

CONSTITUTION  
OF  
ELLEN WHITTY LTD

Corporations Law  
A Company Limited by Guarantee  
Not Having a Share Capital

## CONSTITUTION

of

## ELLEN WHITTY LTD

1. The name of the Company is Ellen Whitty Limited.
2. The following expressions have the meanings assigned to them below:

“**Board**” means the Board of Directors from time to time of the Company.

“**Church Law**” means the Code of Canon Law being the Official Law of the Roman Catholic Church as promulgated in 1983, and any amendments or changes in the said Code from time to time.

“**Company**” means the Company limited by guarantee and called Ellen Whitty Ltd

“**Corporations Law**” means the Corporations Law including the Corporations Act 2000 (Cth) of the Commonwealth of Australia and any other statute from time to time regulating the conduct of the Company, as in force from time to time.

Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Corporations Law.

### OBJECTS

3. The primary object of the Company is to be a charitable undertaking of the Brisbane Congregation of the Sisters of Mercy and in that role to pursue the following specific objects:
  - (a) to act as trustee of the Ellen Whitty Trust
  - (b) those objects referred to as “Charitable Purposes” in the Deed of Trust dated 2<sup>nd</sup> June 2021 and any Deeds of Amendment of Trust establishing and governing the Ellen Whitty Trust
  - (c) to do all such other things as may be deemed incidental or conducive to the attainment of the objects of the Company or any of them.
4. The Company shall have all powers given to it by the Corporations Law including all powers necessary to enable the Company to carry out its objects.

### INCOME AND PROPERTY

5. All of the income and property of the Company must be applied solely towards the promotion of the objects of the Company and no portion shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise by way of profit to the Member provided that this restriction does not prevent the payment in good faith of:
- (a) remuneration to any officers or employees of the Company or to any Member or any other person in return for services actually rendered to the Company;
  - (b) interest on money lent to the Company by a Member at a rate not exceeding the rate for the time being charged by the Company's bankers for overdrawn accounts;
  - (c) reasonable and proper rent, remuneration or return for any premises of a Member occupied by the Company;
  - (d) a financial benefit to a Director to which subsection 211 of the Corporations Act refers or payment of an insurance premium in respect of a contract insuring a Director to which subsection 212 of the Corporations Act refers.
  - (e) money, or the provision of other support, to any public benevolent institution (or deductible gift recipient) provided that facility or institution is a fund approved by the Commissioner of Taxation as a fund, authority or institution referred to in Division 30 of the Income Tax Assessment Act 1997 or its replacement.

### DISSOLUTION

6. If upon the winding up or dissolution (other than for the purposes of reconstruction or amalgamation) of the Company there remains after the satisfaction of all its debts and liabilities any property whatsoever the same shall not be paid to the Member of the Company but shall be given or transferred to such Institute or Institutions in Australia having similar objects to the Company and nominated by the Member provided that any such Institute or Institution shall be a Fund approved by the Commissioner of Taxation as a fund authority or institution referred to in Division 30 of the Income Tax Assessment Act 1997 or its replacement. Any dissolution of the Company shall be in accordance with Church Law.

### WINDING UP OF GIFT FUND

7. If the Company is registered as a Deductible Gift Recipient under Division 30 of the Income Tax Assessment Act 1997 or its replacement and it maintains a Gift Fund in accordance with the Act then upon:
- (a) the winding up of the Gift Fund; or
  - (b) the Company ceasing to be endorsed as a Deductible Gift Recipient under Subdivision 30-BA of the Act

any surplus assets of the Gift Fund must be transferred to a fund, authority or institution which is charitable at law and gifts to which can be deducted under Division 30 of the Income Tax Assessment Act 1997. The fund, authority or institution shall be nominated in the same manner as prescribed in clause 6 of this Constitution.

#### **LIABILITY**

8. The liability of the Member of the Company is limited.

#### **CONTRIBUTION OF MEMBERS**

9. The Member of the Company undertakes to contribute to the property of the Company in the event of the same being wound up while a member or within one year after ceasing to be a Member for payment of the debts and liabilities of the Company (contracted before ceasing to be a Member) and of the costs charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding \$100.

#### **MEMBERSHIP**

10. The Member of the Company shall be the Corporation of the Trustees of the Order of the Sisters of Mercy in Queensland.

#### **POWERS OF MEMBERS**

11. The following powers are reserved to the Member of the Company:
- (a) To adopt or change the mission, philosophy, and core values of the Company;
  - (b) To review the effectiveness of the Company in fulfilling the mission, philosophy and values of the Company;
  - (c) To receive and review the Annual Report;
  - (d) To fix the number of Directors of this Company (subject to clause 23), appoint the Board of Directors of this Company, appoint the Chair and Deputy Chair from time to time and remove such Directors at any time with or without cause;
  - (e) To set the amounts, if any, payable to Directors by way of Director's fees.
  - (f) To approve the appointment, engagement and removal of the Auditors of the Company;
  - (g) To amend or repeal any clauses of this Constitution.

#### **REPRESENTATIVES**

12. The Member may by written notice to the Secretary:

- (a) appoint a natural person to act as the Representative of the Member in all matters connected with the Company as permitted by the Corporations Act;
- (b) remove a Representative.

A Representative is entitled to exercise at a general meeting all the powers which the organisation appointing him or her could exercise if the Member were a natural person. A letter executed by the Chairperson of the Member is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative. The appointment of a Representative may set out limitations on the Representative's powers.

### **COMMUNICATION BY THE MEMBER TO BOARD**

- 13. The Member shall communicate its actions by executing and delivering to the Chairperson of the Board of Directors a written instrument or instruments signed by the Chairperson of the Member setting forth the action taken and the applicable authorisations or directions from the Member. The action of the Member shall be deemed to have been taken on the date the written instruments are so delivered unless the instruments prove otherwise.

### **GENERAL MEETINGS**

- 14. An Annual General Meeting of the Company shall be held in accordance with the provisions of the Corporations Law. All general meetings other than Annual General Meetings shall be called general meetings.
- 15. A general meeting shall be convened on such requisition or otherwise as provided for in the Corporations Law.
- 16. Subject to the provisions of the Corporations Law relating to special resolutions and agreements for shorter notice, twenty one days' notice at the least (exclusive of the day on which the notice is served or deemed to be served and exclusive of the day for which notice is given) shall be given to such persons as are entitled to receive such notices from the Company specifying in case of special business the general nature of that business.
- 17. For the purposes of clause 16 all business shall be special that is transacted at a general meeting and also all that is transacted at an annual general meeting, with the exception of the consideration of the accounts, balance sheets and the reports to the Board of the Auditors, the election of officers and other members of the Board and the appointment of the Auditors if necessary.

### **PROCEEDINGS AT GENERAL MEETINGS**

- 18. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. A quorum shall be the Representative referred to in clause 12. Members of the Board who are not also Members of the Company may attend any Annual General Meeting or any other meeting to which they are invited by the Member but shall not be counted for the purposes of constituting a quorum and shall not be entitled to vote. A meeting of Member with the Representative of the Member taking part by electronic communication as provided for in clause 51.
- 19. The Chairperson of the Member shall be the Congregation Leader of the Member or nominee.

20. If within half an hour from the time appointed for the meeting a quorum is not present the meeting if convened upon the requisition of the Member shall be dissolved. In any other case it shall stand adjourned on the same day in the next week at the same time and place or to such other day and at such other time and place as the Chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the Members present shall be a quorum.
21. The Chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for thirty days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.
22. The Member shall have one vote.

#### **BOARD OF DIRECTORS**

23. The Board shall consist of between 5 and 7 persons. The Member shall endeavour to ensure that the Company shall have at all times a Board that collectively possesses the competencies necessary to allow the Board to undertake its duties in an effective and efficient manner.
24. A member of the Board (a Director) shall be appointed for terms not exceeding three (3) years and subject to the Corporations Act shall be eligible for reappointment. The first Board shall serve a term of three (3) years. Thereafter, one third of the members of the first Board (as nominated by the Member upon appointment) shall retire after one (1) year. A further one third of the members of the first Board (as nominated by the Member upon appointment) shall retire after a further (2) years. The balance of the first Board shall retire after a further three (3) years. All Board members are eligible for reappointment as prescribed in this clause.
25. In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act the office of a Director becomes vacant if the Director -
  - (a) acts in a manner inconsistent with the mission and philosophy of the Company as adjudged by the remaining Directors;
  - (b) is absent without the consent of the Chairperson from three successive meetings of the Board;
  - (c) resigns by notice in writing to the Member and to the Board;
  - (d) is found by an appropriate guardianship tribunal, board or court to be incapable of performing the duties and responsibilities of a director or of managing his or her estate;
  - (e) is adjudicated bankrupt or enters into a deed of arrangement or assigns his or her estate for the benefit of his or her creditors;

- (f) is convicted of an indictable offence;
- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the interest as required by the Corporations Act;
- (h) is removed by notice in writing by the Member, such notice to be given to the Director and to the balance of the Board;
- (i) is on the recommendation of the Board declared by resolution of the Board passed by a majority of Directors present and voting to be no longer a Director and such recommendation is confirmed in writing to the Member.

26.

- (a) The Chairperson and Deputy Chairperson of the Board shall be appointed by the Member.
- (b) Whenever a casual vacancy occurs in the office of Director the balance of the Board may appoint a person to fill the vacancy provided that such appointment is ratified by the Member.
- (c) With the approval of the remaining Directors, a Director may appoint an alternate to exercise all or some of the Director's powers during any specified period.

#### **POWERS AND DUTIES OF THE BOARD**

27. Subject to the Corporations Law and this Constitution:

- (a) The Board shall oversee the management of the Company and may pay all expenses incurred in promoting and forming the Company and may exercise all such powers of the Company as are not by the Corporations Law or by this Constitution required to be exercised by the Member.
- (b) Without limiting the generality of subclause 27(a) but subject to the provisions of clause 11 the Board may exercise all powers of the Company to borrow money, to charge any property or business of the Company or give any other security for a debt liability or obligation of the Company or of any person.

28. As part of its duties, the Board will:

- (a) ensure that the Company acts in consistency with the objects of the Company.
- (b) ensure effective articulation, promotion and integration of the mission of the Ellen Whitty Trust throughout the Company and the business and undertakings of the Company.
- (c) establish goals and monitor achievement of strategies and plans for the Company and the business and undertakings of the Company.

- (d) provide overall strategic direction of the Company and the business and undertakings of the Company by monitoring trends at national, regional and functional levels.
- (e) oversee development of strategic plans for the Company and the business and undertakings of the Company.
- (f) identify, develop and maintain collaborative relationships and alliances within the Company and the business and undertakings of the Company.
- (g) maintain effective communication within, and external to, the Company and the business and undertakings of the Company.
- (h) direct and monitor operational performance of the Company and the business and undertakings of the Company.
- (i) monitor and evaluate the performance of the senior executive of the Company at least on a yearly basis. The Board may also appoint an acting senior executive for any periods during which the senior executive is absent or is incapable of carrying out the duties of the senior executive.
- (j) delegate any powers to the most senior executive at its discretion the Board considers appropriate.
- (k) commission an external review of the performance of the Company in reference to its objectives to be delivered to the Board by September in the fifth year of its operation and every five years thereafter.
- (l) direct and monitor financial performance of the Company and the business and undertakings of the Company
- (m) to do all such things as are incidental and conducive to the attainment of the objects and the exercise of the powers of the Company.

29. The Board will promptly:

- (a) send to the Member Minutes of Board meetings
- (b) ensure that all information, documentation, analysis and recommendations relating to any matter upon which the Member are required to or are capable of exercising the reserved powers are forwarded to the Member in adequate time to allow the Member to properly consider such matter or matters.

30.

- (a) The Board may by power of attorney appoint any person or persons to be the attorney or attorneys of the Company for such purposes with such powers authorities and discretions (being powers authorities and discretions vested in or exercisable by the Board) for such period and subject to such conditions as the Board thinks fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit.



31. All cheques promissory notes bankers drafts bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed drawn accepted endorsed or otherwise executed as the case may be by any two Directors or in such other manner as the Board determines.

### PROCEEDINGS OF THE BOARD

32. (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit.
- (b) The Chairperson may convene a meeting of the Board or any two Directors may at any time requisition the Secretary to convene a meeting of the Board. Except where all directors resolve to shorten the period, seven (7) days' notice in writing must be given of any meeting of the Board.
- (c) A Board meeting may be held with one or more of the Directors taking part by electronic communication as provided for in clause 50.
33. Subject to this Constitution questions arising at a meeting of the Board shall be decided by a majority of votes of Directors present and voting and any such decision shall for the purposes be deemed a decision of the Board. In the case of an equality of votes the Chairperson of the meeting shall not have a second or casting vote.
34. A Director who has a material personal interest in any matter that is being considered at a meeting of the Board must not vote on the matter and must not be present while the matter is being considered at the meeting, unless the Board has passed a resolution (on which the interested Director has not voted and in respect of which the interested Director has not been present when it was passed) that specifies the interested Director, the interest and the matter and states that the Directors voting on the resolution are satisfied that the interest should not disqualify the interested Director from considering or voting on the matter. The question of whether a Director has a material personal interest shall be considered by reference to any Code of Conduct document adopted by the Board from time to time.
35. At a meeting of the Board one half of the number of Directors plus one shall constitute a quorum. No business shall be transacted at any such meeting unless a quorum is present at the time the meeting proceeds to business.
36. In, the event of a vacancy or vacancies in the office of a Director or offices of Directors the remaining Directors may act but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board they may act only for the purpose of convening a general meeting of the Company.
37. If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Board in terms set out in the document a resolution in those terms shall be deemed to have been passed at a meeting of the Board held on the day on which the document was signed and at the time at which the document was last signed by a Director or if the Directors signed the document on different days on the day on which and at the time at which

the document was last signed by a Director.

38. The Chairperson or a majority of the Directors may request the attendance at any meeting of the Board of any person who in their opinion may be able to assist the Board in any matter under consideration.
39. Subject to this Constitution the procedure to be followed at a meeting of the Board shall be as the Board decides.

#### **ESTABLISHMENT OF COMMITTEES**

40. The Board may at any time (with the consent of the Member) appoint committees from amongst its members or persons co-opted by the Board and may prescribe the functions of any committee and the Constitution of each such committee shall be as approved by the Board.
41. Subject to the obligations and responsibilities of the Board, the Board may delegate any of its powers to a Committee.

#### **NOTICE TO DIRECTORS**

42. Without prejudice to any other method of giving notice it shall be sufficient compliance with any provision of this Constitution requiring notice to be given to Directors if with the observance of the required time notice is given –
  - (a) in a document delivered to the Director in person or
  - (b) in a pre-paid letter or other document addressed and posted to the Director's last known address two days prior to the date by which notice must be given or
  - (c) in a resolution of the Board made at a duly held meeting of the Board and which sufficiently specifies that which is required to be notified if the terms of that resolution as recorded in the confirmed proceedings of that meeting are delivered or posted to the Director in accordance with this Constitution.
43. Any notice may be given in any manner of representing or reproducing words in visible and legible form and may give notice of more than one matter or event.

#### **BY-LAWS**

44. The Board has power to make vary and repeal by-laws from time to time for the proper conduct and management of the Company, provided they do not conflict with this Constitution.

#### **COMPANY SECRETARY**

45. The Board shall appoint the Company Secretary on such terms and conditions as the Board determines. The Company Secretary shall unless otherwise directed by the Board attend all meetings of the Board.

**SEAL**

46.

- (a) The Board shall provide for safe custody of the Seal.
- (b) The Seal shall be used only by the authority of the Board and every document to which the seal is affixed shall be signed by a Director and countersigned by a Director or Secretary or another person appointed by the Board for that purpose
- (c) The Board shall establish a policy regarding use of the Seal.

**ACCOUNTS AND RECORDS**

47.

- (a) The Board shall ensure that there are kept proper accounts and records of the transactions and affairs of the Company and such other records as sufficiently explain its financial operations and financial position.
- (b) The Board shall do all things reasonably open to it to:
  - i. ensure that all money payable to the Company is properly collected;
  - ii. ensure that all money expended by the Company is properly expended and properly authorised;
  - iii. ensure that adequate control is maintained over assets owned by or in the custody of the Company;
  - iv. ensure that all liabilities incurred by the Company are properly authorised;
  - v. ensure efficiency and economy of operations and avoidance of waste and extravagance;
  - vi. develop and maintain an adequate budgeting and accounting system;
  - vii. develop and maintain an adequate internal audit system.

**ANNUAL REPORT**

- 48. The Board will in respect of each financial year prepare an Annual Report for the Member.

**AUDIT**

- 49. The Board shall ensure compliance with all statutory audit requirements.

**ELECTRONIC COMMUNICATION**

50.

- (a) For the purpose of this Constitution, the contemporaneous linking together by telephone, radio, closed circuit television or other electronic means of audio or audio-visual communication or other means of communication of a number of Directors or Member (as the case may be) not less than the quorum together with the Secretary (for a meeting of the Board) or the Chairperson of the Member (for a meeting of the Member) whether or not any one or more of the Directors or Members (as the case may be) is out of Australia, shall be deemed to constitute a meeting and all the provisions in this Constitution as to meetings shall apply to such meetings as long as the following conditions are met:
- i. all the Directors or Member (as the case may be) for the time being entitled to receive notice of such meetings may receive notice of such a meeting by telephone or other means of communication and be linked by telephone or such other means for the purposes of such meeting;
  - ii. each of the Directors or Member (as the case may be) taking part in the meeting by telephone or other means of communication and the Secretary or Chairperson (as the case may be) must be able to hear each of the other Directors or Member taking part at the commencement of the meeting;
  - iii. at the commencement of the meeting each Director or Member (as the case may be) must acknowledge his or her presence for the purpose of the meeting to all the other persons taking part.
- (b) A Director or Member (as the case may be) may not leave the meeting by disconnecting his or her telephone or other means of communication unless he or she has previously obtained the express consent of the chairperson of the meeting and a Director or Member shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone or other means of communication unless he or she has previously obtained the express consent of the Chairperson of the meeting to leave the meeting as aforesaid.
- (c) A minute of the proceedings at such meeting by telephone or other means of communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.

### INDEMNITY AND INSURANCE

51.

- (a) The Board may on behalf of the Company and, subject to the terms of this clause and to the maximum extent permitted by law, grant an indemnity to any person who is or has been an officer or employee of the Company or a subsidiary of the Company or a permitted person against liabilities incurred by that person in such capacity.
- (b) The indemnity granted by clause 51(a) may only be relied on by the person in whose favour it has been granted if that person:
- i. upon becoming aware of a claim or potential claim immediately notifies the Company and provides to the Company all information, records, statements and

assistance that the Company may reasonably require in relation to the claim or potential claim.

- ii. does not admit liability for, or settle or attempt to settle any such claim or incur any costs or expenses in connection with such claim without the prior written consent of the Company; and
- iii. co-operates with the Company in the defence of the claim and in respect of any action taken to recover contribution or an indemnity in respect of the claim.

(c) The Company at its expense shall be entitled to conduct the defence or settlement of any such claim except in circumstances where an insurer insures the person or the Company in respect of the claim and has exercised its rights under a policy of insurance to conduct the defence or settlement of the claim.

(d) The Company may enter into a contract of insurance, or pay the premium in respect of a contract of insurance, which insures a person referred to in clause 52(a) against any liability incurred by the person in such capacity.

(e) The benefits of each indemnity given by or pursuant to this clause continue, notwithstanding that:

- i. a person who is conferred a benefit by this clause ceases to hold office with the Company for any reason whatsoever; or
- ii. the terms of this clause are modified or deleted;

but only in respect of any liability arising from any act or omission occurring prior to the cessation, modification or deletion as the case may be.

(f) In this clause "officer", in relation to a Company means:

- i. a director, secretary or principal executive officer;
- ii. a receiver, or receiver and manager, of property of the Company;
- iii. an administrator of the Company;
- iv. an administrator of a deed of company arrangement executed by the Company;
- v. a liquidator of the Company; and
- vi. a trustee or other person administering a compromise or arrangement made between the Company and another person or other persons.

(g) In this clause "permitted person" means:

- i. an agent or auditor of the Company or an agent or auditor of, a subsidiary of this Company;
- ii. a person appointed as trustee by the Company or a subsidiary of this Company; or

- iii. a person acting as trustee at the express request of the Company or a subsidiary of the Company.

**REPEAL VARIATION AND AMENDMENT OF THIS CONSTITUTION**

- 52. This Constitution may be varied or amended from time to time in accordance with this Constitution and the Corporations Act.

**THE ELLEN WHITTY TRUST**

**DEED OF TRUST**

THIS DEED OF TRUST is made the 2<sup>ND</sup> day of JUNE 2021

**BETWEEN THE CORPORATION OF THE TRUSTEES OF THE ORDER OF THE SISTERS OF MERCY IN QUEENSLAND** of 371 Simpsons Road Bardon in the State of Queensland

**AND ELLEN WHITTY LTD ACN 650 685 493** of 371 Simpsons Road Bardon Brisbane in the State of Queensland (and with its successors and assigns called "the Trustee")

**RECITALS**

- A. The Settlor is desirous of establishing a trust to be applied for the benefit of the charitable objects described herein.
- B. The Settlor has prior to the execution hereof paid to the Trustee \$500.00 ("the Settlement Sum").
- C. The Trust constituted by this Deed shall be known by the name The Ellen Whitty Trust.

**NOW THIS DEED WITNESSES:**

**1. DEFINITIONS AND INTERPRETATION**

In this Deed the following expressions shall have the following meanings:

- (a) "Charitable Purposes" means purposes which are recognised by the law as being charitable.
- (b) "the Deed" and "this Deed" means this Deed.
- (c) "the Income" means the income produced from the investment of the Trust Fund and/or from the property.
- (d) "property" means real, personal, moveable or immovable property of any description including (without limiting the generality hereof) policies of assurance or endowment, cash and choses in action.
- (e) "the Trust Fund" means
  - (i) the Settlement Sum;
  - (ii) such monies as the Trustees collect or raise for the Trust Fund (whether by invitation, promotion or appeal to the public or subscription, benefaction, donation or bequest from the public or otherwise);
  - (iii) any further sums or additional property which any person, body (whether incorporated or unincorporated) or authority may donate to, assign to, transfer to or vest in or cause to be vested in the Trustee to be held upon the trusts and subject to the powers and provisions in this Deed;

- (iv) any other property which may from time to time be held by the Trustee subject to the trusts contained in this Deed;
  - (v) the money investments and property of any description for the time being and from time to time represented by the property referred to in sub-clauses (i)-(iv); and
  - (vi) the income accumulated by the Trustee pursuant to the power so to do contained in clause 4 of this Deed.
- (g) "the Trustee" means the person or corporation named as such or the Trustees or Trustee for the time being and from time to time whether original, additional, surviving, alternate or substituted and whether the same be a natural person or persons, companies, corporations or otherwise or one or more classes of them severally.
- (h) "this Trust" means the trust constituted by and comprised in this Deed.

In this Deed the following interpretations shall apply:

- (a) References to any statutory enactment shall mean and be construed as references to the said enactment as amended modified or re-enacted from time to time.
- (b) The singular shall include the plural and vice versa.
- (c) Words importing the masculine or the neuter gender shall be read as importing such gender as the case may require.

## **2. ESTABLISHMENT OF TRUST**

- 2.1 The Trustee shall hold the Trust Fund upon the trusts and with and subject to the powers and provisions contained in this Deed.
- 2.2 No part of the Trust Fund or the Income shall ever revert to or be held in trust for the Settlor or his estate, or the Trustee.
- 2.3 The Trust is established solely for Charitable Purposes.
- 2.4 The Trustee shall have power at any time and from time to time in its absolute discretion to accept such additional property as may be donated to assigned to transferred to or vested in it to be held upon and subject to the trusts contained in the Deed.

## **3. POWER TO APPLY FOR THE OBJECTS OF THE TRUST**

The Trustee shall have and may exercise in its discretion from time to time power to pay or apply the whole or any part of the Trust Fund or the whole or any part of the Income for all or any of the following objects:

To provide direct relief and/or to support initiatives, projects and endeavours which assist and support the following:

- Those persons experiencing homelessness or at risk of homelessness, in particular women and children;
- Those persons experiencing poverty;
- Those persons experiencing domestic violence;
- Displaced persons, refugees and migrants;
- First Nations peoples.



#### **4. ACCUMULATION OF THE INCOME**

Any residue of the Income remaining after satisfying the purposes aforesaid shall be accumulated and added to the capital of the Trust Fund and be dealt with as part of the Trust Fund.

#### **5. TRUSTEE POWERS**

Any part of the Trust Fund available for investment shall be invested by the Trustee in an investment in which Trustees are for the time being authorised by the law of any State or Territory of the Commonwealth of Australia or of the Commonwealth of Australia to invest trust funds in such manner as the Trustee shall in its absolute discretion deem fit and the Trustee shall have power to make or vary or sell any investment and do all things it could do if it were the legal and beneficial owner of the Trust Fund.

#### **6. ADDITIONAL POWERS OF TRUSTEE**

Subject to clause 5 the Trustee shall have the following powers:

##### **6.1 To Deal with Real Estate**

To purchase, lease or otherwise acquire any land or real property of any description or any estate or interest therein and to lay out moneys for the purpose of erecting buildings, making improvements or developing improving or otherwise exploiting the same (whether income producing or not).

##### **6.2 To Enter into Partnerships and Joint Ventures**

To enter into partnerships or ventures with other persons, firms or companies.

##### **6.3 To Make Deposits**

To make deposits at call or for a term with any bank, financial institution, corporation or person on such terms and conditions as the Trustee may decide.

##### **6.4 To Deal with Personal Estate**

To purchase, lease, hire or otherwise acquire any personal property and any share or interest including (without affecting the generality thereof) any share or interest in any contract for the sale or purchase of any property whether real or personal, options, entitlements or rights, settled funds, estate of a deceased person, book or other debt or chose in action.

##### **6.5 To Advance and to Borrow Moneys**

To advance and lend moneys to and to borrow and raise moneys from and to secure by mortgage floating charge or any other form of security the payment of money to any persons, firms, companies, corporations or governmental or municipal bodies, and upon such terms with or without security or interest as the Trustee shall deem fit; and the Trustee is hereby expressly empowered to join with any corporation or person in executing any mortgage or other document for the purpose of securing the payment of money to or by the Trustee jointly with any other person.

##### **6.6 To Pay Management Costs**

To pay out of the Trust Fund or the Income all costs, charges and expenses incidental to the management of the Trust Fund or to the exercise of any power, authority or discretion in this Deed or in carrying out or performing the trusts which the Trustee may at any time incur, including all income tax or other taxes payable in respect of the Trust Fund, costs in any way connected with the preparation and execution of this Deed, and all moneys which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Trust Fund or these presents.

6.7 To Exercise Rights in Relation to Securities

To exercise all rights and privileges and perform all duties and do all such acts, matters and things appertaining to any shares, stock or debentures in any corporation for the time being subject to the trusts as the Trustee could do if it were the legal and beneficial owner of the shares, stock or debentures or were personally interested or concerned in the corporation, and without diminishing the generality of the foregoing, with liberty to assent to any arrangements modifying such rights, privileges or duties and to agree to any Scheme of Arrangement for the reconstruction or the increase or reduction in the capital of any corporation and to make any agreement in respect or in the course of the winding up of any company and for such purpose to deposit, surrender or exchange any of the said shares, stock or debentures or the title thereto, and to pay any calls or contributions or other necessary expenses in connection with any such shares, stock or debentures or any title thereto.

6.8 To Open Bank Accounts

To open any account or accounts with any Bank or Banks and to operate by and in all usual ways any such account or accounts.

6.9 To Take Actions to Protect the Trust Fund

To take such action as the Trustee shall think fit for the adequate protection of any part or parts of the Trust Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee.

6.10 To Act on Legal Advice

To take and act upon the opinion (given in writing) of a legal practitioner practising in any country where the Trust Fund or any part may for the time being be invested in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the trusts PROVIDED THAT nothing in this provision shall prohibit or impede the Trustee from applying to any Court if it shall think fit.

6.11 To Register Asset in Name of Nominee

To permit any asset of the Trust to be held or registered in the name of any nominee of the Trustee and to deposit securities belonging to or related to the Trust Fund with any Bank.

6.12 To Determine all Matters of Doubt

To determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund.

6.13 To Institute Proceedings

To institute and defend proceedings at law and to proceed to the determination of such proceedings or compromise the same as the Trustee shall consider advisable.

**6.14 Exercise of Discretion by Trustee Corporation**

Every Trustee who is a corporation or company may exercise or concur in exercising any of its discretions or powers by a resolution of such corporation or company or by a resolution of its Board of Directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more members of its Board of Directors or governing body appointed from time to time by the said Board of Directors or governing body for that purpose.

**6.15 To Act Notwithstanding Personal Interest**

To exercise or concur in exercising all of the foregoing powers and discretions contained in this Deed or otherwise by law conferred notwithstanding that the Trustee or any person being a Trustee or any person being a Director or shareholder of a Trustee (being a company) has or may have a direct or personal interest (whether as Trustee of any other settlement or in his personal capacity or as a Director or shareholder of any corporation or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.

**7. INVESTMENT OF TRUST FUND IN NAME OF NOMINEE**

If it shall be necessary for the title to any property forming part of the Trust Fund to be registered in the name of the Trustee the same may in the discretion of the Trustee be registered in the name of a nominee of the Trustee.

**8. GIFTS TO TRUST**

The Trustee may retain any gift to the Trust in its original form without selling or converting the same into money but such gifts shall be part of the Trust Fund and the Trustee shall hold such gifts upon the trusts and subject to the provisions of this Deed.

**9. SPECIAL POWERS AND DISCRETIONS OF TRUSTEE**

- 9.1 Every discretion or power conferred upon the Trustee shall be exercisable by the Trustee in its absolute discretion and no Trustee shall be held liable for any loss or damage occurring as a result of its exercising or refusing or failing to exercise any such discretion or power.
- 9.2 No Trustee shall be liable for any breach of trust however occurring except to the extent (if any) that such breach results from its own wilful or reckless default or neglect.
- 9.3 The Settlor and the Trustee shall be held harmless against any claims, losses, duties, taxes and impositions arising in connection with the Trust Fund.
- 9.4 Where there is more than one Trustee none shall be bound to take proceedings against the other for any breach or alleged breach of trust.
- 9.5 All persons claiming any beneficial interest in over or upon the property subject to this Trust shall be deemed to take with notice of and subject to the protection hereby conferred upon the Trustee.

9.6 Notwithstanding anything to the contrary contained in this Deed any exercise by the Trustee of any power discretion or authority conferred on the Trustee by this Deed may be made:

- (a) by oral declaration of the Trustee or resolution of the Trustee recorded in the records or Minutes of the Trustee; or
- (b) in writing signed by the Trustee; or
- (c) in the case of a sole corporate Trustee, by a resolution of such corporation or company or by a resolution of its Board of Directors or governing body.

#### **10. TRUSTEE TO KEEP ACCOUNTS**

The Trustee shall keep or cause accounts to be kept in such manner as the Trustee thinks fit of all receipts and payments assets and liabilities of the Trust and of all other matters necessary for showing the financial position of the Trust. The Trustee shall at the expense of the Trust cause such accounts to be audited at least once a year by an auditor appointed by the Trustee.

#### **11. AMENDMENT OF DEED**

Subject to the approval of the Commissioner of Taxation the trusts, powers and provisions of this Trust Deed at any time and from time to time may be modified, altered or extended in any manner by supplemental deed executed by the Trustee PROVIDED ALWAYS THAT the Trustee, shall not have any power to revoke, add to, release, delete or vary any of the trusts or powers contained in this Deed or in any other Deed revoking, adding to, releasing, deleting or varying this Deed so that the Trustee or any former Trustee or any corporation or trust in which the Trustee or any former Trustee has any actual or contingent beneficial interest or may acquire a beneficial interest in the Trust Fund.

#### **12. APPOINTMENT OF NEW TRUSTEE AND RETIREMENT OF CURRENT TRUSTEE**

The power of appointing a new Trustee shall rest with the current Trustee and the current Trustee may retire and appoint such new Trustee by supplemental deed executed by the retiring Trustee and the new Trustee.

#### **13. TRUSTEE'S OFFICE VACATED**

The office of a Trustee shall ipso facto be determined and vacated if such Trustee being a company or corporation shall have a receiver appointed or enter into any official management or have a petition for its winding up presented to the Court or pass a resolution for its winding up or enter into a scheme of arrangement (not being merely for the purpose of amalgamation or reconstructions).

#### **14. ENDORSEMENT**

- 14.1 The Trustee must seek to obtain the endorsement of the Trust Fund under Subdivision 50-B of the Income Tax Assessment Act 1997 as amended.
- 14.2 To resolve any doubt, inconsistency or uncertainty, this Deed is to be read down to comply with subdivision 50-B of the Income Tax Assessment Act 1997 as amended.
- 14.3 The Trustee may seek endorsement for the Trust to be registered as a Deductible Gift Recipient.

#### **15. APPLICABLE LAW**

In addition to the express powers conferred on the Trustee by this Deed it shall be entitled to exercise in respect of the Trust Fund all or any of the powers, authorities and discretions conferred on Trustee by the law of the State of Queensland and the rights and liabilities of the Trustee and every question arising under or in relation to this Deed and the Trust hereby created shall be regulated by law of the said State.

## **16. WINDING UP**

If upon winding up or termination of the Trust Fund there remains after satisfaction of all debts and liabilities any property the same shall not be paid to the Settlor or the Trustee but shall be given and transferred to such institute or organisation with similar objects to the Trust Fund and nominated by the Trustee (or in the Trustee's absence, the Attorney General for the State of Queensland) provided such transfer meets the requirements of the Division 50-B of the Income Tax Assessment Act 1997 as amended or its replacement.

If the Trust is endorsed as a Deductible Gift Recipient and if upon winding up or termination of the Trust Fund there remains after satisfaction of all debts and liabilities any property in the Gift Fund the same shall not be paid to the Settlor or the Trustee but shall be given and transferred to such institute or organisation with similar objects to the Trust Fund also endorsed as a Deductible Gift Recipient and nominated by the Trustee (or in the Trustee's absence, the Attorney General for the State of Queensland) provided such transfer meets the requirements of the Division 50-B of the Income Tax Assessment Act 1997 as amended or its replacement.

IN WITNESS WHEREOF the parties have executed this Deed on the 2 day of June 2021.

SIGNED SEALED AND DELIVERED by the said )  
Settlor in the presence of: )

*C. Reuter*  
*P. Kuchner*

*[Signature]*  
Witness

Executed by Ellen Whitty Ltd )  
authority of a resolution of the Board of )  
Directors in the presence of )  
a Director and )  
the Director/Secretary in the presence of: )

*C. Reuter*  
*P. Kuchner*

*[Signature]*  
Witness