

**Sample 2010-03-26 Discretionary Trust**

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**Messrs Smith & Partners  
Unit 4  
4 Gladstone Road  
Castle Hill NSW 2154**

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THIS DEED is dated as provided in Schedule 1 and is made BETWEEN the Settlor named in Schedule 1 of the one part AND the Trustee named in Schedule 1 of the other part.

RECITALS:

- (a) The Settlor desires to establish by this Deed a Trust to make certain provisions for the benefit of Beneficiaries as herein provided.
- (b) The Settled Sum referred to in Schedule 1 has been paid to the Trustee by the Settlor (the receipt whereof is hereby acknowledged) to be held upon the Trusts herein declared.

NOW IT IS WITNESSED:

1. In this Deed the words in Schedule 4 shall have the meanings as contained therein unless the context otherwise requires.

**SETTLEMENT**

2. (a) The Settlor settles by this Deed upon the Trustee the settled sum to hold the Trust Fund upon the trusts contained in this Deed and with the powers contained in Schedule 3.
- (b) The name of the trust and the proper law of the trust are contained in Schedule 1.

**INCOME DISTRIBUTION**

3. (a) Subject to paragraph 5 and to this paragraph, the Trustee shall each financial year (or within two months thereafter) distribute the whole of the Income of the Trust Fund to the Income Beneficiaries, but the Trustee in its absolute discretion shall determine the proportion or amount of the Income of the Trust Fund for that financial year to be paid between the Income Beneficiaries.
- (b) Prior to the close of any financial year (or within two months thereafter) the Trustee may:
  - (i) determine that the whole or part of the Income of the Trust Fund from a specific investment ("the attributable income") may be distributed to any one or more of the Income Beneficiaries to the exclusion of the other or others, or accumulated (to the extent permitted by this Deed) to the intent that such income is distributed in specie and in the event that the Trustee so determines the attributable income may be so distributed and the books of account of the Trust Fund may be made up to reflect the income from the specific investment and so that the expenses attributable to the gaining or producing of that income are appropriately charged against that income and generally so that it is possible to trace the source of such attributable income to the particular Beneficiary or Beneficiaries and the list provided by sub- paragraph (g) shall be made up to reflect that determination.

- (ii) determine that the whole or any part of the income of the Trust from a particular category as provided in sub-paragraph (c) may be distributed to any one or more of the Income Beneficiaries to the exclusion of any other or others or accumulated, (to the extent permitted by this Deed) and become part of the Corpus of the Trust Fund, and so that, subject to the Trustee otherwise determining, the expenses attributable to the gaining or producing of that income are appropriately charged against that income and generally so that it is possible to trace the source of such distribution to the particular Beneficiary or Beneficiaries and the list provided by sub paragraph (g) shall be made up to reflect that determination. The whole or any part of the Corpus of a category may at the discretion of the Trustee be distributed in accordance with paragraph 4.
- (c) The Trustee may in the books of account and records of the Trust separately record each of the following categories of income received into the Trust Fund:
- (A) dividends which under the Act:
- (i) are fully franked;
  - (ii) are unfranked;
  - (iii) to which a foreign credit attaches; or
  - (iv) any other separately identifiable taxation consequences or benefit is attached or arises.
- (B) income, including capital gains, which under the Act:
- (i) has an Australian source;
  - (ii) has an ex-Australian source;
  - (iii) has a foreign tax or other credit attached;
  - (iv) is exempt from tax or subject to differing rates of tax or tax investment; or
  - (v) has or gives rise to any other separately identifiable taxation consequences or benefit including and without limitation income from assets held by the Trustee in the nature of life insurance policies or their proceeds or any other asset that may give rise to income that is excepted trust income for the purposes of the Act.
- (d) The Trustee may identify and separately record and maintain in the books of account and records of the Trust, Income or Corpus having, or in respect of which there is attached, individual or unique characteristics other than as referred to in the preceding sub-paragraph as the Trustee determines.
- (e) Expenses and outgoings of the Trust Fund may at the discretion of the Trustee be allocated against and deducted from the Income or Corpus of any one or more categories in such manner as the Trustee sees fit.
- (f) The Trustee may at any time during a financial year distribute income to any Income Beneficiary in such amount as it thinks fit. The Trustee shall keep a record of payments made in accordance with this paragraph and the time of making payment to Income Beneficiaries and at the end of each financial year take into account such payments as the Trustee sees fit.
- (g) The Trustee shall in respect of each financial year prepare a list which shall provide as follows:-

- (i) the name of each Income Beneficiary;
- (ii) the proportion of income and/or amount of income and/or the amount of attributable income, and/or the amount or proportion of income from a category, if any, which the Trustee in its absolute discretion decides to distribute to each or any Income Beneficiary. The Trustee may express each proportion as a percentage of the total income and the percentage may include the figure 100% or 0% and such proportion of income and/or amount of income and/or amount of attributable income and/or income from a particular category, shall be listed against the name of each Income Beneficiary;
- (iii) the list shall specify the financial year to which it applies;
- (iv) the list shall be signed and dated by the Trustee;
- (v) the list shall apportion and dispose of all of the income of the financial year which is not being accumulated.
- (h) (i) The Trustee shall enter particulars of any list prepared pursuant to this paragraph in the Minute Book of the Trust;
- (ii) in the event of the Trustee failing to enter particulars in the Minute Book the entries in the books of account of the Trust shall be sufficient.
- (i) In the event of a Trustee failing to prepare the list or to distribute the whole of the income (less any income to be accumulated in accordance with paragraph 5) of the Trust to the Income Beneficiaries then no Income Beneficiary shall be entitled to any of the said income by way of such failure and the rights of Income Beneficiaries shall be limited to the commencement of legal proceedings to compel the Trustee to comply with the provisions of this paragraph.
- (j) Where the Trustee is required by law to pay tax in respect of Income of the Trust distributed to a Beneficiary the Trustee may pay the same out of Income or Corpus to which the Beneficiary is presently entitled or may deduct the same out of moneys which may then or thereafter come into the hands of the Trustee or over which the Trustee has control and to which the Beneficiary is or becomes entitled. Tax on accumulation of income may be paid from Income or from Corpus as the Trustee decides.
- (k) Income or capital to which a Beneficiary becomes entitled and which can be identified as being of a category, retains its separate identity on passing to or being received by the Beneficiary or when the Beneficiary otherwise becomes entitled to it.

#### VESTING

4. (a) The Trustee shall distribute on the vesting date or upon the earlier termination of the Trust the whole of the Corpus of the Trust either in cash or in specie to the Corpus Beneficiaries but the Trustee shall have absolute discretion as to the proportion of the Corpus of the Trust to be distributed to any such Corpus Beneficiary.

## CORPUS DISTRIBUTION PRIOR TO VESTING

- (b) The Trustee may at any time prior to the vesting date distribute Corpus or any part thereof to any Corpus Beneficiary in such amount as it thinks fit. The Trustee shall make a record of such distribution and upon the vesting date or earlier termination of this Trust take such payments into account as it thinks fit.
- (c) In respect of any distribution of Corpus, whether prior to or on the vesting date, the Trustee shall prepare a list which shall provide as follows:-
- (i) the name of each of the Corpus Beneficiaries;
  - (ii) the proportion of Corpus and/or amount of Corpus and/or the amount or proportion of Corpus from a category, if any, which the Trustee in its absolute discretion decides to distribute to each or any Corpus Beneficiary. The Trustee may express each proportion as a percentage of the total Corpus and the percentage may include the figure 100% or 0% and such proportion of Corpus and/or amount of Corpus and/or Corpus from a particular category, shall be listed against the name of each Corpus Beneficiary;
  - (iii) the list shall specify the financial year to which it applies;
  - (iv) the list shall be signed and dated by the Trustee;
  - (v) the list shall apportion and dispose of the whole of the Corpus being so distributed.
- (d) The Trustee may prior to the vesting date in respect of any undistributed Corpus vary any list.
- (e) The Trustee shall enter particulars of any list prepared pursuant to this paragraph in the Minute Book of the Trust and if the Trustee fails to do this the entries in the books of account of the Trust shall be sufficient.
- (f) The Trustee shall in the event of the termination of the Trust prior to the vesting date distribute the proceeds of the Trust Fund in accordance with the provisions of this Deed within twelve months or on the vesting date whichever is earlier.
- (g) The Trustee shall in the event of termination on the vesting date thereupon distribute the proceeds of the Trust Fund in accordance with the provisions of this Deed.
- (h) In the event of the Trustee failing to prepare the list or to distribute the whole or any part of the Corpus of the Trust to the Corpus Beneficiaries as required or permitted by this paragraph then no Corpus Beneficiary shall be entitled to any of the Corpus by way of such failure and the rights of the Corpus Beneficiaries shall be limited to the commencement of legal proceedings to compel the Trustee to comply with the provisions of this paragraph.

- (i) Where the Trustee becomes liable to pay tax in respect of or arising out of a distribution of Corpus, it may deduct and pay the same out of such distribution, and to the extent to which the same may be insufficient to fully discharge liability, the Trustee may pay the same from other moneys or property which may be in or come to the possession or control of the Trustee as it sees fit.

#### **INCOME AND LOSSES**

- 5. (a) The Trustee may in its absolute discretion on or before the end of the financial year accumulate for such period as it thinks fit but not greater than the period permitted by law all or any part of the income of the Trust Fund derived during that year notwithstanding the provisions of paragraph 3 hereof.
- (b) The Trustee may determine that the losses of the Trust shall be borne out of future income or out of Corpus.

#### **TRUSTEE ACTS**

- 6. The provisions of any enactment relating to Trusts and Trustees that may apply in accordance with the proper law of this Trust are subject to this Deed and apply and may be required by that enactment and otherwise only so far as a contrary intention is not expressed in this Deed.

#### **PERSONS UNDER LEGAL DISABILITY**

- 7. (a) Where the Trustee wishes to apply, pay or credit any amount to a Beneficiary who has become presently entitled to a share of any income or Corpus but is subject to a legal disability such amount may be expended or invested by the Trustee on behalf of such Beneficiary subject to the provisions of this Deed and with the same powers of investment as if the amount formed part of the Trust Fund and the whole or any part of such amount may be applied by the Trustee for the maintenance, education advancement (including past advancement or education) in life or otherwise for the benefit of the Beneficiary as the Trustee may in its absolute discretion determine.
- (b) Any part of the Trust Fund to be paid by the Trustee to any infant Beneficiary under this Deed may be paid by the Trustee in its discretion to the parent or guardian of such infant or the person who has the apparent custody of such infant or to an account with a financial institution held for that infant and the receipt of such person or financial institution shall be a sufficient discharge for the Trustee who shall not be liable for the application thereof however the Trustee may otherwise apply the same for or towards the maintenance, education (including past maintenance or education) without being responsible for the application thereof.

#### **APPOINTOR**

- 8. (a) The power to appoint a new or additional Trustee and the power to remove a Trustee shall, subject to this paragraph, vest in:
  - (i) The Appointor/s from time to time.

- (ii) if there is more than one Appointor on and from the death of an Appointor, in the surviving Appointor or Appointors.
- (iii) on and from the death of a sole or surviving Appointor, in such person or persons as the sole or surviving Appointor may in writing or by their will nominate.
- (iv) on and from the death of the sole or surviving Appointor without such nomination having been made or such nominee having died or ceased to be in existence or unwilling to act as Appointor, in the Trustee for the time being of the Trust.

- (b) In the event that there shall be more than one Appointor they shall act by a simple majority.
- (c) If at any time no persons shall have the power to appoint a new Trustee or an additional Trustee, the power shall be vested in the Trustee or Trustees for the time being of the Trust.
- (d) Where a Trustee or an additional Trustee is appointed pursuant to this paragraph, the Trust Fund shall at that time vest in the person or jointly in the persons who shall thereupon be the Trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance.
- (e) The power to appoint a new Trustee contained in this paragraph is subject to paragraphs 9(c) and 11.
- (f) The power to appoint or remove a Trustee may be exercised by written instrument or by deed signed by the Appointor(s) at that time.
- (g) If any Appointor becomes subject to a legal disability including being declared bankrupt or an order being made for the sequestration of the estate of the Appointor, then from the time of such disability, and during the continuance thereof, the power of appointment and removal vested in the Appointor shall vest in the Trustee provided that where there is more than one Appointor, the power shall vest in the other Appointor or Appointors. Upon the cessation of the legal disability including any sequestration order ceasing to have effect, then the power shall revert in the Appointor or the Appointors, if more than one.

#### **SETTLOR NOT TO BENEFIT**

- 9. (a) Any purported appointment of the Settlor as Trustee made otherwise than as an original appointment upon the establishment of the Trust is void.
- (b) Notwithstanding anything herein contained:-

- (i) Neither the Settlor nor any person claiming under or in right of the Settlor shall be entitled to any interest in or benefit in or arising from the Trust Fund by resulting trust or otherwise and any acts determinations or otherwise by any party hereto or by any subsequent Settlor or Trustee purporting to create such interest or benefit shall be void.

#### Rule against perpetuities

- (ii) The provisions of this Deed and any acts, determinations or otherwise by any party hereto or by any Settlor, Appointor or Trustee shall be subject to compliance with the rule against perpetuities.

#### Sole Director Corporate Trustee

- (c) If the Trustee is a company having a sole director who is also one of the beneficiaries or if the Trustee is a sole Trustee who is also one of the beneficiaries, no determination of the Trustee may be made distributing any capital to such beneficiary during the period the beneficiary is the sole director of the Trustee or the sole Trustee.

#### TRUSTEE CEASING OFFICE

10. If the Trustee being an individual dies or shall be found to be of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or shall become bankrupt or make an arrangement or composition with creditors generally or if the Trustee being a corporation has a receiver, or receiver and manager, or official manager, or provisional liquidator, or liquidator appointed or administrator appointed to it then in each such case the office of Trustee shall ipso facto become vacant.

#### NEW APPOINTOR

11. (a) An Appointor, or any one of them with the written consent of all other Appointors, if any, may in writing (signed by that or those Appointor/s) nominate any other person or entity as an Appointor in that Appointor's place and on execution of that document ("nomination") the Appointor shall cease to be the Appointor and the new Appointor shall take that Appointor's place and shall thereupon become an Appointor (either solely or if there was more than one of them as one of two or more Appointors). The Settlor shall not be capable of becoming an Appointor under this Deed.

(b) The nomination must then be given to the Trustee.

(c) An Appointor may resign as Appointor by notice in writing to the Trustee and any other Appointor.

#### TRUSTEE RESIGNATION

12. The Trustee may at any time resign from office by giving not less than seven days written notice to the Appointor or such lesser period of notice as the Trustee and the Appointor may agree.

#### MAJORITY VOTE OF TRUSTEES

13. If there is more than one Trustee of this Deed then the Trustees shall act by majority vote.

### **TRUSTEE'S LIABILITY**

14. The Trustee shall not be liable to any Beneficiary or any party hereto or their legal personal representatives in any manner whatsoever for any failure of the Trustee to exercise its discretion or power or in respect of any other default or neglect in carrying out the trusts hereof nor shall it be liable for any loss or damage or otherwise except in the case of the Trustee's wilful default.

### **IN SPECIE DISTRIBUTION, MAINTENANCE & TRANSFERS**

15. The Trustee may in its absolute discretion at any time and from time to time:-

#### **In Specie Distribution**

- (a) In lieu of paying income to the Beneficiaries in cash transfer any property of the Trust in whole or partial satisfaction of that income and for this purpose the Trustee may determine the value of any property to be so transferred and any entries or minutes in the Trustee's books of account or records shall be deemed conclusive evidence of the value of such property.

#### **Maintenance**

- (b) Apply pay or credit the whole or any part of the Corpus of the Trust Fund or the Income of the Trust Fund to or for the maintenance, education advancement in life to or for any one or more of the Corpus Beneficiaries or Income Beneficiaries respectively

#### **Transfers**

- (c) Pay or transfer the whole or any part of the Trust Fund to the Trustee of any settlement or Trust under which any one or more of the Beneficiaries is a Beneficiary whether absolutely contingently presently or prospectively and whether the Trust is a discretionary one or otherwise provided however that such payment or transfer will not result in a breach of the rule against perpetuities.

### **REMUNERATION OF TRUSTEES**

16. (a) The Trustees shall be entitled to be reimbursed for expenses and costs properly incurred in acting as Trustee hereunder or otherwise incidental to the provisions of this Deed and shall be entitled to such remuneration, if any, as the Trustee and the Appointor may agree upon and in the case of disagreement such remuneration as the Appointor nominates.
- (b) Any Trustee being a solicitor, accountant or other person engaged in a profession shall be entitled to charge and be paid all professional charges for services rendered by it in connection with the Trusts hereof or matters incidental thereto notwithstanding that such services or part thereof could have been rendered by a non-professional Trustee.

### **RECEIPTS**

17. The receipt in writing of the Trustee is a complete discharge to any person or entity paying or transferring anything to the Trustee and the payer is not bound to see to the application of it. The receipt in writing of the payee or the secretary, treasurer or any other officer or employee or member of a payee who is a beneficiary is a complete discharge to

the Trustee in respect of anything paid or transferred to a beneficiary and the Trustee is not bound to see to the application of it.

#### VARIATION

18. (a) The Trustee may (with the written consent of the Appointor, if any) at any time by Deed or instrument in writing or by written or oral resolution (evidenced by the certificate of a person present at the making of such resolution) alter, vary, modify or otherwise amend any provision in this Deed or add to this Deed in such manner as it may in its absolute discretion determine. In amplification of this power the Trustee may at any time, in its absolute discretion add or remove a person as an Income Beneficiary or as a Corpus Beneficiary.
- (b) Provided that no such alteration, variation, modification or amendment shall be capable of being made if it:-
- (i) infringes the rule against perpetuities or paragraph 9(a);
  - (ii) varies, alters, revokes or amends paragraph 8(a)(i) hereof, this paragraph or paragraph 9(a) or 9(b);
  - (iii) has the effect of divesting or modifying the interest of any Beneficiary who has become presently, indefeasibly and absolutely entitled pursuant to this Deed.
- (c) The Trustee may at any time renounce the power contained in paragraph 18 (a) and upon such renunciation and to the extent thereof such power shall be terminated and shall no longer be exercisable.

#### OTHER PARTIES

19. (a) No person dealing with the Trustee need:
- (i) enquire as to the adequacy of the powers of the Trustee in relation to such dealing; or
  - (ii) enquire as to the proper exercise by the Trustee in relation to such dealing; or
  - (iii) enquire as to the proper exercise by the Trustee of any of the powers authorities and discretions vested in the Trustee; or
  - (iv) enquire as to the propriety or regularity of any transaction affecting the Trust Fund; or
  - (v) see to the application of any moneys paid to the Trustee or at the Trustee's direction.
- In the absence of fraud on the part of any such person dealing with the Trustee such dealing shall be deemed so far as that person is concerned to be within the powers of the Trustee and to be valid and effectual accordingly. The receipt of the Trustee or the receipt of any person or corporation so paid at the direction of the Trustee is an effective discharge of all liability.
- (b) No mortgage, charge or other security given or created by the Trustee shall be invalid by reason of any error or omission whether of law or fact on the part of the Trustee.

- (c) If the Trustee enters into any arrangement with any lender or with any other financier or other party, no such lender, financier, or other party need enquire whether there is any necessity for any borrowing, finance or other dealing by the Trustee or as to the purpose for which such borrowing, finance or other dealing is required nor as to the application of any monies so borrowed or financed.
- (d) Any person having any dealing with the Trust shall be entitled to assume that every power necessary to be exercised in relation to the giving or making of any instrument, resolution or certificate purporting to be made or given pursuant to or in accordance with the provisions of this Deed has been validly and properly exercised.

### **MINUTE BOOK**

20. The Trustee shall at all times maintain a minute book in which shall be recorded determinations by the Trustee pursuant to this Deed and such other matters as the Trustee deems desirable and such minute book shall constitute prima facie evidence of matters contained therein. Where the Trustee is a company then the minutes of meetings of that company, so far as they relate to the Trust, shall suffice for the purposes of this paragraph.

### **INDEMNITY OF TRUSTEES**

21. The Trustee shall be indemnified and held harmless out of the Trust Fund against all claims, costs, damages, losses, fees, expenses, taxes, duties, impositions and any other liabilities that arise in connection with or in consequence of this Deed or the Trusts hereby created. The Trustee has no right of indemnity against any one or more of the Beneficiaries.

### **CEASING OF BENEFICIARY**

22. (a) The Trustee may at any time, with the Appointor's written consent, remove a Beneficiary from the whole or any part of Schedule 2 by signing a declaration to that effect and from the signing of that declaration and the Appointor's written consent, the Beneficiary shall no longer be a Beneficiary of this Trust in accordance with terms of that declaration.
- (b) A Beneficiary may at any time remove themselves as a Beneficiary of this Trust by signing a declaration to that effect provided that the Appointor consents to that removal in writing. The Appointor must give to the Trustee the declaration and the Appointor's consent as soon as practicable and the removal takes effect from the time and date that the declaration and consent is given to the Trustee.
- (c) The removal of a Beneficiary under this or any other provision of this Deed does not affect any distribution and or benefit made prior to the removal of a Beneficiary nor any vested entitlement of such Beneficiary.
- (d) Any removal of a Beneficiary under this provision may be temporary in which case the period of removal shall be specified in the declaration.

SIGNED SEALED and DELIVERED by the Settlor and Trustee on the day referred to in Schedule 1.

SIGNED SEALED and DELIVERED

by the Settlor

Smith, Walter John

-----

in the presence of:

-----

Signed Sealed and Delivered by

Williams, Rosanna

.....

in their capacity as Trustee

in the presence of:

.....

Signed Sealed and Delivered by

Williams, George Douglas

.....

in their capacity as Trustee

in the presence of:

-----

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SCHEDULE 1

NAME OF TRUST: Sample 2010-03-26 Discretionary Trust

DATE OF DEED:

SETTLOR: SMITH, Walter John  
Lvl 29  
266 Park Street  
Sydney NSW 2000

TRUSTEE: WILLIAMS, Rosanna  
22 Maple Street  
Grangetown NSW 2999

WILLIAMS, George Douglas  
22 Maple Street  
Grangetown NSW 2999

SETTLED SUM: \$20.00

APPOINTOR: WILLIAMS, George Douglas  
22 Maple Street  
Grangetown, NSW 2999

PROPER LAW: The proper law of this Deed shall be determined in accordance with the common law unless the Trustee determines that the proper law shall be that of some other place in the world which it considers reasonably connected with this Trust.

SCHEDULE 2

INCOME BENEFICIARIES

INCOME BENEFICIARIES:

Williams, George Douglas

Williams, Rosanna

SPOUSE: Any spouse of an income beneficiary named above.

CHILD: Any child of an income beneficiary named above or any child of any spouse of an income beneficiary named above or any spouse of such child.

LINEAL ISSUE: Any lineal issue living at the distribution date of any child of any income beneficiary named above or any lineal issue living at the distribution date of any child of any spouse of an income beneficiary named above.

OTHER RELATIVES: Any sibling, parent, nephew or niece of an income beneficiary named above or any sibling, parent, nephew or niece of any spouse of an income beneficiary named above or any spouse of such sibling, parent, nephew or niece.

COMPANY: Any company whenever incorporated in which a share is held for the time being by any of the persons referred to above except a company where any such share so held has the right to receive notices of general meetings of members and no other rights. Any company whenever incorporated in which any share is held by the Trustee.

TRUSTS: Any Trust established anywhere at any time under which any person or company referred to above has any interest be it expectant, prospective, contingent or vested irrespective of whether other persons have any interests in those Trusts.

CHARITIES AND ASSOCIATIONS: The trustee of any charitable trust in that capacity. Any society, authority, institution, church, religious order, corporation, person or entity which at the time a distribution of income of the Trust is made is exempt from income tax under the Act or, if at such time a gift of money to such body is deductible against assessable income of the donor by virtue of the Act.

TRUSTEE: The Trustee named in Schedule 1 of this Deed.

SCHEDULE 2

CORPUS BENEFICIARIES

**CORPUS BENEFICIARIES:**

Williams, George Douglas

Williams, Rosanna

**SPOUSE:** Any spouse of a corpus beneficiary named above.

**CHILD:** Any child of a corpus beneficiary named above or any child of any spouse of a corpus beneficiary named above or any spouse of such child.

**LINEAL ISSUE:** Any lineal issue living at the distribution date of any child of any corpus beneficiary named above or any lineal issue living at the distribution date of any child of any spouse of a corpus beneficiary named above.

**OTHER RELATIVES:** Any sibling, parent, nephew or niece of a corpus beneficiary named above or any sibling, parent, nephew or niece of any spouse of a corpus beneficiary named above or any spouse of such sibling, parent, nephew or niece.

**COMPANY:** Any company whenever incorporated in which a share is held for the time being by any of the persons referred to above except a company where any such share so held has the right to receive notices of general meetings of members and no other rights. Any company whenever incorporated in which any share is held by the Trustee.

**TRUSTS:** Any Trust established anywhere at any time under which any person or company referred to above has any interest be it expectant, prospective, contingent or vested irrespective of whether other persons have any interests in those Trusts.

**CHARITIES AND ASSOCIATIONS:** The trustee of any charitable trust in that capacity. Any society, authority, institution, church, religious order, corporation, person or entity which at the time a distribution of corpus of the Trust is made is exempt from income tax under the Act or, if at such time a gift of money to such body is deductible against assessable income of the donor by virtue of the Act.

**TRUSTEE:** The Trustee named in Schedule 1 of this Deed.

### SCHEDULE 3

#### POWERS

The Trust Fund shall be invested in any manner in which the Trustee in its absolute discretion determines. Without limiting the generality of the foregoing the Trustee shall be entitled to exercise any of the powers hereunder:-

1. All powers may be exercised by the Trustee notwithstanding that it is interested directly or indirectly in any property or any corporation company or public body in which any part of the Trust Fund is invested hereunder that any Beneficiary hereunder is interested directly or indirectly in any property or any corporation or public body in which any part of the settled fund or income therefrom is invested hereunder, that it has from time to time or at any time exercised all or any of the powers conferred upon it either alone or in conjunction with any other person or persons, including any other trust and the Trustee in its capacity, as Trustee, of any other trust, that it has sold all or any of the investments of the Trust Fund for cash or upon terms and conditions.
2. Retain any property in the state or condition in which it is received for such period as the Trustee determines and irrespective of whether such property is of a wasting nature.
3. Upon such conditions as the Trustee determines, surrender and deliver up any securities forming part of the Trust Fund to any corporation.
4. Borrow or raise money or to join with any person in borrowing or raising money for any of the purposes of this Trust or the exercise by the Trustee of any of its powers authorities or discretions upon such terms and conditions and with or without security or interest as the Trustee in its discretion deems fit and for the purpose of any such borrowing or raising to mortgage charge or encumber the whole or any part of the Trust Fund and no lender advancing money to the Trustee shall be concerned to see to the application thereof or the purpose of such borrowing or otherwise and the Trustee may mortgage or charge in favour of the lender the whole or any part of the Trust Fund or any part thereof to secure the repayment of any moneys together with interest, if any, at such rate as the Trustee thinks fit either by charge or legal or equitable mortgage or otherwise and with such powers and provisions and upon such terms as the Trustee shall from time to time think fit.
5. Upon such conditions as the Trustee determines, exchange any property forming part of the Trust Fund for any other property.
6. Employ such professional or other services as the Trustee may determine including services from a partner of a Trustee or from a person who is a director or shareholder of a corporation which is a Trustee.
7. Grant rights of agistment or join with any other person or persons in granting rights of agistment with regard to any property or interest therein at any time forming part of the Trust Fund in all respects and upon such terms and conditions and for such periods as the Trustee shall think fit.
8. Settle or compromise upon such conditions as the Trustee determines all matters arising under this Trust or in relation to the Trust Fund and such settlement or compromise shall be final and binding on the parties hereto and the Beneficiaries.

9. Accept rights of agistment of livestock in all respects upon such terms and conditions and for such period or periods as the Trustee shall think fit.
10. Allow any one or more of the Beneficiaries to occupy, have custody of, or use any property forming part of the Trust Fund on such terms and conditions in all respects as the Trustee deems fit.
11. Consent conditionally or otherwise to any reconstruction or reorganisation of any corporation and securities of which form part of the Trust Fund and to consent to any reduction of capital or other dealing with such securities as the Trustee may determine.
12. Invest all or any money forming part of the Trust Fund as if the Trustee were in all respects beneficially entitled thereto in any form of real property or personal property wherever situated and whether involving liabilities or not and whether in possession or reversion and whether producing income or not and whether secured or unsecured and upon such terms and conditions as the Trustee in its discretion deems fit and either solely or with one or more persons as joint tenant or as tenant in common.
13. So long as any mortgage debts or any other moneys remain owing by the Trustee in its capacity as Trustee under this Deed, the Trustee may apply such portions of the Trust Fund as it may deem fit in payment in part or in whole of the said mortgage debts or other moneys remaining owing as aforesaid.
14. Advance or lend money forming part of the Trust Fund to any person including a Beneficiary company trust or governmental or semi-governmental body or authority wherever situated for such period and upon such terms and conditions and with or without security or interest as the Trustee in its discretion deems fit.
15. Sell, alienate or otherwise dispose of all or any part of the Trust Fund in such manner by private treaty or auction and for such price in money or other consideration and upon such terms and conditions as the Trustee deems fit and to receive the consideration.
16. Determine all questions and matters of doubt which may arise in the course of the administration of the Trust Fund and otherwise arising from this Deed.
17. Institute and defend proceedings and to proceed to the final end and determination thereof or compromise the same as the Trustee shall determine.
18. Incorporate either alone or with any other person or persons any corporation in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability for any purpose the Trustee may determine and without limiting the generality thereof a purpose may be the acquiring of the whole or any part of the Trust Fund and so that the consideration of the sale of the Trust Fund or any part thereof to any corporation incorporated pursuant to this paragraph may consist wholly or partly of securities of the corporation which may be credited as fully paid and may be allotted to or otherwise vested in the Trustee and be capital moneys in the Trustee's hands.
19. Acquire in any manner whatsoever (including by lease or licence) any property whether real or personal upon such terms and conditions as the Trustee may determine.

20. Determine whether any sums received or disbursed or losses incurred are on account of capital or income or partly on account of one and partly on account of the other and in what proportions and the decision of the Trustee whether made in writing or implied from the acts of the Trustee shall be conclusive and binding.
21. Apply any money for the time being forming part of the Trust Fund in improving or developing any land which or the proceeds of sale of which may for the time being be subject to the trusts hereof or erecting, enlarging, improving or rebuilding any buildings upon such land and power to conduct farming operations.
22. (a) Guarantee, indemnify or become surety for, with or without security and with or without remuneration, the due payment of money or debts of any person and to guarantee, indemnify or become surety for, with or without security and with or without remuneration, the due performance of any contract agreement covenant or obligation of any person.
  - (b) To give any guarantee and/or indemnity or otherwise become liable for the payment of money or the performance of any contract or other obligation by any person natural or corporate including the Trustee in its personal capacity or as a trustee of any other trust and if the Trustee thinks fit to give security for any such guarantee and/or indemnity or other liability over all or any part of the assets of the Trust Fund and to exercise all or any of these powers whether or not there is consideration or benefit to the trust and either alone or jointly with any person or persons natural or corporate including a trustee of any other trust or the Trustee in its personal capacity or as a trustee of any other trust and to assume joint or joint and several or several liability in respect of any joint exercise of the said powers.
  - (c) To give any guarantee or indemnity for payment of moneys or the performance of any contract obligation or undertaking by any person firm company corporation or association upon such terms with or without security as the Trustee shall deem fit and to secure any such guarantee or indemnity by mortgaging or charging (by a fixed or floating charge or otherwise) any undertaking of the Trustee or all or any part of the Trust Fund including any property which may subsequently be acquired by the Trustee so that it will form part of the Trust Fund and the rights of the mortgagee or charge shall take priority in all respects over the rights of the beneficiaries and all other persons whatsoever.
23. Make any investment for cash or otherwise and upon such terms and conditions as the Trustee in its discretion deems fit and make or purchase any investment for an amount greater than the amount of the Trust Fund and the Trustee may agree to pay for any such investment wholly or in part from future money which may come into its hands including dividends profits interest or other income payable in respect thereof and to acquire by purchase or gift livestock and other personal property.
24. Exercise or concur in exercising the rights attaching to any securities forming part of the Trust Fund so as to become a director or other officer or employee of any corporation and to vote for and to be paid and to retain for the Trustee's own use and benefit reasonable remuneration for the Trustee's services to that corporation.
25. Employ agents in the execution of the trusts and powers herein contained and instead of acting personally from time to time to employ and pay out of the Trust Fund such managers, agents, advisers, solicitors, accountants or other persons or transact any business or to do any act required to be done in connection with the administration of the trusts hereof declared including the receipt and payment of money AND in amplification of the foregoing

power to delegate in writing the exercise of all or any of the powers or discretionary authorities hereby conferred on the Trustee and to execute any Power of Attorney or other instrument necessary or advisable to effectuate such appointments and purpose.

26. Accept any property which may be transferred to the Trustee to form part of the Trust Fund by any person either personally or by testamentary act or disposition or by any corporation.
27. Lend money upon such terms and conditions as the Trustee may determine.
28. To exercise or concur in exercising all of its powers authorities and discretions notwithstanding that the Trustee or any person being a Director or shareholder of the Trustee (if a company) has or may have a direct or personal interest (whether as Trustee of any other Trust or in a personal capacity or as a Director or shareholder of any corporation or otherwise) in the mode or result of exercising such power authority or discretion or may benefit either directly or indirectly as a beneficiary or otherwise as a result of the exercise thereof and notwithstanding that the Trustee for the time may be a sole Trustee.
29. Give or take on lease licence or hire purchase any kind of real or personal property and on such terms as the Trustee shall in its absolute discretion determine.
30. Permit any of the Beneficiaries to reside in any dwelling house which or the proceeds of sale of which for the time being is subject to the trust hereby created upon such conditions as to payment of rent, rates, taxes or other expenses and outgoings and as to repair and decoration and for such period and generally upon such terms and conditions as the Trustee in its absolute discretion shall think fit.
31. Change and vary any property from time to time forming part of the Trust Fund for others hereby or by law authorised.
32. Pay all insurance premiums, rates, taxes, rents and other outgoings in connection with any real or personal property subject to the trusts hereby created and manage the said property and effect such repairs as the Trustee may consider necessary or advisable to such property and where the Trustee is unable to charge such expenditure against income from that property it shall be at liberty to resort to capital.
33. Acquire by allotment, purchase or otherwise the shares or stock whether ordinary, preferred, deferred, redeemable or otherwise and whether partly or fully paid or having any liability thereof of any company wheresoever situated or incorporated and whether public, proprietary or private and any debenture note or other securities of any such company or of any municipal or statutory authority in the Commonwealth of Australia or any British dominion, colony or possession or any foreign country with power to take up new shares or other securities in any such company or authority.
34. Enter into partnership from time to time with any person or corporation and in all respects upon such terms and conditions as the Trustee shall think fit whether or not the Trustee is a member of any such partnership in its own individual right or is a shareholder in or director of any such corporation with powers to vary the terms and conditions of any such partnership.
35. Conduct or carry on or to join with any other person in conducting or carrying on any profession which may be lawfully carried on by the Trustee, trade or business and to use for such purposes such money, land or other assets whatsoever as the Trustee shall think fit notwithstanding any personal interest the Trustee may have in any such profession trade or business.

36. Terminate upon such terms and conditions as the Trustee shall think fit any such partnership and to join in and be a party to any partition of the assets thereof.
37. Invest in the acquisition of a policy or policies of life assurance including endowment assurance upon such life or lives as the Trustee shall think fit provided that the power hereby given shall extend only to a policy or policies as aforesaid maturing on or before the vesting day hereinbefore referred to.
38. At any time to invest any money whether capital or income to which any of the Beneficiaries who are under a legal disability are or may become entitled either by exercise of the discretion of the Trustee or otherwise in any securities as it is by this instrument or by law authorised to invest the Trust Fund.
39. Lease all or any part of any real or personal property for the time being subject to the trusts hereof for any period upon such terms and conditions and for such rent as the Trustee shall in its absolute discretion think fit and make allowances to or with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies.
40. If the Trustee holds any money for which it cannot obtain a proper discharge then it may invest such money in any form of investment authorised by this Deed and in addition in any shares or stock of any company irrespective of the rights attaching to the shares and in loans of any nature whether secured or unsecured and on such terms as the Trustee thinks fit, to any person company or trust.
41. Accept and to hold or to appoint any person on its behalf to accept and hold any patents, trademarks, licences or other rights and to accept or authorise any person on its behalf to accept any liabilities or duties and to enter into any restrictive covenants or ties in conjunction therewith as it may think fit.
42. Pay application moneys and calls on shares and for that purpose raise money on the security of the Trust Fund and to accept transfers of stock shares and debentures and concur in any arrangement for the modification of the rights of the holders of any debentures of any of the stocks or shares of any company in which the Trust Fund or any part thereof may from time to time be invested.
43. (a) Invest in or acquire any firm or business whatsoever or wheresoever situated and/or to enter into any partnership or into any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise with any one or more person trust or company for any business or enterprise whatsoever or wheresoever situated.  
  
(b) To blend for the purposes of investment as it may from time to time decide any moneys which the Trustee holds upon the trusts herein declared with other moneys (whether or not such moneys are subject to any other settlement or trust and whether or not the Trustee is trustee of such other settlement or trust) and to join with any other person or persons including a trustee of another trust in making common investments including in carrying on any business, partnership or joint enterprise.
44. Operate any banking account in credit or in overdraft and to sign endorse accept execute and issue bills of exchange, promissory notes, bills of lading, warrants, and other negotiable or transferable securities or instruments in connection with or incidental to any investment,

business or venture in respect of which any part of the Trust Fund is employed or in connection with any transaction relating to the Trust Fund or the trusts hereof and to delegate to any one person alone or together with any other person or persons the foregoing powers.

45. Do all such things as the Trustee in its discretion deems fit for the adequate protection of any part of the Trust Fund or otherwise for giving effect to this Trust and to do all such other things as may be incidental to the exercise of any of the powers authorities or discretions of the Trustee.
46. Generally to perform all acts of alienation and hypothecation and other acts of ownership to the same extent and with the same effect as might have been done if this Deed had not been made and the decision and action of the Trustee whether actually made or taken in writing or implied from the acts of the Trustee shall be conclusive and binding on all the Beneficiaries and others who in the future acquire any interest under this Deed.
47. Grant options in respect of any property forming part of the Trust Fund to any person and on such terms and conditions as the Trustee in its discretion deems fit.
48. Invest in units or sub-units of any fixed or flexible unit trust whatsoever.
49.
  - (a) The Trustee is empowered and authorised to enter into any transaction of any kind including mortgages, guarantees, charges, letters of credit, third party securities or otherwise of any kind with any bank, building society or financial institution (in this paragraph referred to as "bank") as it thinks fit.
  - (b) Such bank may have recourse to the assets of the Trust and to satisfy any liability of the Trust properly incurred by the Trustee as trustee of the Trust and arising out of any such transaction with such bank.
  - (c) The Trustee is empowered to give an authority and power of attorney to the Bank to provide for bank officers to draw, present and sign (whether as drawer, acceptor or endorser) bills on the Trustee's behalf.
  - (d) The Trustee is empowered to enter into any such transaction notwithstanding any conflict which may arise on the part of the Trustee, and if the Trustee is a corporation, on the part of any of its directors, when entering into any such transaction.
50. The Trustee may in writing delegate the exercise of all or any of the powers or discretions hereby conferred on the Trustee and execute powers of attorney or other instruments necessary to effectuate such purpose.
51. The Trustee shall not be disqualified from dealing or contracting with itself beneficially and is empowered to enter into contracts with the Trust provided that it shall have previously declared its interest.
52.
  - (a) To enter into any trading facility whether in connection with a flexible trading facility or margin lending facility with any financial institution or other entity including and without limitation Macquarie Bank Limited and to execute all such documents and comply with such terms and conditions as may apply to such facility and the Trustee shall subject to this Deed be entitled to be indemnified out of the assets of the Trust to satisfy any liability properly incurred by the Trustee arising out of such facility.

- (b) Directly or indirectly to enter into any transaction involving or in connection with, an exchange of streams of payment between parties.
- (c) To enter into any transaction involving, or in connection with, trading commodities, securities or currency at a fixed price for delivery or settlement, whether immediately or at a future date.
- (d) To enter into any transaction for hedging, managing or protecting against movements in currency exchange, interest or discount rates or in respect of costs of borrowing, lending or entering into financial facilities or arrangements.
- (e) Without limiting any other power, to enter into any currency or interest rate exchange or swap of any description.
- (f) To enter into any mortgage, charge or other security over all or any assets of the Trust to secure the payment or the performance of any contract or obligation in connection with any transactions to which the Trustee is a party.
- (g) To enter into any derivatives transaction(s) including but not limited to any contract or purchase or sell or deal in any derivatives product, including any interest rate swap, currency swap, currency option, interest rate option, swaption, smart forward, money market transaction, foreign exchange transaction, margin foreign exchange transaction, futures transaction, forward rate agreement, forward rate bill transaction, synthetic forward exchange transaction, deposit transaction, currency transaction, interest rate transaction, bond option, commodity (including precious metals, electricity or energy) option or other transaction, credit derivative, equity derivative, capital market transaction, securities buy-back transaction or sell-back transaction and any other product traded, or transaction undertaken, on financial markets (whether on an exchange or not) from time to time and at any future time and synthesis or derivative of any of them and any option on any transaction or product referred to in this paragraph and otherwise to do and perform all things so as to operate, utilise or deal with the facilities of any stock or futures exchange either directly or through any broker or agent in any market in any part of the world.
- (h) To enter into any master agreement(s) being any agreement (however described) that sets out the terms of, or otherwise relates to, any derivative transaction, and which is published or prepared by any bank, financial institution, domestic or international financial industry body or association, and any schedule, annexure, annex, supplement, addendum (however described) to, or of, that agreement.
- (i) To give and execute any mortgage, charge or other security over all or any part or parts of the assets of the Trust as may be required to secure the payment or the performance of any contract obligation under or in connection with any transaction of the type referred to in paragraph (g) or (h) above.
53. The Trustee has the power to enter into any agreement with the Commonwealth or any Commonwealth instrumentality.
54. The Trustee may in writing determine at any time on or before the end of the applicable financial year that in respect of that financial year the Income of the Trust is defined in a manner other than as provided in Schedule 4.

## SCHEDULE 4

### DEFINITIONS

- (a) "Act" means the Income Tax Assessment Act, 1936 and 1997 (as applicable) and any amendment of either Act and or any Act replacing either or both of them (as applicable).
- (b) "Appointor" means the person or persons referred to as the Appointor in Schedule 1 or the person for the time being appointed as Appointor pursuant to this Deed.
- (c) "Beneficiaries" means the persons referred to as Beneficiaries in Schedule 2 hereto.
- (d) "Category" in relation to Income or Corpus of the Trust Fund means that part or those parts of the Income or Corpus which the Trustee has separately identified, characterised, and recorded in the books of account of the Trust or elsewhere so that it may be separately identified or dealt with as provided in paragraph 3 or 4.
- (e) "Child" includes an adopted child and a step-child and whenever born, adopted or becoming a step-child.
- (f) "Corpus" for the purposes of paragraph 4 means so much of the Trust Fund as does not constitute Income of the Trust.
- (g) "Corpus Beneficiaries" means the beneficiaries so referred to in Schedule 2 hereto.
- (h) "Distribute" includes pay, transfer, assign, set aside and in relation to a Beneficiary includes placing a sum to the credit of a Beneficiary in the books of account of the Trust or by otherwise appropriating such sum to a Beneficiary.
- (i) "Financial Year" means a financial year commencing on the 1st of July and ending on the 30th of June in the following year and in respect of any broken period occurring at the commencement or determination of this Deed means the portion of the financial year running in the case of such commencement from the date hereof to the 30th of June next and in the case of such termination from the 1st of July last preceding such termination to the date of such termination.
- (j) "Income" of the Trust includes all profits or gains taken into account in calculating the net income of the Trust, and exempt income, as defined in Section 95(1) of the Act, notwithstanding that the whole or any part thereof may otherwise include Corpus of the Trust. This provision is subject to the exercise of the Trustee's powers under Schedule 3.
- (k) "Income Beneficiaries" means the beneficiaries so referred to in Schedule 2 hereto.
- (l) "Person" includes a corporation, firm, trust and any legal entity.
- (m) "Settlor" means the person referred to as the Settlor in Schedule 1 hereto.
- (n) "Spouse" includes de-facto spouse and includes a spouse at any time and from time to time and includes a previous spouse.
- (o) "Trust" means the trust hereby established.

- (p) "Trustee" means the Trustee referred to as the Trustee in Schedule 1 hereto or the Trustee for the time being of this Deed except for the purposes of Schedules 1 and 2.
- (q) "Trust Fund" includes:-
- (i) the Settled Sum;
  - (ii) property accepted by the Trustee as an addition to the Trust Fund;
  - (iii) accumulated income and accretions from the above;
  - (iv) property acquired or received by the Trustee pursuant to or in consequence of the Trust hereby created.
- (r) "Vesting Date" means whichever is the earlier date of:-
- (i) the day being the seventy-ninth anniversary of the execution of this deed;
  - (ii) twenty one years after the date of death of the last survivor of the lineal descendants of King George VI of England born before and living at the date hereof;
  - (iii) such earlier date as the Trustee may revocably or irrevocably appoint.
- (s) Words importing the singular shall include the plural and vice versa and words importing one gender shall include any other gender.