

LAST WILL AND TESTAMENT

OF

…………………………………….

(ID: ……………………………….)

Financial Adviser:

**WITNESSES SHOULD BOTH BE PRESENT AT THE SAME TIME WHEN YOU SIGN THE WILL.**

**FIRST WITNESS SECOND WITNESS**

NAME IN PRINT ................................... .....................................

RELATIONSHIP TO

TESTATOR/TESTATRIX ................................... ......................................

**LAST WILL AND TESTAMENT**

of

XXXXXXXXXXXXXXXXX

Identity Number:

# I, …………………., being unmarried/ married in/out community of property to ……………………………….., (hereinafter referred to as my spouse), hereby revoke all Wills and Codicils previously made by me and declare this to be my Last Will and Testament.

# Unless the context otherwise requires, words importing the singular shall include the plural, and words importing the masculine shall include the feminine, and vice versa.

# (1)

# **COLLATIO:**

# I direct that my heirs shall not be required to collate any donations made by me to them during my lifetime.

# (2)

# **APPOINTMENT OF BENEFICIARIES**

# I bequeath my estate as follows:

2.1

2.2 Residue of my estate to my spouse.

Should my spouse predecease me, or not survive me by more than 30 (thirty) days, then I bequeath the residue of my estate to my children.

Should a child predecease me, the benefit that would have devolved upon such child shall devolve upon such child's descendants by representation or, failing descendants, upon my remaining children or their descendants by representation.

(3)

**FAMILY OBLITERATION**

In the absence of all the heirs mentioned above, I bequeath my assets as follows:

## 3.1 ….

## 3.2 The residue of my estate to.......

# (4)

**INSOLVENCY**

# Should any of my nominated beneficiaries in this will be an unrehabilitated insolvent on the date he/she becomes entitled to his/her inheritance, I hereby revoke the bequest made to such beneficiary and bequeath those assets the beneficiary would be entitled to my trustees to be held in trust and invested by it in terms of my Will, subject to the following provisions:

# 4.1 My trustee(s) is empowered to use so much of the net income and, if found necessary, of the capital as it shall decide, for the maintenance, education, general welfare and benefit of the specific beneficiary and/or his/her descendants or his/her dependants. Any surplus income shall be capitalised.

# 4.2 The trustee(s) shall have the power to terminate the trust at any time in their discretion.

# 4.3 Should the beneficiary die before the termination of this trust, the benefit that would have devolved upon such beneficiary shall devolve upon such beneficiary’s descendants by representation or, failing descendants, upon such beneficiary’s intestate beneficiaries in terms of the rules of intestate succession.

# 4.4 The interest that any of my heirs have in the trust, may not be ceded, pledged, mortgaged or otherwise dealt with. Any entitlement to income or any assets to which any heir is entitled to under this trust, will not be subject to any right of attachment or sale in execution. The right to income or assets due to any heir due will under no circumstances form part of the estate of such person before such income or assets are transferred or paid to him. Should any of my heirs be declared insolvent, or reach a compromise with his creditors, before the amount payable in respect of this trust is received by them, such benefit will terminate and vest in my remaining children or heirs as stated in the substitution clauses above.

# (5)

# **CREATION OF A TRUST**

# I direct that should any beneficiary be under the age of () years, such beneficiary's inheritance shall be held in trust by my trustee who shall utilise as much of the income as it, in its discretion, may deem necessary for the maintenance, education, general welfare and benefit of the beneficiary. Any surplus income shall be capitalised.

I further authorise my trustee to utilise the whole or part of the capital for the above purposes should it, in its discretion, decide that the income is insufficient.

When the beneficiary attains the age of () years the trust shall terminate and the capital, as it then exists, shall be paid to him or her.

Notwithstanding the above, I direct that my trustee shall have the power, in its absolute discretion, to accelerate or postpone termination of this trust, either in whole or in part, should circumstances warrant such action.

I nominate as trustees of this trust ………………………….

# (6)

**POWERS AND DUTIES OF TRUSTEES**

# I direct that my trustee shall have full power to:

6.1 take over and retain any of my assets in the form in which they may be found at the time of my death;

6.2 To open and operate a bank account in the name of the trust;

6.3 Carry on any business;

6.4 To sell or let movable or immovable property belonging to the trust, in such manner as they think fit, and when the property is sold they are entitled to take out credit to allow for the purchase price or part thereof;

6.5 To acquire shares in any private or public company, whether in the RSA or abroad;

6.6 My trustees shall in their sole discretion, sell assets of my estate at such price and place and at such time and in such a manner and on such conditions as they in their sole and absolute discretion may deem necessary.

6.7 To exercise voting rights, linked to any shares that form part of the trust, in the best interest of the trust;

6.8 Invest or reinvest funds in securities and investments (including the purchase of immovable property), notwithstanding that such investments may be of a type not ordinarily regarded as being trustee investments;

6.9 Lend money, whether upon security or otherwise and at interest or otherwise, to such persons and upon such terms as my trustee, in its sole discretion, deems to be in the best interest of the beneficiaries;

6.10 Accept any gifts, bequests or payments from any source whatsoever in favour of any trust created herein; and

6.11 To take legal action or to defend any legal action in the name of the trust or to establish arbitration proceedings to be necessary in respect of any matter in respect of which the trustees have agreed to all deeds, powers of attorney and other documents to be signed as may be required;

6.12 To use the services of professionals such as attorneys, accountants, doctors and other consultants, which our trustees may deem necessary. Our trustees may pay a professional fee to such person. A professional person may include the partner of a trustee;

6.13 Enter into any re‑distribution agreement.

6.14 To receive compensation for their services according to the rate prescribed for trustees in the regulations promulgated in terms of the Administration of Estates Act 66/1965;

# (7)

**EXCLUSION OF A MARRIAGE IN/OUT OF COMMUNITY OF PROPERTY**

# I direct that the inheritance devolving upon any beneficiary under my Will as well as the proceeds, the reinvestment of such proceeds and the income thereon shall be free from the legal effects, including any accrual system, of any present or future marriage of such beneficiary whether in or out of community of property. This will also be applicable to any permanent relationships, common-law spouses or live-in relationship and will in all circumstances be protected from the creditors of the spouse or life partner.

# (8)

# **BEQUEST TO MINORS**

# I direct that any of my personal effects, household effects, furniture, jewellery, and motor vehicles to which a minor may become entitled under my Will, may be handed to such minor's guardian at the discretion of my executor and/or trustee for the period of the beneficiary's minority. The receipt of the said guardian, who shall not be required to furnish security in this regard, shall be sufficient discharge to my executor and/or trustee.

# (9)

**APPOINTMENT OF GUARDIANS**

# Failing a natural guardian, I nominate ………….. to be the guardian of my minor children and I direct that the said guardian shall not be required to furnish security for acting in that capacity.

(10)

**RETIREMENT BENEFIT FOR MINORS**

# I authorise and direct the trustees of any Pension/Provident/Preservation, Retirement Annuity or Group Life schemes that I am a member of at time of my death, to pay any benefit that might become payable to the trustee(s) of any trust created in this will, to be accepted and administered by the trustee(s) subject to the conditions.

(11)

**APPOINTMENT OF EXECUTOR**

I nominate and appoint ............... as the Executor of my estate, with the power of assumption.

Should my nominee fail to assume office or relinquish office, I nominate and appoint ............... as the Executor of my estate.

(12)

**SECURITY**

I hereby direct that the Master of the High Court shall waive the need for any executor, trustee or any assumed nominee appointed in terms of this will to furnish any security in terms of the Estate Duty Act 1965 (Act 66 of 1965) and the Trust Property Control Act 1988 (Act 57 of 1988), or any amendments of the these laws.

# (13)

# **POWERS OF EXECUTOR**

# My Executor shall have the following powers:

# 13.1 I direct that my executor shall be entitled to recover fees as executor, in accordance with its official tariff from time to time.

13.2 I direct that my executors shall have power in their entire discretion in respect of all assets and income under their control in terms of this Will from time to time:

13.3 To take over and retain any of my assets in the form in which they may be found at the time of my death and to accept any benefit payable as a result of my death;

13.4 To realise any assets by such methods and at such times as they may deem fit and to hire or let any property; with the consent from the beneficiary concerned.

13.5 To invest and re-invest funds in their entire discretion and in any manner whatsoever notwithstanding that investments may be of a type not ordinarily regarded as being “trustee investments”;

13.6 To borrow monies for any of the purposes of my estate and/or the administration and/or the distribution thereof upon bank overdraft or from other sources and to give security for such borrowings;

13.7 To carry on any business and/or farming or other operations as to them may seem expedient whether alone or in partnership and whether directly or indirectly through a company or otherwise;

13.8 To act as surety for and on behalf of a beneficiary or a company in which a beneficiary may have an interest and to encumber assets of my estate for that purpose;

13.9 To employ agents to locate any beneficiary whose whereabouts may be unknown and deduct all costs incurred from the inheritance of such beneficiary.

13.10 Insofar as assets of an non-income producing nature are concerned, to make these, where appropriate, available for the use, comfort and enjoyment of a beneficiary or beneficiaries. My executor are empowered to require a beneficiary to contribute to the upkeep and running costs of such assets should they consider it desirable.

13.11 To settle claims against the estate

13.12 To make payments to a beneficiary before the final acceptance of the liquidation and distribution account and to pay income to a beneficiary or a trust beneficiary should it deem necessary.

**SIGNED AT THIS DAY OF 20**

**in the presence of the undersigned witnesses, all being present at the same time and signing in the presence of each other.**

AS WITNESSES:

1. .........................

.................................

Testator/Testatrix

2. ..........................