

[##@##]

and

[##] [PTY] LTD

and

ALAN PETERSON FREES

and

IAN FREDERICK PYMAN

DEED OF APPOINTMENT AND INDEMNITY



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THIS DEED is made on 2022

BY

1. [##@##] of [] (the *Indemnifier*),
2. [##] [PTY] LTD (ACN #####) of [] (the *Company*), and
3. ALAN PETERSON FREES of 3 / 243 Bluff Road, Sandringham, Victoria 3191 (*Frees*), and
4. IAN FREDERICK PYMAN of 9 Hurlingham Street, Brighton East, Victoria 3187 (*Pyman*).

RECITALS

- A. Frees has consented, at the request of the Indemnifier, to act as a director of the Company.
- B. Pyman is to be appointed as the alternate director for Frees.
- C. In addition, Frees has consented, at the request of the Indemnifier, to act as the public officer of the Company.
- D. The Indemnifier has agreed to indemnify Frees and Pyman (the *Appointees*) on the terms set out in this Deed.

IT IS AGREED as follows:

1. INTERPRETATION

Words or phrases having a particular meaning for the purposes of the Corporations Act 2001 (the *Act*) have the same meaning in this Deed. Other rules for the interpretation of this Deed are contained in Schedule 1.

2. APPOINTMENT

2.1 Consent to act

The Company appoints Frees as a director and Frees, at the request of the Indemnifier, accepts that appointment and consents to act as a director of the Company with effect from the date specified in item 1 of Schedule 2 (the *Commencement Date*). In addition, Frees appoints Pyman as his alternate director with effect from the Commencement Date and Pyman consents to that appointment. A reference to a *director* of the Company throughout this Deed includes any alternate director.

2.2 Public Officer

In addition to the position as a director of the Company, the Indemnifier has requested Frees to accept appointment as the public officer of the Company for the purposes set out in Schedule 3. Frees accepts that appointment with effect from the Commencement Date.

2.3 Payment

- (a) The Indemnifier will procure that the Company pays the Appointees, or as they direct, a fee of the amount and at the time specified in item 2 of Schedule 2 (and that fee includes the fee for Frees acting as the public officer of the Company). That fee is fixed for the period up to (and including) the date specified in item 3 of Schedule 2. The fee

will be subject to review at the end of that period in light of what the Appointees have been called upon to do during the initial period (and the then current fee will be reviewed annually thereafter). Any proposed increase in excess of 10% will be subject to the mutual agreement of the Indemnifier and the Appointees.

- (b) Subject to the Appointees presenting the Company with a Tax Invoice (as required by Clause 6.2), the Indemnifier must pay the fee within 30 days of the invoice date.

2.4 D&O Insurance premium and claims

[The Company has and shall maintain directors' and officers' insurance (**D&O Insurance**) for the benefit of the Appointees.][The Appointees may arrange directors' and officers' insurance (**D&O Insurance**), at the Company's cost, for the benefit of the Appointees in respect of their roles as a director/alternate director (and, in the case of Frees, the public officer) of the Company.] Any such insurance will not limit, prejudice or derogate from the Appointees' right to rely on, and the Indemnifier's obligations under, this Deed. The Appointees shall notify the Company of any claim, demand or circumstance which could give rise to a claim under the D&O Insurance within five business days of receiving notice of a claim or obtaining knowledge of a circumstance which could give rise to a claim under the D&O Insurance.

2.5 Resignation

2.5.1 Resignation

- (a) The Appointees (or either of them) may resign as a director (and, in the case of Frees, the public officer) of the Company at any time but must give the Indemnifier at least 30 days' prior notice in writing of the effective date of the resignation, except where:
 - (i) the Appointees believe the Company is or is about to become insolvent;
 - (ii) the Indemnifier has failed to comply with any of the undertakings in Clause 4; or
 - (iii) the Company has failed to pay punctually any fee payable in accordance with Clause 2.3 (provided the Appointees first provide the Company with 10 business days' prior written notice to allow the Company to remedy the past due fee prior to resignation) or [reimburse the Appointees under Clause 2.4 for the cost of the D&O Insurance effected in accordance with that Clause][has failed to maintain the D&O Insurance effected in accordance with Clause 2.4],(each a **Termination Event**), in which case the resignation will take effect immediately notice is given to the Indemnifier.
- (b) The Appointees (or either of them) shall resign as a director (and, in the case of Frees, the public officer) of the Company immediately upon request of the Indemnifier.

2.5.2 Reimbursement of Fees

- (a) If the Appointees (or either of them) resign as a result of a Termination Event or at the request of the Indemnifier, the Company will not be entitled to repayment of any part of the fees paid by the Company prior to his resignation.
- (b) If the Appointees (or either of them) resign otherwise than in accordance with Clause 2.5.2(a) (or are removed for cause), the Company will be entitled to a pro rata refund of the fee it has paid for the then current period.

2.6 Performance as Director or Public Officer

The Appointees' performance as a director, and Frees' performance as the public officer, of the Company shall be subject to the prior written instructions received from or on behalf of the Indemnifier. The Appointees will not perform any task as a director/alternate director, nor will Frees as the public officer, of the Company or sign any minutes of board of directors or of shareholders' meetings, balance sheets, corporate books, agreements, powers of attorney, tax

returns or any other document related to the Company, without the approval of the Indemnifier. All such documents must be prepared by or on behalf of the Company by properly qualified and experienced people and must be submitted to the Appointees for signature on a timely basis.

3. INDEMNITY AGAINST LIABILITY

3.1 Indemnity

3.1.1 Terms of indemnity

To the extent permitted by law, and without limiting the powers or obligations of the Indemnifier, the Indemnifier indemnifies each Appointee against all actions, proceedings, claims, demands, losses, damages, liabilities, costs and expenses whatsoever which may from time to time be made, instituted, suffered or incurred by the Appointees (or either of them) as a result of or in relation to any act or omission on the part of the Appointee in his capacity as a director/alternate director (or, in the case of Frees, as the public officer) of the Company or otherwise as a result of or in relation to the Appointees holding office as an officer of the Company or in connection with any breach by the Indemnifier or the Company of this Deed. This indemnity will not apply to the extent that any such action, proceeding, claim, demand, damage, liability, loss, cost or expense results from any negligence, default, breach of duty or breach of trust of which the Appointee may be guilty in relation to the Company. This indemnity does not limit any indemnity provided to the Appointees under the D&O Insurance but the Appointees are not obliged to seek indemnity, or to exhaust their remedies to obtain indemnity, under the D&O Insurance before relying on or making a claim under this indemnity.

3.1.2 Self-insured Retention for D&O Insurance

If and to the extent that the D&O Insurance includes a self-insured retention in the circumstances set out in this Clause 3.1.2, the Indemnifier must satisfy the self-insured retention and cover all costs, charges and expenses incurred by the Appointees (or either of them) in defending any proceedings, whether civil or criminal, brought against them (or either of them) or in which they are involved and which give, or will give, rise to a claim for indemnity under Clause 3.1.1. The Appointees must repay all expenses paid under the self-insured retention to the Indemnifier if they are found by a final judgment of a court exercising proper jurisdiction to have committed conduct involving a lack of good faith or known to them to be wrongful.

3.1.3 Additional assurance

To the extent permitted by law, and without limiting the powers or obligations of the Indemnifier under this Deed or the terms of the D&O Insurance, the board of directors of the Company may authorise the Company to, and the Company may, enter into any:

- (a) documentary indemnity in favour of; or
- (b) insurance policy for the benefit of,
the Appointees.

3.1.4 Indemnity not affected

Neither this Deed nor the obligations of the Indemnifier under this Deed will be affected by anything which, but for this provision, might operate to release, prejudicially affect or discharge the Indemnifier or in any way relieve the Indemnifier from any obligation, including:

- (a) the grant to any person of any time, waiver or other indulgence, or the discharge or release of any person;
- (b) any transaction or arrangement that may take place between the Appointees (or either of them) and any person;
- (c) any amendment or alteration to the Company's Constitution;

- (d) the winding up of the Indemnifier or the Company;
- (e) the Appointees (or either of them) becoming a party to or bound by any compromise, assignment of property or composition of debts;
- (f) the Appointees (or either of them) ceasing to hold the position of director in the Company; or
- (g) any legal limitation, disability, incapacity or other circumstance relating to any person, whether with or without the consent or knowledge of the Indemnifier or the Company. None of the above paragraphs limits the generality of any other.

3.1.5 Unlimited and continuing indemnity

The indemnity provided under this Deed:

- (a) is an unlimited and continuing indemnity;
- (b) indemnifies the Appointees despite them (or either of them) ceasing to hold any position in the Company; and
- (c) is not to be taken to be wholly or partially discharged by the payment at any time of any amount payable under this Deed in respect of the indemnity or by any settlement of account or other matter or thing.

3.2 Irrevocable covenant

The Indemnifier's covenant in Clause 3.1.1 is irrevocable and will survive the Appointees' resignation or removal as a director (or, in the case of Frees, public officer) of the Company.

4. INDEMNIFIER'S UNDERTAKINGS

Without limiting anything in Clause 3, the Indemnifier irrevocably undertakes to the Appointees as follows but for so long only as the Appointees (or either of them) remain a director (or, in the case of Frees, public officer) of the Company:

4.1 Company's solvency

The Indemnifier will ensure at all times that the Company is able to pay all of its debts as and when they become due and payable. This obligation includes a duty to advance funds to the Company or to pay any creditor or creditors of the Company direct, if requested to do so by the Appointees (or either of them), so as to satisfy this undertaking.

4.2 Financial statements

The Indemnifier will ensure that, if so requested by the Appointees (or either of them) at any time, the Appointees:

- (a) receive a copy of the Company's annual audited statutory accounts (if applicable);
- (b) receive a copy of the Indemnifier's audited, consolidated annual financial report;
- (c) receive a copy of any report or review prepared annually or from time to time by or for the Indemnifier or for the Indemnifier's auditors concerning the Company; and
- (d) have access to the Australian office or agent of the Indemnifier's auditors (at the Company's cost) to ask questions about any report or review of the Company.

4.3 Demands and claims

The Indemnifier will ensure that the Appointees are promptly informed if the Company:

- (a) receives a legal proceeding commenced against the Company, either for an amount of \$100,000 or more or in circumstances that oblige the Indemnifier or the Company to give notice to an insurer of a notifiable claim;

- (b) receives a demand or penalty notice of any kind from, or is notified of an investigation or audit by, a government or statutory body or authority, including the Australian Securities & Investments Commission or the Australian Taxation Office; or
- (c) proposes to enter into a contract or arrangement of any kind that is outside the normal or ordinary course of its business or operations.

4.4 Governance

The Indemnifier will procure that the Appointees, at their request, are promptly provided with information about governance arrangements in respect of or concerning the Company, including banking authorities determined and/or approved from time to time in respect of the Company's business.

4.5 Company party to any guarantee, indemnity, etc

The Indemnifier will notify the Appointees in writing promptly if the Company is or intends to become a party to any guarantee, indemnity or other form of surety. The notification must include the amount for which the Company is contingently liable. In such circumstances, the Indemnifier must provide the Appointees with such additional information or materials as the Appointees may reasonably request.

5. ACCESS TO FILES AND PAPERS

5.1 Access to Relevant Papers

To ensure that the Appointees have ongoing access to records concerning the discharge of their fiduciary duties during the period of their appointment as a director (or, in the case of Frees, public officer) of the Company (including, without limitation, records that the Appointees may require for any legal proceedings), the Company will grant the Appointees or their authorised representatives access, without fee or charge, for a period of seven (7) years after they (or the last of them) cease to hold any position in or with the Company, to all documents, memoranda and materials (**Relevant Papers**) concerning:

- (a) the Company and given or made available (or that should have been given or made available) to its directors during the period of the Appointees' appointment as a director (or, in the case of Frees, public officer); and
- (b) the Appointees' performance of their duties as a director (or, in the case of Frees, public officer) of the Company, including all written communications to or from the Appointees (or either of them) in their capacity as a director (or, in the case of Frees, public officer).

5.2 Copies of Relevant Papers

The Company must promptly provide the Appointees with a copy of any Relevant Papers requested by the Appointees or their authorised representatives, without fee or charge. The parties acknowledge and declare that:

- (a) this Clause does not limit any rights the Appointees may have from time to time under the Act to access any Relevant Papers; and
- (b) any such access does not constitute an express or implied waiver by the Company of any claim to legal professional privilege against persons other than the Appointees.

6. GST**6.1 GST to be added to Amounts Payable**

If GST is payable on a Taxable Supply made in connection with this Deed, the party providing the Consideration for that Taxable Supply must also pay the amount of GST payable in respect of that Taxable Supply as additional Consideration.

6.2 Tax Invoice and Adjustment Note

No payment of any amount pursuant to Clause 6.1, and no payment of the GST amount where the Consideration for a Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the recipient.

6.3 Definitions

For the purposes of this Clause, *GST*, *Tax Invoice*, *Taxable Supply*, *Consideration* and *Adjustment Note* have the meanings given by the *A New Tax System (Goods and Services Tax) Act 1999* (C'ith).

7. GENERAL PROVISIONS**7.1 Amendment**

This Deed may be amended only by another deed executed by all parties.

7.2 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

7.3 Enurement

The provisions of this Deed will enure for the benefit of and be binding on the parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.

7.4 Further assurances

Each party must take all steps, execute all documents and do everything reasonably required by the other party to give effect to anything contemplated by this Deed.

7.5 Governing law

This Deed is governed by the laws of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction in that State.

7.6 Stamp duty

The Indemnifier must pay any stamp duty payable on or in connection with this Deed.

SCHEDULE 1

Rules for Interpretation of Deed

The following rules apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) The singular includes the plural and conversely, a gender includes all genders and, if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (d) A reference to a Clause or Schedule is a reference to a Clause of, or a schedule to, this Deed.
- (e) A reference to **\$** or **dollars** is to Australian currency.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to a party to this Deed or another agreement or document includes the party's successors and permitted substitutes or assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (j) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (k) The meaning of general words is not limited by specific examples introduced by **including**, **in particular** or **for example**, or similar expressions.

SCHEDULE 2

<p>1. Commencement Date (Clause 4.D.2.1):</p>	<p>The date of incorporation of the Company/[Insert relevant date]</p>
<p>2. Fee (Clause 4.D.2.3(a)):</p>	<p>\$### (plus GST) per annum, payable [annually][quarterly] in advance with effect from the Commencement Date.</p>
<p>3. End of fixed fee date (Clause 4.D.2.3(a)):</p>	<p>#####</p>

SCHEDULE 3*Role of Public Officer*

1. A company must appoint a public officer within three months after it commences to carry on business or derive income in Australia (s252(1)(a) Income Tax Assessment Act (**ITAA**)). The company must keep the office constantly filled (s252(1)(b)). Only a natural person of at least 18 years of age who is ordinarily resident in Australia and capable of understanding the nature of the obligations attaching to the position is capable of being a public officer (s252(3)).
2. Before an appointment is taken to have been duly made, notice of the appointment in writing, specifying the name and address for service of the public officer, must be given to the Commissioner (s252(1)(c)). The notice of appointment must be given to the Commissioner at the place where, under the Regulations, the return of the company is to be given (regulation 63).
3. Service of documents on the public officer or at his address for service is sufficient service on the company for all the purposes of the ITAA and regulations (s252(1)(e)).
4. The public officer is answerable for the doing of everything required to be done by the company under the ITAA and regulations, and in case of default is liable to the same penalties (s252(1)(f)). Everything done by the public officer which he is required to do in his representative capacity is taken to have been done by the company (s252(1)(g)). Any notice given to or requisition made on the public officer is taken to have been given to or made on the company (s252(1)(h)). Proceedings taken against a public officer are regarded to have been taken against the company and the company is jointly liable with the public officer for any penalties imposed on the public officer (s252(1)(i)).
5. The return of a company must contain a declaration by the public officer that the particulars shown in the return and the accompanying statements are true and correct in every particular and disclose without reservation or exception a full and complete statement of income derived (regulation 11(1)(g)).

EXECUTED as a Deed.

EXECUTED by [##@##] by being signed)
by its authorised officer in the presence of:)

Signature

Witness

Title

Full Name (Please print)

Full Name (Please print)

)

EXECUTED as a deed in accordance with section 127 of the *Corporations Act 2001* by **[##] PTY LTD:**

Director Signature

Director/Secretary Signature

Full Name (Please print)

Full Name (Please print)

SIGNED, SEALED and DELIVERED)
by **ALAN PETERSON FREES** in the)
presence of:)

.....
Signature

.....
Witness

.....
Full Name (Please print)

SIGNED, SEALED and DELIVERED)
by **IAN FREDERICK PYMAN** in the)
presence of:)

.....
Signature

.....
Witness

.....
Full Name (Please print)