

Hybrid Trust Sample Updated 2010 June 4

Sample Only, Subject to Copyright



Table of Contents

BACKGROUND	1
OPERATIVE PROVISIONS	1
1. DICTONARY	1
2. ESTABLISHMENT OF TRUST	3
3. BENEFICIAL INTEREST OF UNIT HOLDERS	3
4. CREATION AND CLASSIFICATION OF UNITS	3
5. UNIT HOLDERS' REGISTER	4
6. UNIT HOLDER' CERTIFICATES	4
7. REDEMPTION OF UNITS	5
8. TRANSFER OF UNITS	6
9. TRANSMISSION OF UNITS	7
10. NET INCOME OF THE FUND	7
11. CAPITAL OF THE FUND	8
12. DISCRETIONARY BENEFICIARIES	9
13. PAYMENTS TO BENEFICIARIES	10
14. STATEMENTS AND ACCOUNTS	11
15. APPOINTMENT AND REMOVAL OF TRUSTEE	11
16. VARIATION OF TRUST	12
17. VARIATION OF CLASS RIGHTS	12
18. TRUSTEE POWERS	12
19. MEETINGS OF UNIT HOLDERS	18
20. LIMITATION ON LIABILITY OF UNIT HOLDEKS	19
21. PROPER LAW	20
22. NO PUBLIC OFFER	20
23. TERMINATION OF TRUST	20
24. SPECIAL CONDITIONS	20
SCHEDULE	21

THIS DEED made on the _____ by the Initial Unit Holder(s) and the Trustee.

BACKGROUND

- A. The Initial Unit Holder(s) agree(s) to pay to the Trustee or its nominee on the execution of this Deed the Initial Sum.
- B. The Trustee(s) will be the initial Trustee(s) of the Trust. All assets held by it will be held on trust under the provisions set out in this Deed.
- C. The provisions set out in this Deed shall apply to the Trustee(s) and the Beneficiaries.

OPERATIVE PROVISIONS:

1. DICTIONARY

1.1 Definitions

In this Deed and in any documents created in connection with this Deed:

- 1.1.1 "Act" means the Income Tax Assessment Act 1936 as amended from time to time and includes the 1997 Act;
- 1.1.2 Beneficiary means a Discretionary Beneficiary or a Unit Holder;
- 1.1.3 "Deed" means this Deed as amended and includes the Schedule and the Annexure;
- 1.1.4 "Discretionary Beneficiary" has the meaning given in sub clause 12.2, 12.3 and 12.4;
- 1.1.5 "Financial Year" means the year ending on the 30 June each year or any other period nominated in writing by the Trustee;
- 1.1.6 "First Offer" has the meaning given in clause 8;
- 1.1.7 "Fund" means:
 - 1.1.7.1 the Initial Sum, plus
 - 1.1.7.2 any other assets which become subject to the provisions of this Deed, less
 - 1.1.7.3 any liabilities of the Trust;
- 1.1.8 "Fund Value" has the meaning given in clause 7;
- 1.1.9 "Initial Sum" means the initial sum specified in the Schedule;
- 1.1.10 "Initial Unit Holder" means the person or persons nominated as the Initial Unit Holder in the Schedule;
- 1.1.11 "Net Income" has the meaning given to that phrase under the law regarding the taxation of trusts set out in the Act;
- 1.1.12 "Nominated Event" has the meaning given in clause 9;

- 1.1.13 "Person" includes a company, corporation, firm or body of persons recognised as a person under the Law;
- 1.1.14 "Related Unit Holders' Class of Discretionary Beneficiaries" means a class of general beneficiaries related to a Unit Holder under sub clauses 12.2, 12.3 and 12.4;
- 1.1.15 "Related Unit Holder" means a Unit Holder included in a Related Unit Holders' Class of Discretionary Beneficiaries;
- 1.1.16 "Required Percentage of Units" means the amount so stated in the Schedule;
- 1.1.17 "Schedule" means the schedule attached to this Deed and which forms part of this Deed;
- 1.1.18 "Second Offer" has the meaning given in clause 8;
- 1.1.19 "Special Conditions" means the special conditions, if any, specified in the Schedule;
- 1.1.20 "Spouse" includes a person who lives with a person on a bona fide domestic basis as the husband, wife or partner of the person;
- 1.1.21 "Termination Date" has the meaning given in clause 23;
- 1.1.22 "Third Offer" has the meaning given in clause 8;
- 1.1.23 "Transferee Unit Holder" has the meaning given in clause 8;
- 1.1.24 "Trust" means the trust created by this Deed and which shall be known by the name specified in the Schedule;
- 1.1.25 "Trustee" and "Trustee(s)" means the person or persons specified as the Trustee(s) in the Schedule and any other person or persons appointed from time to time under this Deed;
- 1.1.26 "Unit" means an undivided part of the Fund held by a Unit Holder;
- 1.1.27 "Unit Holder" means a person registered under this Deed as a holder or co holder of a Unit;
- 1.1.28 "Unit Price" has the meaning given in sub clause 7.3.1;
- 1.1.29 "Unit Holders' Proportions" means the proportion the Units held by the Unit Holder at the relevant time bears to the total Units on issue at that time; and
- 1.1.30 "Unit Holders' Class of Discretionary Beneficiaries" means the Discretionary Beneficiaries who are related to a Unit Holder in the manner described in sub clauses 12.2, 12.3, or 12.4;
- 1.1.31 "Vendor Unit Holder" has the meaning given in clause 8.
- 1.2 Gender and number**
- 1.2.1 Words meaning one gender shall include the other gender
- 1.2.2 Words meaning the singular shall include the plural.

1.3 **Statutory enactments**

1.3.1 A reference to a statutory enactment shall be a reference to such enactment as amended from time to time.

1.4 **Headings**

1.4.1 Headings shall not be considered when interpreting this Deed.

1.5 **Governing law**

1.5.1 The governing law shall be the law of the state specified in the Schedule.

2. **ESTABLISHMENT OF TRUST**

2.1 **Initial Sum**

2.1.1 The Trustee acknowledges receipt of the Initial Sum.

2.1.2 The Initial Sum shall be divided into Units as stated in the Schedule and each Initial Unit Holder has paid to the Trustee their proportion of the initial sum as provided in the Schedule the receipt of which the trustee acknowledges.

2.2 **The Fund**

The Trustee shall hold the Fund on trust for the Beneficiaries under the provisions of this Deed.

3. **BENEFICIAL INTEREST OF UNIT HOLDERS**

3.1 **No entitlement to any part of the Fund**

A Beneficiary shall not be entitled to any particular asset or part thereof included in the Fund.

3.2 **Units of same class of equal value**

All Units of the same class shall be of equal value unless otherwise specified in the Deed or agreed to in writing by each Unit Holder.

4. **CREATION AND CLASSIFICATION OF UNITS**

4.1 **Additional Units**

The Trustee may, with the written consent of the Unit Holder, issue additional Units to such persons as it thinks fit and in accordance with a signed application for units approved by the Trustees.

4.2 **Special Conditions Units**

The Trustee may, with the written consent of each Unit Holder, issue Units on such special conditions, or subject to such terms, conditions and obligations as the Trustee may determine.

4.3 **Bound by Deed**

The Trustee shall not issue Units to or permit a transfer of Units to a person unless that person irrevocably agrees in writing to be bound by this Deed.

4.4 **Refusal to register without a reason**

The Trustee may refuse to register a transfer of Units from any person without being required to give any reason for so doing.

5. **UNIT HOLDERS' REGISTER**

5.1 **Details to be recorded**

5.1.1 The Trustee shall maintain a register of Unit Holders ("the Register").

5.1.2 The Register shall record the names and addresses of Unit Holders, the total number of Units and the number of each Unit held by each Unit Holder, any special terms affecting the Units, the date of issue, acquisition, disposal or redemption of each Unit and any other details the Trustee considers appropriate.

5.1.3 No transfer of Units shall be effective until the Trustee makes an appropriate entry to record the transfer in the Register.

5.2 **Identity of Unit Holder**

5.2.1 The person shown in the Register as the Unit Holder in relation to a Unit shall be the only person recognised by the Trustee as the Unit Holder in relation to that Unit for the purposes of this Deed.

5.2.2 A Unit Holder shall be recognised by the Trustee as holding a Unit on trust.

5.2.3 The Trustee shall not be required by a Unit Holder or any other person to recognise any beneficial, contingent, future or partial interest in any Unit other than for the person who is shown as Unit Holder in the Register.

5.2.4 The Trustee may note in the Register that a Unit is held by the Unit Holder on trust. The Trustee shall not be affected with notice of any trust noted in the register and this note shall not create a liability or duty of care against the Trustee in favour of any other person.

6. **UNIT HOLDER' CERTIFICATES**

6.1 **Issue of Certificates**

6.1.1 The Trustee may issue a certificate to each Unit Holder to record the details of the Units held by each Unit Holder.

6.1.2 Each certificate shall be in such form as the Trustee determines.

6.1.3 Each certificate may be numbered, dated and cross referenced to the Register as the Trustee considers appropriate.

6.1.4 The Unit Holders shall return any such certificate to the Trustee on request to permit any alteration to the certificate that may be required.

6.1.5 The certificate remains the property of the Trustee at all times.

7. REDEMPTION OF UNITS

7.1 Redemption at the request of a Unit Holder

7.1.1 A Unit Holder may request the Trustee to redeem a Unit.

7.1.2 The request shall be in writing.

7.1.3 On receipt of a request the Trustee may redeem the Unit and serve a notice of redemption on the Unit Holder.

7.1.4 On redemption the Unit Holder shall be entitled to receive the Unit Price from the Trustee for each Unit redeemed.

7.2 Redemption without the request of a Unit Holder

7.2.1 The Trustee may redeem a Unit other than under sub clause 7.1 by giving one month's notice in writing to the Unit Holder of its intention to redeem the Unit.

7.2.2 The notice period referred to in sub clause 7.2.1 may be waived by the Unit Holder by written notice to the Trustee to this effect.

7.2.3 On redemption the Unit Holder shall be entitled to receive the Unit Price from the Trustee for each Unit redeemed.

7.3 Calculation of Unit Price

7.3.1 Unit Price shall be equal to the value the Fund ("Fund Value") divided by the number of Units on issue at the date of the valuation adjusted for any special terms or conditions attached to the Units being redeemed.

7.3.2 In calculating the Fund Value the Trustee shall:

7.3.2.1 apply generally accepted accounting principles and valuation principles, taking the advice of accountants and valuers as required;

7.3.2.2 consider the expected cost of realising an asset or paying out a liability to allow the Unit Price to be paid to the Unit Holder;

7.3.2.3 consider the proportionate interest of the Unit Holder in the net income of the Trust from the start of the most recent Financial Year to the date of redemption of the Units. The payment of this part of the Unit Price may be deferred until three month's after the end of the Financial Year should the Trustee believe this is necessary to allow time to accurately calculate such amount.

7.4 Effect of redemption

Upon:

7.4.1 service of a notice of redemption under sub clause 7.1;

7.4.2 service of a notice under sub clause 7.2 where the Unit Holder waives its right to one months notice under 7.2.2; or

7.4.3 one month's notice in sub clause 7.2 where the Unit Holder does not waive the right to one month's notice;

the Units referred to in the notice shall be cancelled and the Trustee shall make appropriate entries in the Register to record the cancellation.

7.5 Payment of Unit Price

The Trustee shall pay the Unit Price to the Unit Holder within one month of the Redemption of the Unit or as otherwise may be agreed in writing by the Trustee and the Unit Holder or required by sub clause 7.3.2.3.

8. TRANSFER OF UNITS

8.1 Transfers to Related Persons

A Unit may be transferred at any time by a Unit Holder to a Person who is a member of that Unit Holder's Class of Discretionary Beneficiaries without the consent of the Trustee or any other Unit Holder.

8.2 Transfers to persons other than Related Persons

A Unit may not be transferred other than in accordance with sub clause 8.1 unless the procedure set out in sub clause 8.3 has been followed.

8.3 Procedure for transfers to persons other than Related Persons

8.3.1 A Unit Holder proposing to transfer Units to a person other than a Related Unit Holder (the "Vendor Unit Holder") shall give a Transfer Notice to the Trustee. The Transfer Notice shall be irrevocable and shall appoint the Trustee as the agent of the Vendor Unit Holder for the sale of the Units at the Unit Price.

8.3.2 Within fourteen days of receiving a Transfer Notice the Trustee shall offer to sell the Units specified in the Transfer Notice to the Unit Holders other than the Vendor Unit Holder ("the Offeree Unit Holders") at the Unit Price. This offer shall be in accordance with the Unit Holders' Proportions at the date of the offer and shall be known as "the First Offer". The First Offer must remain open for fourteen days and may only be accepted in writing. If there is more than one such Unit Holder the Units will be offered to them in proportion to the number of Units held by each of them.

8.3.3 On acceptance of a First Offer and payment the Trustee shall record the transfer of Units and other appropriate entries in the Register, issue fresh Unit Certificates and do all other things necessary to record the sale.

8.3.4 On the lapse of a First Offer as regards units not accepted the Trustee shall offer to transfer the unsold Units at the Unit Price to any Offeree Unit Holder who accepted a First Offer (a "Second Offer"). If there is more than one such Unit Holder the Units will be offered to them in proportion to the number of Units acquired by each of them under the First Offer.

8.3.5 On acceptance of a Second Offer and payment the Trustee shall record the transfer of Units and other appropriate entries in the Register, issue fresh Unit Certificates and do all other things necessary to record the sale.

8.3.6 On the lapse of a Second Offer the Trustee may make a further offer (a "Third Offer") and the Third Offer shall be deemed to be a Second Offer for the purpose of the process set out in the preceding sub clauses.

8.4 **Offers not accepted**

8.4.1 If the Offeree Unit Holders do not accept all the Units on offer under sub clause 8.3 the Vendor Unit Holder may sell the unsold Units to any Person at any price not being a price less than the Unit Price..

8.4.2 Subject to 8.6.3, on being given a duly stamped transfer(s) of Units the Trustee shall record the transfer(s) of Units and make such appropriate entries in the Register, issue fresh Unit Certificates and do all other things necessary to record the transfer(s).

8.5 **Form of Transfer**

A transfer of Units may be effected by a written instrument of transfer in such form as determined by the Trustee in writing from time to time.

8.6 **Execution of transfer**

8.6.1 For the purposes of this sub clause a person accepting a transfer of Units from a Unit Holder shall be called a "Transferee Unit Holder".

8.6.2 The Transferee Unit Holder shall be responsible for ensuring all documents required to record the transfer of Units are properly completed and provided to the Trustee. The Transferee Unit Holder shall be responsible for all costs including stamp duty arising in connection with a transfer of Units.

8.6.3 The Trustee may refuse to register any transfer of Units at any time without giving a reason for doing so.

9. **TRANSMISSION OF UNITS**

9.1 **Death of Unit Holder**

On the death of a Unit Holder, the legal personal representative of the deceased Unit Holder shall be the only person recognised by the Trustee as having any title to or interest in the Units held by the deceased Unit Holder.

9.2 **Bankruptcy or liquidation of a Unit Holder**

9.2.1 A person becoming entitled to a Unit on the bankruptcy or liquidation of a Unit Holder (a "Nominated Event") may, subject to sub clause 9.2.2 nominate in writing themselves or some other person to be the new Unit Holder.

9.2.2 Despite any other provision in this Deed, the Trustee may refuse to register a transfer of Units under sub clause 9.2.1 and may deem (by notice in writing to the relevant nominee) the Nominated Event to be a giving of a Transfer Notice under sub clause 8.3 in which event the provisions of clause 8.3 apply.

10. **NET INCOME OF THE FUND**

10.1 **Distribution of Net Income**

The Net Income of the Trust for a Financial Year may be allocated by the Trustee under a written resolution of the Trustee on or prior to the last day of that Financial Year as follows:

10.1.1 as reserves to meet any contingencies, provide for repairs or maintenance, or for depreciation or for any other purpose;

10.1.2 as reserves of accumulated income; or

10.1.3 to each Unit Holders' Class of Discretionary Beneficiaries in accordance with the Unit Holder's Proportions and, within each Unit Holders' Class of Discretionary Beneficiaries, to such Discretionary Beneficiaries as the Trustee sees fit.

10.2 **Different types of income, tax credits and tax rebates**

10.2.1 The Trustee may separately account for different types of income, tax credits and tax rebates.

10.2.2 The Trustee may resolve in writing on or prior to the end of the Financial Year to distribute such amounts to the Discretionary Beneficiaries in each Unit Holders' Class of Discretionary Beneficiaries as it sees fit. Such amounts need not be distributed proportionately to the distribution of Net Income under sub clause 10.1.3.

10.2.3 If the Trustee fails to make a resolution under sub clause 10.2.2 or if the resolution is not effective at law the amounts shall be distributed proportionately to the distribution of Net Income under sub clause 10. 1.3.

10.3 **Default Distributions**

If the Trustee fails to allocate Net Income for a Financial Year under sub clause 10. 1 or fails to allocate any different type of income, tax credit or tax rebate under sub clause 10.2, or if any such allocation is not effective at law, the Net Income, type of income, tax credit or tax rebate, as the case may be, shall be deemed to be allocated to the Unit Holders, in accordance with the Unit Holders' Proportions at the end of the Financial Year.

11. **CAPITAL OF THE FUND**

11.1 **Application of capital of the Fund**

Any amounts which are deemed by the Trustee to be capital shall not be available for distribution as Net Income. Such amounts shall be added to and held as capital and shall be applied under the provisions of this Deed.

11.2 **Distribution of capital prior to Termination Date**

The Trustee may determine in writing that any part of the capital of the Fund may be distributed to a Unit Holder or a Unit Holders' Class of Discretionary Beneficiaries. This distribution shall be in accordance with any special rights attached to any Units. The distribution shall be to each Unit Holders' Class of Discretionary Beneficiaries in accordance with the Unit Holder's Proportions and, within each Unit Holders' Class of Discretionary Beneficiaries, to such Discretionary Beneficiaries as the Trustee sees fit.

11.3 **Default capital distribution**

If an allocation of capital under sub clause 11.2 is not effective at law, the amount of the capital shall be deemed to be allocated to the Unit Holders in accordance with the Unit Holders' Proportions at the end of the Financial Year.

12. DISCRETIONARY BENEFICIARIES

12.1 Classes of Discretionary Beneficiaries

12.1.1 For each Unit Holder there is a Unit Holders' Class of Discretionary Beneficiaries.

12.1.2 A Unit Holders' Class of Discretionary Beneficiaries is created when a person becomes a Unit Holder and at that time all persons in that class become Discretionary Beneficiaries.

12.1.3 A Unit Holders' Class of Discretionary Beneficiaries terminates when a person ceases to be a Unit Holder and all Discretionary Beneficiaries in that Unit Holders' Class of Discretionary Beneficiaries cease to be Discretionary Beneficiaries.

12.2 Natural person Unit Holder

Where a Unit Holder is a natural person and does not act as a trustee of a trust the Unit Holders' Class of Discretionary Beneficiaries shall be:

12.2.1 the spouse of the Unit Holder and any other person related to the Unit Holder or to the spouse of the Unit Holder whether by blood or by marriage;

12.2.2 a child or grandchild of the Unit Holder born;

12.2.3 any private company incorporated in Australia, of which the Unit Holder or a person described in sub clauses 12.2.1 or 12.2.2 is a director or a shareholder; and

12.2.4 the trustee of any trust of which the Unit Holder or a person described in sub clauses 12.2.1, 12.2.2 or 12.2.3 is a beneficiary or discretionary object.

12.3 Company Unit Holder

Where a Unit Holder is a corporation (not acting as a trustee), the Unit Holders' Class of Discretionary Beneficiaries shall be:

12.3.1 any director or shareholder of the corporation;

12.3.2 the spouse of any person described in clause 12.3.1 and any other person related to the Unit Holder or to the spouse of the Unit Holder whether by blood or by marriage;

12.3.3 any child or grandchild of any person described in sub clauses 12.3.1 or 12.3.2;

12.3.4 any private company incorporated in Australia of which a person described in sub clauses 12.3.1, 12.3.2 or 12.3.3 is a director or a shareholder;

12.3.5 the trustee of any trust of which any persons described in sub clauses 12.3.1, 12.3.2, 12.3.3 or 12.3.4 is a beneficiary or a discretionary object; but

12.3.6 does not include the Trustee.

12.4 Trustee Unit Holder

Where a Unit Holder acts as a trustee of a trust, the Unit Holders' Class of Discretionary Beneficiaries shall be:

12.4.1 each beneficiary or discretionary object of the trust of which the Unit Holder is trustee;

12.4.2 the spouse of any person described in clause 12.4.1 and any other person related to the Unit Holder or to the spouse of the Unit Holder whether by blood or by marriage;

- 12.4.3 any child or grandchild of any person described in sub clauses 12.4.1 or 12.4.2;
- 12.4.4 any private company in which a person described in sub clauses 12.4.1, 12.4.2 or 12.4.3 is a director or a shareholder;
- 12.4.5 the trustee of any trust, whether now or existing or hereafter created of which any person described in sub clauses 12.4.1, 12.4.2, 12.4.3 or 12.4.4 is a beneficiary or a discretionary object.

13. PAYMENTS TO BENEFICIARIES

13.1 Means of payment

A requirement to distribute, pay, apply or set aside any amount of Net Income to or for a Beneficiary may be satisfied by:

- 13.1.1 by placing such amount to the credit of the Beneficiary in the Trust's accounts;
- 13.1.2 by drawing a cheque in respect of such amount made payable to or for the credit or benefit of the Beneficiary;
- 13.1.3 by paying the same in cash to or for the benefit of the Beneficiary;
- 13.1.4 if the Trustee thinks fit, by transferring any of the investments of the Fund in specie to the Beneficiary and if applicable, on receiving payment of the difference between the amount to which the Beneficiary is entitled and the value of such investment at the valuation made by a valuer appointed by the Trustee for that purpose;
- 13.1.5 if the Trustee thinks fit, by issuing Units to Unit Holders entitled to such amount in full discharge of the amount due; and or
- 13.1.6 by such other means as the Trustee may determine.

13.2 Cheque

Any monies payable by the Trustee to a Unit Holder or a member of a Unit Holders' Class of Discretionary Beneficiaries may be sent through the post to the address shown on the Register for the Unit Holder.

13.3 Payment to Co-Unit Holders

The Trustee may determine that any share of Net Income, capital or any tax credit or tax rebate available for distribution to a minor or a person under a legal disability who shall be presently entitled thereto, shall be held by it under a separate trust for such minor or person under a legal disability until he or she shall have attained the age of eighteen (18) years or ceased to be under such legal disability.

13.4 Unpaid distributions to comprise separate trusts

An unpaid distribution shall comprise a separate trust for the benefit of the Unit Holder and shall not comprise a loan.

13.5 Definition

In this clause a reference to a Unit Holder includes a reference to a Discretionary Beneficiary.

14. STATEMENTS AND ACCOUNTS

14.1 Accounting records

The Trustee shall maintain proper books of accounts to separately record all income, capital tax credits and tax rebates as determined by the Trustee.

14.2 Financial Statements

The Trustee shall procure financial statements, including a profit and loss account and a balance sheet, as at the end of each Financial Year showing:

- 14.2.1 the Net Income of the Trust for the Financial Year;
- 14.2.2 the gross income of the Trust for the Financial Year;
- 14.2.3 the expenses of the Trust for the Financial Year;
- 14.2.4 the liabilities of the Trust as at the end of the Financial Year;
- 14.2.5 the assets comprised in the Fund as at the end of the Financial Year
- 14.2.6 the amounts held in any reserve account as at the end of the Financial Year;
- 14.2.7 issued units as at the end of the Financial Year;
- 14.2.8 any unpaid distributions to Unit Holders or Discretionary Beneficiaries; or
- 14.2.9 any other matter required to be recorded by the Trustee to comply with any law relating to trusts or companies or to any activity carried on by the Trustee.

14.3 Election to appoint an auditor

- 14.3.1 Unit Holders, holding more than the Required Percentage of Units may by written resolution require an auditor to be appointed to audit the accounts of the Fund
- 14.3.2 The cost of the audit shall be paid out of the Fund.

14.4 Administration of the Trust

The Trustee may do all things required to properly administer the Trust.

15. APPOINTMENT AND REMOVAL OF TRUSTEE

15.1 Retirement of Trustee

- 15.1.1 A Trustee may retire after giving one month's written notice to the Unit Holders or such other period notice as may be agreed in writing by the Unit Holders and the Trustee.
- 15.1.2 The Unit Holders may appoint a new Trustee by a resolution passed by Unit Holders holding more than the Required Percentage of Units.

15.2 Removal of Trustee

- 15.2.1 If the Trustee is liquidated, ceases to carry on business, or has a receiver or administrator appointed, or a similar event occurs the Unit Holders may by written resolution remove the Trustee and appoint a new Trustee in its place.
- 15.2.2 In any other case, the Unit Holders may by written notice to the Trustee after passing a resolution of not less than the Required Percentage of Units remove any Trustee and appoint a new Trustee or Trustees.

15.3 Additional Trustee

In addition to their powers under clauses 15.2.1 and 15.2.2, the Unit Holders may appoint an additional trustee after giving notice to the Trustee. The resolution must be passed by a written resolution of Unit Holders holding more than the Required Percentage of Units.

15.4 Restriction on appointment

A Trustee may not be a Unit Holder unless the Trustee was appointed as the first Trustee, of this Trust or one of the first Trustees.

15.5 Change of Trustee

15.5.1 On a change of Trustee the old Trustee shall do all things necessary to give effect to the change of Trustee

15.5.2 On a change of Trustee the old Trustee shall be deemed to have irrevocably appointed the new Trustee its attorney for these purposes and authorises the new Trustee to sign any documents and give all authorities and undertakings required to do this.

16. VARIATION OF TRUST

16.1 Variation of trust Deed

16.1.1 This Deed may be amended, revoked or added to by any instrument in writing executed by the Trustee.

16.1.2 Any such amendment, revocation or addition shall not prejudicially affect the rights of a Unit Holder to Net Income of the Fund or prejudicially affect the rights of Unit Holders of a class of Units to participate in the Net Income or capital of the Fund, or the conditions of issue of such class of Units. This is unless the consent of the Unit Holder affected, or the consent of all Unit Holders of the class whose rights are to be prejudicially affected, is first obtained.

16.2 Restriction on variation power

No amendment, revocation or addition of this Deed shall infringe any applicable law or rule against perpetuities or otherwise extend the Termination Date.

17. VARIATION OF CLASS RIGHTS

17.1 Variation of class rights

The Trustee may vary the rights attached to a class of Units provided all the Unit Holders of that class consent to the variation in writing. On doing this the Units of that class shall be held subject to that variation.

18. TRUSTEE POWERS

18.1.1 The Trustee's powers include all powers vested on a trustee under the law applying to trustees and, without limiting the generality of the foregoing, include the powers set out in this Deed.

18.1.2 The exercise or non exercise of the Trustee's powers shall not be challenged in anyway by any Unit Holder or Discretionary Beneficiary.

18.1.3 Exercise of powers by company trustee

The Trustee, if it is a company, may exercise or concur in exercising any discretion or power conferred by this deed by a majority resolution of its board of directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more of its directors appointed unanimously from time to time by the board of directors or governing body for that purpose and may by majority resolution of its directors terminate any such delegated authority.

18.1.4 Exercise of powers by more than one trustee

The Trustees, if two or more, may exercise or concur in exercising any discretion or power conferred by this deed by a majority resolution of those Trustees.

18.1.5 The Trustee's shall include:-

- (1) The power to in its absolute discretion accept any property given or transferred to the Trustee as Trustee of this settlement.
- (2) The power to in its absolute discretion retain property in the condition in which it has been received by the Trustee for such period as the Trustee may think fit notwithstanding that it may have been received by way of bonus or be of a wasting, reversionary or depreciating nature.
- (3) The power to in its absolute discretion retain the whole or any part of the Trust Fund in the form of cash for such period and in such currency as the Trustee may think fit notwithstanding that the cash retained may be earning no interest at all.
- (4) The power to in its absolute discretion retain for such period as the Trustee may think fit any property notwithstanding that it may not be producing any income.
- (5) The power to in its absolute discretion purchase, lease or otherwise acquire any property (whether income producing or not) in any country upon such terms and conditions as the Trustee may think fit. In purchasing, leasing or acquiring any property, the Trustee may allow the whole or any part of any money payable in respect of such purchase, lease or acquisition to remain unpaid upon such terms and conditions as the Trustee may think fit and the Trustee may secure the payment of any money remaining unpaid and any interest thereon by mortgage, charge or other security over the whole or any part of the Trust Fund. If the property purchased, leased or acquired consists of or includes stocks, shares, notes, debentures, bonds, mortgages and other securities (whether secured or not) in or issued by any corporation or other entity of whatever kind in any country then, any such stocks, shares or other securities may be wholly or partially paid up and may bear less than a commercial rate of interest or no interest at all and may be for any term and may be expressed in any currency and may be upon such other terms and conditions as the Trustee may think fit.
- (6) The power to in its absolute discretion to acquire and retain policies of assurance and policies of insurance on the life of any person and upon such conditions as the Trustee may think fit.
- (7) The power to in its absolute discretion acquire and retain annuities for such period and upon such terms and conditions as the Trustee may think fit.

- (8) The power to in its absolute discretion advance or lend money to any person, corporation, bank, government, public body or authority in any country, either with or without security and either bearing or not bearing interest and in such currency and upon such terms as to repayment and otherwise as the Trustee may think fit.
- (9) The power to in its absolute discretion lend any property other than money to any person or corporation, either with or without security and for such period and upon such terms as to use, return and otherwise as the Trustee may think fit. If the Trustee takes any security in relation to any money or property advanced or lent, the value of the security may be less than the amount of money or the value of the property advanced or lent and the Trustee shall not be obliged to obtain any valuation of the security or the property lent.
- (10) The power to in its absolute discretion sell, exchange or otherwise dispose of any property and to grant options or rights to purchase, exchange or otherwise acquire any property upon such terms and conditions as the Trustee may think fit; and to vary any contract for sale, buy at any auction, rescind any contract for sale and resell upon such terms and conditions as the Trustee may think fit. Any consideration due to the Trustee in respect of any sale, exchange, disposition, option or right may consist of money or property or partly of money and partly of property and the Trustee may allow any such consideration to remain outstanding either with or without security and either bearing interest and for such period and upon such terms and conditions as the Trustee may think fit. In selling, exchanging or otherwise disposing of the whole or any part of the Trust Fund and in granting any options or rights in relation thereto the Trustee shall not be obliged to obtain any valuation of the whole or the part to be sold, exchanged or disposed of or which is to be the subject of the option or right but may accept such consideration as it may think fit.
- (11) The power to in its absolute discretion lease or license and to grant options or rights to lease or license any property to any person including a Unitholder for such period and for such rent or consideration including rent free and upon such terms and conditions as the Trustee may think fit.
- (12) The power to in its absolute discretion promote or carry on any business, scheme or undertaking of any nature in any country (including any business, scheme or undertaking of a speculative nature) upon such terms and conditions as the Trustee may think fit.
- (13) The power to in its absolute discretion join or enter into partnership or into any arrangement for sharing of profits, co operation, joint adventure or otherwise in any country with any person, corporation or other entity for the purpose of promoting or carrying on any business, scheme or undertaking of any nature (including any business, scheme or undertaking of a speculative nature) upon such terms and conditions as the Trustee think fit.
- (14) The power to in its absolute discretion borrow money in any currency or obtain any other form of financial accommodation for any purpose whatsoever upon such terms and conditions as the Trustee may think fit. The amount of money borrowed or value of financial accommodation obtained may exceed the net value of the Trust Fund at or after the time of the borrowing or obtaining of the financial accommodation. The Trustee may secure any liability in respect of any money borrowed or any financial accommodation obtained, and any interest thereon, by mortgage, charge or other security over the whole or any part of the Trust Fund.

- (15) The power to in its absolute discretion ensure that no person, corporation, bank, society, association or other body lending or advancing money to the Trustee as Trustee of this settlement shall be concerned to see that such money or financial accommodation is needed or that no more than is needed is borrowed or obtained or to see to the application of the money borrowed or proceeds of the financial accommodation.
- (16) The power to in its absolute discretion guarantee the performance of any person, company or other entity (including any Unitholder) in relation to any agreement, contract, undertaking or promise and the Trustee may secure any such guarantee by mortgage, charge or other security over the whole or any part of the Trust Fund.
- (17) The power to in its absolute discretion separately indemnify any person, company or other entity (including any Unitholder) for any costs, expenses, losses or outgoings incurred by reason of the non performance of any person, company or other entity in relation to any agreement, contract, undertaking or promise and the Trustee may secure any such indemnity by mortgage, charge or other security over the whole or any part of the Trust Fund.
- (18) The power to in its absolute discretion create, give, renew, alter or vary any mortgage, charge or other security over the whole or any part of the Trust Fund for any purpose whatsoever and upon such terms and conditions as the Trustee may think fit.
- (19) The power to in its absolute discretion release or discharge either wholly or in part any mortgage, charge or other security whether or not the whole of the indebtedness or other liability secured by the mortgage, charge or other security has been repaid or discharged.
- (20) The power to in its absolute discretion make, add to, enlarge, alter, demolish or reconstruct any improvements on any land whether the title to such land be freehold, leasehold or some other title.
- (21) The power to in its absolute discretion repair, maintain, renovate or improve any property.
- (22) The power to in its absolute discretion insure any property in which the Trustee has an interest upon such terms and conditions as the Trustee may think fit. Any such insurance need not be for the full value of the property insured but may be for such amount as the Trustee may think fit. The Trustee shall not be obliged to obtain any valuation of any property for the purpose of insuring it.
- (23) The power to in its absolute discretion surrender any property (whether onerous or not) upon such terms and conditions as the Trustee may think fit.
- (24) The power to in its absolute discretion accept any shares, units, notes, debentures or other securities in any corporation and/or other entity in any country wholly or in partly in place of or in exchange for any shares, units, notes, debentures or other securities forming part of the Trust Fund.

- (25) The shares, units, notes, debentures or other securities in the corporation may be wholly or partially paid up and the notes, debentures or other securities in the corporation and/or other entity may bear less than a commercial yield or no yield at all and may be for any term and may be expressed in any currency and may be upon such terms and conditions as the Trustee may think fit.
- (26) The power to in its absolute discretion exercise all rights and privileges in respect of any shares, units, notes, debentures or other securities from time to time forming part of the Trust Fund in such manner as the Trustee may think fit.
- (27) The power to in its absolute discretion pay calls on any shares, units, notes, debentures or other securities or to allow same to be forfeited.
- (28) The power to in its absolute discretion promote or assist in promoting any corporation in any country for any purpose whatsoever including any speculative purpose.
- (29) The power to in its absolute discretion sell or transfer any property to any corporation and/or other entity including a corporation and/or other entity which the Trustee may have promoted or assisted in promoting in consideration consisting wholly or in part of shares wholly or partially paid up or wholly or in part of units, notes or debentures of whatever term and yield or wholly or in part of cash or property payable immediately or by instalments either with or without security and either bearing or not bearing income. Such shares, units, notes, debentures, securities or cash shall be deemed to be corpus or part of the corpus of the Trust Fund and no apportionment or allowance shall be made in respect of any income comprised in the whole or the part of the Trust Fund which was sold or transferred.
- (30) The power to in its absolute discretion appoint itself or to accept appointment or election and to act as director, manager or secretary of or hold any other office in any corporation and/or other entity in any country in which any part of the Trust Fund may be invested, or which the Trustee has promoted or assisted in promoting.
- (31) The power to in its absolute discretion enter into any arrangements with any Government or any public or private body or authority to obtain any rights, authorities, privileges or concessions which the Trustee may think desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, authorities, privileges and concessions.
- (32) The power to in its absolute discretion apply for, promote and obtain any statute, order, regulation, or other authorisation or enactment which may benefit any part of the Trust Fund and to oppose any bills, proceedings or applications which may seem directly or indirectly to prejudice any part of the Trust Fund.
- (33) The power to in its absolute discretion engage or employ any person, firm or corporation (including any Unitholder) in any country to do any act or transact any business upon such terms as to remuneration and otherwise as the Trustee may in its absolute discretion think fit even if the act or business is such that the Trustee could do itself
- (34) The power to in its absolute discretion appoint any person or corporation to act as the agent or attorney of the Trustee for the purpose of executing or exercising all or any of the powers, authorities and discretions given to the Trustee by this clause and to revoke any such appointment. Any such appointment or revocation shall be upon such terms and conditions as the trustee may in its absolute discretion think fit.

- (35) The power to in its absolute discretion allow documents of title in respect of any property to remain out of the power and possession of the Trustee whether with or without security and for such period and upon such terms and conditions as the trustee may think fit.
- (36) The power to in its absolute discretion allow any property to be held by or registered in the name of any person or corporation in any country whether with or without security and for such period and upon such terms and conditions as the Trustee may think fit.
- (37) The power to in its absolute discretion give receipts for capital and other moneys notwithstanding that the Trustee is not the sole trustee of this settlement and to allow any person or corporation to give a receipt on behalf of the Trustee. Any receipt shall be a valid and effective and an absolute discharge to the person, corporation or entity in whose favour it is given.
- (38) The power to in its absolute discretion commence, defend or otherwise take part in any proceedings in any court, tribunal or other judicial, quasi judicial or administrative body including any arbitration. The Trustee may conduct such proceedings in such manner as it may in its absolute discretion think fit and may discontinue, withdraw from, compromise or proceed to the final determination of any such proceedings on such terms and conditions (including a total admission of liability at any stage of the proceedings) as the Trustee may think fit.
- (39) The power to compromise, compound, abandon or otherwise settle any debt, account, claim or thing whatsoever relating to the whole or any part of the Trust Fund including releasing in whole or in part the payment or transfer of any property owing or due to the Trustee.
- (40) The power to in its absolute discretion determine:-
- (i) whether any property (the term "property" for the purposes of this sub clause shall include money but not property which is part of the Net Income of the Fund) received by the Trustee is received as corpus of the Trust Fund or as income of the Trust Fund and the extent which such property is received as corpus of the Trust Fund or income of the Trust Fund; and
 - (ii) whether any property applied, disbursed or expended by the Trustee is applied, disbursed or expended out of the corpus of the Trust Fund or out of the income of the Trust Fund; and
 - (iii) to treat any tax credits or rebates as either income or corpus having regard to the manner of and nature of the particular tax credit or rebate.
- (41) Subject to any applicable law (in particular, any law relating to the lending of moneys to superannuation funds or their members) and subject to the written consent of all Unit Holders at any time or times and from time to time before the Termination Date lend any sum or sums out of the Trust Fund and any moneys held in trust pursuant to the Deed to any Unit Holder either with or without security and upon such terms and conditions as to repayment and with or without interest as the Trustee shall think fit.
- (42) The power to in its absolute discretion move, transmit or reinvest all or any part of the Trust Fund to whatever location and at such time or times as the Trustee may think fit.

- (43) The power to in its absolute discretion do anything and to execute any writing incidental to or which may facilitate any exercise of the powers, authorities and discretions conferred on the Trustee by this clause.
- (44) Notwithstanding anything herein to the contrary or otherwise contained the Trustee with the consent of all Unit Holders, shall have power to:
- (i) sell, transfer, hire, lease or dispose of any real or personal property of the Trust Fund or to lend or advance any moneys to the Trustee in the Trustee's personal capacity or in the capacity of trustee of another trust fund or otherwise howsoever or to any company or partnership whatsoever notwithstanding that the Trustee be a shareholder, director, member or partner of such company or partnership or to a wife, husband, or child of any Trustee absolutely;
 - (ii) buy, transfer, acquire, hire or lease any real or personal property or to borrow any moneys from the Trustee in the Trustee's personal capacity or in the capacity of the trustee of another trust fund or otherwise howsoever or from any company or partnership whatsoever notwithstanding that the Trustee be a shareholder, director, member or partner of such company or partnership or from the husband, wife or child of any Trustee;
 - (iii) to exercise all the powers and discretions vested in the Trustee notwithstanding that the Trustee may be a Unit Holder and generally to deal with the Trustee in its personal capacity in all respects as if there were two separate persons to the dealings;
 - (iv) to divide assets in specie between the Trust Fund and other trust funds in such manner as the Trustee shall think fit.
- (45) The power to open in the name of the Trustee or in the name of a person or corporation as nominee of the Trustee or in the joint names of the Trustee and another, any cheque, savings deposit or other account with any bank or financial institution wherever situated with full power to operate on any such account including, without limitation, power to sign, draw and endorse Promissory Notes, Bills of Exchange, Bills of Lading, cheques and other negotiable or transferable instruments including any on the account and to close the account.

19. MEETINGS OF UNIT HOLDERS

- 19.1 The Trustee may at any time convene a meeting of the Unit Holders and at the request in writing signed by Unit Holders, who at that time hold not less than 25 per cent of all issued Units shall convene a meeting of the Unit Holders.
- 19.2 The Trustee shall give at least three days written notice of every meeting of the Unit Holders and shall specify in the notice the general nature of the business to be transacted.
- 19.3 At a Unit Holders meeting a Unit Holder nominated by the meeting shall preside and at any other meeting convened by the Trustee a person (whether or not a Unit Holder) nominated by the Trustee shall preside.
- 19.4 Subject to this deed, every question arising at a meeting of the Unit Holders shall be decided on a show of hands unless a poll is demanded. Each Unit Holder shall have one vote for each Unit held by that Unit Holder.

- 19.5 A Unit Holder may demand a poll before or immediately after a question is put to a show of hands. The demand for a poll may be withdrawn.
- 19.6 Two Unit Holders present in person or by proxy and holding (or representing by proxy) between them not less than 50 per cent of the issued Units of a particular class is the quorum for a meeting unless there is only one Unit Holder.
- 19.7 With the sanction of the meeting the Chairman may adjourn the meeting to a time and place determined by him.
- 19.8 The Chairman shall adjourn a meeting at which a quorum is not present.
- 19.9 The Unit Holders may vote at a meeting either personally or by proxy. A proxy shall be in the usual or common form or in any other form approved by the Trustee. A Unit Holder which is a company may vote by an authorised representative who may speak or demand a poll and generally act as a proxy on its behalf.

20. LIMITATION ON LIABILITY OF UNIT HOLDERS

20.1 No other relationship

Nothing in this Deed shall create or be deemed to create a relationship of principal and agent between the Trustee and the Unit Holders, a relationship of partners as between the Trustee and the Unit Holders, or a relationship of partners between the Unit Holders.

20.2 No indemnity from Unit Holders

20.2.1 Despite any other provision of this deed or any rule of law to the contrary, no unit holder by reason of holding units or of the relationship created by this deed is under any obligation personally to indemnify the Trustee or any creditor of the Trustee in the event of there being any deficiency of the assets of the trust fund as compared with the liabilities of the Trustee in relation to the trust fund. The rights of indemnity of the Trustee or of such creditor are limited to recourse to the assets of the trust fund. The Trustee is entitled to be fully indemnified out of the assets for the time being comprising the Trust Fund against all liabilities incurred by the Trustee in the execution or attempted execution of or as a consequence of the failure to exercise any of the trusts, authorities, powers and discretions hereof or by virtue of being the Trustee.

20.2.2 A Unit Holder shall not be liable for any loss or damage howsoever incurred or suffered by the Trustee in acting as trustee of the Trust.

20.2.3 The Trustee expressly waives, releases, forfeits and abandons all rights and remedies which the Trustee otherwise might have at law or in equity to recover from a Unit Holder moneys by reason of any right of indemnity or subrogation notwithstanding that any such right may not be able to be satisfied or discharged in whole or in part out of the assets comprising the trust fund

20.2.4 In this clause a reference to a Unit Holder includes a reference to a Discretionary Beneficiary.

20.3 Notices

A notice required to be given to a Unit Holder shall be deemed to have been duly given if it is in writing and is either delivered or sent by post in a prepaid envelope addressed to the Unit Holder at the address shown on the Register. Notices sent by post shall be deemed to be served on the second day following the day of posting.

21. PROPER LAW

The law of the state specified in the Schedule shall apply to this Trust.

22. NO PUBLIC OFFER

It is expressly declared and provided that no offer or invitation shall be made to the public in respect of a Unit or Units in this Trust and that all offers or invitations shall comply with the relevant legal requirements and no more than 20 Unit Holders may be registered as Unit Holders at any one time counting joint Unit Holders separately.

23. TERMINATION OF TRUST

23.1 Termination of trust

The Trust shall be wound up and terminate on the first to occur of:-

- 23.1.1 Unit Holders holding not less than 90% of the Units giving written notice to the Trustee that the Trust shall be determined;
- 23.1.2 the Trustee resolving to determine the Trust; or
- 23.1.3 eighty years from the date of this Deed.

23.2 Procedure on determination

- 23.2.1 The date of such an event shall be called the "Termination Date".
- 23.2.2 The Trustee shall on the Termination Date call in and convert the Fund to money, pay the liabilities of the Trust and pay the net amount to the Unit Holders. This shall be subject to any Special Conditions or rights effecting the Units and shall be in accordance with the Unit Holders' Proportions on the Termination Date.

23.3 Postponement of sale

In winding up the Trust the Trustee may postpone the sale, calling in and conversion of any part of the investments and property of the Fund for such time as it thinks is in the interests of the Unit Holders. The Trustee shall not be responsible for any loss attributable to such postponement.

23.4 Provision for liabilities

In winding up the Trust the Trustee may make such provisions as it considers necessary to provide for any actual or contingent liabilities in respect of the Fund or any of the investments of the Fund. The Trustee may withhold such amounts from the amounts distributed to Unit Holders on a separate trust pending ultimate payment of the amount to the Unit Holders.

24. SPECIAL CONDITIONS

- 24.1 The Deed shall include any Special Conditions stated in the Schedule and these Special Conditions may be expressed to take precedence over any other provision in this Deed.

SCHEDULE

Name of Trust: Hybrid Trust Sample Updated 2010 June 4

Dated:

Name of Trustee

My Favourite Company Pty Ltd
A.C.N. 111 222 333
66 Main Street
Manly NSW 2095

FIRST PART (herein called "the Trustee")

and the (several) person(s) who execute this Deed or sign an application for units or a transfer of units containing an agreement with the Trustee under which the applicant for or transferee of units agrees to be bound by the provisions of this Deed.

SECOND PART

INITIAL SUM: \$1,800.00

Executed as a Deed on the Date of this Deed.

Executed for and on behalf of
My Favourite Company Pty Ltd
A.C.N. 111 222 333

by authority of the director(s)
in the presence of:
(Trustee)

.....
Director Secretary

.....
OR Sole Director and Secretary

Executed for and on behalf of
My Favourite Company Pty Ltd
(ACN 111 222 333)

by authority of the director(s)
in the presence of:
(Corporate Unit Holder)

Amount to be paid to
and accepted by
the Trustee pursuant
to clause 2(a): \$900.00

.....
Director

.....
Secretary

.....
OR Sole Director and Secretary

Signed Sealed and Delivered by
Patrick Jones
(Individual Unit Holder)

in the presence of:

.....
Amount to be paid to and accepted by
the Trustee pursuant to clause 2(a) \$900.00