

**Trust Deed**

**dated** *18th December* **2015**

**establishing the**

**Howard Guinness Leadership Trust**

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**THIS DEED OF TRUST** is made on ..... 18 December ..... **2015**  
between the following parties:

1. **Dr Peter and Mary Jones (nee Mary Guinness)**  
of 11 Amaroo Crescent, Mosman NSW 2088 (**Founders**)  
and
2. **THE CRUSADER UNION OF AUSTRALIA (ABN 90 213 359 332)**  
of Suite 1/38 Rowe Street, Eastwood NSW 2122 (**Trustee**)

### **RECITALS**

- A. The Founders wish to establish a charitable trust (the **Trust**) for the purposes outlined below.
- B. The Trustee is willing to act as the Trustee of the Trust, and to hold the Trust Fund on the trusts outlined in this deed and in accordance with the Relevant Law.
- C. The Founders have paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed and in accordance with the Relevant Law.

**THIS DEED WITNESSES** as follows:

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**1 Name**

The Trust is to be known as the **Howard Guinness Leadership Trust**.

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**2 Definitions and interpretation**

**2.1 Definitions**

In this deed:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**ACNC Commissioner** means the Commissioner of the Australian Charities and Not-for-profits Commission, established under the ACNC Act.

**Charitable** means charitable within:

- (a) the Governing Law;
- (b) the laws of the Commonwealth; and

- (c) the common law.

**Charitable Entity** means a fund, authority or institution which is Charitable.

**Charitable Purposes** means purposes which are Charitable at law and, if applicable:

- (a) which are charitable purposes under Part 3 of the Charities Act;
- (b) that are for the public benefit under Division 2 of Part 2 of the Charities Act; and
- (c) which do not include any purpose which is a disqualifying purpose under Division 3 of Part 2 of the Charities Act.

**Charities Act** means the *Charities Act 2013* (Cth).

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA 97.

**CPI** means the Consumer Price Index for Australia (all groups) published from time to time by the Australian Bureau of Statistics and in the event that the Australian Statistician shall update the reference base of such index number due conversion shall be made to preserve the intended continuance of calculation by using the appropriate arithmetical factor determined by the said Statistician. In the event that there is a suspension or discontinuance of the Consumer Price Index (all groups) by the Commonwealth authorities the "Consumer Price Index" shall mean such Index published at the commencement of each year in the Australian Statistician's Summary of Australia Statistics which fairly reflects fluctuations in the cost of living in Australia and in the absence of any such Index then such allocation shall be by reference of such Index as may be determined by the Nominees of the President or Chairman of the Actuaries Institute of Australia or some other body formed with objects similar to those of that institution whose decision shall be conclusive and binding.

**Crusaders** means all those people involved in the activities of the Crusader Union, including any member, Officer, employee or volunteer either in a leadership position or role or who has the potential to hold such a position or perform such a role.

**Crusader Union** means The Crusader Union of Australia (ABN 90 213 359 332) and any other entity that either acquires the whole or major part of the undertaking of the Crusader Union or otherwise carries on all or most of the activities of the Crusader Union and in either case can properly be regarded as the successor to the Crusader Union.

**Distribute** has the meaning given to that term in clause 4.2 and includes irrevocably resolve to pay or apply; and like terms, such as **distribution**, have similar meanings.

**Eligible Entity** means any Charitable Entity which is exempt from income tax under the ITAA 97.

**Financial Year** means the period from the date of this deed to the following 31 August and then each period of 12 months beginning on 1 September and ending on 31 August in each year, or such other period as the Trustee decides from time to time.

**Gifts** includes all gifts (by will or otherwise), donations, settlements and/or other dispositions in money and/or property to or in favour of the Trust Fund.

**Governing Law** means the laws of the jurisdiction named in clause 14.

**Investment Committee** means the committee established under clause 12.5.

**ITAA 97** means the *Income Tax Assessment Act 1997* (Cth).

**Major Gift** has the meaning given to that term in paragraph 1(b) in **Schedule 2**.

**Minor Gift** has the meaning given to that term in paragraph 1(a) in **Schedule 2**.

**Officer** includes a director, and a member of a committee of management or any other controlling body, of the Trustee.

**Relevant Law** means:

- (a) an Act of which the Commissioner or the ACNC Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner or the ACNC Commissioner has the general administration of the part);
- (b) regulations under such an Act (including such a part of an Act); and
- (c) any other statute, regulation or law applicable to the Trust.

**Responsible Person** means an individual who acknowledges and agrees with the Basis of Belief as set out in the constitution of the Trustee in the same manner as required by directors of the Trustee and has a degree of responsibility to the public in that such a person:

- (a) performs a significant public function;
- (b) is a member of a professional body having a code of ethics or rules of conduct;
- (c) is a director of a company whose shares are listed on the Australian Securities Exchange;
- (d) has received formal recognition from government for services to the community;
- (e) is an individual before whom a statutory declaration may be made;

- (f) is officially charged with spiritual functions by a Christian religious institution; or
- (g) is approved as a Responsible Person by the Commissioner.

**Settled Sum** means one hundred and fifty dollars (\$150).

**Specific Powers** has the meaning given to that term in clause 12.5(a).

**Sub-fund** means a management account established and operated by the Trustee for any one or more Trust Purposes in accordance with clause 4.8.

**Sub-Fund Average NAV** has the meaning given to that term in clause 4.2(a)(i)(B).

**Sub-Fund General Account** has the meaning given to that term in paragraph 2.1 in **Schedule 2**.

**Sub-Fund Major Gifts Account** has the meaning given to that term in paragraph 3.1 in **Schedule 2**.

**Sub-Fund Major Gifts Account Balance** has the meaning given to that term in paragraph 3.2 in **Schedule 2**.

**Sub-Fund Minor Gifts Account** has the meaning given to that term in paragraph 2.1 in **Schedule 2**.

**Sub-Fund Minor Gifts Account Balance** has the meaning given to that term in paragraph 2.2 in **Schedule 2**.

**Sub-Fund NAV** means the market value of the net assets of each Sub-fund as at the end of the relevant Financial Year.

**Sub-fund Threshold** for a particular Financial Year means the sum calculated as follows:

- (a) For the Financial Year ending 31 August 2016: \$500,000.
- (b) For each succeeding Financial Year, the Sub-fund Threshold for the preceding Financial Year, increased by the increase in the CPI from the quarter ending 30 June in the previous Financial Year to the quarter ending 30 June in that succeeding Financial Year.

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

**Trust Fund** means:

- (a) the Settled Sum;
- (b) all money, investments and property paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
- (c) all income of the Trust Fund, including income earned or to which it is entitled;

- (d) all accretions to the Trust Fund;
- (e) all accumulations of income; and
- (f) all money, investments and property from time to time representing the above or into which they are converted;

and includes any part of the Trust Fund.

**Trust Purpose** means the purposes outlined in clause 4.1.

**Trustee** means the person named in this deed as the Trustee and any other Trustee for the time being of the Trust, whether original, additional or substituted.

**Trustee's Powers** means all the Trustee's powers under clause 7.

## 2.2 Interpretation

In this deed, unless the context requires otherwise:

- (a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;
- (b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended; and
- (c) a reference to any legislation or legislative instrument, or a provision of any legislation or legislative instrument, includes any amendment to that legislation, legislative instrument or provision, any consolidation or replacement of that legislation, legislative instrument or provision, and any subordinate legislation or legislative instrument made under that legislation or legislative instrument.

## 2.3 Headings

Headings are used for convenience only and do not affect the interpretation of this deed.

## 2.4 Footnotes and endnotes

Any footnotes and endnotes do not form part of the operative provisions of this deed, and therefore do not affect the interpretation of this deed.

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### 3 Declaration of trust

The Founders and the Trustee declare that the Trustee must hold the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.

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## 4 Trust Purpose and Trust Fund

### 4.1 Trust Purpose

The purposes for which the Trust is established are:

- (a) To further the Charitable Purposes of the Crusader Union by:
  - (i) assisting the Crusader Union to attract, retain, train and otherwise develop leaders of its employees and volunteers involved in its activities;
  - (ii) promoting, encouraging and developing Christian leadership skills among Crusaders generally, and in particular by promoting and developing such skills in those people involved in executive management and in volunteer leadership in the Crusader Union or in its activities; and
  - (iii) providing money, property or benefits to any other entity or person to be used by that entity or person solely either:
    - (A) for any one or more specified Charitable Purposes within clauses 4.1(a)(i) and 4.1(a)(ii), or
    - (B) if so specified, for any Charitable purposes whatsoever within clauses 4.1(a)(i) and 4.1(a)(ii), as determined by that entity or person.
- (b) To do all other things incidental or ancillary to, and in furtherance or aid of, the above purposes, in such manner as the Trustee from time to time decides.

### 4.2 Application of income and capital

The Trustee must hold the Trust Fund on trust to pay or apply (together **distribute**) all or any part of the income and capital of the Trust Fund solely for the Trust Purpose and the specific purposes of each Sub-fund, as the Trustee decides. However:

- (a) During each Financial Year, the Trustee must:
  - (i) Distribute at least the greater of:
    - (A) the minimum amount required to be distributed by the Commissioner and/or the ACNC Commissioner and/or otherwise by law in order for the Trust to remain a registered charity with the ACNC and exempt from income tax; and
    - (B) 5% of the average of the market value of the net assets of each Sub-fund as at the end of the three previous Financial Years (**Sub-Fund Average NAV**).
  - (ii) Except as permitted by **Schedule 2**, not distribute more than 15% of the Sub-Fund Average NAV of each Sub-fund; and
  - (iii) Determine the extent to which any distribution is to be treated as a payment or application from one or more Sub-funds under clause 4.8(b).
- (b) No distribution is required during the Financial Year in which the Trust is established.
- (c) In the next two succeeding Financial Years, the Sub-Fund Average NAV of each Sub-fund shall be calculated by reference to the previous and then the two previous Financial Years, respectively.
- (d) In the case of any distribution in specie, the market value of the property at or about the time of distribution, as determined by the Trustee, shall be used in applying clauses 4.2(a) and 4.2(c).

#### **4.3 Trustee may accumulate income**

- (a) Subject to clauses 4.2, 4.3(b) and 4.3(c), the Trustee may accumulate and retain as part of the Trust Fund so much of the income of the Trust Fund for any Financial Year as it thinks fit, in furtherance of the Trust Purpose.
- (b) The amount or percentage of the income of the Trust Fund accumulated under clause 4.3(a) must not exceed that from time to time specified or permitted by the Commissioner either generally in the case of charitable trusts or specifically in the case of the Trust as the maximum that would permit the Trust to remain eligible for exemption from income tax.
- (c) In respect of any Financial Year in which the Trustee exercises its powers under clause 4.3(a), the Trustee must determine the extent to which the accumulation is referable to one or more Sub-funds under clause 4.8(b).

#### **4.4 Factors Trustee may consider**

In exercising its powers and discretions under clause 4.2, the Trustee may have regard to:

- (a) any recommendations of the Investment Committee; and
- (b) the provisions and objects, so far as they are consistent with the Trust Purpose, of any other trust (including a trust established by a testamentary instrument) where:
  - (i) the capital of the other trust has been transferred to or otherwise vested in the Trustee to hold for any one or more Trust Purposes; and
  - (ii) the trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other trust in exercising the Trustee's powers and discretions under this deed.

#### **4.5 Policies and rules**

For the purpose of paying or applying the Trust Fund, the Trustee may:

- (a) formulate policies;
- (b) make rules in connection with a policy; and
- (c) revoke or amend a policy or rule and formulate others.

#### **4.6 Not-for-profit entity**

The Trust is established as and must operate as a not-for-profit entity.

#### **4.7 In Australia**

The Trust is established in Australia and, if (but only while and to the extent) required under any Relevant Law, must operate and pursue its purposes either only, or at least principally, in Australia.

#### **4.8 Sub-funds**

- (a) The Trustee must establish and maintain one or more management accounts (each a **Sub-fund**):
  - (i) in respect of Gifts or other money which may be received for any one or more Trust Purposes; and/or
  - (ii) otherwise in respect of any one or more Trust Purposes, as determined by the Trustee.

- (b) Any such Sub-fund may be used to record:
- (i) Gifts from a donor or group of donors; and/or
  - (ii) an amount set aside by the Trustee for one or more Trust Purposes out of the general accounts of the Trust Fund; and/or
  - (iii) Gifts for one or more Trust Purposes;
- and in each case money received because of those Gifts or amounts set aside in respect of that Trust Purpose or those Trust Purposes (such as income, profits or gains), and payments, applications or other deductions from the Sub-fund.
- (c) The Trustee may:
- (i) determine the names of the Sub-funds;
  - (ii) determine the purpose of a Sub-fund; and
  - (iii) formulate rules, policies, targeted capital amounts and other incidental matters relating to the maintenance of a Sub-fund, provided they are not contrary to this deed or any requirements of the Commissioner or the ACNC Commissioner.
- (d) Unless, and only to the extent that, it would be inconsistent with any applicable rules and/or policies or any applicable laws:
- (i) A donor or group of donors (or persons nominated by the donor or group of donors) may make requests or indicate preferences as to the name of the Sub-fund, and as to the payments or applications from a Sub-fund in respect of Gifts from that donor or group of donors. A request or preference that a Gift be credited to a particular Sub-fund with a particular Trust Purpose determined by the Trustee is a request or preference that the Trustee pay or apply the balance for the time being of that Sub-fund for that Trust Purpose.
  - (ii) The Trustee is under no obligation, other than that referred to in clauses 4.8(e) and 4.8(f) and **Schedule 2**, to comply with either any request to establish a particular named Sub-fund for a particular Trust Purpose or preference as to the payments or applications from a particular Sub-Fund.
  - (iii) However, except as otherwise provided in this deed, the Trustee must pay or apply any money recorded in a Sub-fund only for the particular Trust Purpose of that Sub-Fund.

- (iv) A Sub-fund forms part of the Trust Fund and is not a separate trust fund.
  - (v) A Sub-fund need not be separately invested but is to be separately accounted for.
  - (vi) The Trustee may provide reports on the investments and payments and applications from the relevant Sub-fund to a donor or group of donors but is not under an obligation to do so.
- (e) The Trustee hereby establishes the first three Sub-funds under clause 4.8(a), with the names, respective purposes and settled sums set out in **Schedule 1**.
- (f) **Schedule 2** also contains provisions that apply to the maintenance and cessation of Sub-funds.

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## 5 Transaction that is uncommercial and benefits

### 5.1 Transaction that is uncommercial

- (a) The Trustee may not enter into any transaction that is uncommercial in the opinion of the Trustee when entered into, unless the transaction is:
- (i) in furtherance of the Trust Purpose; or
  - (ii) on terms more favourable to the Trust than would otherwise be expected under an arm's length transaction.
- (b) In clause 5.1(a), a transaction that is uncommercial is the provision of a financial or other benefit on terms which:
- (i) would not be reasonable in the circumstances if the benefit were provided on an arm's length basis; or
  - (ii) are more favourable to the recipient than the terms referred to in clause 5.1(b)(i);
- and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

## **5.2 Benefits**

- (a) Apart from a payment or application authorised under clauses 4, 5.1 or 11, or a payment or application allowed by the Commissioner, no part of the Trust Fund may be paid or applied, directly or indirectly, to or for:
  - (i) a Trustee; or
  - (ii) a member or Officer of a Trustee.
- (b) Clause 5.2(a) does not prevent a payment or application by the Trustee in good faith to or for the benefit of any of the persons listed in that clause in furtherance of the Trust Purpose.

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## **6 Qualifications, Appointment & Change of Trustee**

### **6.1 Qualifications**

- (a) Subject to clause 6.1(b), the Trustee must be a company or other body corporate whose board of directors, committee of management or other controlling body is comprised of at least three individuals and (if not the Crusader Union itself) that has a similar mission and values to the Crusader Union, whose constitution includes the Basis of Belief of the Crusader Union and whose board of Directors, committee of management or other controlling body have each acknowledged and agreed with that Basis of Belief.
- (b) If and while required under any Relevant Law, the Trustee must ensure that a majority of the Officers of the company or other body corporate referred to in clause 6.1(a) are Responsible Persons.

### **6.2 Qualifications not met**

- (a) If the requirements in clause 6.1 are at any time not met, the Trustee must not exercise any discretion or power until the requirements are met, except:
  - (i) for the purpose of meeting those requirements;
  - (ii) for the purpose of exercising a statutory power to appoint a new Trustee;
  - (iii) to protect the Trust Fund; or
  - (iv) in the case of urgency.
- (b) If the requirements in clause 6.1 are at any time not met and if the Trustee does not have, or is unable to exercise, the power to cause those requirements to be met or a statutory power

of appointing a new Trustee as referred to in clause 6.2(a)(i), the Trustee may, in writing, appoint a new Trustee under clause 6.3(a).

- (c) All acts of the Trustee are valid even if it is later discovered that there was a breach of clause 6.2(a).
- (d) In exercising a statutory power of appointing a new Trustee as referred to in clause 6.2(a)(ii), the Trustee may only appoint as trustee in its place another company or other body corporate complying with clause 6.1 that has a similar mission and values to the Crusader Union, whose constitution includes the Basis of Belief of the Crusader Union and whose board of directors, committee of management or other controlling body have each acknowledged and agreed with that Basis of Belief.

### **6.3 Appointment of new Trustee**

- (a) The Trustee may, by deed, appoint as Trustee in its place another company or other body corporate complying with clause 6.1 and that has a similar mission and values to the Crusader Union, whose constitution includes the Basis of Belief of the Crusader Union and whose board of directors, committee of management or other controlling body have each acknowledged and agreed with the Basis of Belief.
- (b) The Trustee shall be deemed to have vacated this role upon the appointment of a new Trustee taking effect.
- (c) Any new Trustee shall be bound by the terms of this deed as if it had been originally appointed the Trustee by this deed.
- (d) The powers in clauses 6.2(b) and 6.3(a) are to be treated as supplementary or additional to the powers vested in trustees by law.

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## **7 Trustee's Powers**

### **7.1 Powers**

In furtherance of the Trust Purpose, the Trustee may:

- (a) invest money or other property of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia, and, consistent with clause 4.8(d)(v), mix or commingle money or other investments or property subject to any Sub-fund with money or other investments or property subject to any other Sub-fund;

- (b) change an investment or vary the terms and conditions on which an investment is held;
- (c) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (d) borrow or raise, or secure the payment of, money, and secure the repayment of any debt, liability, contract, guarantee or other engagement, in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (e) take and act on the opinion of a legal practitioner who holds a current practising certificate in the jurisdiction named in clause 14 in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (f) take any action for the adequate protection or insurance of any part of the Trust Fund and take out, or pay for or reimburse the Trustee for, adequate insurance which, subject to the limitations in clause 8.2, protects or indemnifies the Trustee and its Officers, agents, employees and delegates against the risk of personal liability arising from the Trustee acting as the trustee of the Trust, or the Officers, agents, employees and delegates from the exercise of powers or discretions under this deed or delegated to them under clause 12.4;
- (g) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (h) subject to the trusts of this deed, generally:
  - (i) perform any administrative act; and
  - (ii) whether or not the Trustee is under any legal obligation to make the payment, pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund, its management or winding up, or in connection with the preparation, execution, stamping and amending of this deed;
- (i) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;

- (k) accept as part of the Trust Fund any Gifts in money or property and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (l) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money or property;
- (m) establish a public fund;
- (n) manage or dispose of any property it holds with all the powers of an absolute owner;
- (o) donate money, property or benefits to, or for the establishment of, any Charitable Entity that is within the Trust Purpose;
- (p) donate money or property to any entity or person to be used by that entity or person solely for a Charitable Purpose that is within the Trust Purpose;
- (q) donate money or property to any other person in furtherance of the Trust Purpose (for example, if the purpose is the purpose of relieving the necessitous circumstances, poverty, distress or disadvantage of that person or their family and that purpose is within the Trust Purpose);
- (r) otherwise pay or apply any money or property in furtherance of the Trust Purpose;
- (s) carry on any business or activity which may seem to the Trustee capable of being conveniently carried on in furtherance of the Trust Purpose;
- (t) set aside such amounts as the Trustee thinks proper to repair, maintain, replace or improve the whole or any part of the Trust Property, for meeting contingencies, or for any other Trust Purpose; and
- (u) do all other things incidental or ancillary to, and in furtherance or aid of, the exercise of the Trustee's powers under this deed.

## **7.2 Powers are supplementary**

The powers and discretions in clause 7.1 are to be treated as supplementary or additional to the powers vested in trustees by law.

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## **8 Liability for breaches of trust**

### **8.1 Indemnity**

Subject to clause 8.2, the Trustee and any Officer, agent, employee or delegate (under clause 12.4) of the Trustee, where purporting to act in the exercise of the trusts of this deed or in the exercise of powers or discretions under this deed, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses relating to:
  - (i) entering into this deed or any deed amending this deed;
  - (ii) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (iii) all matters incidental to the Trust; and

all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes), and acts and things done, in connection with or resulting from the matters referred to in this clause 8.1(b), including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed and the delegate exercising any power or discretion delegated to them under clause 12.4.

### **8.2 Limitations**

Notwithstanding clause 8.1, the Trustee and an Officer, agent, employee or delegate of the Trustee is prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

- (a) the dishonesty of that Trustee, Officer, agent, employee or delegate of the Trustee;
- (b) gross negligence or recklessness of that Trustee, Officer, agent, employee or delegate of the Trustee; or
- (c) a deliberate act or omission known by that Trustee, Officer, agent, employee or delegate of the Trustee to be a breach of trust.

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## **9 Financial Information and Receipts**

### **9.1 Trustee to keep accounts**

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

### **9.2 Financial report**

- (a) As soon as practicable after the end of each Financial Year, the Trustee must prepare or cause to be prepared a financial report containing financial statements for that Financial Year of the Trust (including a statement of comprehensive income and a balance sheet showing the financial position of the Trust at the end of that Financial Year) in accordance with the accounting standards applicable to the Trust Fund (including additional information at the discretion of the Trustee, which may be early adopted) at the relevant time.
- (b) The Trustee must also ensure that its own audited annual financial statements include (whether in a Note to them or otherwise), among other things, a summary of the comprehensive income and a balance sheet showing the financial position of the Trust at the end of the corresponding Financial Year.
- (c) The Trustee must also ensure that its annual financial report sent to its own members each year is accompanied by a copy of the audited financial statements for the Trust for the corresponding Financial Year.

### **9.3 Audit**

Whether or not required under the Relevant Law, the Trustee must arrange for an audit of the annual financial statements by a person or firm authorised by section 60-30 of the ACNC Act. The audit should be finalised before the earliest date (if any) on or by which the Trustee is required by any Relevant Law to lodge an annual return, statement or other report with the Commissioner or the ACNC Commissioner.

### **9.4 Receipts**

- (a) Receipts issued for gifts to the Trust Fund must state:
  - (i) the name of the Trust Fund and that the receipt is for a gift made to the Trust Fund;
  - (ii) the Australian Business Number applicable to the Trust;
  - (iii) the fact that the receipt is for a gift; and

- (iv) any other matter required to be included on the receipt pursuant to the requirements of the ITAA 97.
- (b) If applicable, receipts must also state the name of the Sub-fund to which the gift relates.

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**10 Amending this deed**

- (a) The Trustee may by deed revoke, add to or vary any of the provisions of this deed, so long as:
  - (i) except to the extent (if at all) then permitted by law:
    - (A) no part of the Trust Fund becomes subject to any trusts other than trusts within the Trust Purpose as at the date of this deed; and
    - (B) subject to paragraph 4.2 of Schedule 2, no part of any Sub-fund becomes subject to any trusts other than for the particular purpose of that Sub-fund; and
  - (ii) no amendment is made to this clause 10 so as to permit this deed to be amended in a manner prohibited by clause 10(a)(i).
- (b) Where required under any Relevant Law, the Trustee must notify the Commissioner and/or the ACNC Commissioner of the amendment in writing.
- (c) Having regard to clause 2.4:
  - (i) footnotes and/or endnotes may be added to, or deleted from, any copy of this deed, or otherwise amended, at will by the Trustee or any other person;
  - (ii) any such changes do not involve any amendment to this deed of a kind covered by clauses 10(a) and 10(b); and
  - (iii) copies of this deed in circulation may, or may not, include footnotes and/or endnotes.

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**11 Trustee's remuneration and Trustee's and Officers' expenses**

The Trustee may apply the Trust Fund to:

- (a) pay fair and reasonable remuneration for the services of the Trustee in acting as the trustee of and administering the Trust at a rate not exceeding the maximum annual management fee

chargeable by a licensed trustee company under section 601TDD of the *Corporations Act 2001* (Cth);

- (b) pay, or reimburse the Trustee for, reasonable expenses incurred as Trustee of the Trust; and
- (c) pay, or reimburse an Officer of a Trustee for, reasonable expenses incurred by the Officer as an Officer of a Trustee of the Trust.

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## **12 General**

### **12.1 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper Officer of any recipient of a payment or application of income or capital from the Trust Fund is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

### **12.2 Trustee's discretions and powers**

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

### **12.3 Personal interest of Trustee or Officer**

Subject to the requirements of clause 5 and the Relevant Law, the Trustee and any Officer of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law even though the Trustee or that person:

- (a) has or may have a direct or personal interest or a conflict of fiduciary duty in the method or result of exercising the power or discretion; or
  - (b) may benefit either directly or indirectly from the exercise of any power or discretion;
- and even though the Trustee is a sole Trustee.

### **12.4 Delegation of powers**

Subject to the requirements of clause 6 and the Relevant Law, the Trustee may, by power of attorney or otherwise, delegate to any person (including a group of persons) being Responsible Persons any of the powers or discretions given to it under this deed. The exercise of any of the powers or discretions under this deed by an attorney or other delegate is valid and effectual and binds all persons interested under this deed.

## 12.5 Delegation of investment powers to Investment Committee

- (a) The Trustee must exercise its power of delegation under clause 12.4 to appoint an Investment Committee to exercise the Trustee's power of investment of the Trust Fund, including (without limitation) its powers under clauses 7.1(a) to 7.1(c), 7.1(g), 7.1(j), 7.1(k) and 7.1(n) (together **Specific Powers**) and any other powers in clause 7.1 or otherwise that are incidental or ancillary to, and in furtherance or advancement of, the exercise of its power of investment or those specific powers.
- (b) The Investment Committee must consist of at least three but not more than five individuals, consisting of:
  - (i) Responsible Persons;
  - (ii) Not more than one director, or member of the committee of management or any other controlling body, of the Trustee, but only if, in the opinion of the Trustee, the director or member has appropriate expertise and experience in financial and/or investment management; and
  - (iii) A majority with recognised expertise and experience in investment management.
- (c) The Investment Committee:
  - (i) May determine:
    - (A) The manner in which its proceedings are to be conducted; and
    - (B) Any other matters related to the function of the Committee.
  - (ii) But must:
    - (A) Meet at least twice in each Financial Year;
    - (B) Report as soon as practicable to the Trustee in writing after each meeting;
    - (C) Keep minutes of its proceedings and make them available to the Trustee; and
    - (D) Keep records of, and advise the Trustee at least once each Financial Year of, the attendance record of the members of the Committee.
- (d) Subject to clause 12.5(b), the Trustee may appoint additional or replacement individuals, and remove existing individuals, as members of the Investment Committee.

- (e) The Investment Committee must:
  - (i) prepare, maintain and review from time to time an investment strategy in written form, which should:
    - (A) set out the investment objectives of the Trust Fund; and
    - (B) detail the investment methods (such as asset allocation ranges, desired liquidity and risk tolerance (and, if and to the extent thought appropriate, risk management strategies)) aimed at achieving those objectives;
  - (ii) present the investment strategy to the Trustee for its consideration and approval before implementation; and
  - (iii) implement the investment strategy approved by the Trustee and only make investment decisions in accordance with that investment strategy.
- (f) The Trustee may from time to time give written notice to the members of the Investment Committee of matters to which the Trustee wishes the Committee to have regard in carrying out its delegated role under this clause 12.5. But the Committee retains the power and discretion to exercise its delegated powers as it thinks fit.
- (g) The Trust Fund's investments must be made and maintained on an arm's length basis.
- (h) Section 14A(2) of the *Trustee Act 1925* (NSW) applies to every member of the Investment Committee as if they were a trustee of the Trust Fund.
- (i) Sections 14A(4) and 14C of the *Trustee Act 1925* (NSW) apply to the Investment Committee as if the Committee was the trustee of the Trust Fund.
- (j) Without limiting clauses 12.5(a), 12.5(h) and 12.5(i), the Investment Committee may seek the independent and impartial advice of such competent (or apparently competent) persons as it thinks fit on matters related to the function of the Investment Committee. The reasonable costs of obtaining the advice are payable out of the Trust Fund.
- (k) The Trustee must promptly do all things reasonably necessary or desirable to implement the decisions of the Investment Committee in accordance with the investment strategy approved by the Trustee.

## **12.6 Trustee's decisions**

The Trustee may decide, after requesting and receiving a recommendation from the Investment Committee if it considers necessary:

- (a) whether any money is to be considered as capital or income;
- (b) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
- (c) all questions and matters of doubt arising in the execution or operation of the trusts of this deed.

To the maximum extent permitted by law, every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

## **12.7 Members of Trustee may request a copy of the Trust Deed**

If any member for the time being of the Trustee requests in writing a copy of this deed, the Trustee must promptly make a copy available to that member, at no cost to the member.

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## **13 Winding up, or revocation of endorsement as an income tax exempt entity**

Upon the earlier of:

- (a) the winding up of the Trust, or
- (b) the revocation of the Trust's endorsement as an income tax exempt entity under Subdivision 50-B of the ITAA 97,

the Trustee must pay or apply any assets of the Trust Fund remaining after the satisfaction of (or provision for) all its debts and liabilities, and the costs of winding up the Trust Fund, to or for one or more Eligible Entities whose purposes include one or more of the purposes in clauses 4.1(a)(i) and 4.1(a)(ii) or purposes similar to any one or more of those purposes, as the Trustee decides. The Trustee may also request any such Eligible Entity to pay or apply any such assets solely for one or more such purposes (such as the particular purposes of a Sub-fund established under clause 4.8(a)).

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**14 Governing law**

This deed is governed by the laws of the state of New South Wales of Australia.

**1 The Jim Kidd Strategic Leadership Fund (JKSL Fund)**

**Purpose:**

To further the Charitable Purposes of the Crusader Union as follows:

- (a) First, by assisting it to attract, retain, train, develop and remunerate a suitable person to perform the role of Executive Director.
- (b) If and for so long as the assets of the JKSL Fund are not required to achieve the purpose in paragraph (a), the surplus assets may be applied by assisting the Crusader Union to attract, retain, train, develop and remunerate other senior ministry staff who report to the Executive Director.

**Settled sum:**

Fifty dollars (\$50).

**2 The Holt Summit Fellowship Fund**

**Purpose:**

To further the Charitable Purposes of the Crusader Union by assisting the Holt Memorial Fellowship Scheme to develop the Christian leadership skills of participants and ministry activities of Summit Educational Camps.

**Settled sum:**

Fifty dollars (\$50).

**3 The Crusader Schools Ministry Fund**

**Purpose:**

To further the Charitable Purposes of the Crusader Union by assisting it to attract, retain, train, develop and remunerate Schools Ministry staff and volunteers involved in Schools Ministry activities, with a key focus on leadership development.

**Settled sum:**

Fifty dollars (\$50).

- A. **Exceptions from annual maximum distribution cap in clause 4.2(a)(ii); and**
  - B. **Other provisions relating to the maintenance and cessation of Sub-funds (refer clause 4.8(f))**
- 1 **Minor and Major Gifts**
- In this Schedule 2:
- (a) A **Minor Gift** is a Gift of less than \$100,000 in money or monies worth.
  - (b) A **Major Gift** is a gift of \$100,000 or more in money or monies worth.
- 2 **Sub-fund Minor Gift Accounts**
- 2.1 In addition to any general running balance management account referable to each Sub-fund (each a **Sub-fund General Account**), the Trustee must maintain separate running balance management accounts (each a **Sub-fund Minor Gifts Account**) that comprise solely:
- (a) The aggregate of all Minor Gifts received that are referable to that Sub-fund.
  - (b) Any share of the net income of the Trust for a Financial Year attributable to the Sub-fund Minor Gifts Account, as reasonably determined by the Trustee.
  - (c) **Less** the annual amounts calculated each Financial Year as follows:
    - (i) any amount treated under clause 4.2(a)(iii) as a payment or application from that Sub-fund, being part of a distribution required to be made under clause 4.2(a)(i); and
    - (ii) to the extent not already taken into account under paragraph 2.1(c)(i), any distributions by the Trustee during that Financial Year out of that Sub-fund under paragraph 2.3 of this **Schedule 2**.
- 2.2 The balance for the time being in that Sub-fund Minor Gifts Account is called the **Sub-fund Minor Gifts Account Balance**.
- 2.3 In addition to any distribution out of a Sub-fund required or permitted by clause 4.2(a), the Trustee may at any time and from time to time distribute an amount up to (but not exceeding) the Sub-fund Minor Gifts Account Balance.
- 2.4 Any such distribution shall further reduce the Sub-fund Minor Gifts Account Balance by the amount of the distribution, under paragraph 2.1(c)(ii).

- 2.5 The intent of paragraphs 2.1 to 2.4 in relation to each Sub-fund in relation to each Financial Year is as follows:
- (a) Broadly, Minor Gifts are not subject to the cap in clause 4.2(a)(ii), but may be distributed by the Trustee in full either immediately or at any later time, whereas Major Gifts are subject to that cap.
  - (b) First, the minimum distribution required under clause 4.2(a)(i) for a Financial Year shall be deducted from the Sub-fund Minor Gifts Account Balance. It shall also count towards the cap under clause 4.2(a)(ii).
  - (c) Secondly, distributions in a Financial Year in excess of the minimum distribution required under clause 4.2(a)(i) for that Financial Year should also be regarded as being distributions of Minor Gifts, thereby further reducing the aggregate undistributed Minor Gifts available for Distribution (reflected in the Sub-fund Minor Gifts Account Balance). However, the Sub-fund Minor Gifts Account Balance cannot be reduced below zero (that is, cannot be a negative amount).
  - (d) Once a Sub-fund Minor Gifts Account has been reduced to zero, any further distributions in that Financial Year within the cap in clause 4.2(a)(ii) shall be deducted from the Sub-fund Major Gifts Account Balance.
- 2.6 An example of how paragraphs 2.1 to 2.5 are intended to apply to each Sub-fund is as follows:
- (a) Assume that, at 31 August Years 1, 2 and 3, the Sub-fund NAV was \$1 million (all of which represented Major Gifts and net income referable to them), so that the Sub-fund Average NAV at 31/8/03 was also \$1 million, and that there had been no Minor Gifts in any of Years 1 to 3. Further assume that there is no higher minimum amount applicable under clause 4.2(a)(i)(A).
  - (b) Assume that, in Year 4:
    - (i) There was one Major Gift of \$110,000.
    - (ii) There were five Minor Gifts of \$90,000 each, totalling \$450,000 (thus creating a Sub-fund Minor Gifts Account Balance of \$450,000).
    - (iii) The net income of the Sub-fund for that year was \$75,000, all of which was referable to the assets held as at the end of Year 3.

- (iv) The result of paragraphs 2.6(b)(i) to 2.6(b)(iii) is that the Sub-fund NAV has increased from \$1 million to \$1.635 million; and the Major Gifts Account Balance would be \$1,185,000.
  - (v) The Trustee wanted to distribute \$250,000 out of the Sub-fund in that year in furtherance of the purposes of the Sub-fund.
- (c) In that case, as regards the desired \$250,000 distribution in Year 4:
- (i) The Sub-fund Minor Gifts Account Balance starts out as being \$450,000 (see paragraph 2.6(b)(ii)).
  - (ii) First, that amount is to be reduced by the minimum distribution for that Financial Year required under clause 4.2(a)(i)(B), namely 5% x the \$1 million Sub-fund Average NAV as at 31 August end year 3, = \$50,000; thereby reducing the Sub-fund Minor Gifts Balance to \$400,000.
  - (iii) Then, as regards the desired annual distribution of the further \$200,000:
    - (A) the entire \$200,000 can be distributed in Year 4, which reduces the Sub-fund Minor Gifts Balance from \$400,000 to \$200,000, and
    - (B) The Sub-fund Major Gifts Account Balance is not reduced by the distribution and remains at \$1,185,000 (\$1 million + \$110,000 + \$75,000).
- (d) So, at the end of Year 4 (31/8/year 4):
- (i) The Sub-fund NAV would be \$1.635 million, less distributions of \$250,000, namely \$1,385,000.
  - (ii) The Sub-fund Minor Gifts Account Balance would be \$200,000.
  - (iii) The Sub-fund Major Gifts Account Balance would be \$1,185,000.
  - (iv) The balance in the Sub-fund General Account should also be approximately \$1,385,000. (To the extent that there was a difference, the Trustee may wish to make adjustments to the various balances under paragraph 5.1 of this Schedule 2.)
- (e) Assume that, in Year 5:
- (i) The Trustee wanted to again distribute \$250,000.
  - (ii) There were no Major Gifts received.
  - (iii) A Minor Gift of \$20,000 was received.

- (iv) The net income of the Sub-fund for the year was \$70,000, all of which was referable to the assets held as at the end of Year 4.
- (f) In that case, as regards the desired \$250,000 distribution in Year 5:
  - (i) The Sub-fund Average NAV for Years 2, 3 and 4 would be \$1,128,333. The 5% minimum applicable under clause 4.2(a)(i) is therefore \$56,417 and the 15% cap applicable under clause 4.2(a)(ii) is therefore \$169,250.
  - (ii) The Sub-fund Minor Gifts Account Balance at the beginning of the year is \$200,000 and is increased by the Minor Gift of \$20,000 received during that year, to \$220,000.
  - (iii) The net income of \$70,000 for that Financial Year needs to be prorated between the Sub-fund Minor Gifts Account Balance as at the end of the preceding Financial Year (\$200,000) and the Major Gifts Account Balance as at that date (\$1,185,000), in accordance with paragraphs 2.1(b) and 3.1(b). Assume that the Trustee reasonably determines that those proportions should be 14.44% and 85.56%, respectively: namely \$10,108 and \$59,892 respectively. That increases the Minor Gifts Account Balance by \$10,108 from \$220,000 to \$230,108, and the Major Gifts Account Balance by \$59,892 from \$1,185,000 to \$1,244,892.
  - (iv) Then, as regards the desired distribution for year 5 of \$ 250,000:
    - (A) The Sub-fund Minor Gifts Account Balance is first reduced by the minimum distribution under clause 4.2(a)(i), namely \$56,417 (reduced from \$230,108 to \$173,691).
    - (B) The next part of the distribution (\$173,691) is used to reduce the Trust Fund Minor Gifts Account Balance to nil.
    - (C) The remainder of the desired distribution (\$250,000 less \$56,417 less \$173,691 = \$19,892) is used to reduce the Major Gifts Account Balance, since the allowed range in clause 4.2(a)(ii) is up to \$112,833 (namely \$169,250 less the minimum distribution of \$56,417).
  - (v) At the end of Year 5 (after the distribution of \$250,000), the Sub-fund NAV would be \$1,225,000 (namely \$1,385,000 plus \$20,000 plus \$70,000, less \$250,000). The

Sub-fund Minor Gifts Account Balance would be nil and the Sub-fund Major Gifts Account Balance would be \$1,225,000 (\$1,244,892 less \$19,892).

- (g) This example is shown in the spreadsheet attached as **Schedule 3**.

### **3 Sub-fund Major Gift Accounts**

3.1 In addition to any Sub-fund General Account and Sub-fund Minor Gifts Account, the Trustee must maintain separate running balance management accounts (each a **Sub-fund Major Gifts Account**) that comprises solely:

- (a) The aggregate of all Major Gifts that are referable to that Sub-fund.
- (b) Any share of the net income of the Trust for a Financial Year attributable to the Sub-fund Major Gifts Account, as reasonably determined by the Trustee.
- (c) **Less** the annual amounts treated under paragraph 2.5(d) as a payment or application from that Sub-fund.

3.2 The balance for the time being in that Sub-fund Major Gifts Account is called the **Sub-fund Major Gifts Account Balance**.

### **4 Cessation (winding-up or winding-down of a Sub-fund)**

4.1 Subject to paragraph 4.2 of this **Schedule 2**, the three Sub-funds established under clause 4.8(e), and any other Sub-fund established subsequently, shall continue for the life of the Trust.

4.2 After 31 August 2025, where the Sub-fund Average NAV of any Sub-fund at the end of a Financial Year is less than the Sub-fund Threshold, then at any time in the succeeding Financial Year the Trustee may allocate, credit, pay or apply the whole or any part of the balance of that Sub-fund's Sub-fund General Account to any other one or more other Sub-funds (which shall be treated as a Major Donation to the other Sub-fund(s)).

### **5 Trustee may vary account balances**

5.1 Notwithstanding any other provision in this **Schedule 2**, the Trustee may at any time or from time to time apportion any losses, liabilities, costs and expenses relating to the Trust Fund or make other accounting adjustments, in such manner as it reasonably thinks fit to increase or reduce any Sub-fund Minor Gifts Account Balances and Sub-fund Major Gift Account Balances,

in order to ensure that the aggregate of such Balances, any similar balances in any other general running balance management accounts, any similar other ledger accounts relating to the net assets



of the Trust Fund together equal, or at least do not exceed, the market value of the Trust's net assets from time to time available for distribution.



Schedule 3

Clause 2.6(g) of Schedule 2 example

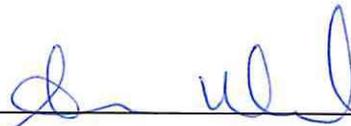
Schedule Ref		Min/Max Distributions	Gifts	Subfund NAV at year end	Distribution to CUoA	Sch. 2 Minor Gifts Account Balance	Sch. 3.2 Major Gifts account Balance
2.2.6(a)	Year 1		1,000,000	1,000,000			1,000,000
2.2.6(a)	Year 2		1,000,000	1,000,000			1,000,000
2.2.6(a)	Year 3		1,000,000	1,000,000			1,000,000
2.2.6(b)(i)	Year 4		110,000	110,000			110,000
2.2.6(b)(ii)			90,000			90,000	
2.2.6(b)(ii)			90,000			90,000	
2.2.6(b)(ii)			90,000			90,000	
2.2.6(b)(ii)			90,000			90,000	
2.2.6(b)(ii)			90,000			90,000	
				450,000			
2.2.6(b)(iii)	Net Income			75,000			75,000
2.2.6(b)(iv)	sub total			1,635,000		450,000	1,185,000
<b>3 year average NAV</b>				1,000,000			
4.2(a)(i)(B)	Distribution Minimum 5%	50,000					
4.2(a)(ii)	Distribution Maximum 15%	150,000					
2.2.6(c) (ii)	Distribution Year 4 part 1			-50,000	-50,000	-50,000	
2.2.6(c) (iii)	Distribution Year 4 part 2			-200,000	-200,000	-200,000	
	<b>Total distribution to Crusader Union</b>			<b>-250,000</b>	<b>-250,000</b>	<b>-250,000</b>	
2.2.6(d)	<b>NAV BALANCE END YEAR 4</b>			<b>1,385,000</b>		<b>200,000</b>	<b>1,185,000</b>
2.2.6(e)(iii)	Year 5		20,000	20,000		20,000	
2.2.6(e)(iv)	Net Income			70,000		10,108	59,892
2.2.6(f)(iii)	sub total			1,475,000		230,108	1,244,892
<b>3 year average NAV</b>				1,128,333			
(1,000,000+1,000,000+1,385,000)/3							
2.2.6(f) (i)	Distribution Minimum 5%	56,417					
2.2.6(f) (i)	Distribution Maximum 15%	169,250					
2.2.6 (e) (i)	Distribution Year 5 part 1			-56,417	-56,417	-56,417	
	sub total					173,692	
2.2.6 (e) (i) and 2.3	Distribution Year 5 part 2	use all minor account balance		-173,692	-173,692	-173,692	
2.2.6 (e) (i)	Distribution Year Part 3			-19,892	-19,892		-19,892
2.5 (d)	<b>Total distribution to Crusader Union</b>			<b>-250,000</b>	<b>-250,000</b>	<b>-230,108</b>	<b>-19,892</b>
2.2.6(f)(v)	<b>NAV BALANCE END YEAR 5</b>			<b>1,225,000</b>		<b>0</b>	<b>1,225,000</b>

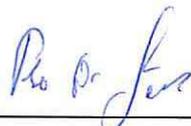
**SIGNING PAGE**

**EXECUTED AS A DEED**

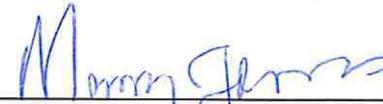
Signed, sealed and delivered by **Peter and Mary Jones** as Founders

in the presence of:

  
\_\_\_\_\_  
Signature of Witness

  
\_\_\_\_\_  
Signature of Peter Jones

ANNA WOOD  
\_\_\_\_\_  
Name (please print)

  
\_\_\_\_\_  
Signature of Mary Jones

Signed, sealed and delivered by **The Crusader Union of Australia** as Trustee in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its Directors:

  
\_\_\_\_\_  
Signature of ~~Company Secretary~~ / Director

  
\_\_\_\_\_  
Signature of Director

PHILIP WILLIAM BELL  
\_\_\_\_\_  
Name (please print)

SANTINO DIMARCO  
\_\_\_\_\_  
Name (please print)