



Deed

Deed of Gift

[Insert name of Company]

Disclaimer

This document is provided to assist people who want to be part of the Pledge 1% movement. The document provides a starting point for people to implement their commitment to Pledge 1%. However, it has not been written to take into account or satisfy any individual's personal circumstances or objectives.

Therefore, this document does not represent professional advice given by Pledge 1% or any person acting for Pledge 1% to you or anyone else. To the maximum extent permitted by law, Pledge 1% and all persons acting for Pledge 1% in preparing this document disclaim all liability to any person, arising directly or indirectly from any person taking or not taking action based upon the information in this document.

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Deed Poll of Gift

Date ► (the **Effective Date**)

Made by:

Company **[insert name of Company] Pty Ltd**
ACN [insert ACN] of [insert address]

Recitals

- 1 The Company is a member of the Pledge 1% movement, a movement that seeks to inspire and support business founders to use at least 1% of the resources of their business for the good of the community (**Pledge 1%**).
- 2 As part of its membership of Pledge 1% the Company agrees that on or prior to the occurrence of a Liquidity Event or the Termination Date, the Company will donate the cash equivalent of 1% of its Shares on the terms of this deed.

This deed poll witnesses as follows:

In this deed poll capitalised expressions have the meanings set out in Schedule 1. This deed poll will be interpreted in accordance with Schedule 1. This deed poll includes all schedules.

1 The Gift

1.1 The Gift of Pledge Payments

The Company agrees that subject to the terms of this deed poll the Company will donate:

- (a) to one or more Australian charitable organisations of its choosing (the **Charitable Recipients**); and
 - (b) pursuant to clause 3, clause 4 and clause 5 (as applicable),
 - (c) in one or more cash payments (the **Pledge 1% Payments**),
- the Pledge 1% Gift on the terms of this deed.

2 Charitable Recipient

2.1 Default Charitable Recipient

- (a) On and from the Effective Date the Company nominates the following Australian charitable organisation to be the **Default Charitable Recipient** under this deed:

Default Charitable Recipient	ABN
[insert]	[insert]

- (b) By executing this deed poll the Company confirms that it has received evidence from the Default Charitable Recipient that it is a deductible gift recipient for taxation purposes.
- (c) The Company may, at any time and from time to time, nominate a new Australian charitable organisation to be the Default Charitable Recipient (such organisation to be the **New Default Charitable Recipient**) by executing a Default Charitable Recipient Nomination Deed Poll in the form set out in Schedule 2.

2.2 Notification and information rights for Default Charitable Recipient

- (a) Within 10 Business Days following the Effective Date the Company must notify the organisation specified in clause 2.1(a) by providing notice in the form of Schedule 3 that it:
 - (1) is the Default Charitable Recipient under this deed;
 - (2) may have rights under this deed on the occurrence of a Liquidity Event and on termination under clause 5;
 - (3) has the right to receive the information set out in clause 2.2(c) below.
- (b) Within 10 Business Days following the date that the Company executes a Default Charitable Recipient Nomination Deed Poll, the Company must notify the:
 - (1) organisation that was the Default Charitable Recipient immediately before the Company executed the Default Charitable Recipient

- Nomination Deed Poll that it is no longer the Default Charitable Recipient under this deed poll; and
- (2) New Default Charitable Recipient that it is the Default Charitable Recipient under this deed poll in the form set out in Schedule 3.
- (c) The Company acknowledges and agrees that the Default Charitable Recipient has the right on request to:
- (1) receive from the Company such information available to the Company necessary to enable the Default Charitable Recipient to determine whether or not the Company has fulfilled its obligations under clause 1.1 of this Deed; and
 - (2) receive such other information from the Company as the Default Charitable recipient may reasonably require and that is otherwise in the public domain.

2.3 Donations to Charitable Recipients

- (a) All donations of Pledge 1% Payments pursuant to clause 3, clause 4 and clause 5 will be made to Charitable Recipients as follows:
- (1) to the Default Charitable Recipient as determined pursuant to clause **Error! Reference source not found.** and otherwise if determined by the Company in its absolute discretion; and
 - (2) to one or more Charitable Recipients nominated by, and in any proportions nominated, by the Company in its absolute discretion.
- (b) The Company must ensure that any Australian charitable organisation receiving Pledge Payments pursuant to clause 2.3(a)(2) is approved by the Australian Taxation Office as a 'deductible gift recipient'.

2.4 Conditions of share issue

If any Pledge 1% Payment is satisfied by issue of Shares in accordance with clause 6, it is a condition of any such payment to any Charitable Recipient that if required under the terms of any shareholder deed, shareholders agreement or similar contract (**Shareholders Agreement**) or otherwise if requested by the Company, that the Charitable Recipient signs a deed of accession in the form required under the Shareholders Agreement or (otherwise approved by the Board) under which it agrees to be bound by the Shareholders Agreement as a Shareholder.

3 Partial Gifts prior to a Liquidity Event

3.1 Partial Gifts

A **Partial Gift** will occur in the event the Company makes a Pledge 1% Payment to a Charitable Recipient pursuant to this deed poll prior to a Liquidity Event.

4 Donation on the occurrence of a Liquidity Event

4.1 Liquidity Event

In this deed a **Liquidity Event** means:

- (a) **(Share Sale)** the sale of all of the shares in the company in accordance with the terms of the Shareholders Deed;
- (b) **(Asset Sale)** the sale, transfer, exclusive license or other disposition in a single transaction or a series of related transactions (but not including a transfer or disposition by pledge or mortgage to a bona fide lender) of all or substantially all of the assets or intellectual property of the company (other than to a wholly-owned Subsidiary of the company);
- (c) **(IPO)** an initial public offering of shares in the Company or a Company Group Member (or any company which is proposed by the board of directors of the Company to become the ultimate holding company of the Company Group) on the Australian Securities Exchange or any other recognised securities exchange;
- (d) **(Winding up)** the liquidation, dissolution or winding up of the Company; or
- (e) **(Return of capital)** any other return of capital by the company to holders of Preference Shares and Ordinary Shares generally (including buy backs but excluding dividends).

4.2 Donation

- (a) On a Liquidity Event, the Company must pay to one or more Charitable Recipients (which may or may not include the Default Charitable Recipient), in proportions as the Company sees fit, a cash payment equal to the Outstanding Pledge 1% Gift at that time.
- (b) For the avoidance of doubt, the Company must pay the Outstanding Pledge 1% Gift to one or more Charitable Organisations and if the Company does not nominate one or more Charitable Organisations and the proportions in which they are to receive the Outstanding Pledge 1% Gift under clause 4.2(a) then the payment under clause 4.2(a) must be made to the Default Charitable Recipient.

4.3 Notice to the Default Charitable Recipient

The Company must provide written notice to the Default Charitable Recipient of any anticipated Liquidity Event as soon as reasonably practicable.

4.4 Timing for payment

The Company must pay each Pledge 1% Payment in Immediately Available Funds without counterclaim or set-off on or before the occurrence of a Liquidity Event.

5 Termination

- (a) This deed terminates:

- (1) immediately on the occurrence of a Liquidity Event, where the Outstanding Pledge 1% Gift has been paid to one or more Charitable Recipients pursuant to clause 4; and
 - (2) otherwise in accordance with clause 5(b).
- (b) If no Liquidity Event has occurred and this deed poll has not yet been terminated in accordance with clause 5(a)(1), this deed terminates on the date which is **15 years** after the Effective Date.

6 Satisfaction of the Gift by Issue of shares

6.1 Gift may be satisfied by issue of Shares

The Company may, at its option, determine to satisfy the Pledge 1% Gift, including any Partial Gift:

- (a) in one or more issues of Shares; or
- (b) in any combination of issues of Shares or payments.

6.2 Calculation of value of issued Shares

Where the Pledge 1% Gift is satisfied, either in whole or in part, by issue of Shares (the **Gifted Shares**) to the Charitable Recipient, in determining compliance with its obligations under this deed poll, the Company shall be deemed to have donated an amount calculated in accordance with the following formula:

$$D = E \times F$$

where:

- (1) **D** is the value deemed donated;
- (2) **E** is the number of Shares issued to a Charitable Recipient; and
- (3) **F** is the value of each Share, on a fully diluted basis, as at the Relevant Time.

7 Tax

For the avoidance of doubt:

- (a) This deed is not an agreement for the purposes of section 104-5 Income Tax Assessment Act 1997 (Cth) (**ITAA**), and any transaction contemplated pursuant to this deed poll is not a disposal of an asset under any agreement for the purposes of section 104-5 ITAA.
- (b) A gift made pursuant to the terms of this deed is a gift for the purposes of the ITAA and the entry by the Company into this deed poll does not preclude the Company from claiming a deduction pursuant to section 30-15 ITAA.

8 Notices

- (a) A notice or other communication under this deed poll (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or email and addressed to the party in accordance with the details for that party specified below or as otherwise specified by a party by Notice. A Notice may not be sent by facsimile.

Party	Address	Attention	Email
Company	[insert]	[insert]	[insert]
Default Charitable Recipient	The address for the Default Charity Recipient the Australian Charities and Not-for-profits Commission website	The Secretary	The email address for the Default Charity Recipient the Australian Charities and Not-for-profits Commission website.

- (b) If the sender is a company, the Notice must be signed (or in the case of email, sent) by an officer of the sender.
- (c) Notices are taken to have been given and received as follows:
- (1) If sent by hand, when delivered to the addressee.
 - (2) A Notice sent by post is regarded as given and received on the fifth Business Day following the date of postage.
 - (3) A Notice sent by email to the address specified by a party is regarded as given and received when received in legible form by the addressee.
- (d) A Notice sent by email is regarded as having been given and received unless the sender receives an automated message that the email has not been delivered or that the recipient is 'out of office'.
- (e) A Notice delivered or received other than on a Business Day or after 4.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

9 Right to sue

The Company acknowledges and agrees that the Default Charitable Recipient (as determined from time to time pursuant to clause 2.2) has rights under, and may sue upon the covenants made to it in, this deed.

10 General

10.1 Inconsistency

If there is any conflict between the provisions of this deed poll and any other document (including any shareholders deed or similar agreement between the Company and the Shareholders, if any) then the provisions of this deed poll prevail to the extent of the inconsistency.

10.2 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in the laws of New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed poll.

10.3 Invalidity and enforceability

If any provision of this deed poll is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

10.4 Waiver

Any right arising from a breach of this deed poll or of any Power arising upon default under this deed may be waived on behalf of a party with the written consent of the party granting the waiver.

10.5 Security Interest over Shares

Nothing in this deed poll creates a Security Interest over any share in the Company.

10.6 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day.

10.7 Taxes and Duties

The Company is not responsible for any Duties or Taxes which may become payable by any Charitable Recipient in connection with this deed poll, including any payments or issues made pursuant to it.

10.8 Exercise of rights

- (a) Unless expressly required by the terms of this deed poll, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this deed poll.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power,

authority, discretion or remedy, under or in connection with this deed poll. Any conditions must be complied with by the party relying on the consent, approval or waiver.

10.9 Deed poll is irrevocable

Subject to clauses 2.2 and 5, this deed poll is irrevocable.

Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Charitable Recipient	is defined in clause 1.1(a).
Company Group	the Company and each Subsidiary (if any) from time to time.
Company Group Member	any of the entities which form part of the Company Group.
Default Charitable Recipient	is defined in clause 2.1(a).
Effective Date	the date of this deed, as set out on page 5.
ITAA	is defined in clause 7(a).
Liquidity Event	is defined in clause 4.1.
New Default Charitable Recipient	is defined in clause 2.1(c).
Notice	is defined in clause 8(a).
Outstanding Pledge 1% Gift	<p>is calculated in accordance with the following formula:</p> $A = B - (C + D)$ <p>where:</p> <p>(a) A is the amount of the Outstanding Pledge 1% Gift;</p> <p>(b) B is the Pledge 1% Gift;</p> <p>(c) C is the sum of all Partial Gifts that have been paid in cash; and</p> <p>(d) D is the sum of the value of all Partial Gifts that have been satisfied by the issue of Shares, the value of such Shares to be determined at the Relevant Time.</p>

Term	Meaning
	For the avoidance of doubt, where the result of applying the above formula is nil or a negative amount, the Outstanding Pledge 1% Gift is nil.
Partial Gift	is defined in clause 3.1.
Pledge 1% Gift	is an amount equal to the value of one percent (1%) of the Company's fully diluted share capital, such value to be determined at the Relevant Time.
Pledge 1% Payment	is defined in clause 1.1(c).
Relevant Time	Is the time that is immediately prior to a Liquidity Event.
Share	an issued share of any class in the capital of the Company.
Share Capital	all the Shares on issue
Shareholder	a shareholder of the Company from time to time.
Shareholders Agreement	is defined in clause 2.4.
Subsidiary	has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).

1.2 Interpretation

In this deed:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this deed.
- (b) Specifying anything in this deed after the words 'include' or 'for example' or similar expressions does not limit what else is included.
- (c) The singular includes the plural and the plural includes the singular.
- (d) Words of any gender include all genders.
- (e) Other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning.
- (f) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (g) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this deed.

- (h) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (i) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (j) A reference to a party to a document includes that party's successors and permitted assignees.
- (k) A reference to any payment, 'dollar' or '\$', consideration or price shall be in Australia Dollars, the lawful currency of Australia.
- (l) A reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (m) No provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision.

Schedule 2

Default Charitable Recipient Nomination Deed Poll

Date ►

Company **[insert name of Company]**
[ACN **[insert ACN]**] of **[insert address]**

This deed poll witnesses as follows:

- (a) The Company has entered into a Deed of Gift dated **[insert date]** (**Gift Deed**).
- (b) This deed poll supersedes any previous deed poll, nomination or election made by the Company for the purposes of the Gift Deed.
- (c) The Company wishes to change its nominated Default Charitable Recipient (as that term is defined in the Gift Deed) pursuant to clause 2.1 of the Gift Deed to the Charitable Recipient set out below (the **New Default Charitable Recipient**):

New Default Charitable Recipient	ACNC
[insert]	[insert]

- (d) The Notice details for the New Default Charitable Recipient for the purposes of clause 8(a) of the Gift Deed are set out below:

Address	Attention	Email
[insert]	[insert]	[insert]

- (e) By executing this deed poll the Company confirms that it has received evidence from the New Default Charitable Recipient that it is a deductible gift recipient for taxation purposes.

Executed as a deed poll:

Insert appropriate execution block for the Company.

Schedule 3

Notice to Default Charitable Recipient

To: [insert date]

[insert name of Default Charitable Recipient]

[insert address]

Attn: [insert name of contact]

Email: [insert email]

("you")

From:

[insert name of Company]

[insert address]

("the Company")

Dear [insert name of Contact]

Notification of interest – Pledge 1% Deed of Gift – [insert Company name]

1 Pledge 1% movement

Pledge 1% is a corporate philanthropy movement dedicated to making the community a key stakeholder in every business by encouraging and challenging companies to pledge 1% of equity, profit, product, and employee time to their communities.

Taking the 1% pledge helps companies and individuals demonstrate their philanthropic intent and hold themselves accountable for turning a pledge into action.

The Company has taken a pledge under the Pledge 1% movement, meaning that the Company has pledged to donate an amount equal to 1% of the fully diluted equity of the Company to one or more Australian charities. The Company has made this pledge through signing a Deed of Gift in relation to the shares of the Company dated [insert date] (the **Gift Deed**).

The Gift deed is attached to this letter as **Attachment 1**.

Alternative 1: If appointing the Default Charitable Recipient.

[Under the Gift Deed the Company has named you as the Default Charitable Recipient.]

Alternative 2: If appointing a new Default Charitable Recipient

[Pursuant to a Default Charitable Recipient Nomination Deed Poll dated **[insert date]** (attached to this letter as **Attachment 2**) the Company has named you as the New Default Charitable Recipient.]

2 Rights as the Default Charitable Recipient

As the Default Charitable Recipient you have certain rights arising out of the Gift Deed.

3 [Confidentiality]

Explanatory Note: This paragraph is optional in case the Company does not want the Default Charitable Recipient to make any announcement or public statements about the Pledge Shares and the Equity Gift.

By accepting the rights set out in paragraph [2] above as the Default Charitable Recipient arising pursuant to the Gift Deed **you acknowledge and agree:**

- (1) You must not:
 - (A) use or disclose any Confidential Information provided to you under this letter or its attachment[s]; or
 - (B) make any public announcement or issue any press release regarding this letter, the Gift Deed or the transactions contemplated by it
- (2) You may use or disclose Confidential Information or make a public announcement or issue any press release:
 - (A) with the prior written consent of the board of directors of the Company; and
 - (B) to the extent possible, after consultation with the board of directors of the Company regarding the form and content of the disclosure.
 - (C) if the Confidential Information is within the public domain, other than by a breach of this paragraph [2] by you;
 - (D) to your advisers who have a legitimate need to know and on a confidential basis; or
 - (E) if required to do so by a government agency.
- (3) For the purpose of paragraph [2(1)(A)] **Confidential Information** means any information regarding (A) the Company, (B) this letter, (C) the Gift Deed or (D) the transactions contemplated by this letter or the Gift Deed.]

Yours sincerely

[insert name of Director of the Company]

Tel: **[insert]**

Email: **[insert]**

Attachment 1

Insert Attachment 1 – the executed Gift Deed.

[Attachment 2]

Insert Attachment 2 (if applicable) – the Default Charitable Recipient Nomination Deed Poll.

Signing page

Executed as a deed poll

Explanatory Note: Insert execution clauses as appropriate.

Important note: This document is a deed poll, therefore it must be executed correctly otherwise it is not binding. A company must sign by TWO directors (or a director and a company secretary) unless the company only has a sole company director (in which case the sole director may sign).

In order to complete the Deed of Gift (and before the parties sign the document) all 'square bracketed' items should be completed and the 'square brackets' deleted and any notes contained in 'yellow boxes' should be deleted.

The Company

Signed sealed and delivered by

[The Company] Pty Ltd ACN

[ACN]

by

sign here ►

Company Secretary/Director

sign here ►

Director

print name

[insert name]

print name

[insert name]