**Sample Document**

**Charitable Trust Deed**

This sample document has been prepared by King & Wood Mallesons at the request of, and in consultation with, the Office of Social Impact Investment and its advisers. It forms part of a suite of sample transaction documents that have been developed by the Office of Social Impact Investment for use in connection with a social benefit bond (SBB) arrangement involving private investors in the Australian wholesale capital market.

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This sample document is intended to provide a guide for, and to streamline the development of, the documentation (and specific provisions) that is used for an SBB arrangement. This sample document can be freely used for such a purpose in accordance with the Creative Commons licence mentioned above. Use of this sample document may help to make the legal process more efficient and reduce costs.

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This sample document contains general provisions and other information only and does not take into account the objectives, needs or financial arrangements of any particular transaction. Before using this sample document, you should carefully consider and make your own assessment of whether it is appropriate for the SBB arrangement or other transaction that you are considering. You should consult your own legal, tax and other professional advisers as part of your assessment of this sample document and its suitability for your transaction.

You should satisfy yourself that cross references in the sample document to other provisions of the sample document, or to any provisions or the names of other documents, are correct.

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If you have any questions in relation to this sample document, or any specific provision or other related information, queries can be directed to socialimpactinvestment@dpc.nsw.gov.au.

**Instructions for use**

This sample document includes provisions that are intended to apply for a “**SPE Issuer Transaction**”, being an SBB arrangement that involves a special purpose entity acting as the issuer of any bonds.

These provisions may be supplemented by, or replaced with, optional provisions connected with certain features that may be included by an SBB arrangement, including where the SBB arrangement involves a funding model which will require that the NSW Government takes security, or commercially agreed terms for bonds which provide for security to be given, over particular assets, for which certain “**Secured Transaction**” provisions may need to be included. Additional optional provisions have been included in this sample document for consideration.

There are drafting instructions included in the sample document to assist in drafting for the inclusion (or removal) of these and other optional features.

**Charitable Trust Deed**
(NSW Social Benefit Bonds)

**[*Insert name of Settlor*]
[*Insert legal name and ABN of Trustee*]**
**[[*Insert legal name and ABN of Manager*]****]**

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Details

|  |  |
| --- | --- |
| **Parties** | **Settlor, Trustee** [and **Manager**] |
| **Settlor**  | Name | [*insert name*] |
|  | ABN | [*insert ABN*] |
|  | Address | [*insert address*] |
|  | Fax | [*insert fax number (including area code)*] |
|  | Attention | [*insert contact*] |
| **Trustee**  | Name | [*insert name*] |
|  | ABN | [*insert ABN*] |
|  | Address | [*insert address*] |
|  | Fax | [*insert fax number (including area code)*] |
|  | Attention | [*insert contact*] |
| **[Manager**]  | Name | [*insert name*] |
| ABN | [*insert ABN*] |
|  | Address | [*insert address*] |
|  | Fax | [*insert fax number (including area code)*] |
|  | Attention | [*insert contact*] |
| **Governing law** | New South Wales, Australia |
| **Date of deed** | [*insert date*]  |

[[[1]](#footnote-1)] General terms

# Definitions and interpretation

## Definitions

These meanings apply unless the contrary intention appears:

**Account Bank** means the Eligible Bank at which the Project Account is opened. The Account Bank is initially [*insert name of Account Bank*].

**Assets** means all the Trustee’s rights, property and undertaking which are the subject of the Trust:

of whatever kind and wherever situated; and

whether present or future.

**Authorised Officer** means, in respect of a party:

[[[2]](#footnote-2)][a director or company secretary of that party, or an officer or employee of the party whose title contains the word “treasurer”, “director”, “chief”, “head”, “manager” or “counsel” or a person performing the functions of any of them;] or

any person nominated by that party as an Authorised Officer of that party for the purposes of a Trust Document.

**Bond Conditions** means the terms and conditions of issue of the Bonds.

**Bond Register** means the register (including any branch register) of Bonds established and maintained in accordance with the SBB Deed Poll and clause 11 (“Funding of Trust Objects”).

**Bondholder** means the holder of a Bond from time to time.

**Bonds** means the social benefit bonds issued, or to be issued, by the Trustee in connection with the transactions contemplated by the Implementation Deed.

**Business Day** means a day (not being a Saturday, Sunday or public holiday in that place) on which banks are open for general banking business in Sydney.

**Class** meansa class of Member of the Trust.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers.

**Department** means [*Relevant Minister (Portfolio) and Department*].

**Details** means the section of this deed headed “Details”.

**Eligible Bank** means an Australian authorised-deposit taking institution, acting through a permanent establishment located in Australia.

### An **Event of Default** occurs where:

### the Department is entitled to terminate the Implementation Deed under clause [26.1] (“Termination by Department for Cause and on Other Grounds – For Cause”) thereof; or

### the Implementation Deed is terminated for any reason in accordance with its terms and any amounts owing to the Department at the time of, or in respect of, that termination have not been duly paid on or by the relevant due date for payment; or

### the Trustee does not pay any amount due to be paid to any Bondholder in respect of a Bond within 2 Business Days of the date on which it is due to be paid.

**Government Agency** means:

any body politic or government in any jurisdiction, whether federal, state, territorial or local; and

any minister, department, office, commission, instrumentality, agency, board, authority or organisation of any government or in which any government is interested; and

any corporation owned or controlled by any government.

**GST** and **GST Law** have the respective meanings given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Implementation Deed** means the document entitled “Implementation Deed of Agreement for Social Benefit Bond Transaction” to be entered into by the Trustee and the Department on or about [*insert date*].

**Initial Charitable Member** means [*insert name and ABN*].

A person is **Insolvent** if:

it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined in the Corporations Act) appointed to its property; or

it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by an Extraordinary Resolution (as defined in the SBB Deed Poll) of Bondholders); or

an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which it may be reasonably deduced it is so subject); or

it is otherwise unable to pay its debts when they fall due; or

or something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Material Adverse Effect** means a material adverse effect on:

the ability of the Trustee to comply with its obligations under this deed or any other Trust Document; or

the rights and remedies of any Relevant Party under this deed or any other Trust Document; or

the effectiveness or priority of this deed or any other Trust Document or the value of any collateral under that document; or

the validity or enforceability of this deed or any other Trust Document.

**Member** means a person registered as a Member of the Trust in the register of Members kept by or on behalf of the Trustee.

**Member Register** means the register of Members in the Trust to be established and maintained under clause 8 (“Member Register”).

**Potential** **Event of Default** means an event which, with the giving of notice or lapse of time, would be likely to become an Event of Default.

**Project Account** means the account opened with the Account Bank in the name of the Trustee and designated as the project account for the Trust.

**Related Entity** has the meaning it has in the Corporations Act.

**Relevant Party** means each party to a Trust Document other than the Trustee.

**SBB Deed Poll** means the document entitled “SBB Deed Poll (NSW Social Benefit Bonds)” dated [*insert date*] executed by the Trustee.

**Settlor** means the person so described in the Details.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the overall net income of any Relevant Party.

**Transaction Document** means:

the Implementation Deed;

the SBB Deed Poll;

the Bond Conditions.

**Trust** means the trust established by this deed.

**Trust Objects** meansthose objects or objectives set out in clause 2.5 (“Trust Objects”).

**Trust Documents** means:

this deed; and

each Transaction Document.

**Trust Expenses Account** has the meaning given in clause 17.2 (“Trust Expenses”).

**Trustee** means the person so described in the Details.

**Wilful Default** means, in respect of the Trustee, any intentional failure to comply with or intentional breach by the Trustee of any of its obligations under this deed or any other Trust Document, other than a failure or breach:

which arose as a result of a breach by a Relevant Party or by any other person (other than the Trustee) of any of its obligations under this deed or any other Trust Document, in each case, as contemplated by clause 14.3(d) (“Limitation of Trustee’s liability”);

which is in accordance with a lawful court order or direction or required by law; or

which is in accordance with an instruction or direction given to it by any person in circumstances where that person is entitled to do so by this deed or any other Trust Document or at law.

[***Option 1 Provisions******(Secured Transactions).*** *Where security is given by the Trustee in connection with the SBB arrangement:*

1. *The following definitions are for inclusion (in alphabetical order) and modification as appropriate*:

**Bond Security Trustee** means [*insert name and ABN*].

**First Security Deed** means the deed entitled “First Security Deed (NSW Social Benefit Bonds)” entered into by the Department and the Trustee on or about the date of this deed.

**Priority and Co-ordination Deed** means the Priority & Co-Ordination Deed (NSW Social Benefit Bonds) to be entered into between the Department, the Bond Security Trustee and the Trustee in connection with regulating the priorities between the First Security Deed and the Second Security Deed.

**Second Security Deed** means the document entitled “Second Security Deed (NSW Social Benefit Bonds)” dated on or about the date of this deed between the Trustee and the Bond Security Trustee.

**Secured Money** means

in respect of the First Security Deed and the Department, the “Secured Money” as defined in the First Security Deed; and

in respect of the Second Security Deed, the “Secured Money” as defined in the Second Security Deed.

**Secured Party** means each person with the benefit of a security interest granted under a Security Document.

1. *The definitions for “****Event of Default****” and “****Insolvent****” are be replaced in full by the following*:

### An **Event of Default** occurs where:

### the Department is entitled to terminate the Implementation Deed under clause [26.1] (“Termination by Department for Cause and on Other Grounds – For Cause”) thereof;

### the Implementation Deed is terminated for any reason in accordance with its terms and any amounts owing to the Department at the time of, or in respect of, that termination have not been duly paid on or by the relevant due date for payment; and

### the Trustee does not pay:

#### any amount due to be paid to any Bondholder in respect of a Bond within 2 Business Days of the date on which it is due to be paid; or

#### any other amount of the Secured Money within 5 Business Days of the date on which it is due to be paid.

A person is **Insolvent** if:

it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined in the Corporations Act) appointed to its property; or

it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Department and the Bond Security Trustee); or

an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or

it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Department or the Bond Security Trustee reasonably deduces it is so subject); or

it is otherwise unable to pay its debts when they fall due; or

or something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

1. *The following additional sub-paragraphs are to be included in the definition of “****Transaction Documents****”*:

the First Security Deed;

the Second Security Deed; and

the Priority and Co-ordination Deed.

*End of Option 1 Provision (delete if security is not given by the Trustee)*]

[***Option 3 Provision (Manager).*** *Where a Manager has been appointed to manage the Trust:*

1. *The following definitions are for inclusion (in alphabetical order) and modification as appropriate:*

**Management Deed** means the document entitled “Management Deed (Charitable Trust for NSW Social Benefit Bonds)” dated on or about the date of this deed between the Trustee and the Manager.

**Manager** means the person so described in the Details.

1. *The following additional sub-paragraph is to be included in the definition of “****Trust Documents****”*:

###  the Management Deed.

*End of Option 3 Provision (delete if a Manager has not been appointed to manage the Trust)*]

## General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears in this deed, the following applies:

### the singular includes the plural and vice versa;

### a reference to a document or an agreement (including this deed or any other Trust Document) includes the document or agreement as varied, novated, supplemented, extended, replaced or restated;

### the meaning of general words is not limited by specific examples introduced by “**including**”, “**for example**” or “**such as**” or similar expressions;

### a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

### the word “**person**” includes an individual, a body corporate, a partnership,a joint venture, an unincorporated association and an authority or any other entity or organisation;

### a reference to a time of day is a reference to Sydney time;

### a reference to “**dollars**”, “**$**” or “**A$**” is a reference to the currency of Australia;

### a reference to the word “**law**” includes common law, principles of equity and legislation (including regulations);

### a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;

### a reference to the word "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);

### the word “**directive**” includes a treaty, an official directive, request, guideline or policy (whether or not having the force of law) with which responsible persons generally comply in carrying on their business;

### an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;

### a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;

### a reference to any thing (including an amount) is a reference to the whole and each part of it;

### a reference to accounting standards is a reference to accounting standards, principles and practices generally accepted in the relevant place, consistently applied;

### a reference to an accounting term in an accounting context is a reference to that term as it is used in relevant accounting standards;

### an Event of Default or a Potential Event of Default is “**continuing**” if it has not been waived by the Department in accordance with the Implementation Deed or remedied to the satisfaction of the Department;

### the reference to “**person**” in the definition of “**Insolvent**”, when used in respect of the Trustee, is a reference to the Trustee:

#### in its personal capacity; and

#### in respect of the Trust, in its capacity as trustee of the Trust,

#### but not the Trustee in its capacity as trustee of any other trust. Any non-payment of any amount owing by the Trustee as a result of the operation of clause 14.3 (“Limitation of Trustee’s liability”) will not result in the Trustee being Insolvent; and

### a reference to “**close of business**” on a day is a reference 5.00 pm on that day.

## Perpetuity period

The perpetuity period applicable to the dispositions and trusts contained in this deed is the period of 80 years commencing on the date of this deed, less one day.

## Capacity – Trustee

In each Trust Document, except where expressly provided to the contrary a reference to:

### the Trustee is a reference to the Trustee in its capacity as trustee of the Trust, and in no other capacity; and

### the undertaking, assets, business, money or any other thing of or in relation to the Trustee is a reference to such undertaking, assets, business, money or other thing of or in relation to the Trustee only in its capacity as trustee of the Trust only, and in no other capacity.

[***Option 3 Provision (Manager).*** *Where a Manager has been appointed to manage the Trust, insert:*

## Capacity – Manager

### The Manager enters into this document as manager of the Trust and in no other capacity (including in any capacity or role other than as manager of the Trust as it may assume under any other Trust Document) and each undertaking given, each obligation incurred by and each right conferred on the Manager under this document is in that capacity only. Nothing in this document limits or qualifies the obligations or rights of the Manager in any other capacity under any other document.

*End of Option 3 Provision (delete if a Manager has not been appointed to manage the Trust)*]

# Declaration of Trust

## Establishment of Trust

The Settlor has upon execution of this deed transferred to the Trustee the sum of $10 and directs that the Trustee is to, and the Trustee hereby declares that it will:

### act as Trustee of the Trust; and

### hold the Assets as a public charitable trust and shall have the Trust Objects set out in clause 2.5 (“Trust Objects”) of this deed.

## Furtherance of Trust Objects

In performing its obligations under this deed, the Trustee shall direct its efforts towards furthering the Trust Objects.

## Name of Trust

The Trust is called “[*insert name of Trust*]” or by such other name as the Trustee determines from time to time.

## Duration of Trust

The Trustends on the earlier of:

### the date specified by the Trustee, as the date of termination of the Trust; and

### the date on which the Trust terminates in accordance with clause 1.3 (“Perpetuity period”) or another provision of this deed or by law.

## Trust Objects

### The Trust is established and must be maintained exclusively for public charitable purposes.

### Without limiting this clause 2.5, the Trust is established exclusively for public charitable purposes and for the following core purposes:

### [*describe objects and objectives of the Trust (which may be consistent with clause [2.1] of the Implementation Deed)*]

### [*For example, under the equivalent provision under the charitable trust deed for The Benevolent Society’s 2013 SBB, the following objectives were set out:*

#### *through the trial of a pilot social benefit bond, to raise funds for, and otherwise assist and support, children and families in communities in New South Wales who are disadvantaged, in need or vulnerable;*

#### *for the outcomes to further an improvement of the economic, personal and social circumstances of children and families in communities in New South Wales who are disadvantaged, in need or vulnerable; and*

### *to provide the services as an appropriate means for the Trust and the subcontractor of the services to be provided under the Implementation Deed to act as, and support and assist others to be, leaders in the provision of relief for children and families in communities in New South Wales who are disadvantaged, in need or vulnerable.*]

### The Trustee may also do all such other things that are incidental or conducive to furthering the core purpose of the Trust in clause 2.5(b).

Without derogating from the generality of the objects described above, the Trust may solicit donations, gifts and bequests of money or property and other forms of financial assistance to, or for the benefit of, the objects of the Trust, including by conducting fundraising initiatives or issuing Bonds.

The Trustee may apply capital as well as income of the Trust for the charitable purposes of the Trust.

## Holding of Assets

### It is intended that money will be raised from members of the public, which, together with any additional property, and all investments and property representing that money and property and any accretions or additions to it from time to time shall be held as Assets by the Trustee and applied in accordance with the terms of this deed and the other Trust Documents.

### The Trustee must identify the Assets as property and rights of the Trust in its records.

## No Guarantee

[***Standard Provision****. Insert:*

The parties acknowledge, and all Bondholders are deemed to acknowledge, that the Bonds issued by the Trustee are not liabilities of any Member. No Member guarantees the payment or repayment or the return of any principal invested in, or any particular rate of return on, the Bonds or the performance of any Assets.

*End of Standard Provision (delete if the following optional provision is included)*]

[***Option 3 Provision (Manager).*** *Where a Manager has been appointed to manage the Trust:*

The parties acknowledge, and all Bondholders are deemed to acknowledge, that the Bonds issued by the Trustee are not liabilities of the Manager or any Member. Neither the Manager nor any Member guarantees the payment or repayment or the return of any principal invested in, or any particular rate of return on, the Bonds or the performance of any Assets.

*End of Option 3 Provision (delete if a Manager has not been appointed to manage the Trust)*]

# Membership

## Initial Member

The Trust will initially have the Initial Charitable Member as its sole Member.

## Classes of Membership

### There may only be a single Initial Charitable Member, who shall be the sole Initial Charitable Member.

### The Trustee may, with the consent of the Initial Charitable Member:

#### establish any new Class and define the rights, restrictions and obligations of Members in that Class;

#### prescribe (and revoke or amend) the criteria for membership of a Class and appoint Members in that Class in accordance with such criteria; and

#### vary or cancel the rights, restrictions and obligations of Members in any new or existing Class.

### All Members will rank *pari passu* amongst themselves, except to the extent:

#### specified in this deed; or

#### that there is more than one Class of Member, in which case Members in each Class will rank *pari passu* with all other Members of that Class.

### At the time of establishing a separate Class of Member, the Trustee must identify the Class (if any) to which the Members belong and maintain that information in the Member Register.

# Income and property of the Trust

## Limitation on purpose

The Trust must not be carried on for the purpose of the profit or gain of any Member of the Trust (other than the Initial Charitable Member).

## Limitation on income and property of the Trust

### The income and property of the Trust shall be applied solely in furtherance of the Trust Objects.

### Subject to other payments contemplated, permitted or required under the other Transaction Documents, in respect of amounts that are available to be distributed by the Trustee as permitted under the Transaction Documents, the Trustee must distribute, all such amounts in the following order:

#### first, *pari passu* and rateably:

##### any Taxes payable in relation to the Trust; and

##### subject to clause 17.2 (“Trust Expenses”):

###### the Trustee’s Costs incurred in connection with its role as trustee of the Trust; and

###### any Costs of the Trust incurred and payable,

as and when such amounts fall due to be paid; and

#### next, all amounts owing to the Bondholders in relation to the Bonds in accordance with the relevant Bond Conditions.

## Limitation on the power of the Trust

Subject to clause 4.5 (“Permitted powers of the Trust”), the Trustee does not have the power to:

### issue units in the Trust of any kind; or

### apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Trust for the benefit of, or to a Member of, the Trust (other than the Initial Charitable Member).

## Use of surplus funds

The Trustee may apply any surplus funds of the Trust to further the charitable objects of the Initial Charitable Member to the extent consistent with the Trust Objects.

## Permitted powers of the Trust

The restriction in clause 4.3 (“Limitation on the power of the Trust”) does not prevent the payment in good faith of:

### fees in respect of the Trust as provided for in clause 17 (“Fees”);

### interest on moneys lent to the Trust by a Member of the Trust; and

### property rent, remuneration or return for any premises of a Member occupied by the Trust.

[***Option 1 Provision (Secured Transactions).*** *Where security is given by the Trustee in connection with the SBB arrangement:*

## Ranking of interests

The rights of the Secured Parties of the Trust rank in priority to the interests of the Members.

*End of Option 1 Provision (delete of security is not given by the Trustee)*]

# Perpetuities and accumulations

## Perpetuities

No power or discretion conferred on the Trustee by this deed is capable of being exercised outside the perpetuity period specified in clause 1.3 (“Perpetuity period”).

## Accumulations

No power of accumulation conferred on the Trustee by this deed allows accumulation in breach of, or for a period in excess of that permitted by the law restricting excessive accumulations.

# Liability of Members limited

Except as expressly provided in this deed, no Member of the Trust is liable to:

### indemnify the Trustee in respect of any liability in connection with the Trust;

### contribute to the Assets; or

### discharge any liability in connection with the Trust.

# Cessation of membership

A Member ceases to be a member of the Trust if:

### the Member resigns in writing (the resignation being effective on the date the resignation is first received by the Trustee unless another date is stated in the resignation notice); or

### the continued membership of the Member would, as determined by the Trustee, no longer further the Trust Objects, or would have a material adverse effect on the attainment of those objects.

# Member Register

## Establishment and maintenance of Member Register

The Trustee agrees to establish and maintain a Member Register for the Trust.

## Location of Member Register

The Member Register must be located in Sydney (or any other place in Australia as the Trustee may determine from time to time).

# General powers, rights and responsibilities of the Trustee

## Appointment

### The Trustee agrees to act as trustee of the Trust in connection with the Trust Documents and to exercise its rights and comply with its obligations under the Trust Documents.

## Extent of obligations

### The Trustee has no obligations except those expressly set out in the Trust Documents to which it is a party.

## Binding nature of relationship

Each Member is:

### bound by the provisions of this deed;

### deemed to acknowledge that the Trust is subject to the provisions of this deed and the other Trust Documents; and

### bound by anything properly done or not done by the Trustee in accordance with this deed and the other Trust Documents.

## Excluded roles and duties

The appointment as Trustee does not mean that the Trustee:

### is a trustee for the benefit of; or

### is a partner of; or

### has a fiduciary duty to, or other fiduciary relationship with,

any Member, Relevant Party or any other person, except as expressly provided in any Trust Document to which it is a party.

## Exercise of rights and compliance with obligations

### The Trustee has all the powers of a natural person and corporation in connection with the exercise of its rights and compliance with its obligations in connection with theTrust Objects.

### The Trustee may exercise its rights and comply with its obligations in connection with theTrust Objects in any manner it thinks fit.

## Awareness of certain events

### Each party (other than the Trustee) is taken not to be aware of an Event of Default or Potential Event of Default until an officer or employee of that party (or a Related Entity of that party) having day to day responsibility for the administration or management of the transactions contemplated by the Trust Documents has actual knowledge that the events or circumstances constituting the Event of Default or Potential Event of Default have occurred.

### Each party (other than the Trustee) is taken not to be aware of any other thing relating to the Trust until an officer or employee of that party (or a Related Entity of that party) having day to day responsibility for the administration or management of the transactions contemplated by the Trust Documents has actual knowledge of sufficient facts to ascertain that thing.

### The Trustee will only be considered to have knowledge or notice of or awareness of any matter or thing if:

#### subject to clause 9.6(c)(ii), the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual knowledge, notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trustee’s obligations under this deed or any other Trust Document; and

#### in the case of an Event of Default or a Potential Event of Default, such officer or employee referred to in clause 9.6(c)(i) has actual knowledge of the event or circumstance constituting the Event of Default or Potential Event of Default.

[***Option 3 Provision (Manager).*** *Where a Manager has been appointed to manage the Trust, insert:*

# Role of the Manager

## Excluded roles and duties

The appointment of the Manager does not mean that the Manager:

### is a trustee for the benefit of; or

### is a partner of; or

### has a fiduciary duty to, or other fiduciary relationship with,

any Member, the Trustee, any Relevant Party or any other person, except as expressly provided in any Trust Document to which it is a party.

## Manager must direct Trustee

Subject to clause 10.5 (“Restrictions on Manager’s directions”), the Manager must in accordance with the Trust Documents direct the Trustee how to carry on the Trust Objects.

## Trustee must follow Manager’s directions

The Trustee must carry on the Trust Objects in accordance with the Manager’s directions. However, the Trustee need not comply with any direction the Manager gives it in connection with the Trust Objects to the extent that the Trustee considers that the Manager is not entitled to give the direction under clause 10.5 (“Restrictions on Manager’s directions”).

## Specific matters on which directions are given

Subject to clause 10.5 (“Restrictions on Manager’s directions”), but without limiting any other provision of this deed:

### for each of the matters and circumstances under clauses 2.5 (“Trust Objects”), 3.2(a) (“Classes of membership”), 4.4 (“Use of surplus funds”), 9.5 (“Exercise of rights and compliance with obligations”) or 11 (“Funding of Trust Objects”) for which the Trustee is expressed to have a discretion whether to take an action or do a thing, it must take that action or do such thing if it is directed by the Manager to do so; and

### subject to such direction having not been revoked by the Manager in writing, the Manager is deemed to expressly direct the Trustee to take such action and do each thing as it may or must do under clauses 4.2(b) (“Limitation on income and property of the Trust”), 16 (“Project Account and trust segregation”), 17.2 (“Trust Expenses”) and 23.3 (“Realisation of Assets”); and

### for the purposes of clause 7(b), the Trustee shall be required to seek the instructions, and will adopt the determinations, of the Manager in respect of the relevant matters.

## Restrictions on Manager’s directions

The Manager must not direct the Trustee to do anything, or refrain from doing anything, in connection with the Trust if doing, or not doing, that thing may:

### have a Material Adverse Effect;

### lead to the Trustee incurring any actual or potential Tax liability; or

### be illegal or contrary to the terms of the Trust Documents; or

### result in the Trustee breaching a fiduciary duty; or

### result in the Trustee incurring a personal liability in circumstances where the Trustee is not reasonably satisfied that it is adequately indemnified against that liability.

## General requirements in relation to Manager’s directions

Any direction the Manager gives the Trustee:

### may be deemed to be given by the express terms of this deed (and the Manager’s execution of this deed will be evidence of any such direction being so given), provided that any such direction may be revoked at any time by the Manager if the Manager determines that to give such a direction would contravene clause 10.5 (“Restrictions on Manager’s directions”); or

### must:

#### be given by an Authorised Officer of the Manager; and

#### specify any action the Trustee must take to comply with the direction.

## Manager confirmation on direction to issue Bonds

If the Manager directs the Trustee to issue Bonds (to the extent it is permitted to do so under an Australian financial services licence), by giving the direction, the Manager confirms to the Trustee that it is satisfied that the offer to which the issue of Bonds relates:

### does not require disclosure to investors in accordance with Parts 6D.2 or 7.9 of the Corporations Act; and

### is not an offer to a retail client as defined for the purposes of section 761G of the Corporations Act.

## Manager must provide information requested

The Manager agrees to provide the Trustee with any information the Trustee reasonably requires to comply with any direction the Manager gives the Trustee.

## Trustee need not make enquiries or assessments

The Trustee need not enquire, or make any assessment, about the merits of any direction the Manager gives it, and may rely on any direction provided by the Manager without further inquiry.

## Notices and communications

### Where the Trustee is required under a Trust Document to give any notice or make any other communication:

### in its personal capacity, it will also provide a copy of that notice or other communication to the Manager; and

### in its capacity as trustee of the Trust, the Manager is expressly authorised to give that notice or make that other communication on behalf of the Trustee in accordance with that Trust Document.

#### *End of Option 3 Provision (delete – and renumber following provisions accordingly – if a Manager has not been appointed to manage the Trust)*]

# Funding of Trust Objects

## Bonds

The Trustee shall issue Bonds in respect of the Trust in registered form in accordance with the SBB Bond Deed Poll, the Bond Conditions and this clause 11.

## Information required in Bond Register

### The Trustee must enter, or must procure the entry of, the following information in the Bond Register:

#### the name of the Trust; and

#### details of all issues of Bonds (including the class of Bond, the issue date, the issue price, the outstanding principal amount of the Bonds and the name, address and account details of the Bondholders); and

#### the total number of issued Bonds and the number of Bonds held by each Bondholder; and

#### if principal is repaid in respect of any Bonds other than on the scheduled maturity date for those Bonds, details of the repayment (including the amount and date of the repayment) and the outstanding principal amount of the Bonds following the repayment; and

#### details of all transfers of Bonds (including the transfer date, the name of the transferor and the name, address and account details of the transferee);

#### details of all redemptions of Bonds that are effected (including the redemption date and the redemption price); and

#### any other information that the Trustee considers necessary or desirable.

### The Trustee must ensure that a copy of the Bond Conditions is kept with the Bond Register.

## Bond Register is paramount

Except as ordered by a court of competent jurisdiction or required by law, the Trustee must treat the person whose name is entered in the Bond Register as the holder of a Bond as the owner of that Bond.

No notice of any trust or other interest in, or claim to, any Bond will be entered in the Bond Register. The Trustee need not take notice of any trust or other interest in, or claim to, any Bond, except as ordered by a court of competent jurisdiction or required by law.

## Update and correction of Bond Register

The Trustee must:

### update the Bond Register, or procure its update, if it is notified of any change in any of the details recorded in the Bond Register in respect of a Bondholder; and

### correct the Bond Register, or procure its correction, if it becomes aware that any details in the Bond Register are incorrect or incomplete.

The Trustee must update or correct, or procure the update or correction of, the Bond Register as soon as practicable (and, in any event, by no later than 5 Business Days) after being notified or becoming aware of the relevant event or circumstance.

## Closure

The Trustee may close the Bond Register, or procure its closure:

### from close of business on each record date (as provided under the Bond Conditions) for any Bond. The Trustee must reopen the Bond Register, or procure that it is reopened at the opening of business on the Business Day immediately following the payment date corresponding with that record date; and

### at any other time in its discretion.

# The Trustee

## Dealing in different capacities

The Trustee and any of its Related Entities may:

### engage in any kind of banking, trust or other business with the Members, any Relevant Party or any of their respective Related Entities; and

### accept fees and other consideration from the Members, any Relevant Party or any of their respective Related Entities for services in connection with any Trust Document or any other arrangement,

as if the Trustee were not the trustee of the Trust and without having to account to the Members for any income they derive in doing so.

The Trustee and its Related Entities are released from any obligation they might otherwise have to the Members in relation to these matters.

## Separate entities

In acting as trustee of the Trust and in each other capacity in which it may act under the Trust Documents, the relevant division or department of the Trustee is to be regarded as a separate entity from any other of its divisions or departments.

If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is not taken to have notice of it.

## Knowledge of the Trustee

The Trustee will only be considered to have knowledge, notice or awareness of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual knowledge, notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trustee’s obligations under this deed or any other Trust Document.

# Delegation and reliance on advice

## Power to delegate

[***Standard Provision****. Insert:*

### Subject to clauses 13.1(b) and 13.1(c), the Trustee may employ agents and attorneys and may delegate any of its rights or obligations as trustee without notifying any other person of the delegation.

### The Trustee is not responsible or liable to any Member for any act or omission of any delegate appointed by the Trustee if:

#### the delegate is a clearing system; or

#### the Trustee is obliged to appoint the delegate pursuant to an express provision of a Trust Document or pursuant to an instruction given to the Trustee in accordance with a Trust Document; or

#### the Initial Charitable Member consents to the delegation in accordance with clause 13.1(c).

### The Trustee agrees that it will not:

#### delegate a material right or obligation or a material part of its rights or obligations under this deed; or

#### appoint any Related Entity of it as its delegate,

#### unless it has received the prior written consent of the Initial Charitable Member.

*End of Standard Provision (delete if the following optional provision is included)*]

[***Option 3 (Manager Provision).*** *Where a Manager has been appointed to manage the Trust, insert:*

### Subject to clauses 13.1(b) and 13.1(c), the Trustee may employ agents and attorneys and may delegate any of its rights or obligations as trustee without notifying any other person of the delegation.

### The Trustee is not responsible or liable to any Member for any act or omission of any delegate appointed by the Trustee if:

#### the delegate is a clearing system; or

#### the Trustee is obliged to appoint the delegate pursuant to an express provision of a Trust Document or pursuant to an instruction given to the Trustee in accordance with a Trust Document; or

#### the Manager consents to the delegation in accordance with clause 13.1(c).

### The Trustee agrees that it will not:

#### delegate a material right or obligation or a material part of its rights or obligations under this deed; or

#### appoint any Related Entity of it as its delegate,

#### unless it has received the prior written consent of the Manager.

*End of Option 3 Provision (delete if a Manager has not been appointed to manage the Trust)*]

## Trustee may rely on communications and opinions

In relation to any Trust Document, the Trustee may rely:

### on any communication or document it believes to be genuine and correct and to have been signed or sent by the appropriate person; and

### as to legal, accounting, taxation or other professional matters, on opinions and statements of any legal, accounting, taxation or other professional advisers used by it or any other party to a Trust Document; and

### on the contents of any statements, representation or warranties made or given by any party other than itself pursuant to this deed, or direction from any person permitted to give such instructions or directions under the Trust Documents; and

### on any calculations made by a Relevant Party under any Trust Document (including without limitation any calculation in connection with the assets of the Trust).

## Dispute or ambiguity

If there is any dispute or ambiguity in relation to any matter connected with the Trust Documents, the Trustee may (but need not) do one or both of the following:

### obtain and rely on advice from its legal, accounting, taxation or other professional advisers or any person referred to in clause 13.2(b) (“Trustee may rely on communications and opinions”); or

### apply to a court for any direction or order the Trustee considers appropriate.

As long as the Trustee is using reasonable endeavours to resolve any ambiguity, the Trustee may (but need not) refuse to do anything in relation to matters affected by the ambiguity.

# Indemnity and limitation of liability

[*The following sets out an example indemnity and limitation of liability provision. Whilst it is recognised that an individual third-party trustee may have a preference for its own form of these provisions, regard should be had to the principles that are included below.*]

## Indemnity

The Trustee is indemnified out of the Assets against any liability or loss arising from, and any Costs properly incurred in connection with, complying with its obligations or exercising its rights under the Trust Documents.

To the extent permitted by law, this indemnity applies despite any reduction in value of, or other loss in connection with, the Assets as a result of any unrelated act or omission by the Trustee or any person acting on its behalf.

This indemnity does not extend to any liabilities, losses or Costs to the extent that they are due to the Trustee’s fraud, negligence or Wilful Default.

## Legal Costs

The Costs referred to in clause 0 (“Indemnity”) include all legal Costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis.

These legal Costs include any legal costs which the Trustee incurs in connection with proceedings brought against it alleging fraud, negligence or Wilful Default on its part in relation to the Trust. However, the Trustee must repay any amount paid to it in respect of those legal Costs under clause 0 (“Indemnity”) if and to the extent that a court determines that the Trustee was fraudulent, negligent or in Wilful Default in relation to the Trust or the Trustee admits it.

## Limitation of Trustee’s liability

### The Trustee enters into this deed and each Trust Document only in its capacity as trustee of the Trust and in no other capacity. Notwithstanding any other provisions of this deed (other than the below paragraphs of this clause 14.3) or any other Trust Document, a liability arising under or in connection with this deed or any other Trust Document is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the Assets out of which the Trustee is actually indemnified for the liability. This limitation of the Trustee’s liability applies despite any other provision of this deed (other than the below paragraphs of this clause 14.3) or any other Trust Document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed or any Trust Document.

### The parties other than the Trustee may not sue the Trustee in any capacity other than as trustee of the Trust, including seeking the appointment of a receiver (except in relation to the Assets), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to the Assets).

### The provisions of this clause 14 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because under this deed or by operation of law there is a reduction in the extent of the Trustee’s indemnification out of the Assets as a result of the Trustee’s fraud, negligence or Wilful Default in relation to the Trust.

### It is acknowledged that the Relevant Parties are responsible under this deed and the other Trust Documents for performing a variety of obligations relating to the Trust. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed or any other Trust Document) will be considered fraud, negligence or Wilful Default of the Trustee for the purpose of paragraph (c) of this clause 14.3 to the extent to which the act or omission was caused or contributed to by any failure by any Relevant Party or any other person to fulfil its obligations relating to the Trust or by any other act or omission of any Relevant Party or any other person.

### No attorney, agent, receiver or receiver and manager appointed in accordance with this deed or any other Trust Document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or Wilful Default of the Trustee for the purpose of paragraph (c) of this clause 14.3.

### The Trustee is not obliged to do or refrain from doing anything under this deed or any other Trust Document (including incur any liability) unless the Trustee’s liability is limited in the same manner as set out in this clause 14.

## Liability must be limited and must be indemnified

The Trustee is not obliged to do or not do anything in connection with the Trust Documents (including enter into any transaction or incur any liability) unless:

### the Trustee’s liability is limited in a manner which is consistent with clause 14.3 (“Limitation of Trustee’s liability”); and

### it is indemnified against any liability or loss arising from, and any Costs properly incurred in connection with, doing or not doing that thing in a manner which is consistent with clause 0 (“Indemnity”).

For the avoidance of doubt, the Trustee is not obliged to use its own funds in performing its obligations under any Trust Document (including this deed) other than in the circumstances set out in clause 14.3(c) (“Limitation of Trustee’s liability”).

## Exoneration

Neither the Trustee nor any of its directors, officers, employees, agents or attorneys will be taken to be fraudulent, negligent or in Wilful Default for the purposes of clause 14.3(c) (“Limitation of Trustee’s liability”) because:

### any person other than the Trustee does not comply with its obligations under the Trust Documents; or

### of the financial condition of any person other than the Trustee; or

### any statement, representation or warranty of any person other than the Trustee in a Trust Document is incorrect or misleading; or

### of any omission from or statement or information contained in any information memorandum or any advertisement, circular or other document issued in connection with any Bonds; or

### of the lack of effectiveness, genuineness, validity, enforceability, admissibility in evidence or sufficiency of the Trust Documents or any document signed or delivered in connection with the Trust Documents; or

### of acting, or not acting (unless it has been instructed in accordance with the Trust Documents to act), in accordance with instructions of:

#### any person permitted to give instructions or directions to the Trustee under the Trust Documents; or

#### any person to whom a person described in clause 14.5(f)(i) has delegated any of its rights or obligations that permit it to give instructions or directions to the Trustee under the Trust Documents, as notified to the Trustee,

#### (or, in either case, instructions or directions that the Trustee reasonably believes to be genuine and to have been given by an appropriate officer of any such person).

#### For the avoidance of doubt:

##### for the purpose of clause 14.5(f)(i), the Trustee will be able to rely on a direction from the relevant person even if it has received notice of delegation by the person of any of its rights or obligations;

##### for the purpose of clause 14.5(f)(ii), the Trustee is not required to investigate the scope of any such delegation or whether the delegate giving the instructions is entitled to give such instruction to the Trustee under the terms of its delegation;

### of acting, or not acting (unless it has been instructed in accordance with the Trust Documents to act) in good faith in reliance on:

#### any communication or document that the Trustee believes to be genuine and correct and to have been signed or sent by the appropriate person;

#### as to legal, accounting, taxation or other professional matters, on opinions and statements of any legal, accounting, taxation or other professional advisers used by it or any other party to the Trust Documents;

#### on the contents of any statements, representation or warranties made or given by any party other than the Issuer pursuant to this deed, or instructions or directions from any person permitted to give such instructions or directions under the Trust Documents of any Trust; or

#### on any calculations made by a Relevant Party under any Trust Document (including without limitation any calculation in connection with the Assets);

### it is prevented or hindered from doing something by law or order;

### of any payment made by it in good faith to a fiscal authority in connection with Taxes (including Taxes assessed on the income of the Trust) or other charges in respect of the Trust even if the payment need not have been made; or

### of a failure by the Trustee to check any calculation, information, document, form or list supplied or purported to be supplied to it by a Relevant Person under this deed, under any Trust Document, or any other person.

## No supervision

Except as expressly set out in the Trust Documents, the Trustee has no obligation to supervise, monitor or investigate the performance of any Relevant Person or any other person.

## Payment obligations not affected by limitation of liability

[***Standard Provision.*** *Insert*:

The limitation of the Trustee’s liability under clause 14.3 (“Limitation of Trustee’s liability”) is to be disregarded for the purposes of determining whether an Event of Default has occurred because of a failure by the Trustee to pay an amount payable by it under any Trust Document.

*End of Standard Provision (delete if the following optional provision is included)*]

[***Option 1 Provision (Secured Transactions).*** *Where security is given by the Trustee in connection with the SBB arrangement, insert:*

The limitation of the Trustee’s liability under clause 14.3 (“Limitation of Trustee’s liability”) is to be disregarded for the purposes of determining whether an Event of Default has occurred because of a failure by the Trustee to pay an amount payable by it under any Trust Document or in interpreting the definition of Secured Money.

*End of Option 1 Provision (delete of security is not given by the Trustee)*]

## Cleared funds

The Trustee is only taken to be in receipt of funds in relation to the Trust to the extent that those funds are cleared funds. Without limiting any other provision of any Trust Document, the Trustee will not be taken to be fraudulent, negligent or in Wilful Default for the purpose of clause 14.3(c) (“Limitation of Trustee’s liability”) as a result of a failure to make any payments in accordance with a Trust Document due to it not being in receipt of cleared funds at the time of payment. For the avoidance of doubt, such amounts will continue to be due and payable in accordance with the Trust Documents.

# Change of Trustee

## Mandatory retirement

The Trustee must retire as trustee of the Trust if:

### the Trustee becomes Insolvent;

### required by law;

### the Trustee ceases to carry on business as a professional trustee; or

### the Trustee merges or consolidates with another entity, unless:

#### that entity assumes the obligations of the Trustee under the Trust Documents; and

#### the Initial Charitable Member approves the merger or consolidation (such consent not to be unreasonably withheld).

### In addition, the Initial Charitable Member may request the Trustee to, and the Trustee must (if so requested), retire as trustee of the Trustif (1) the Trustee does not comply with a material obligation under the Trust Documents and, (2) if the non-compliance can be remedied, the Trustee does not remedy the non-compliance within 30 days of being requested to do so by the Initial Charitable Member.

## Voluntary retirement

The Trustee may retire as trustee of the Trust by giving the Members at least 90 days’ (or such shorter period as the Members and the Trustee may agree) notice of its intention to do so.

## When retirement takes effect

Subject to clause 15.4 (“Appointment of successor trustee”), the retirement of the Trustee as trustee of the Trust takes effect when:

### a successor trustee is appointed for the Trust; and

### the successor trustee obtains title to, or obtains the benefit of, this deed and each other Trust Document to which the Trustee is a party as trustee of the Trust; and

### the successor trustee and each other party to the Trust Documents to which the Trustee is a party as trustee of the Trust have the same rights and obligations among themselves as they would have had if the successor trustee had been party to them at the dates of those documents.

## Appointment of successor trustee

### If the Trustee retires as trustee of the Trust, the Trustee agrees to use its best endeavours to ensure that a successor trustee acceptable to the Initisl Charitable Member is appointed for the Trust as soon as possible. If no successor trustee is appointed within 90 days after notice of retirement or removal is given, the Trustee may appoint a successor trustee or apply to the court for a successor trustee to be appointed.

## Costs of retirement

If the Trustee retires (other than in the case of clause **Error! Reference source not found.** (“Mandatory retirement”), everything it is required to do under clause 15.6 (“Trustee to deliver documents”) and its costs in entering into the retirement and appointment document under clause 15.7 (“Further steps”) is at the Trustee’s own expense. If the Trustee retires because it is required to do so by law, everything it is required to do under this clause 15 is an expense of the Trust.

## Trustee to deliver documents

If the Trustee retires as trustee of the Trust, it agrees to deliver to the successor trustee:

### all original documents in its possession relating to the Trust and the Assets; and

### any transfers, requests, notices of assignment or other documents to record the transfer of the Assets to the successor trustee which the successor trustee reasonably requests.

## Further steps

Without limiting clause 15.6 (“Trustee to deliver documents”), if the Trustee retires as Trustee of the Trust, it agrees to do anything the successor trustee reasonably asks (such as obtaining consents, and signing, producing and delivering documents including a retirement and appointment document) to give effect to the retirement and the appointment of the successor trustee.

## Discharge of further obligations

When a successor trustee is appointed as trustee of the Trust, the retiring Trustee is discharged from any further obligation under the Trust Documents. However, this discharge does not affect any accrued rights or obligations.

# Project Account and trust segregation

## Project Account

As soon as practicable after the execution of this deed, the Trustee must open the Project Account with an Eligible Bank.

## Transfer of Project Account

If the Account Bank at which the Project Account is held ceases to be an Eligible Bank, upon becoming aware of the occurrence of that event, the Trustee must immediately establish a new Project Account with an Eligible Bank and transfer the funds standing to the credit of the old Project Account to the new Project Account.

[***Option 1 Provision (Secured Transactions).*** *Where security is given by the Trustee in connection with the SBB arrangement, insert:*

## Operation

The Trustee must operate the Project Account in accordance with:

### while any Secured Money remains outstanding or owing (including contingently owing) to the Department, clause [10] of the First Security Deed; and

### once all Secured Money outstanding or owing (including contingently owing) to the Department has been fully and finally paid or repaid, clause [10] of the Second Security Deed.

### *End of Option 1 Provision (delete of security is not given by the Trustee)*]

## Allocation to Trust

The Trustee must account for the Assets and liabilities of the Trust separately from the assets and liabilities of any other trust. The Trustee must ensure that all of the Assets and liabilities of the Trust are separately allocated in the records of the Trust from the Assets and liabilities of any other trust.

# Fees and expenses

## Fees

The Trustee is entitled to a fee for performing its obligations under this deed. The fee payable is payable at the times and in the amounts set out in a side letter between the Trustee and [*insert name*].

## Trust Expenses

### On [*insert date(s)*] in each year up to (but excluding) the final redemption date for the Bonds, the Trustee will deposit an amount of A$[*insert amount*] into an account held with an Eligible Bank and maintained in the name of the Trustee (“**Trust Expenses Account**”).

### Subject to the Trustee having made payments contemplated, permitted or required under the other Transaction Documents as and when due, funds standing to the balance of the Trust Expenses Account will be applied by the Trustee, at any time as required, rateably in respect of:

#### the Trustee’s Costs incurred in connection with its role as trustee of the Trust; and

#### any Costs of the Trust incurred and payable.

### Other than as set out in clause 17.2(b), amounts will only be released from the Trust Expenses Account after any necessary payments have been made in accordance with clause 17.2(b):

#### on the final redemption date for the Bonds; or

#### if the Trustee has granted any security interest over the Assets, and which security interest has been enforced.

# Variation of Trust Documents

The Trustee may agree to a variation of a Trust Document without the consent of any other party if in the reasonable opinion of the Trustee, the variation is:

### necessary or advisable to comply with any law or the requirement of any Government Agency; or

### necessary to correct an ambiguity, an obvious error, or is otherwise of a formal, technical or administrative nature only; or

### desirable for any reason, provided that such variation will not have a Material Adverse Effect.

# General

## Counterparts

This deed may consist of a number of copies, each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

## Governing law and jurisdiction

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

# Notices and other communications

## Service of process

Without preventing any other method of service, any document in a court action in connection with this deed may be served on a party by being delivered to or left at that party’s address for service of notices in accordance with this clause 20.

## Form - all communications

Unless expressly stated otherwise in the Trust Document, all notices, certificates, consents, approvals, waivers and other communications in connection with a Trust Document must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified in the Trust Document or, if the intended recipient has notified otherwise, marked for attention in the way last notified.

## Form - communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 20.2 (“Form - all communications”). However, the email must state the first and last name of the sender.

Communications sent by email are taken to be in writing and signed by the named sender.

## Delivery

Communications in connection with a Trust Document must be:

### left at the address of the intended recipient set out or referred to in the Trust Document; or

### sent by prepaid ordinary post (airmail, if appropriate) to the address of the intended recipient set out or referred to in the Trust Document; or

### sent by fax to the fax number of the intended recipient set out or referred to in the Trust Document; or

### sent by email to the address of the intended recipient set out or referred to in the Trust Document; or

### given in any other way permitted by law.

However, if the intended recipient has notified a changed address or fax number, then any communication must be to that address or number.

## When effective

### Communications take effect from the time they are received or taken to be received (whichever happens first) unless a later time is specified in them.

### Communications are taken to be received:

#### if sent by post, 3 days after posting (or 7 days after posting if sent from one country to another); or

#### if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or

#### if sent by email:

##### when the sender receives confirmation of receipt from the intended recipient or an automated message confirming delivery; or

##### 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

### Despite clauses 20.5(a) and 20.5(b), if communications are received or taken to be received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day and take effect from that time unless a later time is specified in them.

## Communications to Bondholders

This clause 20 (“Notices and other communications”) does not apply to communications to Bondholders. All communications to Bondholders in connection with a Transaction Document must be given in accordance with the Bond Conditions.

# Other interests and dealings

### [***Standard Provision.*** *Insert:*

### The Trustee may exercise all its powers even if it, any Related Entity of it or any director, shareholder or officer of any of them may have an interest in the manner or result of exercising the power or may benefit directly or indirectly as a result.

### Provided it acts in good faith, and subject to the relevant Trust Documents, a corporation may act as a trustee or manager of the Trust even if its Related Entities or directors, officers or shareholders of any of them are the Trustee, a Member, a Bondholder or a Relevant Party or interested as directors, shareholders, officers, partners, or otherwise stand in a fiduciary or beneficial relationship to any person:

#### with whom Assets may be invested;

#### with whom the Trustee, any Member, any Relevant Party or any Bondholder may deal; or

#### who may be legally or beneficially interested in or entitled to any interest in the Trust.

### Provided it acts in good faith, and subject to the relevant Trust Documents, the Trustee may sell assets from, lend money to, borrow or raise money from, and otherwise deal with:

#### itself whether on its own behalf or in any other capacity;

#### any Related Entity;

#### any director, officer or member of itself or any Related Entity; and

#### any other person referred to in clause 21(b),

#### in all ways as if it was not the Trustee or Manager (as the case may be) and shall not be liable to account for any profit or commission derived as a result.

*End of Standard Provision (delete if the following optional provision is included)*]

[***Option 3 Provision (Manager).*** *Where a Manager has been appointed to manage the Trust, insert:*

### The Trustee and the Manager may each exercise all its respective powers even if it, any Related Entity of it or any director, shareholder or officer of any of them may have an interest in the manner or result of exercising the power or may benefit directly or indirectly as a result.

### Provided it acts in good faith, and subject to the relevant Trust Documents, a corporation may act as a trustee or manager of the Trust even if its Related Entities or directors, officers or shareholders of any of them are the Trustee, the Manager, a Member, a Bondholder or a Relevant Party or interested as directors, shareholders, officers, partners, or otherwise stand in a fiduciary or beneficial relationship to any person:

#### with whom Assets may be invested;

#### with whom the Trustee, the Manager, any Member, any Relevant Party or any Bondholder may deal; or

#### who may be legally or beneficially interested in or entitled to any interest in the Trust.

### Provided it acts in good faith, and subject to the relevant Trust Documents, the Trustee and Manager may each sell assets from, lend money to, borrow or raise money from, and otherwise deal with:

#### itself whether on its own behalf or in any other capacity;

#### any Related Entity;

#### any director, officer or member of itself or any Related Entity; and

#### any other person referred to in clause 21(b),

#### in all ways as if it was not the Trustee or Manager (as the case may be) and shall not be liable to account for any profit or commission derived as a result.

*End of Option 3 Provision (delete if a Manager has not been appointed to manage the Trust)*]

# GST

## Construction

### In this clause 22, words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law.

## Consideration GST exclusive

Unless expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

## Payment of GST

If GST is payable on any supply made under this deed, for which the consideration is not expressly stated to include GST, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

## Timing of GST payment

The recipient will pay the amount referred to in clause 22.3 (“Payment of GST”)in addition to and at the same time that the consideration for the supply is to be provided under this deed.

## Tax Invoice

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 22.3 (“Payment of GST”). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

## Adjustment event

If an adjustment event arises in respect of a taxable supply made by a supplier under this deed, the amount payable by the recipient under clause 22.3(“Payment of GST”)will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

## Reimbursements

Where a party is required under this deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

### the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

### if the payment or reimbursement is subject to GST, an amount equal to that GST.

# Procedure on termination

## Expiration

Subject to clause 23.2 (“By the Trustee”), the Trust will terminate on the day prior to the expiration of the perpetuity period determined in accordance with clause 1.3 (“Perpetuity period”).

## By the Trustee

Upon full and complete discharge of each of its obligations under the Transaction Documents, the Trustee may terminate the Trust, and the Trust will terminate on the date specified by the Trustee as the date of termination of the Trust in a notice given to the Initial Charitable Member.

## Realisation of Assets

Following termination of the Trust, the Trustee must realise the Assets.

## Distribution following termination

The net proceeds of realisation, after making allowance for all liabilities of the Trust (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, must be distributed in accordance with clause 24 (“Winding up of Trust”).

## Trust deed applies until date of final distribution

The provisions of this deed continue to apply from the date of termination until the date of final distribution under clause 24.2 (“Distribution of assets”).

# Winding up of Trust

## Rights of Members on winding up

If the Trust is wound up or dissolved, the Members (other than the Initial Charitable Member) have no right to participate in any distribution or payment of the assets or property of the Trust.

## Distribution of assets

### Subject to clause 24.2(b), if on the winding up or dissolution of the Trust there remains, after satisfaction of all its debts and liabilities, any property, the property must be given or transferred to some other entity or entities:

#### having objects similar to the objects of the Trust; and

#### whose constituent document prohibits the distribution of its income and property to an extent at least as great as that imposed on the Trust.

### If the Trust is endorsed as a deductible gift recipient for the purposes of Australian taxation laws and regulations, and either:

#### the Trust is wound up or dissolved; or

#### the Trust’s endorsement as a deductible gift recipient is revoked;

#### then:

#### where clause 24.2(b)(i) applies, any property that remains after the satisfaction of all of the Trust’s debts and liabilities; or

#### where clause 24.2(b)(ii) applies, any property of the trust,

#### in either case that is:

#### gifts of money or property for the Trust Objects; or

#### contributions made in relation to an eligible fundraising event held for the Trust Objects; or

#### money received by the Trust because of such gifts and contributions,

#### shall be transferred to some other entity or entities to which Australian income tax deductible gifts can be made.

### The Initial Charitable Member may receive any such property under clauses 24.2(a) or 24.2(b) to the extent it meets the applicable description of an entity eligible to receive transfer of that property under those provisions.

**EXECUTED** as a deed

Signing page

**Settlor**

[*Execution block*]

**Trustee**

[*Execution block*]

**Manager**

[*Execution block*]

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| --- | --- | --- |
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1. [***Drafting Note****: in these General Terms, all cross-references to names, terms and provisions in other documents, and cross-references to provisions in this deed should be carefully checked and confirmed.*] [↑](#footnote-ref-1)
2. [***Drafting Note****: paragraph (a) of the definition of “Authorised Officer” to be confirmed / adapted as required for relevant titles of appropriate officers from the relevant parties.*] [↑](#footnote-ref-2)