
Deed of variation of Model Trust Deed for Special Disability Trusts (Variation of the Duration of the Trust)

THIS DEED OF VARIATION made the _____ day of _____ 20__.

PARTIES

1. [*Name of trustee*] of [*address*] (the 'Trustee').
2. [*Name of Appointor*] of [*address*] (the 'Appointor').

RECITALS

- A. By deed of settlement made [*date of deed*] between [*name of settlor*] as settlor and [*name of trustee*] as the trustee (the 'Trust Deed') a Special Disability Trust was established known as the [*name of Special Disability Trust*] Trust. (For testamentary trusts created by a will substitute the creation of the trust with the estate of the testator and date of death).
- B. The Trustee was appointed trustee of the [*name of trust*] by the Trust Deed and has continuously held such office up to and including the date of this deed. (For changes in trustees, document the resignation/death/removal and appointment over time and state the trustees currently holding office).
- C. Clause 9.2 of the Trust Deed permits the Trust to be amended and states:
 - a. Save as provided in this sub-clause the terms of these terms of trust shall not be capable of being revoked or added to or varied;
 - b. If there is for the time being an Appointor, the Trustee with the consent in writing of the Appointor, may at any time and from time to time by Deed amend the provisions whether of these terms of trust or of any Deed executed pursuant to this sub-clause but so that such amendment:
 - i. Shall be made only if it would not cause the trust to become non-compliant with the requirements of Part 3.18A of the *Social Security Act* or Division 11B of the *Veterans' Entitlements Act* in relation to special disability trusts; and
 - ii. Does not infringe any law against perpetuities; and
 - iii. Shall be made only if it is not made in favour of or for the benefit of or so as to result in any benefit to the settlor; and
 - iv. Does not affect the beneficial entitlement to any amount allocated for or otherwise vested in the Principal Beneficiary prior to the date of the amendment.

- c. The operation of this sub-clause shall not prevent:
 - i. The Trustee accepting a nomination in accordance with subsection 4.2; and
 - ii. The Trustee exercising its powers of nomination in accordance with sub-clause 6.1.
- D. The Appointor has from the time of execution of the Trust Deed up to and including the date of this deed continuously held office as Appointor and has not done anything so as to prejudice or preclude the Appointor from exercising the Appointor's powers and authority contained in the Trust Deed. (For changes in Appointor, document the resignation/death/removal and new appointment over time and state the Appointor currently holding office).
- E. The parties desire to amend the terms of the Trust Deed in the manner set out in this deed.

THE PARTIES AGREE

Variation of Trust Deed

1. The Trustee declares that the Trust Deed is varied as follows:
 - a. Clause 1.5 of the Trust Deed is repealed and the following clause is substituted in its place:

1.5 Duration of Trust

The trust will end on the earlier of:

 - (a) the date that is 12 months after the death of the Principal Beneficiary;
 - (b) if assets are fully expended on the Principal Beneficiary, the date of such full expenditure; or
 - (c) the date that is the day before the eightieth anniversary of the day this trust was made ('the end date').

[Commentary: The 12 month period in clause 1.5(a) has been included to allow time for the orderly winding up of the Principal Beneficiary's affairs following their death. The 12 month period in clause 1.5(a) can be extended or shortened if this is preferred. Please ensure any extension does not result in the trust end date being extended beyond the date allowed under the applicable State or Territory legislation. As of 23 October 2020, all States and Territories (other than South Australia) have legislation that sets an 80 year maximum for the duration of most trusts. The period in clause 1.5(c) can be shortened or extended, to comply with applicable State or Territory legislation. It is recommended that independent legal advice be obtained in relation to any proposed variation of the periods in clauses 1.5(a) and 1.5(c). For example: State law sets out the number of years that a trust may exist.]

Consent of the Appointor

2. The Appointor consents to this variation of the Trust Deed.

Effective date of deed

- 3. The Trust Deed is varied and this deed becomes effective on the last day this deed is executed by all parties being the date of this deed.

Rest of Trust Deed unaltered

- 4. In all other respects the terms of the Trust Deed remain unaltered.

EXECUTED AS A DEED

EXECUTED by

[*name of trustee*])

[*Signature of Trustee*]

In the presence of)

.....

[*Signature of Witness*]

[*name of trustee*]

[*Signature of Trustee*]

In the presence of)

.....

[*Signature of Witness*]

SIGNED SEALED AND DELIVERED)

By [*name of Appointor*])

[*Signature of Appointor*]

In the presence of:)

.....

[*Signature of Witness*]