed in accordance with the Act and the Applicable Law. The rights and obligations of the Trustee and the Beneficiary, and every question arising in relation to this Deed and the Trust, will be regulated by the Act and the Applicable Law.

**10. SEVERANCE**

If any provision in this Deed is by law unenforceable, invalid or made inapplicable, it will be severed or read down, but only so as to maintain as far as possible all other provisions in this Deed.

**11. COUNTERPARTS**

This Deed may be signed or executed in a number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.



Executed as a Deed

**EXECUTED AS A DEED** by TURTLES FUND )  
PTY LTD ACN 654 724 679 As Trustee For )  
TURTLES SUPERANNUATION FUND. )

\_\_\_\_\_  
ANDREW JAMES KERR  
Director

\_\_\_\_\_  
STACEY ANN KERR  
Director

**EXECUTED AS A DEED** by TURTLES SUPER )  
PROPERTY PTY LTD ACN 654 724 857. )

\_\_\_\_\_  
ANDREW JAMES KERR  
Director

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STACEY ANN KERR  
Director