



**Adapt.** Chart new markets.

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**LAST WILL AND TESTAMENT**

of

**CASPIAN WATERS**

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.....  
**CASPIAN WATERS**

.....  
First witness

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Second witness

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DATED the ..... day of ..... in the year .....

**1. Last will and testament**

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- 1.1 I, **CASPIAN WATERS** of 3 Seasalt Street, Caviar Lakes NSW 2200, Marine Biologist (*I, me* or the *Testator*) hereby revoke any and all prior wills and other testamentary acts previously made by me and declare this to be my last will and testament.
- 1.2 This will is made in contemplation of marriage and divorce generally and will not be revoked or voided in the event of my subsequent marriage to, or divorce from, any person.

**2. Definitions and interpretation**

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**Definitions**

2.1 The following definitions apply in this will:

**Beneficiary** means, in respect of each Gift prescribed by this will, each person specified in this will (and/or in any list in relation to my Personal Chattels created for the purposes of clause 7.1) as a recipient of that Gift, including Substitute Beneficiaries.

**Child** means, in respect of a particular person, any:

- (a) biological child:
  - (i) including any:
    - (A) child born as a result of artificial conception procedures and/or under surrogacy arrangements; and/or
    - (B) posthumously conceived child, provided that affirmative consent to posthumous conception was given by either biological parent; and
  - (ii) excluding any child conceived from donated sperm in respect of the donor thereof unless the donor by deed poll expressly declares that child to be his “Child” for the purposes of this will; and
- (b) legally adopted child,

of that person (whether born or adopted before or after the date of this will and including any child conceived but not yet born at the date of my death), and includes any step-child or child under the foster care of that person.

**Directly** means, in respect of the receipt of any Gift by a Beneficiary, the direct receipt of the Gift by that Beneficiary free from any Testamentary Discretionary Trust.

**Digital Assets** means: (i) all digital files and information (including emails, digital music, digital photographs, digital videos, software licenses, social networking accounts, online banking/financial accounts, domain registrations, web hosting accounts, etc) that I own or control, regardless of the ownership of the physical digital devices (such as computers, tablets, smartphones, servers, etc) on which they are stored or through which they may be accessed; (ii) all such digital devices that I own or control; and (iii) all passwords and other credentials for accessing such digital files, information and devices.

**Executor** means an executor of my estate from time to time as appointed under this will.

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CASPIAN WATERS

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First witness

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Second witness

**Family Law** means the *Family Law Act 1975* (Cth), the *Family Law Regulations 1984* (Cth), the *Family Law Rules 2004* (Cth), the *Family Court Act 1997* (WA), Chapter 2 of the *Federal Circuit Court Rules 2001* (Cth) and related common law.

**Gift** means any allocation of assets (for the avoidance of doubt, including a proportionate share of any assets) made, given or granted by the Testator pursuant to the operation of this will, whether monetary or non-monetary and whether relating to any specific asset and/or the whole estate or the residual estate generally and, for the avoidance of doubt, includes any allocation of assets to a Substitute Beneficiary.

**Guardians** means the persons I nominate in accordance with the last dated list signed by me and stored with this will or amongst my private papers (if any) to be the guardians of each Minor Child.

**Insolvency Event** means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) a bankruptcy notice is issued against the person;
- (b) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
- (c) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
- (d) the person proposes or effects a moratorium involving any of the person's creditors;
- (e) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- (f) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- (g) the person becomes an "insolvent under administration" as defined in section 9 of the *Corporations Act 2001* (Cth); or
- (h) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (g) of this definition happens to the person under the law of any jurisdiction.

**Lineal Descendants** means, in respect of a particular Beneficiary, any and all lineal descendants (including Children, grand-children, great-grandchildren, etc) of that Beneficiary.

**Minor Child** means any child who is under 18 years of age of whom I am the sole guardian at the time of my death.

**My Spouse** means my spouse, Wanda Waters of 3 Seasalt Street, Caviar Lakes NSW 2200.

**Personal Chattels** means: (i) furniture, curtains, blinds, drapes, carpets, linen, crockery, glassware, ornaments, domestic appliances and utensils, garden appliances, utensils and effects and other chattels of ordinary household use or decoration; (ii) liquors, wines and consumable stores; (iii) domestic and racing animals; (iv) motor vehicles, boats and aircrafts; (v) original paintings and other original works of art; and (vi) trophies, clothing, jewellery and other chattels of a personal nature.

**Registered Charity** means an entity that is registered as a charity with the Australian Charities and Not-for-profits Commission and endorsed as a deductible gift recipient by the Australian Taxation Office.

**Substitute Beneficiary** means any person to whom a Gift is allocated in accordance with the operation of clause 6.2 (*per stirpes* substitution) or clause 8.3 (substitution of charitable organisations).

**Testamentary Discretionary Trust** means a testamentary discretionary trust created or arising under or pursuant to this will in accordance with clause 9.

### References to family relationships

- 2.2 In this will, unless the context requires otherwise, a reference to a:
- (a) relationship of lineal descendance (eg, “*parent*”, “*father*”, “*mother*”, “*grandchild*”, “*great-grandchild*”, etc) and/or sibling relationship (eg, “*sibling*”, “*brother*”, “*sister*”, etc) shall have a meaning that corresponds to the definition of the term “Child” in clause 2.1; and
  - (b) marital, domestic or family relationship includes a relationship that comes into existence after the date of this will.

### Other rules of interpretation

- 2.3 The following rules of interpretation apply in this will unless the context requires otherwise:
- (a) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (b) a reference to a person includes a person who is born or that comes into existence after the date of this will; and
  - (c) all monetary amounts are in Australian currency.

## 3. Executor

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### Appointment of Executor

- 3.1 I appoint My Spouse to be the executor of my estate.

### Gifts to the Executor

- 3.2 A Gift to a person who is an Executor is not conditional upon that person acting as Executor.

### Personal interests of Executor

- 3.3 An Executor may exercise all powers and discretions under this will or at law in relation to the administration of my estate even if the Executor has a personal interest in the exercise of the power or discretion.

## 4. Appointment of Guardians

---

- 4.1 I appoint the Guardians to be responsible for the day-to-day and long-term care, welfare and development of each Minor Child until the child reaches 18 years of age.
- 4.2 I instruct my Executor and the Guardians to comply, as far as is practicable, with:

- (a) the directions set out in Schedule 1; and
- (b) any further instructions concerning the care and maintenance of any Minor Child as I may record in the last dated list signed by me and stored with this will or amongst my private papers (if any),

and any such list will not be construed as a revocation, alteration or codicil to this will and I do not require the Executor to publish the contents of any such list.

## 5. Eligibility of Beneficiaries

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### Minimum age

- 5.1 A Gift in this will to a Beneficiary who is less than 18 years old is contingent upon the Beneficiary reaching that age and does not vest until the Beneficiary reaches that age. Until then the relevant assets are to be held by the Executor on trust and applied for the benefit and maintenance of that Beneficiary.

### Survivorship

- 5.2 Each Gift to a Beneficiary under this will is contingent upon the Beneficiary:
- (a) being born, if the Beneficiary is a Child who has been conceived but is not yet born at the date of my death; and
  - (b) in all cases, surviving me by at least 30 clear days.

In this will, a reference to a Beneficiary surviving me is a reference to that Beneficiary both satisfying these requirements and reaching 18 years of age – ie, if a Beneficiary does not satisfy these requirements or dies before reaching 18 years of age, the Beneficiary will not be taken to have survived me.

## 6. Estate to My Spouse

---

- 6.1 Other than any Gifts of personal items under clause 7 and the charitable donation under clause 8, I direct that the whole of my estate is to be placed into a Testamentary Discretionary Trust for the benefit of My Spouse provided that, as a condition precedent to formation of the Testamentary Discretionary Trust, My Spouse does not make an election to receive the assets Directly pursuant to clause 9.6.
- 6.2 If My Spouse does not survive me but leaves behind any Lineal Descendants who do survive me, all Gifts to My Spouse will instead be allocated to her Children in equal shares as tenants in common *per stirpes*.

## 7. Personal items

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### Personal Chattels

- 7.1 I give, free of all duties and encumbrances, all Personal Chattels that I own at the date of my death to the Executor to be distributed in accordance with the last dated list signed by me and stored with this will or amongst my private papers (if any). Unless otherwise expressly provided, each such Gift of Personal Chattels is to be given Directly.

## Digital Assets

7.2 I direct the Executor to deal with my Digital Assets in accordance with the instructions set out in the last dated list or memorandum signed by me and stored with this will or amongst my private papers (if any) and, for these purposes, the Executor has the power to access, modify, delete/destroy and control my Digital Assets.

## 8. Charitable donation

---

8.1 If My Spouse does not survive me, I give Directly to Australian Red Cross (ABN 50 169 561 394) a pecuniary legacy in the amount of \$2,000.00, provided that this amount may be halved pursuant to clause 8.4.

8.2 I wish the amount of the pecuniary legacy given under clause 8.1 to be automatically adjusted in line with changes in the consumer price index.

8.3 If the Gift under clause 8.1 would otherwise fail, that Gift will instead be allocated to any one or more Registered Charities, as selected by the Executor, having the following charitable purposes:

Humanitarian support of people in need in times of crisis

8.4 To avoid double-gifting, if:

- (a) pursuant to clause 5.2, My Spouse is taken not to have survived me; and
- (b) for the purposes of the Last Will and Testament of My Spouse, I am taken not to have survived My Spouse,

the amount of each pecuniary legacy under clause 8.1 will be halved.

## 9. Testamentary discretionary trusts

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9.1 Where a Gift is directed in this will to be given to a Beneficiary by way of being placed into a Testamentary Discretionary Trust for the benefit of the Beneficiary, I instruct the Executor to:

- (a) **(Establishment of Testamentary Discretionary Trust)** hold the assets that are the subject thereof on trust for the Beneficiary in accordance with this clause 9, provided that, as a condition precedent to formation of the Testamentary Discretionary Trust, the Beneficiary does not make an election to receive the assets Directly pursuant to clause 9.6; and
- (b) **(Notice of intention)** as soon as practicable after my death (but subject always to the relevant Beneficiary reaching 18 years of age), provide to each such Beneficiary a written notice:
  - (i) setting out the Beneficiary's entitlement to those assets;
  - (ii) informing the Beneficiary of the option to receive the whole or any portion of those assets Directly pursuant to clause 9.6; and
  - (iii) recommending that the Beneficiary take appropriate legal, taxation, financial and other professional advice about the exercise of that option.

## Substitute Beneficiaries

9.2 Where a Gift is directed in this will to be given to a particular Beneficiary by way of a Testamentary Discretionary Trust and that Gift is allocated to any Substitute Beneficiaries pursuant to the operation of clause 6.2 (*per stirpes* substitution), for the purposes of clause 9.1, that Gift will be taken to have been directed in this will to be given to those Substitute Beneficiaries by way of a Testamentary Discretionary Trust and, for the avoidance of doubt, clause 9.1 will apply in respect of those Substitute Beneficiaries.

## “Primary Beneficiaries” – separate and combined trusts

9.3 Subject to each Beneficiary’s option to receive the relevant assets Directly pursuant to clause 9.6, where:

- (a) **(Single Beneficiary)** any Gift is given under a Testamentary Discretionary Trust to a single Beneficiary, the Executor is to establish a separate trust for that Gift and that Beneficiary will be the “Primary Beneficiary” of that separate trust; and/or
- (b) **(Multiple Beneficiaries)** any Gift is given under a Testamentary Discretionary Trust to multiple Beneficiaries, the Executor is to establish a separate trust for the share of the Gift allocated to each such Beneficiary respectively and each such Beneficiary will be the “Primary Beneficiary” of its respective separate trust,

provided that the Executor will have the power and discretion to combine any trusts that would otherwise be so established as separate trusts and which would have the same Primary Beneficiaries or relate to the same assets.

## “Initial Trustees”

9.4 Unless otherwise agreed between the Executor and the relevant Beneficiaries, the Executor will be the “Initial Trustee” of each separate Testamentary Discretionary Trust established under clause 9.3.

## Trust terms

9.5 The terms of each separate Testamentary Discretionary Trust established under clause 9.3 will be as agreed between the Executor and the relevant Beneficiaries and, unless agreed otherwise between them, will incorporate the key terms set out in Schedule 2.

## Option to take free from trusts

9.6 Within 14 days (or such longer period as the Executor may approve at its discretion) of receipt by a Beneficiary of a notice from the Executor under clause 9.1(b), the Beneficiary may, by written notice to the Executor, elect to receive the whole or any portion of the assets that are subject of that notice from the Executor Directly, in which case, provided that the Beneficiary is not:

- (a) in the reasonable opinion of the Executor, unable to properly handle their own financial affairs;
- (b) the subject of an unresolved or continuing Insolvency Event;
- (c) a party to any unresolved proceedings (including any mediation, arbitration or other dispute resolution process) under any Family Law; and/or
- (d) a foreign resident for Australian taxation purposes,



**Adapt.** Chart new markets.

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**LAST WILL AND TESTAMENT**

of

**WANDA WATERS**

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.....  
**WANDA WATERS**

.....  
**FIRST WITNESS**

.....  
**SECOND WITNESS**

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**WANDA WATERS**

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First witness

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Second witness

DATED the ..... day of ..... in the year .....

**1 Last will and testament**

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- 1.1 I, **WANDA WATERS** of 3 Seasalt Street, Caviar Lakes NSW 2200, Filmmaker (*I, me* or the *Testatrix*) hereby revoke any and all prior wills and other testamentary acts previously made by me and declare this to be my last will and testament.
- 1.2 This will is made in contemplation of marriage and divorce generally and will not be revoked or voided in the event of my subsequent marriage to, or divorce from, any person.

**2 Definitions and interpretation**

---

**Definitions**

- 2.1 The following definitions apply in this will:

**Beneficiary** means, in respect of each Gift prescribed by this will, each person specified in this will (and/or in any list in relation to my Personal Chattels created for the purposes of clause 7.1) as a recipient of that Gift, including Substitute Beneficiaries.

**Child** means, in respect of a particular person, any:

- (a) biological child:
- (i) including any:
- (A) child born as a result of artificial conception procedures and/or under surrogacy arrangements; and/or
- (B) posthumously conceived child, provided that affirmative consent to posthumous conception was given by either biological parent; and
- (ii) excluding any child conceived from donated sperm in respect of the donor thereof unless the donor by deed poll expressly declares that child to be his “Child” for the purposes of this will; and
- (b) legally adopted child,

of that person (whether born or adopted before or after the date of this will and including any child conceived but not yet born at the date of my death), and includes any step-child or child under the foster care of that person.

**Directly** means, in respect of the receipt of any Gift by a Beneficiary, the direct receipt of the Gift by that Beneficiary free from any Testamentary Discretionary Trust.

**Digital Assets** means: (i) all digital files and information (including emails, digital music, digital photographs, digital videos, software licenses, social networking accounts, online banking/financial accounts, domain registrations, web hosting accounts, etc) that I own or control, regardless of the ownership of the physical digital devices (such as computers, tablets, smartphones, servers, etc) on which they are stored or through which they may be accessed; (ii) all such digital devices that I own or control; and (iii) all passwords and other credentials for accessing such digital files, information and devices.

**Executor** means an executor of my estate from time to time as appointed under this will.

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WANDA WATERS

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First witness

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Second witness

**Family Law** means the *Family Law Act 1975* (Cth), the *Family Law Regulations 1984* (Cth), the *Family Law Rules 2004* (Cth), the *Family Court Act 1997* (WA), Chapter 2 of the *Federal Circuit Court Rules 2001* (Cth) and related common law.

**Gift** means any allocation of assets (for the avoidance of doubt, including a proportionate share of any assets) made, given or granted by the Testatrix pursuant to the operation of this will, whether monetary or non-monetary and whether relating to any specific asset and/or the whole estate or the residual estate generally and, for the avoidance of doubt, includes any allocation of assets to a Substitute Beneficiary.

**Guardians** means the persons I nominate in accordance with the last dated list signed by me and stored with this will or amongst my private papers (if any) to be the guardians of each Minor Child.

**Insolvency Event** means, in respect of a particular person, the occurrence of any one or more of the following events in relation to that person:

- (a) a bankruptcy notice is issued against the person;
- (b) a receiver or a trustee for creditors or in bankruptcy is appointed to any of the person's property;
- (c) the person proposes or enters into an arrangement or composition with, or an assignment for the benefit of, any of the person's creditors;
- (d) the person proposes or effects a moratorium involving any of the person's creditors;
- (e) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- (f) the person is unable to pay all of the person's debts as they fall due or is presumed to be insolvent under any applicable law;
- (g) the person becomes an "insolvent under administration" as defined in section 9 of the *Corporations Act 2001* (Cth); or
- (h) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (g) of this definition happens to the person under the law of any jurisdiction.

**Lineal Descendants** means, in respect of a particular Beneficiary, any and all lineal descendants (including Children, grand-children, great-grandchildren, etc) of that Beneficiary.

**Minor Child** means any child who is under 18 years of age of whom I am the sole guardian at the time of my death.

**My Spouse** means my spouse, Caspian Waters of 3 Seasalt Street, Caviar Lakes NSW 2200.

**Personal Chattels** means: (i) furniture, curtains, blinds, drapes, carpets, linen, crockery, glassware, ornaments, domestic appliances and utensils, garden appliances, utensils and effects and other chattels of ordinary household use or decoration; (ii) liquors, wines and consumable stores; (iii) domestic and racing animals; (iv) motor vehicles, boats and aircrafts; (v) original paintings and other original works of art; and (vi) trophies, clothing, jewellery and other chattels of a personal nature.

**Registered Charity** means an entity that is registered as a charity with the Australian Charities and Not-for-profits Commission and endorsed as a deductible gift recipient by the Australian Taxation Office.

**Substitute Beneficiary** means any person to whom a Gift is allocated in accordance with the operation of clause 6.2 (*per stirpes* substitution) or clause 8.3 (substitution of charitable organisations).

**Testamentary Discretionary Trust** means a testamentary discretionary trust created or arising under or pursuant to this will in accordance with clause 9.

## References to family relationships

- 2.2 In this will, unless the context requires otherwise, a reference to a:
- (a) relationship of lineal descendance (eg, “*parent*”, “*father*”, “*mother*”, “*grandchild*”, “*great-grandchild*”, etc) and/or sibling relationship (eg, “*sibling*”, “*brother*”, “*sister*”, etc) shall have a meaning that corresponds to the definition of the term “Child” in clause 2.1; and
  - (b) marital, domestic or family relationship includes a relationship that comes into existence after the date of this will.

## Other rules of interpretation

- 2.3 The following rules of interpretation apply in this will unless the context requires otherwise:
- (a) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - (b) a reference to a person includes a person who is born or that comes into existence after the date of this will; and
  - (c) all monetary amounts are in Australian currency.

## 3 Executor

---

### Appointment of Executor

- 3.1 I appoint My Spouse to be the executor of my estate.

### Gifts to the Executor

- 3.2 A Gift to a person who is an Executor is not conditional upon that person acting as Executor.

### Personal interests of Executor

- 3.3 An Executor may exercise all powers and discretions under this will or at law in relation to the administration of my estate even if the Executor has a personal interest in the exercise of the power or discretion.

## 4 Appointment of Guardians

---

- 4.1 I appoint the Guardians to be responsible for the day-to-day and long-term care, welfare and development of each Minor Child until the child reaches 18 years of age.
- 4.2 I instruct my Executor and the Guardians to comply, as far as is practicable, with:

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Wanda Waters

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First witness

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Second witness

- (a) the directions set out in Schedule 1; and
- (b) any further instructions concerning the care and maintenance of any Minor Child as I may record in the last dated list signed by me and stored with this will or amongst my private papers (if any),

and any such list will not be construed as a revocation, alteration or codicil to this will and I do not require the Executor to publish the contents of any such list.

## **5 Eligibility of Beneficiaries**

---

### **Minimum age**

- 5.1 A Gift in this will to a Beneficiary who is less than 18 years old is contingent upon the Beneficiary reaching that age and does not vest until the Beneficiary reaches that age. Until then the relevant assets are to be held by the Executor on trust and applied for the benefit and maintenance of that Beneficiary.

### **Survivorship**

- 5.2 Each Gift to a Beneficiary under this will is contingent upon the Beneficiary:
- (a) being born, if the Beneficiary is a Child who has been conceived but is not yet born at the date of my death; and
  - (b) in all cases, surviving me by at least 30 clear days,

In this will, a reference to a Beneficiary surviving me is a reference to that Beneficiary both satisfying these requirements and reaching 18 years of age – ie, if a Beneficiary does not satisfy these requirements or dies before reaching 18 years of age, the Beneficiary will not be taken to have survived me.

## **6 Estate to My Spouse**

---

- 6.1 Other than any Gifts of personal items under clause 7 and the charitable donation under clause 8, I direct that the whole of my estate is to be placed into a Testamentary Discretionary Trust for the benefit of My Spouse provided that, as a condition precedent to formation of the Testamentary Discretionary Trust, My Spouse does not make an election to receive the assets Directly pursuant to clause 9.6.
- 6.2 If My Spouse does not survive me but leaves behind any Lineal Descendants who do survive me, all Gifts to My Spouse will instead be allocated to his Children in equal shares as tenants in common *per stirpes*.

## **7 Personal items**

---

### **Personal Chattels**

- 7.1 I give, free of all duties and encumbrances, all Personal Chattels that I own at the date of my death to the Executor to be distributed in accordance with the last dated list signed by me and stored with this will or amongst my private papers (if any). Unless otherwise expressly provided, each such Gift of Personal Chattels is to be given Directly.

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Wanda Waters

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First witness

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Second witness

## Digital Assets

- 7.2 I direct the Executor to deal with my Digital Assets in accordance with the instructions set out in the last dated list or memorandum signed by me and stored with this will or amongst my private papers (if any) and, for these purposes, the Executor has the power to access, modify, delete/destroy and control my Digital Assets.

## 8 Charitable donation

---

- 8.1 If My Spouse does not survive me, I give Directly to Australian Red Cross (ABN 50 169 561 394) a pecuniary legacy in the amount of \$2,000.00, provided that this amount may be halved pursuant to clause 8.4.
- 8.2 I wish the amount of the pecuniary legacy given under clause 8.1 to be automatically adjusted in line with changes in the consumer price index.
- 8.3 If the Gift under clause 8.1 would otherwise fail, that Gift will instead be allocated to any one or more Registered Charities, as selected by the Executor, having the following charitable purposes:
- Humanitarian support of people in need in times of crisis
- 8.4 To avoid double-gifting, if:
- (a) pursuant to clause 5.2, My Spouse is taken not to have survived me; and
  - (b) for the purposes of the Last Will and Testament of My Spouse, I am taken not to have survived My Spouse,
- the amount of each pecuniary legacy under clause 8.1 will be halved.

## 9 Testamentary discretionary trusts

---

- 9.1 Where a Gift is directed in this will to be given to a Beneficiary by way of being placed into a Testamentary Discretionary Trust for the benefit of the Beneficiary, I instruct the Executor to:
- (a) **(Establishment of Testamentary Discretionary Trust)** hold the assets that are the subject thereof on trust for the Beneficiary in accordance with this clause 9, provided that, as a condition precedent to formation of the Testamentary Discretionary Trust, the Beneficiary does not make an election to receive the assets Directly pursuant to clause 9.6; and
  - (b) **(Notice of intention)** as soon as practicable after my death (but subject always to the relevant Beneficiary reaching 18 years of age), provide to each such Beneficiary a written notice:
    - (i) setting out the Beneficiary's entitlement to those assets;
    - (ii) informing the Beneficiary of the option to receive the whole or any portion of those assets Directly pursuant to clause 9.6; and
    - (iii) recommending that the Beneficiary take appropriate legal, taxation, financial and other professional advice about the exercise of that option.

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Wanda Waters

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First witness

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Second witness

## Substitute Beneficiaries

9.2 Where a Gift is directed in this will to be given to a particular Beneficiary by way of a Testamentary Discretionary Trust and that Gift is allocated to any Substitute Beneficiaries pursuant to the operation of clause 6.2 (*per stirpes* substitution), for the purposes of clause 9.1, that Gift will be taken to have been directed in this will to be given to those Substitute Beneficiaries by way of a Testamentary Discretionary Trust and, for the avoidance of doubt, clause 9.1 will apply in respect of those Substitute Beneficiaries.

## “Primary Beneficiaries” – separate and combined trusts

9.3 Subject to each Beneficiary’s option to receive the relevant assets Directly pursuant to clause 9.6, where:

- (a) **(Single Beneficiary)** any Gift is given under a Testamentary Discretionary Trust to a single Beneficiary, the Executor is to establish a separate trust for that Gift and that Beneficiary will be the “Primary Beneficiary” of that separate trust; and/or
- (b) **(Multiple Beneficiaries)** any Gift is given under a Testamentary Discretionary Trust to multiple Beneficiaries, the Executor is to establish a separate trust for the share of the Gift allocated to each such Beneficiary respectively and each such Beneficiary will be the “Primary Beneficiary” of its respective separate trust,

provided that the Executor will have the power and discretion to combine any trusts that would otherwise be so established as separate trusts and which would have the same Primary Beneficiaries or relate to the same assets.

## “Initial Trustees”

9.4 Unless otherwise agreed between the Executor and the relevant Beneficiaries, the Executor will be the “Initial Trustee” of each separate Testamentary Discretionary Trust established under clause 9.3.

## Trust terms

9.5 The terms of each separate Testamentary Discretionary Trust established under clause 9.3 will be as agreed between the Executor and the relevant Beneficiaries and, unless agreed otherwise between them, will incorporate the key terms set out in Schedule 2.

## Option to take free from trusts

9.6 Within 14 days (or such longer period as the Executor may approve at its discretion) of receipt by a Beneficiary of a notice from the Executor under clause 9.1(b), the Beneficiary may, by written notice to the Executor, elect to receive the whole or any portion of the assets that are subject of the notice from the Executor Directly, in which case, provided that the Beneficiary is not:

- (a) in the reasonable opinion of the Executor, unable to properly handle their own financial affairs;
- (b) the subject of an unresolved or continuing Insolvency Event;
- (c) a party to any unresolved proceedings (including any mediation, arbitration or other dispute resolution process) under any Family Law; and/or
- (d) a foreign resident for Australian taxation purposes,

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Wanda Waters

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First witness

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Second witness