



**Amended Trust Deed for Queensland
Community Foundation
(a Public Ancillary Fund)**

Acknowledgement:

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A DEED OF AMENDMENT OF TRUST

By THE PUBLIC TRUSTEE OF QUEENSLAND, a corporation sole established under section 9 of the *Public Curator Act 1915 (Qld)* and continued under section 8 of the *Public Trustee Act 1978 (Qld)*.

BACKGROUND

- A. The Public Trustee constituted a trust to be known as Queensland Community Foundation by a Trust Deed Poll dated 4 February 1997 as a perpetual charitable trust to which the public might contribute tax deductible donations.
- B. The terms of the Trust were amended by Deed Polls executed on the following dates:
 - 19 March 2002;
 - 26 April 2002; and
 - 22 July 2004.
- C. The Public Trustee remains the Trustee of the Trust and the Trust continues as a Public Ancillary Fund endorsed as a DGR. The regulation of Public Ancillary Funds mandates annual distributions and the Public Trustee has made, and intends to continue, to make annual distributions of income.
- D. The Public Trustee has power to amend the Trust Deed subject to certain conditions being satisfied.
- E. The Public Trustee has formed the opinion that changes in Commonwealth taxation law and practice and in particular variations to the promulgation of legal requirements for managing Public Ancillary Funds warrant amendment to the terms of the Trust.
- F. The Public Trustee has also formed the opinion that the consolidation of all amendments made to the Trust into one Deed, the variation of certain powers, the simplification of the terms of the Trust and the amendment of the Trust Deed (having regard to the model trust deed promulgated by the Australian Taxation Office for Public Ancillary Funds), would be beneficial.
- G. The conditions for amendment of the Trust have been satisfied.
- H. Certain words and phrases have the meanings set out in clause 14.2.

PROVISIONS

1 The Trust

1.1 Name of Trust

The Trust is named the Queensland Community Foundation. At the time of this Deed the Trust is also recognized by having the Australian Business Number 69 649 199 658.

1.2 Trust has charitable purpose

- (a) QCF is a Charitable Trust and is a purpose trust pursuant to which the Trustee may provide for all and any purposes that are charitable including any Specific Charitable Purposes it may accept and may not provide for any purposes that are not charitable as the meanings of charity and charitable purpose evolve from time to time.
- (b) QCF is intended to continue in perpetuity.
- (c) QCF is a public fund and the public must be invited to donate to the Trust.

1.3 A deductible gift recipient

QCF is a Public Ancillary Fund and must comply in all regards with the laws and regulations governing deductible gift recipients that are Public Ancillary Funds.

2 Interpretation and Commencement

2.1 Definitions and Interpretation

- (a) The dictionary in clause 14.2 defines particular words used in this Deed.
- (b) This Deed must be interpreted in accordance with the rules of interpretation set out in clause 14.3.

2.2 Application of Operative Provisions

- (a) Unless the context requires otherwise, and subject to sub-clause (c) hereof, the terms of this Deed will apply to the QCF on and from the Date of Commencement.
- (b) From the Date of Commencement this Deed supersedes all preceding constituent documents of the Trust including those listed in Recital A and B of the Background.
- (c) If, after the commencement of this Amended Trust Deed any person is materially prejudiced because of acts done or omitted to be done before the commencement of this Amended Trust Deed then, to the fullest extent permitted by law, and notwithstanding anything in this Deed to the contrary the terms of the

Trust prior to the Date of Commencement shall apply to ameliorate that prejudice.

2.3 A Precondition

It is a precondition of this Deed that the Commissioner consents to these amendments as required by clause 25 of the Trust Deed Poll dated 4 February 1997 referred to in recitals A and B of the Background.

3 The Trustee

3.1 The Public Trustee

The Trustee is the Public Trustee of Queensland. At the time of this Deed the Public Trustee, when acting in the Public Trustee's own right and not as a trustee is recognized by having the Australian Business Number 12 676 939 467.

3.2 Appointment of a new trustee

The Trustee may retire at any time and appoint a new Trustee.

4 Patron

- (a) The Patron of QCF at the time of commencement of this Deed shall continue as Patron of QCF.
- (b) The Trustee may appoint one or more patrons of the Trust and may remove persons from the position of Patron from time to time.

5 QCF Boards and Committees

- (a) The Trustee must establish and appoint a Board of Governors and may establish any other Advisory Committee that the Trustee thinks fit. The Trustee may also promulgate charters for the conduct of such bodies.
- (b) The number of persons constituting the Board of Governors shall be not less than five.
- (c) The Board of Governors and any other Advisory Committee established will operate pursuant to the charter prescribed by the Trustee for it from time to time.
- (d) No member of the Board of Governors or any other Advisory Committee established shall be paid any remuneration for his or her services as a member.
- (e) In exercising discretions under this Deed for the payment or application of the Trust Fund pursuant to sub clause 7.1(a) and 7.10 the Trustee shall consider any recommendations of the Board of Governors.

6 Powers of Trustee

6.1 General powers of the Trustee

- (a) In addition to all and any powers expressly declared to be powers of the Trustee under the terms of this Deed and all and any powers given to the Trustee by common law, equity or statute, including under the *Trusts Act 1973* (Qld) and the *Charitable Funds Act* (Qld) 1958, the Trustee shall have such powers as are necessary to carry out its responsibilities under this Deed.
- (b) Without limiting the generality of the above sub-clause, 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 the Trustee is exercisable at its absolute and uncontrolled discretion. This discretion includes the discretion to determine:
 - (1) whether any receipt is to be categorised as capital or Income;
 - (2) whether any expense, outgoing or other payment ought to be paid out of capital or Income; and,
 - (3) all questions and matters of doubt arising in the performance of the terms of this Deed.
- (c) 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.

6.2 Specific power to accumulate income

In any Accounting Period, the Trustee may accumulate and retain as much of the Income of the Trust Fund as is required to achieve the charitable purpose of the Trust during that Accounting Period, as an addition to the Trust Fund. This power is limited to the extent of any maximum accumulation allowed under any legal requirements promulgated from time to time for managing Public Ancillary Funds.

6.3 Specific power to apply capital

The Trustee may, in any Accounting Period apply so much of the capital as is necessary to carry out the obligations of the Trustee imposed by statute, common law or in equity notwithstanding sub-clause 1.2(b).

6.4 Specific power to delegate

Subject to the requirements set out in clause 1 particularly clauses 1.2 and 1.3, 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.

6.5 Prohibition on use of power where transaction is uncommercial

- (a) The Trustee may not enter into any transaction that is uncommercial when entered into, unless the transaction is:
 - (1) with a deductible gift recipient covered by item 1 in the table in section 30-15 of the *ITAA 97*; and
 - (2) is in the 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 sub clause 6.5 (a), a transaction that is uncommercial is the provision of a financial or other benefit on terms which:
 - (1) would not be reasonable in the circumstances if the benefit were provided on an arm's length basis; or
 - (2) are more favourable to the recipient than the terms referred to in sub clause 6.5 (b)(1);and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

6.6 Prohibition on use of power to achieve certain benefits

Apart from a payment or application authorised under clause 7.1 and subclause 7.11(c), or a payment or application otherwise allowed by the Commissioner, no part of the Trust Fund may be paid or applied, directly or indirectly, to or for any of the following entities:

- (a) the Trustee;
- (b) a member, director, employee, agent or Officer of the Trustee;
- (c) a Donor who or which is not an Eligible Entity;
- (d) a founder; or,
- (e) an Associate of any of these entities who or which is not an Eligible Entity.

7 Administration of the Trust

7.1 Sole and ancillary purposes of the Trust

- (a) The Trustee must hold the Trust Fund in each Accounting Period on trust and pay or apply all or any part of the Trust Fund solely for the purposes for which the Trust was established and as otherwise provided for by this Deed.
- (b) In discharging the Trustee's obligations pursuant to clause 7.1 the Trustee must distribute only to Eligible Entities.
- (c) The operation of clause 7.1 does not preclude the Trustee from applying any part of the Trust Fund for an ancillary purpose unless that application amounts to a breach of the terms of the Trust, or would prejudice the Trust's status as a

Charitable Trust or DGR.

- (d) For the purpose of this clause, 'ancillary purpose' includes an incidental purpose and means a purpose that is necessary or desirable:
- (1) to achieve the charitable purpose of the Trust set out in clause 1.2; or
 - (2) so that the Trust complies with any legal requirements promulgated from time to time for managing Public Ancillary Funds.

7.2 Account

Whilst ever the Public Trustee is the Trustee then the monies vested in or coming into the hands of the Public Trustee, howsoever arising, and whether directed to be invested or not, shall be received into the Common Fund of the Public Trustee notwithstanding that the Public Trustee holds funds on any other account therein, and shall from there be invested by the Public Trustee.

7.3 Returns

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

7.4 Trustee to keep accounts

The Trustee shall 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.

7.5 Financial Statements

As soon as practicable after the end of each financial year the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that financial year in accordance with the standards prescribed from time to time by the Australian Accounting Standards Board.

7.6 Audit

Each financial year, the Trustee must arrange for an audit of the financial statements by a person registered as an auditor under Part 9.2 of the *Corporations Act 2001*. The audit must be finalised by the date on which the Trustee is required to give a return to the Commissioner for the relevant year.

7.7 Further contributions to be part of the Trust Fund

The Trustee may from time to time accept further sums of money on the terms of the Trust as an addition to the Trust Fund.

7.8 Receipts

The Trustee must issue receipts as required and in accordance with the law.

7.9 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 by the recipient.

7.10 Sub-funds

- (a) The Trustee may create, maintain, and close management accounts called Sub-funds. Sub-funds will be given a unique identifiable name. The names attributed to Sub-funds are for convenience only, and are not to be used to interpret the purpose of the Sub-fund or create any obligations on the Trustee.
- (b) Sub-funds may be used to record receipts from Donors, money received because of Gifts and Deductible Contributions and payments or applications from the Sub-fund.
- (c) Donors may make requests or indicate preferences, as to the name of the Sub-funds, and as to the payments or applications from the Sub-funds.
- (d) The Trustee is under no obligation to comply, and the Trustee is at liberty to not agree, or give any assurance that it will comply, with any such request or preference.
- (e) For the purpose of clarity it is declared that any receipt recorded to a Sub-fund forms part of the Trust Fund and does not give rise to a separate trust.
- (f) The Trustee may at any time cease to maintain any one or more Sub-funds and account for the money and investments in the general accounts for the Trust Fund.
- (g) The Trustee may provide reports of the investments and application of the Sub-funds to the Donors.
- (h) The Trustee may formulate rules and policies relating to the maintenance of the Sub-funds provided they are not contrary to this Trust Deed or any requirements of the Commissioner.

7.11 Trustee's Additional Obligations and Powers

- (a) Where the Trustee receives any property as Trustee of QCF subject to any additional enforceable obligations (whether before or after the Date of Commencement) the additional enforceable obligations shall be recorded by the Trustee as a part of the obligations of the Trustee in management of the relevant Sub-fund pursuant to clause 7.10 of this Deed.
- (b) For the purpose of clarity it is declared that all and any enforceable obligations resulting from the acceptance by the Trustee of any property referred to in sub clause 7.11(a) of this Deed (whether those obligations are owed to a

Donor or any other person in contract, equity, or pursuant to statute or on some other basis) will be owed by the Trustee as part of the obligations imposed upon the Trustee as Trustee of the QCF.

- (c) For the purpose of clarity it is also declared that where the Trustee receives a contribution to the Trust from a Donor and the Donor expresses a request or preference or imposes a condition as to the payment or application of Income earned from the Donor's contribution, the Trustee shall, in any case where, in the Trustee's opinion, giving effect to the request, preference or condition, is impossible, impractical or inexpedient, pay or apply the Income for such similar purpose that, in the Trustee's opinion, best gives effect to the said request, preference or condition.

8 General Management Obligations

The Trustee must manage the Trust subject to:

- (a) the relevant Queensland law governing the Public Trustee and Trustees generally including the *Trusts Act 1973* (Qld);
- (b) the obligations imposed upon trustees of Charitable Trusts at law and in equity;
- (c) *ITAA 97*;
- (d) any legal requirements promulgated from time to time for managing Public Ancillary Funds as DGRs, and
- (e) the terms of this Trust.

9 Remuneration

- (a) If the Public Trustee is the Trustee, the Public Trustee shall be entitled to receive out the Trust Fund fees by way of commission or otherwise not greater than the fees which may from time to time be chargeable by the Public Trustee pursuant to the *Public Trustee Act 1978* (Qld).
- (b) If the Public Trustee is not the Trustee then, unless a law or regulation prohibits charging on the same basis as the Public Trustee, the Trustee may charge and be paid out of the Income of the Trust Fund remuneration as if the Trustee was the Public Trustee.

10 Indemnity

10.1 Entitlement to 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:
 - (1) entering into this Deed or any Deed amending this Deed;
 - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
 - (3) 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 sub-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 any 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.

11 Amending the Trust Deed

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 entities that are entitled to benefit under this Deed that were Designated Charities prior to the Date of Commencement and thereafter will be Eligible Entities; and
- (b) no amendment is made unless the Commissioner consents to the revocation, addition or variation; and
- (c) no amendment is made to this clause 11 so as to permit this Deed to be amended in a manner prohibited by subclause 11(b) unless the Commissioner consents to the revocation, addition or variation; and
- (d) the Trustee notifies the Commissioner of the amendment within 21 days thereof.

12 Portability

Notwithstanding clause 7.1 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 if the following conditions are satisfied:

- (a) 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;
- (b) the distribution will not breach any other provision of this Deed;
- (c) payment or application is permitted by any legal requirements promulgated from time to time for managing Public Ancillary Funds.; and
- (d) the agreement of the Commissioner has been obtained in writing.

13 Winding up

- (a) Upon whichever is the earliest of the winding up of the Trust, it ceasing to be a Public Ancillary Fund, 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 to or for Eligible Entities, as the Trustee decides.
- (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 the ITAA 97 are satisfied, a payment or application under this clause must be made in accordance with those conditions.

14 Miscellaneous

14.1 Not-for-profit entity

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

14.2 Definitions

In these terms of trust unless the context otherwise requires the following expressions shall have the following meanings:

'Accounting Period' means the period commencing on the 1st of July and expiring on the 30th of June the following year.

'Approved Form' means the form, if any, required by the Commissioner for reporting amendments to the Trust Deed.

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

'Board of Governors' means the Board of Governors established pursuant to clause 5.

'Charitable Trust' for the purposes of clause 1.2 means a trust that satisfies the requirement for being charitable at common law and in equity, as expanded or redefined by statute (including under the *Trusts Act 1973* (Qld) and *Charities Act 2013* (Cth)) and takes the broadest meaning for the purposes of the law in the relevant jurisdiction be it Commonwealth, Queensland or otherwise.

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

'Date of Commencement' means 16 June 2015.

'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* in relation to a fundraising event held for the purpose of the Trust.

'Designated Charity' means an entity that, prior to the commencement of this Deed, satisfied the definition of 'Eligible Entity' for the purposes of this Deed and "Designated Charity" for the purposes of the Trust Deed Poll dated 4 February 1997.

'DGR' or 'Deductible gift recipient' means an entity endorsed as a deductible gift recipient under Subdivision 30-BA of the *ITAA 97*.

'Donor' means any person who makes a contribution to the Trust Fund, but who is not the Settlor.

'Eligible Entity' means a fund, authority or institution:

- (a) which is charitable at law;
- (b) that is an exempt entity as defined in section 995-1(1) of *ITAA 97*; and
- (c) 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.

'Gift' means a gift as described in item 2 of the table in section 30-15 of the *ITAA 97* to the Trust or a contribution of money that satisfies the requirements for deductibility set out in item 7 or item 8 of section 30-15 of *ITAA 97*.

'Invest' means employ funds in a manner permitted by these terms of trust and 'investment' shall have a corresponding meaning.

'Income' includes all 'revenue' as defined by the Australian Accounting Standards Board as prescribed from time to time. It includes all dividends interest, rents and other income of the Trust Fund.

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

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

'Named Charity Sub-Fund' means any management account of the Trust Fund used to record payments and receipts intended to benefit the charitable purposes of a particular Eligible Entity.

'Public Trustee' means The Public Trustee Of Queensland, a corporation sole established under section 9 of the *Public Curator Act* 1915 (Qld) and continued under section 8 of the *Public Trustee Act* 1978 (Qld).

'Public Ancillary Fund' means a fund that satisfies the requirements of paragraph (a) of item 2 in the table in section 30-15 of *ITAA* 97.

'Purpose Sub-Funds' means any management account of the Trust Fund used to record payments and receipts intended to be applied to any particular charitable purpose.

'QCF' means the Queensland Community Foundation, and is another name for the Trust.

'Regional Sub-Fund' means any management account of the Trust Fund used to record payments and receipts intended to benefit Eligible Entities in a particular geographical region.

'Specific Charitable Purpose', when used in this Deed, includes without limitation, where a Donor has made a request or preference to benefit a charity by name, the charitable purposes of that charity

'Sub-funds' are management accounts created by the Trustee pursuant to clause 7.10 of this Deed to allow the Trustee to efficiently administer the Trust Fund and to record the preferences of Donors and without limiting the generality of the Trustee's powers under clause 7.10 the Trustee may maintain sub-funds in respect of Gifts and Deductible Contributions in such number and of such type and may categorise such Sub-funds into types that include the following:

- (a) Named Charity Sub-Funds,
- (b) Regional Sub-Funds,
- (c) Purpose Sub-Funds, and
- (d) Unique Sub-Funds.

'TAA 53' means the *Taxation Administration Act* 1953 (Cth).

'the Trust' means the Trust referred to in recitals A and B of the Background as amended by this Deed.

'the Trustee' means the Public Trustee of Queensland at the time of commencement of this Deed and all and any other Trustee for the time being of the Trust whether original, additional or substituted.

'the Trust Fund' means:

- (a) the settled sum;
- (b) all moneys and other property of any description whatsoever paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
- (c) the accumulation of Income as provided for in clause 6.2;
- (d) all accretions to the Trust Fund; and
- (e) the investments and property from time to time representing the moneys property accumulations accretions and additions or any part or parts thereof respectively.

'Unique Sub-Funds' means any management account of the Trust Fund used to

record payments and receipts intended to benefit any number of charitable purposes that might include, but are not limited to: the general charitable purposes of the QCF; Specific Charitable Purposes; or, to benefit particular geographical regions.

14.3 Interpretation

In these terms of trust:

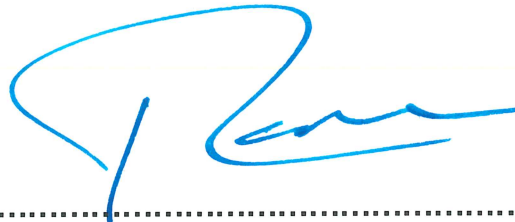
- (a) The singular includes the plural and vice versa, each gender includes the other genders and references to persons include corporations and other legal persons;
- (b) References to a Donor includes a group of Donors;
- (c) References to any statutory instrument shall include any statutory amendment or re-enactment thereof or statutory provisions substituted therefore;
- (d) Headings are inserted for ease of reference and do not form part of these terms of trust and shall not affect the construction of these terms of trust;
- (e) If by reason of the inclusion of any word, description or provision in these terms of trust, all or any part of these terms of trust would be invalid, then these terms of trust are to be construed as if the word, description or provision were not included in these terms of trust.

14.4 Applicable Law

These terms of trust are governed by the laws of Queensland.

EXECUTION

Executed as a Deed by The
Public Trustee of Queensland,
Peter Damien Carne on the *21st*
day of *December* 2016



.....
Peter Damien Carne

in the presence of:

Mr Williams
.....
Witness *Solicitor.*