



# **CITIZEN FAMILY CONSTITUTION**

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# Citizen Family Constitution

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## SUMMARY

*Under this document, certain members of the Citizen family are eligible, but not obliged, to apply to the board to become entitled for distributions of income and, in certain circumstances, capital from the trusts controlled by the board. Successful applicants are known in this document as “Current Members”.*

*The board is not required to accept an application merely because the applicant is a Citizen family member – the applicant must satisfy certain requirements in terms of estate planning, insurance, financial education and other several other issues (see clause 8).*

*The Current Members are responsible for electing members to the Board.*

## 1. TRUSTEE ACKNOWLEDGEMENTS

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The Trustee notes that:

- (a) it is the trustee of the Trusts, in accordance with the Trust Deeds;
- (b) this Constitution limits the Trustee’s power under the Trusts, including the Trustee’s discretion to distribute income and capital of the Trusts;
- (c) the constitution of the Trustee (***Trustee Constitution***) is attached as Schedule 1; and
- (d) the Trustee Constitution establishes the Board.

## 2. STATEMENTS OF INTENTION

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### 2.1 Reasons for Establishing Family Constitution

The intention of establishing this Constitution is to:

- (a) build structured wealth for the immediate and successive generations of the Citizen Family;
- (b) provide a structure for the allocation of wealth among the Citizen Family in an equitable, protective and tax effective manner;
- (c) provide a framework for the succession of members of the Citizen Family so that wealth is maintained and not dissipated; and
- (d) provide a share of the Citizen Family wealth to the greater community, including but not limited to the Nominated Charities.

## 2.2 Family Principles

Members of the Citizen Family should maintain:

- (a) a well balanced values system where we are:
  - (i) honest and ethical;
  - (ii) humble and fair;
  - (iii) loyal and respectful;
  - (iv) tolerant and compassionate to the community;
  - (v) flexible; and
  - (vi) friendly and approachable;
- (b) a desire to strive for excellence and quality in what we do;
- (c) pride in our family and business;
- (d) an improvement mindset;
- (e) a desire to first understand any issue and then commit to a logical problem solving process or conflict resolution process to resolve the issue;
- (f) recognition of the contributions of other members of the Citizen Family; and
- (g) a desire to be an effective contributor using our own creative and innovative talents to benefit the Citizen Family and the wider community.

## 2.3 Family Objectives

The Citizen Family has the following objectives:

- (a) achieve individually acceptable balances of work and family life;
- (b) maintain good, long term relationships between family members; and
- (c) build and maintain pride in the Citizen Family name and reputation.

## 3. BOARD OF DIRECTORS

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### 3.1 Composition of the Board of Directors

Subject to the Trustee Constitution:

- (a) the initial member of the Board is Jack Citizen .
- (b) a Board member continues to hold office until he or she dies, loses capacity, is removed by resolution of the Current Members or until his or her office becomes vacant pursuant to the Constitution or the Trustee Constitution;
- (c) a person (other than Jack Citizen ) may only be a Board member for an aggregate of three (3) years in any six (6) year period; and
- (d) the Current Members that are eighteen (18) years of over may by resolution remove any Board member (other than Jack Citizen) and may by resolution appoint another person in his or her stead.

### 3.2 External Board Members and Professional Advisors

- (a) The Board must consult with Paul Smith, John Jones and Andrew Martin (**Advisors**) in making its decisions.
- (b) For the removal of doubt, the Current Members may nominate one or more of the Advisors as Board members.
- (c) If any of the Advisors practice any profession, they are entitled to be paid fees for work done by them or their firm including without limitation work of a professional nature.

### 3.3 Board Meetings

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit. Each Board member is entitled to reasonable notice of any meetings of the Board.
- (b) While Jack Citizen is the sole Board member, the number of Board members necessary to constitute a quorum is as stated in the Trustee Constitution. Otherwise, the number of Board members whose presence is necessary to constitute a quorum at a Board meeting is such number as is determined by the Board members and, unless so determined, is two (2) Board members.

### 3.4 Chairman of the Board

- (a) The Board members must elect one of their number as chairman of their meetings and may determine the period for which he or she is to hold office.
- (b) Where a Board meeting is held and:
  - (i) a chairman has not been elected as provided by clause 3.4(a); or
  - (ii) the chairman is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Board members present must elect one of their number to be a chairman of the meeting.

### 3.5 Resolutions of the Board

Resolutions of the Board require a majority vote, as follows:

- (a) 5 or more Board members entitled to vote then a vote of not less than 80% of the Board members entitled to vote is required;
- (b) 4 Board members entitled to vote then a vote of not less than 75% of the Board members entitled to vote is required;
- (c) 3 Board members entitled to vote then a vote of not less than 65% of the Board members entitled to vote is required; and
- (d) 2 or less Board members entitled to vote then a vote of not less than 100% of the Board members entitled to vote is required.

### 3.6 Flying Minutes

- (a) A resolution in writing of which notice has been given to all Board Members and which is signed by all Board Members entitled to vote on the resolution is as valid and effective as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Board members.
- (b) Such a resolution shall be deemed to have been passed on the day on which the document or if more than one the last of them and at the time at which the last of them was last signed.

## 4. GENERAL MEETING

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### 4.1 Calling a General Meeting

A Board member (**Calling Member**) must once in any twelve (12) month period, call a general meeting of the Current Members.

### 4.2 Notice Requirements

The Calling Member must comply with the notice requirements set out in the Trustee Constitution when calling a general meeting.

## 5. DISTRIBUTION OF INCOME

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### 5.1 Discretionary Distribution

Subject to clauses 5.2, 5.3 and 5.4 and the terms of the Trust Deeds, the Trustee will at its discretion in each financial year:

- (a) hold the Trust Income which is available for distribution upon trust to pay, apply or set aside the same or any part or parts thereof to or for the benefit of the Current Members and the Nominated Charities (**Income Beneficiaries**); or
- (b) resolve to accumulate the whole or any part of the Trust Income.

### 5.2 Limitations on Discretion – Nominated Charities

In each financial year, the Trustee must pay, apply or set aside a minimum of ten (10) percent of the Trust Income which is available for distribution for the benefit of the Nominated Charities, subject to the condition that the Trustee must not pay, apply or set aside more than ten (10) percent of the Trust Income which is available for distribution to any one particular Nominated Charity.

### 5.3 Limitations on Discretion – Eligible Members of the Citizen Family

In each financial year, the Trustee may pay, apply or set aside up to thirty (30) percent of the Trust Income which is available for distribution for the benefit of the Current Members or their associated entities.

### 5.4 Prerequisites for income entitlements

- (a) Before Current Members are to receive any income entitlements they must satisfy the Trustee that they are either gainfully employed, attending to some form of tertiary education, are raising minor children or have some other reasonable excuse for not working or attending to further education to be considered at the discretion of the trustee.
- (b) If a Current Member chooses not to work, or attend to furthering their education, and is not otherwise raising minor children or otherwise has a reasonable excuse for not working or attending to further education, such as mental or physical illness or caring for a family member who has a mental or physical illness, the Current Member shall not receive distributions of trust income until such time as they can satisfy the Trustee that they satisfy the prerequisites
- (c) In the event there is an unforeseen event which would otherwise preclude the Current Member from receiving the income entitlements then the Trustee may use their discretion to determine whether or not the Current Members are to receive any income entitlements.

## 5.5 **Accumulation**

Any determination to accumulate Trust Income shall be conditional on the law in force in relation to this Constitution giving effect to that determination at the end of the relevant financial year.

## 5.6 **Tax**

- (a) Where the Trustee is required by law to pay Tax in respect of Trust Income allocated or distributed to an Income Beneficiary or moneys held by the Trustee on trust for an Income Beneficiary pursuant to the provisions of the Trust Deed and/or this Constitution, the Board may pay the Tax out of the Trust Income to which the Income Beneficiary is presently entitled or may deduct the same out of moneys which may then or thereafter come into the hands of the Trustee or over which the Trustee has control and to which the Income Beneficiary is or becomes entitled.
- (b) Where the Trustee is liable to pay Tax on accumulation of Trust Income, it may pay the same out of such Trust Income or from Trust Capital as it may decide in its absolute discretion of the Board.

# 6. **DISTRIBUTION OF CAPITAL**

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## 6.1 **Entitlement to Capital**

Contrary to any resolution by the Trustee, prior to the Termination Date, no Current Member has an absolute entitlement to all or part of the Trust Capital.

## 6.2 **Lending**

Subject to clause 7, in each financial year, the Board may lend to Current Members up to a total of thirty (30) percent of the Trust Capital that is not otherwise allocated under the Trust Deeds or this Constitution to a maximum of five hundred thousand dollars (\$500,000.00) to each child. This amount shall be adjusted for inflation from the date of this Constitution to the date of the proposed loan according to the movement of the CPI between those two dates. *CPI* for the purposes of this Constitution means the Consumer Price Index All Groups, Weighted Average of Eight Capital Cities of Australia. If the CPI is no longer current at the date of the proposed loan and another index is then current, the Trustee must compare the indices at the date of this Constitution to the date of the proposed loan and adjust the amount that may be lent to Current Members to take account of inflation.

## 6.3 **Lending to Testamentary Trusts**

The Board may at its discretion, instead of lending Trust Capital to Current Members, lend Trust Capital to the trustee(s) of a testamentary trust of which the Current Member is an income or capital beneficiary.

# 7. **LENDING TO ELIGIBLE MEMBERS OF CITIZEN FAMILY**

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## 7.1 **Application for Loan**

A Current Member (**Borrower**) may apply to the Trustee to borrow money from the Trust Capital.

## 7.2 **Grant of Loan**

The Trustee may at its absolute discretion grant a loan to a Borrower on the terms set out in clause 7.4.



### 7.3 **Maximum Lend**

A Borrower must not at any time owe to the Trustee more five hundred thousand dollars (\$500,000.00) subject to inflation as outlined in Clause 6.3. For the removal of doubt, the Trustee must refuse any application for a loan by a Borrower to the extent that that loan would increase the amount owed from the Borrower to the Trustee beyond the sum of five hundred thousand dollars (\$500,000.00) subject to inflation as outlined in Clause 6.3.

### 7.4 **Loan Terms**

Subject to clause 7.5, loans made by the Trustee under this clause must satisfy the following conditions:

- (a) the loan must require the Borrower to pay interest to the Trustee on the principal and interest outstanding from time to time at a commercial interest rate and otherwise on commercial terms;
- (b) the loan must be consistent with the Constitutions investment policy;
- (c) the Borrower's debt must be secured by the highest possible security available to the Trustee, unless the Trustee is satisfied that there are compelling reasons not to receive such security; and
- (d) for any one loan, a Borrower must not borrow more than thirty (30) percent of the market value of the asset(s) acquired using the borrowed funds.

### 7.5 **Discretionary Terms**

Loans made by the Trustee to a Borrower under this clause may contain such other terms as the Trustee in its absolute discretion determines, to the extent that those conditions are not inconsistent with the conditions set out in clause 7.4.

## 8. **OBTAINING CURRENT MEMBERSHIP**

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### 8.1 **Application**

A member of the Citizen Family may apply to the Trustee to become a Current Member.

### 8.2 **Representative Applications**

If a member of the Citizen Family is:

- (a) less than eighteen (18) years old; or
- (b) of Impaired Capacity;

then the parent or legal guardian of that member may apply to the Trustee for that member to become a Current Member.

### 8.3 **Procedure for Application**

Applications made in accordance with clauses 8.1 or 8.2 must:

- (a) be in writing;
- (b) include a copy of the Proposed Member's binding financial agreement and cohabitation agreement (if any);

- (c) include a copy of the Proposed Member's will (if any);
- (d) include a summary of the asset protection strategies employed in respect of the Proposed Member's assets (if any);
- (e) includes copies of policy documents and certificates of currency for all insurances held in respect of the Proposed Member (if any);
- (f) include such other information as the Trustee at its absolute discretion requires.

#### 8.4 **Acceptance of Application**

If the Board is satisfied that the Proposed Member satisfies the Eligibility Requirements, the Board must:

- (a) grant the applicant status as a Current Member; and
- (b) issue to that Current Member one (1) ordinary share in the Trustee, upon payment by the Current Member of the subscription price for the share, as determined by the Trustee.

### 9. **DISSENTITLING ACT**

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#### 9.1 **First Warning**

If a Current Member commits a Disentitling Act, the Trustee must give that member a written notice:

- (a) outlining the details of the Disentitling Act; and
- (b) requiring (if possible) the member to remedy the Disentitling Act within fourteen (14) days of the date of the notice (**First Warning**).

#### 9.2 **Second Warning**

If a Current Member fails to remedy the Disentitling Act to which the First Warning relates within the time specified in the First Warning, the Trustee must give that member a further written notice:

- (a) stating that the member has failed to comply with the First Warning; and
- (b) requiring (if possible) the member to remedy the Disentitling Act within fourteen (14) days of the date of the further notice (**Second Warning**).

#### 9.3 **Removal as Current Member**

If a Current Member fails to remedy the Disentitling Act to which the Second Warning relates within the time specified in the Second Warning, the Trustee may at its discretion remove that member as a Current Member.

#### 9.4 **Incapable of Remedy**

Despite any other clause in this Constitution, if the Disentitling Act is of a type that is incapable of remedy, the Trustee may at its discretion remove that member as a Current Member immediately upon the occurrence of the Disentitling Act without regard to clauses

9.1 and 9.2.

## 9.5 Cancellation of Share

If a Current Member is removed as a Current Member in accordance with this clause:

- (a) any loan owing from the member to the Trustee will become immediately due and payable and the Trustee must take all reasonable steps to recover payment of the loan; and
- (b) the Trustee must cancel the share held in the Trustee by the member and repay the subscription fee paid by the member for the share.

## 9.6 Procedure for Re-application

A member of the Citizen Family who is removed as a Current Member may re-apply for Current Membership at any time in accordance with clause 8.

# 10. FINANCIAL EDUCATION

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## 10.1 Education to Members

At least once in any six (6) month period, the Trustee must provide a workshop for members of the Citizen Family on the following topics (**Education Session**):

- (a) asset protection strategies; and
- (b) financial planning;

# 11. CONFLICT RESOLUTION

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## 11.1 Notice of Dispute

If any member of the Citizen Family, shareholder in the Trustee or member of the Board enters into a dispute with any other member of the Citizen Family, shareholder in the Trustee or member of the Board, each party must give the other party a notice setting out:

- (a) what the party considers is in dispute; and
- (b) what that party requires to be done to resolve the dispute and the grounds it has for those requirements.

**(Dispute Notice)**

## 11.2 Settlement Conference

If the dispute is not resolved within fourteen (14) days of delivery of the first –mentioned Dispute Notice, the parties must attempt to resolve the dispute by mediation with a mediator approved by both parties or a mediator appointed by the President of the Queensland Law Society Incorporated.

## 11.3 Commencing Proceedings

The parties shall not commence proceedings in any court in relation to a matter subject to mediation unless a written notice is first provided to the other parties to the mediation that the party giving the notice has abandoned the mediation.

#### 11.4 **Negotiations without Prejudice**

Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in any subsequent proceedings.

#### 11.5 **Continued Performance**

During the dispute resolution process the parties must continue to perform their obligations under this Constitution.

### 12. **INCONSISTENCY**

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#### 12.1 **Constitution Will Prevail**

To the extent to which there is inconsistency between any of the Trust Deeds, the Trustee Constitution and this Constitution, this Constitution will prevail.

#### 12.2 **Amendment**

The Current Member must do all things necessary to ensure that the Trust Deeds, the Trustee Constitution and this Constitution are amended from time to time as appropriate to remain consistent with each other.

### 13. **GENERAL**

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#### 13.1 **Amendments to Constitution**

The Trustee may amend this Constitution by resolution.

### 14. **INVESTMENT POLICY**

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#### 14.1 **Consultation**

The Board must consult with the Fitzpatricks Private Wealth (or a successor nominated by Fitzpatricks Private Wealth) in making investment decisions.

#### 14.2 **Minimum Investments Standards**

- (a) The Board must not, in its investment activities:
  - (i) maintain borrowings exceeding thirty (30) percent of the value of the Trust Capital; or
  - (ii) exceed a risk volatility target of eight (8) percent per annum.
- (b) The Board must review the investments of the Trusts regularly but in any event not less than once in any twelve (12) month period to assess compliance with the minimum investment standards set out in clause 14.2(a).

## 15. USE OF FAMILY HOME

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### 15.1 Application

This clause will only apply if neither Jack Citizen or Jane Citizen occupy the Family Home.

### 15.2 Intention

The intention of this clause is that the use of the Family Home is shared fairly among Current Members and their families.

### 15.3 Allocation

The Trustee will at its discretion allocate a period during which each Current Member and that member's family may occupy the Family Home at no cost to the Current Member.

Any decision by the Trustee under this clause is final.

### 15.4 Transfer

A Current Member may transfer the member's entitlement to occupy the Family Home for an allocated period to another Current Member.

### 15.5 Maintenance

The Trustee will insure, keep and maintain the Family Home from the Trust Funds.

### 15.6 Interest

For the removal of doubt, no Current Member will have a legal or equitable right to occupy the Family Home, except with the Trustee's consent.

## 16. CHARITY WORK

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A Current Member must complete an aggregate of five (5) days charity work on a volunteer basis in any twelve (12) month period in which they are a Current Member.

## 17. DEFINITION AND INTERPRETATIONS

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### 17.1 Definitions

In this Constitution, these terms have the following meanings unless the context otherwise requires:

**Act** means the *Income Tax Assessment Act 1936* (**1936 Act**) and the *Income Tax Assessment Act 1997* (**1997 Act**);

**Board** means the board of directors established by the Trustee Constitution through which the Trustee makes decisions;

**Constitution** means this deed and includes the schedules and annexures;

**Current Member** means a member accepted by the Board as a Current Member in accordance with clause 8.4;

**Defacto Relationship** means a defacto relationship as defined by the *Family Law Act 1975* (Cth);

**Disentitling Act** means any of the following acts:

- (a) commission of a criminal offence;
- (b) possession of an illegal drug;
- (c) maintaining an alcohol addiction;
- (d) engaging in conduct that, in the Trustee's opinion, is not befitting of a member of the Citizen Family; or
- (e) failing to comply with clause 16.

**Eligibility Requirements** means:

- (a) the Proposed Member is a member of the Citizen Family;
- (b) the Proposed Member has submitted an application in accordance with clause 8;
- (c) in respect of Proposed Members that are married or in a Defacto Relationship, that member has in place a binding financial agreement, or cohabitation agreement, with their spouse or partner on terms satisfactory to the Board;
- (d) in respect of Proposed Members that are eighteen (18) years old or older, that member has an appropriate succession plan in place on terms satisfactory to the Board;
- (e) in respect of Proposed Members that are eighteen (18) years old or older, that member has appropriate powers of attorney in place on terms satisfactory to the Board;
- (f) the Proposed Member has in place asset protection strategies that are appropriate given the nature of the member's risk and his or her level and nature of assets and which are satisfactory to the Board;
- (g) the Proposed Member has in place all reasonable insurances that a prudent person in the position of the member would have, on terms satisfactory to the Board;
- (h) the Proposed Member has not committed a Disentitling Act in the five (5) years preceding the date of the application under clause 8.2 or 8.3, or in such longer or shorter time as the Trustee in its absolute discretion determines; and
- (i) the Proposed Member has attended at least one Education Session in the past twelve (12) months

**Family Home** means the property located at 80 Ocean Rd, Bronte, New South Wales;

**Citizen Family** means:

- (a) Jack Citizen and Jane Citizen ;
- (b) their lineal descendants;

**Impaired Capacity**, in respect of a member of the Citizen Family, means that member is incapable of making his or her own decisions in relation to financial matters. Any certification by a doctor to this effect will be final;

**Nominated Charities** means:

- (a) Bronte Football Club;
- (b) Treasure House Orphanage (Fiji);
- (c) Bronte Surf Club;
- (d) Bronte Grammar School;
- (e) Any charitable organisation that my children jointly agree upon; and
- (f) Any sporting institution or charitable organisation that the Trustee may in its absolute discretion determine from time to time.

**Proposed Member** means a member of the Citizen Family who makes an application for Current Membership (in the case of clause 8.1) or in respect of whom an application is made for Current Membership (in the case of clause 8.2).

**Tax** means any income tax, capital gains tax, fringe benefits tax, consumption tax, value added tax, goods and services tax, provisional tax, additional tax, penalty tax, stamp duty, fine for late payment, tax on deposit or withdrawal of funds from any account or other tax or imposition payable to any government or government instrumentality;

**Termination Date** means the vesting date of the last of the Trusts to vest;

**Trustee** means the original Trustee - J & J Citizen Pty Ltd ACN XXX XXX XXX or any substitute Trustee appointed from time to time;

**Trusts** means:

- (a) any testamentary trust established under the wills of Jack Citizen and Jane Citizen ;
- (b) the Citizen Family Trust established by a trust deed dated 11 May 2001 between William Smith as settlor and the Trustee as trustee;
- (c) The Grand Property Trust established by a trust deed dated 30 January 2006 between Louise Hand as settlor and Citizen Advisory Pty Ltd as trustee
- (d) any other Trust in which any member of the Citizen Family may have an entitlement or an interest.

**Trust Capital** means the capital of the Trusts;

**Trust Deeds** means the deeds establishing the Trusts, as varied from time to time;

**Trust Income** means the income of each of the Trusts, however it may be defined in the Trust Deed for that Trust (and for the avoidance of doubt, it is defined as "income" in the testamentary trusts established under the wills of Jack Citizen and Jane Citizen , the Citizen Family Trust established by a trust deed dated 11 May 2001, The Grand Property Trust established by a trust deed dated 30 January 2006, and any other Trust in which any member of the Citizen Family may have an entitlement or an interest) and in the event of any inconsistency between the following definition and the definitions in the Trust Deeds, the following definition will prevail:

- (a) all amounts taken into account in calculating the net income of the Trusts for tax purposes, and exempt income, as defined in section 95 of the 1936 Act;

- (b) if section 95 of the 1936 Act does not apply to the Trusts, the amount remaining to the Trustee after payment of or due allowance for all income tax assessable against the Trustee in respect of the income of the Trust Fund; and
- (c) if the Trustee declare in writing that the above definitions of Trust Income, or Income do not apply, then by the Trustee in relation to a financial year, the income calculated in the manner described by the Trustee or, in the absence of a description, the income produced from the investment of the Trust Fund and the efforts of the Trustee less amounts which the Trustee is entitled to reimburse itself out of such income, calculated according to the ordinary meaning of that term in trust law; and

**Trust Fund** means the sum of the trust funds of each of the Trusts;

## 17.2 Interpretation

In the interpretation of this Constitution:

- (a) references to:
  - (i) a party includes the party's successors and assigns;
  - (ii) anything includes part of that thing;
  - (iii) persons includes individuals, companies, associations, partnerships, bodies corporate, and governments and governmental, semi-governmental and local government and agencies;
  - (iv) documents include the document as changed or replaced from time to time;
  - (v) currencies mean Australian currencies;
  - (vi) a party, where the party is more than one person, means all of them together and each of them separately;
  - (vii) a clause or schedules refers to a clause or schedule in this Constitution;
  - (viii) a statute includes all statutes amending, consolidating or replacing the statute.
- (b) the singular includes the plural and vice versa;
- (c) words including a gender shall include all other genders;
- (d) headings do not affect the meaning of this Constitution;
- (e) if a word or phrase is defined, any variation of that word or phrase has a similar meaning;
- (f) a reference to 'indemnity' means that the person giving the indemnity will indemnify and keep indemnified the person given the indemnity against any loss, damage, claims, actions, demands, costs or expenses suffered or sustained because of the event indemnified against. This means that if the person indemnified suffers any loss or must pay any money (whether or not it is actually paid) because of an indemnified event the party giving that indemnity must pay the amount of loss or the amount of liability to the indemnified party. If it does not, the indemnified party can recover the amount as a liquidated claim; and

if anything to be done under this Constitution falls on a date which is not a Business Day, then it must be done on the next Business Day.



**SCHEDULE 1 – CONSTITUTION OF THE TRUSTEE**

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