

Trust deed

The AMSI Foundation Trust

Janet Thomas Bsc (Hons), DipEd, Bed (TESOL), OAM
(Founder)

AMSI Foundation Ltd ACN 615 851 128 **(Trustee)**

Details

Date 14 / 11 / 2016

Parties

Name **Jan (Janet) Thomas BSc (Hons), DipEd, BEd (TESOL), OAM**
Short form name **Founder**
Notice details 16 Curran Street
North Melbourne VIC 3051

Name **AMSI Foundation Ltd**
ACN 615 851 128
Short form name **Trustee**
Notice details Building 161, Monash Road
University of Melbourne
Parkville VIC 3010

Background

- A The Founder desires to establish a Trust solely for the purpose of providing money, property or benefits to or for Eligible Entities and for any purposes set out in the table in Subdivision 30-B of the *Income Tax Assessment Act 1997* (Cth) that covers such Eligible Entities or for the establishment of Eligible Entities, as the Trustee decides.
- B The Founder has prior to the execution of this deed provided the Settled Sum as the Trust Fund to be held by the Trustee upon trust for the Trust Purposes.
- C The Trustee has agreed to act as Trustee and to perform and administer the Trust as signified by its execution of this deed.

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- B The Founder has prior to the execution of this deed provided the Settled Sum as the Trust Fund to be held by the Trustee upon trust for the Trust Purposes.
- C The Trustee has agreed to act as Trustee and to perform and administer the Trust as signified by its execution of this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

Associate has the meaning outlined in section 318 of the ITAA 36.

Board means the 'Board of Directors' of the Trustee as defined in the Trustee's constitution.

Charitable means charitable within the laws of Victoria, the laws of the Commonwealth of Australia, including the *Charities Act 2013* (Cth), and the common law.

Contributor means any Donor and any member of the public and any person that donates money, property or provides other benefits to the Trust Fund to be applied for the Trust Purposes.

Commencement Date means 1 January 2017.

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

Deductible Contribution means a contribution of money or property as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97 and that is not otherwise deductible as a gift under any other item appearing in that table.

Donor means the donor of a Gift or a Deductible Contribution to the Trust.

Eligible Entities means any fund, authority or institution:

- (a) which is Charitable; and
- (b) gifts to which are deductible under item 1 of the table in section 30-15 of ITAA 97.

Financial Year means the period from the date of this deed to the following 30 June and then each period of 12 months beginning on 1 July and ending on 30 June in each year or such other period as agreed to by the Commissioner.

Founder means Janet Thomas.

Fund-raising Event has the meaning in subsection 995-1(1) of the ITAA 97.

Gift means a gift as described in item 2 of the table in section 30-15 of the ITAA 97 to the Trust.

Governing Law means the laws of the jurisdiction named in clause 20.

ITAA 36 means the *Income Tax Assessment Act 1936* (Cth).

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

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

Public Ancillary Fund has the meaning given by subsection 995-1(1) of the ITAA 97.

Public Ancillary Fund Guidelines means the public ancillary fund guidelines, as in force from time to time, made under section 426-103 of Schedule 1 to the TAA 53.

Responsible Person means an individual who:

- (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 officially charged with spiritual functions by a religious institution;
- (d) is a director of a company whose shares are listed on the Australian Securities Exchange;
- (e) has received formal recognition from government for services to the community;
- (f) is an individual before whom a statutory declaration may be made;
- (g) is approved as a Responsible Person by the Commissioner; or
- (h) who meets any other requirements specified from time to time by the Commissioner.

Settled Sum means \$10.

TAA 53 means the *Taxation Administration Act 1953*.

Trust means the Trust established under this deed.

Trustee means the person named in this deed as the Trustee and any other Trustee for the time being of the Trust.

Trust Fund means:

- (a) the Settled Sum;
- (b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund including all Gifts and Deductible Contributions;
- (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;
- (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 Purposes means the purposes outlined in clause 4.

1.2 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) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this deed;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to dollar or \$ is to Australian currency;
- (f) a reference to time is to Victoria, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other legal entity;
- (i) a reference to this deed means this deed as originally executed and as from time to time lawfully amended;
- (j) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in that Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) a reference to any legislation or legislative instrument or a provision of any legislation or legislative instrument, includes any amendment to that legislation or legislative instrument or provision, any consolidation or replacement of that legislation or legislative instrument or provision, and any subordinate legislation or legislative instrument made under that legislation or legislative instrument;
- (m) a reference to a donation includes a Gift; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

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

2. Name

The Trust is to be known as The AMSI Foundation Trust.

3. Declaration of trust

3.1 Declaration

The Founder declares that the Trustee must hold the Trust Fund upon the trusts set out in this deed, with the powers and subject to the provisions in this deed from the Commencement Date.

3.2 Not for profit

The Trust is established in and operates only in Australia, as a not-for-profit entity.

4. Trust Purpose

4.1 Payment and application of the Trust Fund

- (a) The Trustee must pay or apply the income and/or capital of the Trust Fund solely for the purpose of providing money, property or benefits to or for Eligible Entities or the establishment of Eligible Entities as the Trustee decides, in accordance with the **Public Ancillary Fund Guidelines**.
- (b) Where gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of ITAA 97 are satisfied, a payment or application of the Trust Fund must be made in accordance with those conditions.

4.2 Factors Trustee may consider

In exercising its discretions under clause 4.1, the Trustee may have regard to:

- (a) any recommendations of the Board; 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 on the Trusts of this deed; 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 discretions and powers under this deed.

4.3 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.

4.4 Invited to contribute

The public must be invited to contribute to the gift fund.

4.5 Portability

Notwithstanding clause 4.1 but:

- (a) only if permitted by the relevant law; and
- (b) with the agreement of the Commissioner,

the Trustee may pay or apply the Trust Fund or any part of it to or for a private ancillary fund as described in section 426-105 in Schedule 1 to the TAA 53, or to or for another Public Ancillary Fund, provided the trusts of the private ancillary fund or other Public Ancillary Fund are limited to trusts for the provision of money, property or benefits to or for Eligible Entities, or the establishment of Eligible Entities.

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 when entered into, unless the transaction is:
 - (i) with a deductible gift recipient covered by item 1 in the table in section 30-15 of the ITAA 97; and
 - (ii) is in course of furtherance of the Trust's purpose;unless the transaction is 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

Apart from a payment or application authorised under clauses 4.1, 5.1 or 17, 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:

- (a) a Trustee;
- (b) a member, director, employee, agent or Officer of a Trustee;
- (c) a Donor;
- (d) a Founder; or
- (e) an Associate of any of these entities.

6. Qualifications of Trustee

6.1 Corporation

Subject to clause 6.2, the Trustee must be a corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* applies or a body corporate that is incorporated in a Territory, whose board of directors and any other controlling body includes three or more persons the majority of which must be Responsible Persons. The Responsible Persons must be active directors of the Trustee if the Trustee is a company, or if the Trustee is another type of corporation, the Responsible Persons must be active members of the board of directors or any other controlling body of that corporation.

6.2 Other Trustees

Despite clause 6.1, where in accordance with the relevant law each Trustee need not be a corporation to which paragraph 51(xx) of the *Commonwealth of Australia Constitution Act* applies or a body corporate that is incorporated in a Territory, each Trustee must be:

- (a) a corporation as described in clause 6.1;
- (b) three or more persons the majority of which must be Responsible Persons;
- (c) a Public Trustee of a state or territory; or
- (d) prescribed under section 426-102(1)(a)(ii) of Schedule 1 of the TAA 53.

6.3 Qualifications not met

- (a) If the requirements in clauses 6.1 or 6.2 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 exercising a statutory power to appoint a new or additional Trustee;
 - (ii) to protect the Trust Fund; or
 - (iii) in the case of urgency.
- (b) If the requirements in clauses 6.1 or 6.2 are at any time not met and if the Trustee does not have or is unable to exercise a statutory power of appointing a new or additional Trustee as outlined in 6.3(a) the Trustee may by writing appoint a new or additional Trustee.

7. Trustee's powers

7.1 Powers

The Trustee must invest money 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 may, to the extent consistent with the Public Ancillary Fund Guidelines and, where relevant, consistent with the Trust's investment strategy:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) 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;
- (d) take and act on the opinion of a barrister practising in Australia 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;
- (e) take any action for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) 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:
 - (A) of or incidental to the Trust Fund or its management, winding up, ceasing to be a Public Ancillary Fund, or revocation of endorsement as a deductible gift recipient under Subdivision 30BA of the ITAA 97; or
 - (B) in connection with the preparation, execution, stamping and amending of this deed;

other than a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53;
- (h) 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;
- (i) 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;
- (j) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund 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;

- (k) 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, moneys worth or property;
- (l) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Entity to occupy the property on the terms and conditions the Trustee thinks fit; and
- (m) do all other things incidental to the exercise of the Trustee's powers under this deed.

7.2 Additional Powers

Subject to the following powers complying at all times with the Public Ancillary Fund Guidelines, The Trustee shall have the following additional powers:

(a) Power to enter into arrangements

To enter into any arrangements with any government or authority that may seem conducive to any of the objects of the Trust and to obtain from any such government or authority any rights, privileges and concessions (including any patents, trade marks or similar rights) the Trustee thinks fit to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.

(b) Power of conversion of assets

As the Trustee thinks fit, to direct the sale calling in or conversion into money of any of the Trust Fund and power to hold or make available for the use of others (whether with or without consideration) any of the Trust Fund.

(c) Power to appoint an agent

Instead of acting itself, to employ and pay a solicitor, accountant, broker or other agent (Agent) to transact any business or to do any act required or permitted to be done in connection with the collection, holding, administration and management of the Trust Fund and its income, including the collection, receipt and payment of money or acting as custodian or nominee to hold any assets of the Trust Fund. Any such Agent shall be entitled to be paid and allowed all usual reasonable costs, charges and expenses incurred. Nothing in this deed shall prevent an Agent who is not a Trustee being paid all usual reasonable professional and other charges for any business transacted, time expended or acts done by them or their firm or their employees in connection with the Trust Fund or its income or anything arising under this deed, regardless of the fact that the Agent may be an associate of the Trustee.

(d) Power to seek the opinion of counsel

To take and act upon the opinion of any solicitor or counsel of not less than 7 years' standing practising in the Supreme Court of Victoria whether in relation to the interpretation of this deed or of any document or Statute or as to the administration of the Trusts without being liable to any of the persons beneficially interested in respect of any act done by such Counsel or Solicitor in accordance with such opinion. Nothing in this paragraph prohibits the Trustees from applying to a Court if it thinks fit or prohibit any beneficiaries from so doing.

(e) Power to make rules

Subject to this deed, to make rules dealing with any matter relating to the Trust and in particular rules regulating:

- (i) meetings of the Board or the Committee of Management and the procedure to be followed at such meetings;

(ii) who shall benefit from the Trust and the mode, terms and conditions on which benefits are to be provided.

(f) Power to vary rules

To provide for the making of additions, alterations and rescissions of any rule from time to time in force relating to the Trust.

(g) General power

To do all other lawful acts and things as are incidental or conducive to the attainment of the general purposes of the Trust.

(h) Disposition of Property

To sell, exchange or otherwise dispose of any property and to grant options or rights to purchase, exchange or otherwise acquire any property upon such terms and conditions as the Trustee may in its absolute discretion think fit; and to vary any contract for sale, buy at any auction, rescind any contract for sale and re-sell upon such terms and conditions as the Trustee may in its absolute discretion think fit.

(i) Variation of Investments

From time to time, to vary any of the investments of the Trust Fund for or into any other authorised modes of investment. This power shall enable the Trustee to participate in the amalgamation or reconstruction of any company in which any shares stocks debentures notes or other securities are held as investments of the Trust Fund.

(j) Borrowing Powers

From time to time, to borrow money for the purposes of the Trust, strictly in accordance with the Public Ancillary Fund Guidelines, without security or upon the security of any assets of the Trust.

(k) Bank Accounts

From time to time, to open and operate in Australia and elsewhere bank and cheque accounts and other negotiable or transferable instruments. The Trustee shall operate bank accounts and make all such arrangements for dealing with receipts, discharges and payments as it may determine as appropriate from time to time and may give, vary and revoke instructions as to the custody and disposal of any security.

(l) Power to revalue investments

To revalue investments comprising the Trust Fund according to their current market value, and any capital surplus or loss resulting from such revaluation shall be credited or debited, as the case may be, to a capital reserve account.

7.3 Powers are supplementary

The powers and discretions in clause 7.1 and clause 7.2 are to be treated as supplementary or additional to the powers vested in Trustees by law.

8. Administration of Trust

(a) The Trust shall be administered by the Trustee.

(b) The Trustee must solicit and collect donation from Contributors.

9. Compliance

- (a) Before exercising a discretion or power vested in the Trustee under any provision of this deed or by law, the Trustee must ensure that the proposed exercise is in accordance with the Public Ancillary Fund Guidelines.
- (b) The Trustee must comply with all relevant Australian laws, all legally binding directions given to the Trustee by the Commissioner and all requirements contained in the Public Ancillary Fund Guidelines.

10. Liability for breaches of trust

10.1 Indemnity

Subject to clause 10.2, the Trustee and any Officer, agent or employee 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 clause 10.1(b) including, but not limited to, the Trustee performing its duties and exercising its powers and discretions under this deed.

10.2 Limitations

Notwithstanding clause 10.1, the Trustee and an Officer, agent or employee 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 or employee of the Trustee;
- (b) gross negligence or recklessness of that Trustee, Officer, agent or employee of the Trustee;
- (c) a deliberate act or omission known by that Trustee, Officer, agent or employee of the Trustee to be a breach of trust; or
- (d) penalties under section 426-120 of Schedule 1 to the TAA 53.

10.3 No obligation to investigation

Nothing in this deed shall impose any obligation on the Trustee to investigate the accounts or management or control of any company or person in which any assets held under this deed may be invested. The Trustee is also not under any obligation to take any steps or bring any action or in any other manner seek to vary alter amend or add to the constitution of any such company or person or to interfere with the management government or control of any company or person. No neglect or omission in this respect shall be chargeable as a breach of trust.

11. Appointment and Retirement of Trustee

11.1 Resignation

The Trustee may at any time resign as Trustee but must first nominate another Trustee as replacement Trustee. Resignation of the Trustee must be evidenced by a deed of retirement and appointment of Trustee between the outgoing Trustee and the incoming Trustee.

11.2 Vacation of office

The office of a Trustee is immediately vacated if the Trustee enters into administration, receivership or liquidation or any form of insolvency administration.

11.3 Change in Trustee

In relation to any change in Trustee, acts and deeds done or signed for the proper vesting of the Trust Fund in a replacement Trustee are to be done and signed by the retiring Trustee at the expense of the Trust Fund except that the outgoing Trustee who is or may be liable as a Trustee for taxes will not be bound to transfer the Trust Fund unless the new Trustee indemnifies from the Trust Fund the outgoing Trustee against any present or future liability incurred by the outgoing Trustee as a direct or indirect consequence of its acting as Trustee of the Trust.

12. Establishment and operation of Gift Fund

12.1 Maintaining a Gift Fund

The Trustee must maintain for the Trust Purposes a fund (**Gift Fund**):

- (a) to which Contributors shall be invited to donate money or property;
- (b) to which Gifts and Deductible Contributions from Contributors of money or property for the Trust Purposes are to be made;
- (c) to which any money received by the Trust because of those Gifts and Deductible Contributions, is to be credited; and
- (d) that does not receive any other money or property; and
- (e) that shall be administered by the Trustee.

12.2 Limits on use of Gift Fund

The Trustee must use the following only for the purpose of the Trust Purposes:

- (a) gifts, or Deductible Contributions, made to the Gift Fund; and
- (b) any money received because of those gifts.

12.3 Winding up, ceasing to be a Public Ancillary Fund or revocation of endorsement

- (a) At the first occurrence of:
 - (i) the winding up of the Gift Fund;
 - (ii) the Trust ceasing to be a Public Ancillary Fund; or
 - (iii) the revocation of the Trust's endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97;

any surplus Gifts and Deductible Contributions and money received by the Trust because of those Gifts and Deductible Contributions must be transferred to one or more Eligible Entities as the Trustee decides.

- (b) When gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a transfer under this clause 12.3 must be made in accordance with those conditions.

12.4 Bank Account

The Trustee must maintain a separate bank account for the Gift Fund.

12.5 Gift Fund forms part of the Trust Fund

To avoid any doubt, it is declared that the Gift Fund forms part of the Trust Fund.

13. Receipts

- (a) The Trustee shall ensure that any Contributor who donates in cash or in kind to the Trust is provided with a receipt acknowledging actual receipt of the Gift or Deductible Contribution.
- (b) Any receipts issued by the Trust for a gift must state:
 - (i) the name 'The AMSI Foundation Trust';
 - (ii) the ABN of the Trust if it has one; and
 - (iii) the fact that the receipt is for a gift.
- (c) Any receipts issued by Trust for a Deductible Contribution must state:
 - (i) the name 'The AMSI Foundation Trust';
 - (ii) the ABN of the Trust if it has one;
 - (iii) the fact that the receipt is for a gift;
 - (iv) the amount of the contribution if the contribution is money; and
 - (v) the GST inclusive market value of the minor benefit provided in return for the contribution.

14. Returns

14.1 Returns

If required by law or by the Commissioner to do so, the Trustee must give to the Commissioner a return for each financial year within the period required by the Commissioner.

14.2 Requirements about giving material to the Commissioner

The Trustee must comply with the requirements about giving material to the Commissioner required by Subdivision 388 of Schedule 1 to the TAA 53 and the Public Ancillary Fund Guidelines, and the Trustee must comply with any other requirements from a governmental authority, including (without limitation) the Australian Charities and Not-for-profits Commission.

14.3 Valuation

The market value of the assets of the Trust Fund must be estimated as required by the Public Ancillary Fund Guidelines.

14.4 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 and must comply with the record keeping obligations of deductible gift recipients required by Subdivision 382-B of Schedule 1 to the TAA 53 and the Public Ancillary Fund Guidelines.

14.5 Financial statements

- (a) The Trustee shall keep or cause to be kept proper books of account of all sums of money received and expended by or on behalf of the Trust Fund and of all sales and purchases of investments and of the assets and liabilities of the Trust Fund as will sufficiently explain the transactions and financial position of the Trust Fund and enable true and fair profit and loss accounts and balance sheets and any other accounts to be prepared in respect of the Trust Fund. The Trustee shall cause those records to be kept for at least 5 years after the completion of the transactions or acts to which they relate and in such manner as to enable them to be conveniently and properly audited.
- (b) The Trustee shall as soon as practicable after 30 June (or such other accounting date as may be decided upon by the Trustee) in each year prepare or cause to be prepared financial statements showing the financial position of the Trust Fund at the end of that financial year in accordance with the accounting standards.

14.6 Audit

- (a) The Trustee shall have the financial statements of the Trust and compliance with the Public Ancillary Fund Guidelines by the Trust audited by an auditor appointed by the Trustees (**Auditor**) or, if the assets and revenue of the Trust is less than \$1 million in a financial year, the Trustee may, in that financial year, instead have the financial statements and compliance with the Public Ancillary Fund Guidelines by the Trust reviewed rather than audited. No person shall be eligible for appointment as an Auditor or as a reviewer unless they are a registered company auditor carrying on practice in Australia under Part 9.2 of the *Corporations Act 2001* (Cth). The Auditor or reviewer shall report to the Trustee as to:
 - (i) whether the financial statements have been properly drawn up so as to give a true and fair view of the profit and loss of the Trust for the financial year and the state of affairs of the Trust as at the end of the year;
 - (ii) whether proper provision has been made in the financial statements of the Trust for bad and doubtful debts;
 - (iii) whether the accounting records have in their opinion been properly kept;
 - (iv) whether they have obtained all necessary information and explanations they required; and
 - (v) whether there are any defects or irregularities in the financial statements.
 - (vi) Where the Auditor comments adversely upon any matter they shall report on their reasons for such comments.
- (b) The Auditor or reviewer shall not be an Associate of the Trustee.
- (c) The Auditor or reviewer shall continue in office until they resign or are removed by the Trustee. The Trustee shall appoint a qualified Auditor or reviewer to act in place of any Auditor or reviewer so removed and any new Auditor or reviewer must confirm their willingness to act as Auditor or reviewer prior to their appointment.

14.7 Investment strategy

- (a) The Trustee must prepare and maintain an investment strategy in a written form which enables the Trustee, an auditor or the Commissioner to determine whether the Trustee has complied with and is complying with the Public Ancillary Fund Guidelines and any other applicable Australian laws.

- (b) The Trustee must implement the investment strategy and make investment decisions in accordance with the investment strategy.

15. Board

- (a) The functions of the Board will be to advise the Trustee on how payments or applications of income and capital should be made under clause 4.

16. Amending this deed

16.1 General

The Trustee may by deed revoke, add to or vary any of the provisions of this deed, so long as:

- (a) no part of the Trust Fund becomes subject to any trusts other than trusts for the provision of money, property or benefits to or for Eligible Entities; and
- (b) unless the Commissioner consents to the revocation, addition or variation:
 - (i) no amendment is made to clause 2, or is made materially affecting clauses 4, 5, or 7.1 or the definition of Trust Fund in clause 1.1;
 - (ii) no amendment is made that is contrary to the requirements of, or would result in the Trust not complying with, the Public Ancillary Fund Guidelines; and
 - (iii) no amendment is made to this clause 16 so as to permit this deed to be amended in a manner prohibited by clauses 16.1(b)(i) to 16.1(b)(ii); and
- (c) the Trustee notifies the Commissioner of the amendment within 21 days in the form approved by the Commissioner.

17. Trustee's remuneration and expenses

The Trustee may apply the Trust Fund to:

- (a) pay fair and reasonable remuneration for the services of the Trustee in administering the Trust Fund; and
- (b) reimburse the Trustee for reasonable expenses incurred as Trustee of the Trust,

but may not apply the Trust Fund for a payment of, or reimbursement for, any penalties under section 426-120 of Schedule 1 to the TAA 53.

18. General

18.1 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.

18.2 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.

18.3 Personal interest of Trustee

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.

18.4 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 any of the discretions or powers given to it under this deed. The exercise of any of the discretions or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested under this deed.

18.5 Trustee's decisions

The Trustee may decide:

- (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 of the trusts of this deed.

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.

19. Winding up

- (a) Upon whichever is the earliest of:
 - (i) the winding up of the Trust;
 - (ii) it ceasing to be a Public Ancillary Fund;
- (b) or the revocation of the Trust's endorsement as a deductible gift recipient under Subdivision 30-BA of the ITAA 97,

the Trustee must pay or apply any assets of the Trust Fund remaining after the satisfaction of all its debts and liabilities and compliance with any transfer obligations outstanding under clause 12.3(a) in respect of the Gift Fund, to or for Eligible Entities, as the Trustee decides.
- (c) Where gifts to an Eligible Entity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a payment or application under this clause must be made in accordance with those conditions.

20. Governing law

This deed is governed by the laws of Victoria.

21. GST

21.1 Interpretation

In this clause, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

21.2 GST gross up

If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this subclause (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

21.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with subclause 21.2.

21.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

22. Notices and other communications

22.1 Service of notices

A notice or communication under this deed (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

22.2 Effective on receipt

A Notice given in accordance with subclause 22.1 takes effect:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, by 5.00pm on the next Business Day after transmission on a Business Day, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Signing page

EXECUTED as a deed.

Founder

Signed sealed and delivered by Janet Thomas in the presence of

RB
Signature of witness

← J. TL ←
Janet Thomas

ROD BIRCH
Name of witness (print)

Trustee

Executed by AMSI Foundation Ltd in accordance with Section 127 of the *Corporations Act*

G Prince
Signature of director

← RB ←
Signature of director/company secretary
(Please delete as applicable)

GEOFF PRINCE
Name of director (print)

ROD BIRCH
Name of director/company secretary (print)