

**THIS IS THE LAST WILL of me PAMELA DOROTHY CITIZEN of 98  
Railway Parade Granville in the State of New South Wales, Retired.**

1. **I HEREBY REVOKE** all my former testamentary dispositions.
2. **I APPOINT** my children **MICHAEL JAMES CITIZEN, DAVID HERBERT CITIZEN, LOUISE PAMELA CITIZEN and JENNIFFER LOUISE CITIZEN** (hereinafter referred to as "my Trustee" which expression shall include the survivor of them) to be the Executors and Trustees of this my Will.

**ONGOING TRUSTEES**

3. My Trustee shall be the initial trustee or trustees of every trust established by my Will, unless my Will provides otherwise in relation to a particular trust or trusts.

**GIFTS**

4. **I GIVE** free of all taxes and duties payable in consequence of my death,

All my household furniture, plates, plated goods, linen, glass, china, books, pictures, prints, musical instruments, electrical goods, clothing, jewellery, wines, liquors and consumable stores and all other articles of personal or domestic use or ornament at the date of my death to my son **MICHAEL JAMES CITIZEN** provided he shall survive me by 30 days. If my aforesaid beneficiary predeceases me this gift shall lapse and fall into the residue of my estate.

**LIFE TENANCY**

5.
  - (a) **I GIVE** to my Trustee the property known as 98 Railway Parade Granville or such other property that may be my principle residence owned at the date of my death together with all furniture, furnishings and all articles of household and domestic use contained in my said residence, **UPON TRUST** to permit my son **MICHAEL JAMES CITIZEN (Michael)** to reside therein during his lifetime so long as he in respect of such residence:
    - (i) Pays all rates and taxes and other outgoings;
    - (ii) Keeps it in a good and habitable state of repair, fair wear and tear and damage by fire, lightning, flood, tempest and other inevitable accident excepted; and
    - (iii) Keeps it insured to the satisfaction of my Trustee against fire, storm, tempest and other insurable risks.

(b) **I DIRECT** that such right of residence shall form part of my residuary estate in the event of any of the following:

(i) On the death of my son Michael.

(ii) On the failure of my son Michael to **in the opinion of my Trustee** continue to reside permanently therein.

(iii) On the failure of my son Michael to comply, within a reasonable period **in the opinion of my Trustee**, with the conditions contained in paragraph (a) of this Clause.

(c) **I DECLARE** that if my said son Michael does not wish to reside in the aforementioned residence then he is to advise my Trustee accordingly in writing and my right, title and interest in such residence shall pass according to the destination of my residuary estate.

(d) **I DIRECT** that upon the death of my said son Michael. The aforementioned residence shall lapse and fall into the residue of my estate.

#### **PROVISION OF ADVICE**

(e) It is my strong wish that, without binding any party, my Trustee obtains and considers the advice from an appropriately qualified and experienced person in financial and investment planning, in making investment decisions when administering my Estate.

#### **INITIAL ADMINISTRATION**

(f) My Trustee shall, subject to the powers set out the Powers of the Executors and Trustees Schedule, sell, call in or convert into money any part of my Estate and, subject to the succeeding subclause, pay any debts, funeral and other expenses, costs or fees associated with my death or the administration of my Estate ("Testamentary Expenses").

(g) My Trustee shall then deal with the balance of my Estate remaining after the payment and discharge of Testamentary Expenses in accordance with the remainder of this Will.

(h) In the event of my Estate's insolvency, my Trustee shall not be required to use any payments that are paid into my Estate to pay my creditors that are exempt from being "property divisible amongst creditors" under section 116 of the federal *Bankruptcy Act 1966*.

#### **PROTECTIVE OPTIONS FOR MICHAEL**

8. If my son **MICHAEL JAMES CITIZEN "Michael"** ("the Principal Beneficiary") survives me by 30 days, my Trustee shall hold the residue of my estate (which shall comprise "the Principal Beneficiary's Share") on trust for the benefit of the Principal Beneficiary in a Special Disability Trust ("the SDT Fund"), the terms of which are

outlined in the Special Disability Trust Terms Schedule, including the nomination of the Principal Beneficiary as its principal beneficiary, and the amount contributed to the SDT Fund as a result of the exercise of my Trustee's discretion pursuant to this clause is referred to in this Will as "the SDT Amount".-

9. If the Principal Beneficiary does not survive me by 30 days, this clause shall lapse and the amount that would have otherwise comprised the Principal Beneficiary's Share shall be dealt with in accordance with the succeeding clauses of this Will.

#### **AT THE END OF THE TERM**

10. If the Principal Beneficiary survives me by 30 days, then at the end of the Term, my Trustee shall divide the Balance into one or more equal sections and held on trust, subject to:

- a) The remaining provisions of this clause;
- b) My Trustee's discretionary powers provided in the Discretionary Powers Schedule.

- 10.1. For the purposes of this clause:

- a) "the Balance" shall mean:
  - i) In respect of the SDT Fund, my Contribution Balance (calculated in accordance with the terms of trust in the Special Disability Trust Terms Schedule);

and

- b) "the Term" shall mean:
  - i) In respect of the SDT Fund, the End Date as defined in the Special Disability Trust Terms Schedule; -

- 10.2. The Balance shall be held on trust and dealt with in accordance with the succeeding clauses of this Will.

- 10.3. For the purposes of the immediately preceding subclause only, the words "survive me" and "my death" wherever they appear in the succeeding clauses are to be read for the purposes of that subclause as referring to "survive the Principal Beneficiary" and "the Principal Beneficiary's death".

- 10.4. If **Michael** does not survive to become a principal beneficiary under this clause, this clause shall lapse and the amount that would have otherwise comprised the Principal Beneficiary's Share shall be dealt with in accordance with the succeeding clauses of this Will.

- 10.5. **UPON** the death of my son **MICHAEL JAMES CITIZEN** or at the End Date I **DIRECT** that my residuary estate shall pass to such of my children **DAVID HERBERT CITIZEN, LOUISE PAMELA CITIZEN** and **JENNIFFER LOUISE CITIZEN** as shall survive me in equal shares as tenants in common for their own use absolutely. I **DECLARE** that should any child of mine predecease me their share shall lapse.

## GENERAL POWERS OF MY EXECUTOR AND TRUSTEES

11. My Trustee:
  - a) shall have all the powers, authorities and discretions of a natural person, including but not limited to the power to invest and change investments freely as if they were beneficially entitled to them; and
  - b) In the exercise of their powers, they shall not be restricted or obligated by any provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories or anywhere in the world.
12. Without limiting the generality of the preceding subclause, my Trustee shall also have the additional powers as expressly set out in this Schedule.

## SPECIFIC POWERS OF MY EXECUTOR AND TRUSTEE

13. Without limiting the generality of the preceding clause, my Trustee shall have the follow specific powers to:
  - a) Exercise any powers given to them by law;
  - b) Sell, call in and convert into money such assets of my Estate as do not consist of money at the time and on the conditions that they think fit;
  - c) Postpone the sale and conversion of the whole or any part of my Estate for so long as they think without being responsible for any loss;
  - d) Postpone the calling in of any unpaid present entitlement owing to me by the trustee of any trust on terms as agreed to between my Trustee and the relevant trustee;
  - e) Grant an express right of residence in respect of any real estate forming part of my estate;
  - f) Distribute any of my estate assets subject to any debt or security to any beneficiary under the terms of this Will;
  - g) Obtain valuations of any assets as they think fit;
  - h) Contribute to a Special Disability Trust within the meaning of the federal *Social Security Act 1991* or the federal *Veterans' Entitlement Act 1986* of which a Primary Beneficiary or prospective beneficiary is a principal beneficiary;
  - i) For any reason, set aside a sufficient sum out of the income or capital to meet all debts, charges, taxes and other liabilities;

- j) Employ professional advisors including legal practitioners, accountants and financial advisors to assist in the administration of my estate including a Firm of which an Executor or trustee is associated with by virtue of being a partner, employee, owner, shareholder, consultant;
- k) Compromise, compound, abandon, mediate, submit to arbitration, or otherwise settle any debt, account, claim or thing whatever relating to my estate;
- l) Purchase or appropriate the whole or any part of my estate assets at a value determined by an independent and qualified valuer on arm's length terms notwithstanding that they may be the sole executor or sole trustee of a trust;
- m) Appropriate the whole or any part of any asset of my estate (including any unpaid present entitlement owing to me by the trustee of any trust or any Superannuation Death Benefits paid to my estate) not specifically given, devised or bequeathed under this Will:
  - i) In full or partial satisfaction of any interest in my estate; or
  - ii) Towards the satisfaction of any sum that my Trustee determines to pay to any beneficiary;
- n) Delegate in writing, to the extent permitted by law, the exercise of any power or discretion and to execute any powers or attorney or other instruments necessary to give effect to such delegation;
- o) Determine net income in accordance with generally accepted accounting principles, taxation or other definitions;
- p) Determine that any income, however characterised, whether it be franked or unfranked dividends, capital gains, trading revenue, interest, royalties, foreign income, business income or any other kind of income, is a separate class of income and divide that income into different parts including differences in the nature or character or source of that income;
- q) To the extent permitted by law, allocate any expense or outgoings against the category, source, class or other identification to which the expense or outgoing is attributable;
- r) Use income and/or capital to pay any capital gains tax liability levied on the disposal of an asset, and if necessary, appoint liability for that tax;
- s) Use such of the income or capital to reimburse a beneficiary in respect of any capital gains tax liability they may bear resulting from such Capital Gain, to which no one is specifically entitled within the meaning of the Tax Acts;

- t) Separately record, identify, pay, allocate, apply or accumulate as an accretion to the capital any income, right, credit or rebate;
- u) Make taxation and other elections pursuant to the Tax Acts or any other legislation governing trusts;
- v) Treat any dividends, rent, interest and other periodical payments in the nature of income received after my death in respect of a period wholly or partly after my death as having being paid in respect of a period immediately after my death;
- w) Make loans to any beneficiary on whatever terms including with or without interest or security;
- x) Borrow money, either with or without giving security, on such terms as my Trustee or trustees of any trusts established under the terms of this Will deem fit and enter into any mortgage, charge, security agreement, lien or security over the whole or any part of any asset;
- y) Acquire or lease property for occupation, use or enjoyment by a beneficiary (whether alone or with some other person or persons);
- z) Farm, develop, join in venture, subdivide, sell, lease, exchange, transfer to a beneficiary or enter into any other transaction or arrangement relating to real estate on terms that they consider expedient as though they were the absolute beneficial owners thereof;
- aa) Maintain, repair, improve, develop, alter, renovate, pull down, erect or re-erect any part of any asset;
- bb) Enter, participate in, take out or maintain any:
  - i) Insurance policies against risks affecting my estate;
  - ii) Life, health or accident insurance policies in respect of any person;
  - iii) Friendly society, trade union or association of employees benefit scheme in respect of any person;
  - iv) Superannuation or pension scheme in relation to any person; and
  - v) Funeral benefit or payment scheme in relation to any person;
- cc) Do such acts and things in relation to the affairs of any company in which my estate or any trusts established under the terms of this Will is or may become interested or concerned as the trustee sees fit without any obligation to attend meetings personally or by proxy or do any other act or thing in relation to the affairs of the company;

- dd) Continue in any business that I am carrying on at the date of my death, either alone, in partnership with any person, corporation or trust, including being able to:
  - i) Contribute, employ or allow to remain as capital or loans in the business, any assets of my estate; and
  - ii) Entrust the management of the business to any existing partner, director, officer or appointed manager;
- ee) Give a receipt for money or other property received which shall operate as a full discharge to the person making the payment or delivering the property from seeing the application thereof;
- ff) Give guarantees or indemnities or undertakings for the payment of money in relation to the purchase or acquisition of investments;
- gg) Grant leases and vary, release, waive or surrender any lease;
- hh) Nominate in writing any specific powers that are within the general or specific powers under this Will, legislation or general law.



## SPECIAL DISABILITY TRUST TERMS SCHEDULE

### 14. TERMS OF SPECIAL DISABILITY TRUST

Where my Trustee exercises their discretionary powers under the clause headed "Protective Options for Michael" to establish a special disability trust, the terms of trust in this Schedule shall apply to the "Trust Fund" as defined in the clause headed "Definitions" in this Schedule. None of the terms in the other Schedules of this Will shall apply to the Trust Fund.

### 15. TRUSTEES

Subject to the subclause headed "Qualifications of the Trustee", my Trustee shall be the initial Trustees of the Trust Fund, and in this Schedule, shall be referred to as "the Trustees".

### 16. THE PRINCIPAL BENEFICIARY

The Principal Beneficiary of the trust is **MICHAEL JAMES CITIZEN**.

### 17. DECLARATION OF TRUST

The Trustee HEREBY DECLARES that in respect of the trust the Trustee will hold the Trust Fund and the income arising therefrom upon trust during the lifetime of the Principal Beneficiary solely for the benefit of the Principal Beneficiary and with and subject to the powers and obligations contained in the remainder of these terms of trust.

### 18. NAME OF FUND

This trust shall be known as the Michael James CITIZEN Special Disability Fund, and the Trustees shall have the power to re-name the Trust Fund at any time during the duration of the Trust Fund.

### 19. APPLICATION OF OPERATIVE PROVISIONS

Unless the context requires otherwise, the operative provisions set out in the remainder of these terms of trust outlined in this Schedule will apply in respect of the trust established pursuant to these terms of trust.

### 20. DURATION OF TRUST

The trust will end on the earlier of:

- a) The date of death of the Principal Beneficiary;
- b) If assets are fully expended on the Principal Beneficiary, the date of such full expenditure; or
- c) Any earlier date as required by law;

("the End Date").

## **21. THE APPOINTOR**

- a) The Executors shall be the initial Appointors of the Trust Fund and shall act jointly.
- b) The Appointors shall exercise their power in accordance with the clause in this Schedule headed "Appointment and Removal of Trustee".
- c) An Appointor shall have the power to nominate any person or persons or company to act together with or in his, her or its place and may place such conditions or restrictions on such nomination (and may make such nomination revocable or irrevocable) by any notice in writing to the Trustees, or by Will, save that where there is more than one Appointor, an Appointor must obtain from all of the other Appointors the prior written consent to all of the terms of any nomination pursuant to this subclause.
- d) Where more than one Appointor is nominated to succeed an Appointor, if the nomination is otherwise silent, such Appointors shall act jointly.
- e) A successive Appointor, if the nomination is otherwise silent, shall also have the power to nominate a successor or alternate Appointor as if they were the initial Appointor.

## **22. ADMINISTRATION OF THE TRUST**

### **Primary and other Purposes of the Trust**

- a) The Trustees must hold the Trust Fund and the income derived in each accounting period on trust and pay or apply all or any part of the income and all or any part of the Trust Fund for the Primary Purpose and for other purposes primarily for the benefit of the Principal Beneficiary, as defined in the remainder of this clause.
- b) No part of the income or the Trust Fund may be used for any payment of Immediate Family Members or a Child of the Principal Beneficiary including:
  - (i) The provision of care services; or
  - (ii) Repair and maintenance of accommodation for the Principal Beneficiary.
- c) The operation of the first subclause of this clause does not preclude the Trustees from applying any part of the income or the Trust Fund for an Ancillary Purpose to the Primary Purpose.
- d) For the purpose of this Schedule, the "Primary Purpose" means the reasonable care and accommodation of the Principal Beneficiary as determined by the Trustees from time to time but:
  - (i) Does not include such daily living costs or expenses of the Principal Beneficiary that do not relate to reasonable care and accommodation needs;

- (ii) Does not include expenditure that is primarily for the direct or indirect benefit of any other person; and
  - (iii) Must be in accordance with any requirement or determination made by the Secretary from time to time.
- e) For the purpose of these terms of trust, "other purposes" primarily for the benefit of the Principal Beneficiary means the purposes primarily for the benefit of the Principal Beneficiary as determined by the Trustee from time to time but:
  - (i) Shall not include expenditure which is primarily for the direct or indirect benefit of any other person; and
  - (ii) Must be in accordance with any requirement or determination made by the Secretary from time to time.
- f) For the purpose of these terms of trust, "Ancillary Purpose" means a purpose that is necessary or desirable to achieve the Primary Purpose of the trust.

#### **Priority of Principal Beneficiary**

- g) In carrying out their responsibilities under this clause, the Trustee is required:
  - (i) To have regard to the nature and severity of the Principal Beneficiary's condition as well as the current and future care needs of the Principal Beneficiary; and
  - (ii) To ensure the interests of the Principal Beneficiary are to take precedence over any interest or expectancy as to net income or capital of any Donor or Specified Beneficiary; and
  - (ii) To review the needs of the Principal Beneficiary at least annually and wherever possible, consult with the Principal Beneficiary's immediate caregiver and the Principal Beneficiary.

#### **Right of Occupation**

- h) With respect to all real property contributed to the Trust Fund by a Donor or acquired by the Trustees, in which the Principal Beneficiary lives ("the Residence"):
  - (i) the Principal Beneficiary shall have a personal right of occupation in respect of the Residence for as long as she wish for her lifetime; and
  - (ii) the Residence may be sold and the proceeds used to acquire a substituted Residence to which the provisions of this subclause may apply, provided that in exercising their power pursuant to this paragraph, the Trustees shall act to achieve the Primary Purpose, other purposes primarily for the benefit of the

Principal Beneficiary and Ancillary Purposes of the trust, and have regard to the priority of the Principal Beneficiary as set out in the preceding subclauses.

### **Power to Accumulate Income**

- i) The Trustee may, in any Accounting Period, accumulate and retain as much of the income of the trust, if any, as is required to achieve the Primary Purpose, other purposes primarily for the benefit of the Principal Beneficiary or Ancillary Purposes of the trust during that Accounting Period, as an addition to the trust.

## **23. Trust Property Requirements**

### **Contributions**

- a) The Trustee may accept Contributions from anyone who is eligible to be a Donor.

### **Non-acceptable Contributions**

- b) The Trustees shall not accept any of the following:
  - (i) Conditional Contributions by any Donor;
  - (ii) Any asset transferred to the trust by the Principal Beneficiary or the Principal Beneficiary's Partner unless:
    - (A) The asset is all or part of a bequest, or a superannuation death benefit; and
    - (B) The bequest or superannuation death benefit was received not more than three years before the transfer;
  - (iii) Any Compensation received by or on behalf of the Principal Beneficiary; or
  - (iv) Any Contribution that would cause the Trustees to be in breach of the specific requirements set out in these terms of trust.

### **Restrictions on Use of Trust Funds**

- c) The Trust Fund or any of the income of the Trust Fund cannot be used to purchase or lease property from an Immediate Family Member or a Child of the Principal Beneficiary, even if that property is to be used for the Principal Beneficiary's accommodation.
- d) For the purpose of the preceding subclause, "property" includes:
  - (i) A right to accommodation for life in a residence;
  - (ii) A life interest in a residence; and

- (iii) The total value of income and assets of the Trust which may be applied for the purposes of the Trust consisting or other purposes primarily for the benefit of the Principal Beneficiary must not exceed the value if any specified in a determination (if any) under subsection 1209RA(3) of the Social Security Act.

#### **Prohibitions on Borrowing**

- e) The Trustee must not borrow money, whether from a Related or Non-Related Party.

#### **Further Prohibitions with regard to Related Parties**

- f) The Trustee must not;
  - (i) Lend from or give any other financial assistance using the trust or the income of the Trust Fund to; or
  - (ii) Intentionally acquire, except by way of a Contribution, property (other than a listed security acquired at market value) from; or
  - (iii) Employ, engage or pay any agent, contractor or professional person for any services in relation to the trust or the Principal Beneficiary who is; or
  - (iv) Enter into an uncommercial transaction with any person who is;
    - a Related Party.
- g) For the purposes of this clause only, "Related Party" means:
  - (i) The Trustee other than a Professional Trustee;
  - (ii) A Donor;
  - (ii) The Principal Beneficiary;
  - (iv) The Appointor;
  - (v) An Immediate Family Member;
  - (vi) A parent or a sibling of anyone in any of the preceding paragraphs of this subclause;
  - (vii) A descendant of anyone in any of the preceding paragraphs of this subclause;
  - (viii) A Partner of anyone in any of the preceding paragraphs of this subclause; or
  - (ix) Any entity (other than widely held entities) of which anyone in the any of the preceding subparagraphs of this paragraph is a director, shareholder, Trustee or holds the power to appoint a director or Trustee.

### **Prohibition on Lending to Principal Beneficiary**

- h) The Trustee must not lend any of the Trust Fund or any of the income of the Trust Fund to the Principal Beneficiary or the Principal Beneficiary's Partner.

### **Donor Register**

- i) The Trustee must maintain a register of all Donors to the Trust Fund in accordance with Schedule A.

## **24. End of Trust Fund**

### **Balance of Trust at the End Date**

- a) If, at the End Date, after the payment of all taxes and expenses, the Trust Fund has not been fully expended on the purposes of the trust, or the income has not been fully allocated, the property of the Trust Fund and any unallocated income ("the Balance of the Trust Fund") shall be dealt with in accordance with the remainder of this clause.
- b) If there is more than one Donor to the Trust Fund, the Trustee shall identify each Donor's Contributions to the Trust Fund and;
  - (i) calculate the percentage of each Donor's Contributions to the overall Contributions to the Trust Fund; and
  - (ii) apply the percentage to the Balance of the Trust Fund to determine the balance of each Donor's Contribution ("the Donor's Contribution Balance").

## **25. Distribution of Trust Fund at the End Date**

### **Distribution of My Contribution Balance**

- a) At the End Date, such of the Trust Fund that constitutes my Contribution Balance shall be distributed in the manner specified in the subclauses headed "At the end of the Term" in the clause headed "Protective Options for Emma" in the Main Provisions of My Will.

### **Distribution of Other Contribution Balances**

- b) At the end date, the remainder of this clause shall apply to the remaining Donor's Contribution Balances other than My Contribution Balance.
- c) The Trustee anticipates that a Donor may make a nomination at the time of contribution regarding the distribution of all or part of his, her or its Contribution Balance at the end date.
- d) During the term of the Trust Fund:

- (i) A Donor who is an individual may alter his or her nomination by making a subsequent valid nomination during the Donor's lifetime; and
- (ii) A Donor that is an entity (such as the Trustee of a deceased estate, the Trustee of any other trust or a corporation) may alter its nomination by making a subsequent valid nomination for as long as the entity exists;

and the Trustee shall only have regard to the last valid nomination made by the Donor.

- e) For any such nomination or subsequent nomination to be valid, the nomination must be:
  - (i) In the form set out in Schedule B;
  - (ii) Submitted in writing to the Trustee; and
  - (iii) Formally accepted by the Trustee in writing, and an endorsement by the Trustee on the form is sufficient for this purpose.
- f) The Trustee may in its absolute discretion, refuse to accept a nomination or a subsequent nomination.
- g) Where a Donor has nominated his or her Estate, or where a Donor's Contribution Balance is to be dealt with under the terms of the Donor's last Will, an individual Donor is not required to notify the Trustee of any change to his or her last Will.
- h) At the end date, the Trustee shall distribute the Donor's Contribution Balance to the Specified Beneficiary in accordance with the Donor's last valid nomination.
- i) If, with regard to all or any part of a Donor's Contribution Balance, the Donor has not made a valid nomination, or if any Specified Beneficiary cannot receive a distribution, the Trustee shall distribute that part of the Donor's Contribution Balance:
  - (i) If the Donor is an individual, to the Donor, if living at the end date, or if not living, to the legal personal representative of the Donor;
  - (ii) If the Donor is an entity, in the same manner as if the Contribution Balance were my Contribution Balance, save that the Contribution Balance shall be distributed directly to the persons nominated as Primary Beneficiaries to succeed the Principal Beneficiary.

## **26. The Trustee**

### **Qualifications of the Trustee**

- a) The Trustee must:

- (i) In relation to an individual:
  - (A) Be an Australian resident;
  - (B) Not have been convicted of an offence against or arising out of a law of the Commonwealth, a State, Territory or a foreign country, being an offence of dishonest conduct;
  - (C) Not have been convicted of an offence against or arising out of the *Social Security Act*, the *Administration Act* or the *Veterans' Entitlement Act*; and
  - (D) Not have been disqualified at any time from managing corporations under the *Corporations Act 2001*;
- (ii) In relation to a corporation, be a corporation with two or more directors who comply with the requirements of the preceding subparagraphs; or
- (iii) Be a Professional Trustee who complies with the requirements of the preceding paragraphs.
- (b) If at any time the Trustee is not a corporation or a Professional Trustee, there must be two or more individuals acting jointly as Trustee.
- (c) If at the date of establishment of the Trust Fund, any of my Trustee fail to satisfy the requirements of this clause, I direct that the Appointors exercise their powers of appointment in respect of the Trust Fund to ensure that the Trustee at all times complies with this clause.

### **Resignation of Trustee**

- (d) Any Trustee may resign office by notice in writing given to the other Trustees and the Appointor (if any) and such resignation shall take effect upon such notice being given.

### **Trustee's remuneration**

- (e) Any Trustee who is a Trustee Corporation shall be entitled to make all such usual and proper charges for both professional and other services in the administration of the Trust Fund and for the Trustee's time and trouble as the Trustee would have been entitled to make if not a Trustee and so employed.
- (f) Any Trustee who is a Professional Trustee other than a Trustee Corporation, will be entitled to charge and be paid all professional or other charges for any business or act done by him or her, or his or her firm, at the hourly rate of a partner or principal of the firm, in connection with the Trust Fund hereof including acts that a Trustee could have done personally as if he or she were not such a Trustee.



### **Delegation of Powers**

- (g) The Trustee may in writing delegate the exercise of all or any of the powers or discretion hereby conferred on the Trustee to any other person or persons and may execute any powers of attorney or other instrument necessary to give effect to such purpose, however the Trustee (including the delegate) must at all times satisfy the requirements in this clause regarding the qualifications of the Trustee.

### **Extent of Trustee Responsibility**

- (h) No Trustee shall be responsible for any loss or damage occasioned by the exercise of any discretion or power hereby or by law conferred on the Trustee or by failure to exercise any such discretion or power where the Trustee has acted honestly and reasonably.

### **Liability and Indemnity**

- (i) Provided the Trustee has acted honestly and reasonably, the Trustee shall be entitled:
  - (i) To be reimbursed and indemnified for all costs and expenses (including legal costs and State duty) incurred in relation to establishing, operating, administering, amending, terminating and winding up the Trust Fund; and
  - (ii) To be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the trusts authorities powers and discretionary powers hereof or by virtue of being the Trustee of the Trust Fund;

but shall have no recourse against the Principal Beneficiary, any of the Donors, my Executors or any beneficiary of my Estate or any of the Specified Beneficiaries to meet such indemnity.

## **27. Management of the Trust Fund**

### **Powers of Trustee**

- a) The Trustee shall have such powers as are necessary to carry out their responsibilities under these terms of trust and to fulfil the Primary Purpose, other purposes primarily for the benefit of the Principal Beneficiary, Ancillary Purposes, and may nominate any specific powers that they may require, save that the Trustees must at all times administer the Trust Fund in accordance with the relevant Act governing trustees, the *Social Security Act*, the *Administration Act* and the *Veterans' Entitlements Act*, and these terms of trust.
- b) Without limiting the generality of the preceding subclause, the Trustee shall have the specific power to open an account with a financial institution.

### **Standard of Care**

- c) The Trustee must, in managing the Trust Fund and the income generated from the Trust Fund (including exercising a power of investment):
  - (i) If the Trustee's profession, business or employment is or includes acting as a Trustee or investing money on behalf of other persons, exercise the care, diligence and skill that a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or
  - (ii) If the Trustee is not engaged in such a profession, business or employment, exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

### **Investment Strategy**

- d) The Trustee must formulate and give effect to an investment strategy, the dominant purpose of which is to satisfy and fulfil the Primary Purpose and other purposes primarily for the benefit of the Principal Beneficiary as defined in this Schedule. Subject to these needs, the investment strategy must have regard to:
  - (i) The risk involved in making, holding and realising, and the likely return from, the Trust Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) The composition of the Trust Fund's investments as a whole including the extent to which the investments are diverse or involve the Trust Fund in being exposed to risks from inadequate diversification;
  - (iii) The effect of the proposed investment in relation to the tax liability of the Trust Fund;
  - (iv) The liquidity of the Trust Fund's investments having regard to its expected cash flow requirements; and
- e) The ability of the Trust Fund to discharge its existing and prospective liabilities.

## **28. Appointment and Removal of the Trustee**

- a) Subject to the subclauses under the heading "Qualifications of the Trustee", the Appointor may at any time by writing:
  - (i) Remove from office any Trustee (other than a Trustee appointed by the Court);
  - (ii) Appoint a new or additional Trustee; or
  - (iii) Appoint a replacement Trustee for any Trustee who resigns as Trustee or ceases to be Trustee under any provision of these terms of trust or law.
- b) If any Trustee forms the opinion that a deadlock exists in relation to the administration of the Trust Fund, the Trustees shall then be deemed to have resigned from their office and the Appointor, or if no Appointor, the resigning Trustees shall appoint a Professional Trustee (who is not a resigning Trustee) in accordance with this clause.

## **29. Reporting and Audit Requirements**

### **Keep accounts**

- a) The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and all dealings connected with the Trust Fund.

### **Financial Statements & Reporting**

- b) As soon as practicable after the end of each Accounting Period, the Trustee must prepare or cause to be prepared written financial statements showing the financial position of the trust at the end of that Accounting Period.
- c) The financial statements must:
  - (i) Where the Trustee is or includes a Trustee Corporation, be prepared in accordance with all regulatory and legislative requirements applying to a Trustee Corporation; or
  - (ii) Otherwise, be prepared by a member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants, who is not an Immediate Family Member of the Principal Beneficiary.
- d) The Trustee must, on or before 31 March each year, forward to the Secretary the financial statements in relation to the previous financial year.

### **Audit Requirements**

- e) An audit of the Trust Fund may be requested for the previous financial year ended on 30 June or other period as determined by legislative instrument pursuant to the *Social Security Act* or the *Veterans' Entitlements Act* by:
  - (i) The Principal Beneficiary;
  - (ii) An Immediate Family Member;
  - (iii) A legal guardian or financial administrator of the Principal Beneficiary (under Commonwealth, State or Territory law);
  - (iv) A person acting as guardian for the Principal Beneficiary on a long-term basis; or
  - (v) The Secretary.
- f) If an audit request is received, the Trustee must within a reasonable time:
  - (i) Cause an audit of the Trust Fund to be carried out unless already carried out for the relevant time period; and
  - (ii) Provide a copy of the audit report to the person requesting the audit, to any guardian or administrator and to the Secretary.
- (g) The audit must be in accordance with the requirements of any legislative instrument made pursuant to 1209T(7) of the *Social Security Act* or 52ZZWG(7) of the *Veterans' Entitlements Act*; and
  - (i) Where the Trustee is or includes a Trustee Corporation, be carried out in accordance with all regulatory and legislative requirements applying to a Trustee Corporation; or
  - (ii) Otherwise, be carried out by a member of the Institute of Chartered Accountants in Australia, CPA Australia or the National Institute of Accountants, who is not an Immediate Family Member of the Principal Beneficiary or the person who prepared the Financial Statements.

### **30. Miscellaneous**

#### **Waiver of Contravention**

- a) The Trustee shall have the power to:
  - (i) Seek a waiver of contravention from the Secretary in relation to contravention of any requirement of the *Social Security Act* or the *Veterans' Entitlements Act* by the Trust Fund that would disqualify the trust from being a Special

Disability Trust under the *Social Security Act* or the *Veterans' Entitlements Act*, if not for the contravention; and

- (ii) Take the necessary steps to comply with any conditions imposed by the Secretary by way of a waiver notice under section 1209U of the *Social Security Act* or section 52AAWH of the *Veterans' Entitlements Act* and any related legislative instrument made pursuant to these sections.

### **Amending the Trust**

- b) Save as provided in this clause the terms of these terms of trust shall not be capable of being revoked added to or varied.
- c) If there is for the time being an Appointor, the Trustee with the consent in writing of the Appointor, may at any time and from time to time by Deed amend the provisions whether of these terms of trust or of any Deed executed pursuant to this clause but so that such amendment:
  - (i) Shall be made only if it would not cause the trust to become non-compliant with the requirements of Part 3.18A of the *Social Security Act* or Division 11B of the *Veterans' Entitlements Act* in relation to Special Disability Trusts;
  - (ii) Does not infringe any applicable law against perpetuities;
  - (ii) Does not invalidate the gifts to the Trust Fund under any Will (including this Will);
  - (iv) Does not affect the beneficial entitlement to any amount allocated for or otherwise vested in the Principal Beneficiary prior to the date of the amendment.
- d) The operation of the preceding subclause shall not prevent:
  - (i) The Trustee accepting a nomination in accordance with the clause headed "Distribution of Trust Fund at the End Date"; and
  - (ii) The Trustee exercising its powers of nomination in accordance with subclause headed "Powers of Trustee".

### 31. Definitions

In these terms of trust (ie as set out in this Schedule only), unless the context otherwise requires the following expressions shall have the following meanings:

**"accounting period"** means such period as the Trustee may from time to time determine to be an accounting period and subject to any contrary determination by it means such period of twelve months ending on the 30th day of June in each year PROVIDED firstly that the period commencing on the date of my death and ending on the 30th day of June next shall be an accounting period and secondly that the period commencing on the first day of July prior to the end date and ending on the end date shall be an accounting period.

**"the Administration Act"** means the federal *Social Security (Administration) Act 1999*;

**"the Appointor"** means the person or persons named in these terms of trust, subject to any appointment to the contrary made in accordance with the clause headed "The Appointor";

**"Child"** in relation to a Principal Beneficiary has the meaning given to it by section 1209R of the *Social Security Act* and section 52ZZZWE(5) of the *Veterans' Entitlements Act*;

**"Compensation"** has the meaning given to it under Part 1.2 of the *Social Security Act* and under Division 5A of the *Veterans' Entitlements Act*;

**"Contributions"** are money, investments and other assets, donations, gifts, endowments, trust distributions and other forms of financial assistance paid or transferred by a Donor (including my Estate) on an unconditional basis and accepted by the Trustee as additions to the Trust Fund;

**"Donor"** means any person who makes a Contribution to the Trust Fund;

**"Immediate family member"** has the meaning given by section 23(1) of the *Social Security Act* and section 5Q(1) of the *Veterans' Entitlements Act*;

**"Invest"** means the employment of the Trust Fund in a manner permitted by these terms of trust and "investment" shall have a corresponding meaning;

**"the SDT Amount"** shall have the meaning ascribed in the Main Provisions of My Will;

**"my Contribution Balance"** means the Donor's Contribution Balance as calculated in accordance with the clause headed "Distribution of Trust Fund at the End Date" in respect of the SDT Amount;

**"Partner"** has the meaning given by subsection 4(1) of the *Social Security Act* and subsection 5E(1) of the *Veterans' Entitlements Act*.

**"Professional Trustee"** means:

- a) A Trustee Corporation; or

- b) An Australian Legal Practitioner within the meaning of the (NSW) *Legal Profession Act 2004* or the equivalent within its legislative equivalent in other Australian States or Territories.

**"the Principal Beneficiary"** means the person defined as the Principal Beneficiary in the third clause of this Schedule;

**"Secretary"** has the meaning given by section 23 of the *Social Security Act* and section 5Q of the *Veterans' Entitlements Act*.

**"the Social Security Act"** means the federal *Social Security Act 1991*;

**"Specified Beneficiary"** means a person or entity nominated to receive a residuary benefit in accordance with the procedures set out in clause headed "Distribution of the Trust Fund at the End Date".

**"the Trustee"** means the Trustee or Trustees for the time being of this Trust Fund (as named in these terms of trust) whether original, additional or substituted.

**"the Trust Fund"** means:

- a) The SDT Amount;
- b) All moneys and other property of any description whatsoever paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
- c) The accumulation of net income as provided for in the subclause headed "Power to Accumulate Income";
- d) All accretions to the Trust Fund;
- e) The investments and property from time to time representing the moneys property accumulations accretions and additions or any part or parts thereof respectively.

**"Trustee Corporation"** means:

- a) A corporate body authorised by and regulated under the (NSW) *Trustee Companies Act 1964* or its equivalent in other Australian States or Territories to carry on business as a trustee company; and
- b) The Public Trustee created by the *NSW Trustee and Guardian Act 2009* or its equivalent in other Australian States or Territories;

**"Uncommercial Transaction"** means the provision of a financial or other benefit on terms that:

- a) Would not be reasonable in the circumstances if the benefit were provided under an agreement arrangement between independent parties dealing at an arm's length with each other in relation to the transaction; or
- b) Are more favourable to the party to the transaction (not being the Trustee) than the terms referred to in paragraph (a) of this definition;

and that a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances;

**“Veterans’ Entitlement Act”** means the federal *Veterans’ Entitlement Act 1986*.

### **32. Interpretation**

In these terms of trust:

- a) The singular includes the plural and vice versa, each gender includes the other genders and references to persons include corporations and other legal persons;
- b) References to any statute shall include any statutory amendment or re-enactment thereof or statutory provisions substituted therefore;
- c) Headings are inserted for ease of reference and do not form part of these terms of trust and shall not affect the construction of these terms of trust;
- d) If by reason of the inclusion of any word, description or provision in these terms of trust, all or any part of these terms of trust would be invalid, then these terms of trust is to be construed as if the word, description or provision were not included in these terms of trust.

### **33. Applicable Law**

These terms of trust are governed by the laws of New South Wales.

### **34. Status of Schedules**

Schedules A and B (set out on the following pages) are intended to form part of this Schedule.