
Trust Deed of Spire Capital Master Fund

Spire Capital Limited

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Title **Trust Deed of Spire Capital Master Fund**

Date This deed is made as a deed poll on 11 March 2019

By **Spire Capital Limited** (ABN 21 141 096 120) of Level 30, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 ("**Initial Trustee**")

Recitals

A The Trustee declares this deed to be the Trust Deed of the Spire Capital Master Fund.

Operative provisions

1 Definitions and interpretation

1.1 In this Trust Deed, unless the context otherwise requires:

Accounting Standards means the International Financial Reporting Standards, as applicable in Australia.

Accrued Income Entitlement in relation to a Unit means the Trustee's estimate of the appropriate share of the Distributable Income of the Trust attributable to that Unit accrued from the commencement of the Distribution Period to the date for redemption of the Unit.

Acquirer has the meaning given in clause 8.14(b).

Adviser includes any adviser, consultant or expert including any architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, investment manager, broker, administrator or property manager, environmental auditor and/or assessor, and any other person appointed by the Trustee to provide advice in relation to the Trust.

Affected Unit has the meaning given in clause 8.9(a).

AMIT has the meaning given in section 995-1 of the Tax Act.

AMIT Regime means the laws related to the taxation of AMITs in the Tax Act and related legislation, as were implemented by the *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016 and related Acts (being the Income Tax Rates Amendment (Managed Investment Trusts) Act 2016, Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016 and the Income Tax (Attribution Managed Investment Trusts—Offsets) Act 2016)*.

AMMA Statement has the meaning given in section 995-1 of the Tax Act.

Application Price means the application price for a Unit calculated in accordance with this Trust Deed.

ASIC means the Australian Securities and Investments Commission or any Government Agency which replaces it or performs its functions.

ASIC Relief means a declaration made under, modification of or exemption from the provisions of the Corporations Act issued by ASIC.

Assets means all the Property of the Trust, acquired and held in accordance with this Trust Deed including the amount of the Application Price which has not been paid in the case of a Partly Paid Unit, but not:

- (a) application money or Property in respect of which Units have not yet been issued; or
- (b) any Distributable Income payable, but not paid.

BBSW for a period means:

- (a) the rate determined by the Trustee to be the arithmetic mean (rounded up, if necessary, to the nearest 0.01%) of the bid rates displayed at or about 10.30 am Australian Eastern Standard Time (AEST) on the first day of that period on the Reuters screen BBSW page for a term of one month after eliminating the highest (or one of the highest if more than one) and the lowest (or one of the lowest if more than one) of those rates; or
- (b) if for any reason there are no rates displayed for a term then BBSW will be the rate determined by the Trustee to be the average of the buying rates quoted to the Trustee by three Australian banks selected by the Trustee at or about that time on that day. The buying rates must be for bills of exchange which are accepted by an Australian bank and which have a term equivalent to one month.

BBSW rates will be expressed as a yield percent per annum to maturity.

Business Day means a day other than a Saturday or Sunday on which banks are open for general banking business in Sydney, Australia.

Cash means currency and includes cheques.

Class means a class of Units with the same rights, restrictions and obligations, issued by the Trustee in accordance with clause 9 and set out in the Offer Document

Commencement Date means the date on which the Trust commences in accordance with clause 3.1.

Commitment means a commitment, in a form and terms satisfactory to the Trustee, that the Trustee will receive the application money or Property within a time specified by the Trustee.

Compliance Committee means a compliance committee established by the Trustee in connection with the Trust.

Compliance Committee Member means a member of the Compliance Committee.

Control has the meaning given under the Corporations Act and **Controlled** is to be construed accordingly.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the weighted average of the All Groups Price Index Numbers for the eight capital cities of the states and territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia.

Determined Member Component has the meaning given in section 995-1 of the Tax Act.

Determined Trust Component has the meaning given in section 995-1 of the Tax Act.

Distributable Amount has the meaning given in clause 1.1(b).

Distributable Income means the amount determined in accordance with clause 16.

Distribution Account means an account designated with that name in accordance with clause 16.16.

Distribution Calculation Date means each 31 March, 30 June, 30 September and 31 December falling on or before the Termination Commencement Date, each 30 June falling after the Termination Commencement Date and such other days as the Trustee designates.

Distribution Period means:

- (a) for the first distribution, the period beginning on the Commencement Date and ending on the Distribution Calculation Date immediately following the Commencement Date;
- (b) for the last distribution, the period beginning on the day after the last preceding Distribution Calculation Date and ending on the date on which the final distribution is made to Unitholders; and
- (c) in all other cases in each year during the continuance of the Trust, each of the periods beginning on the day after the preceding Distribution Calculation Date and ending on the next occurring Distribution Calculation Date.

EDR means external dispute resolution.

Establishment Costs means any or all Expenses incurred by any person or paid in connection with the establishment and initial promotion of the Trust, including the production and distribution of the first offering document for the Trust.

Expenses includes any costs, liabilities, expenses, commissions, brokerage, fees, Taxes and duties. Examples of Expenses are given in clause 25.4.

Financial Statements has the meaning given in section 9 of the Corporations Act.

Financial Year means:

- (a) for the first financial year, the period on and from the Commencement Date to and including the next 30 June;
- (b) for the last financial year, the period on and from 1 January immediately before the date of final distribution to and including the date of final distribution on termination of the Trust; and
- (c) in all other circumstances, the 12 month period ending on 30 June in each year.

Fully Paid Unit means a Unit on which the Application Price has been fully paid.

Government Agency means, whether foreign or domestic:

- (a) a government, whether federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal,

entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

GST means a goods and services tax, value added tax, consumption tax or a similar tax or a tax on services only, including without limitation, **GST** as defined in section 195-1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

GST Group has the meaning given in the GST Act.

Holder means a Unitholder, an Option Holder, or any of them, as the case requires.

Income Distribution means in respect of a Unitholder and a Distribution Period, the amount calculated in respect of the Unitholder under clause 16.6.

Initial Asset means the initial asset acquired by any Sub Trust.

Initial Units means the 100 Units referred to and issued in accordance with clause 3.1.

Input Tax Credit has the meaning given in the GST Act.

Investment Management Agreement means an investment management agreement which may be entered into between the Trustee as trustee of the Trust and an Investment Manager relating to the management services provided by the Investment Manager for the benefit of the Trust.

Investment Manager means the first or any other investment manager subsequently nominated by the Trustee to provide management services to the benefit of the Trust.

Liabilities means the liabilities of the Trust including any provision which the Trustee decides should be taken into account in accordance with generally accepted accounting principles applicable in Australia in determining the liabilities of the Trust, but excluding any liabilities:

- (a) to applicants for Units in respect of application money or Property in respect of which Units have not yet been issued; or
- (b) to Unitholders, arising by virtue of the right of Unitholders to request redemption of their Units or to participate in the distribution of the Assets on termination of the Trust.

Liabilities referable to a Class of Units will be allocated to, and payable by, that Class only.

Licence means an Australian financial services licence.

Liquid has the meaning given in the Corporations Act.

Minimum Holding means the amount from time to time determined by the Trustee pursuant to clause 11.5 to be the minimum holding for Units.

Net Asset Value means the value of the Assets corresponding to a particular Class of Units calculated in accordance with clause 14 and generally accepted accounting principles applicable in Australia less the Liabilities.

Offer Document means any offer document issued by the Trustee with respect to the Trust from time to time, including term sheets and terms and conditions.

Option means an option granted by the Trustee in respect of an unissued Unit.

Option Holder means a person Registered as the holder of an Option (including persons Registered jointly).

Paid-up Proportion means in relation to Partly Paid Units the number equal to the aggregate of the amount obtained by multiplying each Partly Paid Unit by its Relevant Percentage.

Partly Paid Unit means a Unit on which the Application Price has not been paid in full.

Prior Year Adjustment Amounts means the amount identified by the Trustee as unders and overs in relation to a Trust Component of a character relating to assessable income, exempt income or non-assessable non-exempt income (as those terms are defined in the Tax Act) relating to the Financial Years for which the Trust was an AMIT that are discovered in later Financial Years when the Trust is not an AMIT.

Property includes any rights to property of any description and any income of such property.

Redemption Price means the redemption price of a Unit calculated in accordance with this Trust Deed.

Redemption Request means a written request to the Trustee to redeem Units.

Register means the register of Unitholders kept by the Trustee.

Registered means recorded in the Register.

Registration means recording in the Register.

Relevant Percentage means, in respect of a Unitholder, the percentage calculated in accordance with the following formula at the relevant time:

$$A = \left(\frac{B - C}{B} \right) \times 100$$

where:

- A** is the Relevant Percentage;
- B** is the aggregate of the Application Prices of all the Partly Paid Units held by the Unitholder.
- C** is the aggregate of the amounts of the Application Prices of all the Partly Paid Units held by the Unitholder which remain unpaid (excluding any amounts that are due but unpaid).

Representative Member has the meaning given in the GST Act.

Reorganisation Proposal means:

- (a) a proposal to consolidate, divide or convert Units in a ratio determined by the Trustee, including rounding of the number of Units as the Trustee determines;
- (b) a proposal to cause the Stapling of any other securities or financial products to the Units; or
- (c) any other proposal to reorganise or restructure the capital of the Trust in any way.

Resolution means:

- (a) a resolution passed at a meeting of Unitholders of the Trust:

- (i) on a show of hands, by the required majority of Unitholders present in person or by proxy, attorney or representative and voting on the show of hands; or
- (ii) on a poll, by the required majority of votes cast by Unitholders present in person or by proxy, attorney or representative and voting on the poll; or
- (b) where the law allows, a resolution in writing signed by one or more Unitholders holding the required majority of the Units in the Trust and voting in favour of the resolution.

Except where this Trust Deed or any applicable law provides otherwise, the "required majority" is a "simple majority".

Security Interest means a right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or liability and includes a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance, hypothecation or other security interest.

Security Interest Rules means the rules and policies adopted by the Trustee from time to time for the recognition of Security Interests over Units in accordance with clause 7.6.

Stapling means the linking together of securities or financial products (instruments) so that one instrument may not be transferred or otherwise dealt with without the other instrument.

Subsidiary has the meaning given in the Corporations Act, but so that:

- (a) an entity will also be taken to be a Subsidiary of another entity if it is Controlled by that entity;
- (b) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (c) an entity may be a Subsidiary of a trust if it would have been a Subsidiary if that trust was a corporation.

Sub Trust means a trust which is a Subsidiary of the Trust.

Tax means all kinds of taxes, duties, imposts, deductions, withholding taxes and charges imposed by a government including GST or any amount recovered from the Trustee by way of reimbursement of GST or any amount included either expressly or impliedly in an amount paid or payable by the Trustee on account of GST, together with interest and penalties.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth) or both, as appropriate.

Termination Commencement Date means the date the termination or winding-up of the Trust commences under clause 3.2.

Transaction Costs means:

- (a) when calculating the Application Price of a Unit, the Trustee's reasonable estimate of the average amount necessary to avoid an adverse impact on other Unitholders because of the acquisition of Units; and
- (b) when calculating the Redemption Price of a Unit, the Trustee's reasonable estimate of the average amount necessary to avoid an adverse impact on other Unitholders because of the redemption of Units,

provided that, subject to the Corporations Act, the Trustee may in connection with any particular application or request for redemption of Units deem these costs to be a lesser sum or zero.

Trust means the trust constituted under or governed by this Trust Deed.

Trust Deed means this deed poll.

Trustee means:

- (a) while the Trust is not a registered scheme — the company which is the trustee for the Trust, initially the Initial Trustee or any person who replaces Trustee as trustee; and
- (b) while the Trust is a registered scheme — the company which is registered with ASIC as the responsible entity for the Trust under the Corporations Act.

Trustee Group means any entity which Controls the Trustee, and any other entity which is Controlled by the entity which Controls the Trustee.

Unit means an undivided share in the beneficial interest in the Trust as provided in this Trust Deed.

Unitholder means the person Registered as the holder of a Unit (including persons jointly Registered).

User Pays Fees means any cost incurred in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Unitholder; or
- (b) any act or omission requested by a Unitholder,

which the Trustee determines should be borne by that Unitholder.

Valuation Time means a time determined by the Trustee at which the Trustee calculates Net Asset Value.

Wholesale Clients means:

- (a) a wholesale client within the meaning of sections 761G and 761GA of the Corporations Act; and
- (b) foreign persons to whom Units may be issued without a product disclosure statement being required to be given to them.

1.2 In this Trust Deed:

- (a) unless the context otherwise requires, a reference to:
 - (i) *dollars* or \$ are to Australian dollars, the lawful currency of the Commonwealth of Australia;
 - (ii) time is to Sydney time;
 - (iii) the singular includes the plural and vice versa;
 - (iv) a gender includes all genders;

- (v) a document (including this Trust Deed) is a reference to that document (including any annexures) as amended, consolidated, supplemented, novated or replaced;
- (vi) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (vii) a person includes:
 - (A) a reference to an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency as the case requires; and
 - (B) the person's successors, permitted assigns, executors and administrators;
- (viii) a law:
 - (A) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange;
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (ix) *proceedings* includes litigation, arbitration and investigation;
- (x) the words "**including**" or "**includes**" means "including, but not limited to", or "includes, without limitation" respectfully;
- (b) unless the context otherwise requires, a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (c) headings are for convenience only and do not affect interpretation;
- (d) if a payment or other act must (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day;
- (e) a reference to a year (other than a Financial Year) or month means a calendar year or calendar month respectively;
- (f) if a period occurs from, after or before a day or the day of an act or event, it excludes that day; and
- (g) while the Trust is a registered scheme, every provision in this Trust Deed is expressed to apply subject to the Corporations Act.

2 Name of Trust

- 2.1 The Trust is called the Spire Capital Master Fund or such other name as the Trustee determines from time to time.

- 2.2 If the Trustee resigns or is removed as the trustee, the replacement Trustee must change the name of the Trust to a name that does not imply any association with the former Trustee or its related bodies corporate or its businesses, unless (at the time of its removal) the former Trustee consents in writing.
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3 Duration of the Trust

Initial settlement

- 3.1 The Trust commences when one or more persons subscribe for the Initial Units in the Trust. All Initial Units are to be issued at the same time.

Termination

- 3.2 The Trustee may commence termination of the Trust in accordance with the termination procedure set out in clause 26 on the earlier of:
- (a) the date specified by the Trustee as the date of commencement of termination of the Trust in a notice given to Holders; and
 - (b) the date on which the Trustee commences termination or winding up of the Trust in accordance with another provision of this Trust Deed or by law.

Restriction on issue and redemption of Units

- 3.3 Despite any other provisions in this Trust Deed, no Units may be issued or redeemed after the 80th anniversary of the day preceding the Commencement Date unless that issue or redemption would not offend the rule against perpetuities, or any other rule of law or equity.

Declaration of perpetuity period

- 3.4 The Trustee declares that the perpetuity period is the period from the commencement of the Trust until the date which is the 80th anniversary of the day preceding the Commencement Date.
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4 Trust Deed legally binding

- 4.1 This Trust Deed binds the Trustee and each present and future Holder and any person claiming through any of them as if each of them had been a party to this Trust Deed.
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5 Assets held on Trust

- 5.1 The Trustee must hold the Assets on trust for Unitholders on the terms of and subject to this Trust Deed.
- 5.2 The Assets vest in the Trustee, but must be clearly identified as property of the Trust and held separately from the assets of the Trustee and any other managed investment scheme if, and to the extent that, the Corporations Act so requires.
- 5.3 Each Class of Units issued by the Trustee will correspond to a particular underlying Asset which provides exposure to assets held in a specified Sub-Trust.
- 5.4 All Assets that correspond to a particular Class of Units are held by the Trustee separately from the Assets of any other Class of Units.

- 5.5 All Liabilities, Expenses, fees, losses of any nature whatsoever attributable solely to a particular Class of Units will be allocated to that Class only and will not be allocated to, or payable by, any other Class of Units.

6 Units

Nature of Units

- 6.1 The beneficial interest in the Trust is divided into Units.
- 6.2 Each Fully Paid Unit confers an equal undivided interest and a Partly Paid Unit confers an interest of the same nature which is proportionate to the amount of the Application Price that has been paid on the Unit.
- 6.3 A Class of Unit confers an interest in the Assets that correspond to that Class and are separable from the interest in Assets held by any other Class of Units, subject to the Liabilities. It does not confer an interest in a particular Asset.

Rights attaching to Units

- 6.4 A Unitholder holds a Unit subject to the rights, restrictions and obligations attaching to that Unit.

Rounding

- 6.5 Any excess application or other money or Property which results from rounding under any provision of this Trust Deed becomes an Asset of the relevant Class of Units.

Consolidation and division of Units and Options

- 6.6 Subject to the Corporations Act, Units may be consolidated or divided as determined by the Trustee.

Joint tenancy

- 6.7 Persons Registered jointly as the holder of a Unit or an Option hold as joint tenants and not as tenants in common unless the Trustee otherwise agrees.

Death or legal disability of Holder

- 6.8 If a Holder dies or becomes subject to a legal disability such as bankruptcy or insanity, only the survivor (where the deceased was a joint holder) or the legal personal representative (in any other case) will be recognised as having any claim to the Units and/ or Options Registered in the Holder's name.

7 Transfer and Transmission of Units

Transfer of Units

- 7.1 Subject to this Trust Deed, a Unitholder may transfer Units.
- 7.2 Transfers must be effected:
- (a) by instruments of transfer that are:
 - (i) in a form approved by the Trustee;

- (ii) if necessary, presented for Registration duly stamped;
 - (iii) accompanied by any evidence reasonably required by the Trustee to show the right of the transferor to make the transfer; and
- (b) in a manner prescribed by the Trustee.

Transferee of Units

- 7.3 The transferee in respect of a transfer of Units is deemed to have agreed to accept the Units transferred to it subject to the terms and conditions on which the transferor held them immediately before execution of the instrument of transfer.

Registration of a transfer of Units

- 7.4 A transfer of Units is not effective until Registered and the transferor remains the holder of the Units specified in the transfer until the transfer is Registered.

Transferor's death

- 7.5 The Trustee may Register a transfer of Units notwithstanding that the Trustee at the time of Registration has notice of the transferor's death.

Security Interest Rules

- 7.6 The Trustee may make and amend rules and policies from time to time for the recognition of Security Interests over Units, but is not obliged to make such rules.

Trustee may refuse to Register any transfer of Units in certain circumstances

- 7.7 Subject to this Trust Deed, the Trustee may refuse to Register a transfer of Units if, in its reasonable opinion, registration of the transfer would be in breach of any applicable law or this Trust Deed, without giving any reason for its refusal.
- 7.8 Without limiting clause 7.7, the Trustee:
- (a) may refuse to Register a transfer of Units if it would:
 - (i) result in either the transferor or transferee holding less than the Minimum Holding specified at the time; or
 - (ii) be in breach of the Security Interest Rules; and
 - (b) is not required to give effect to any transaction, transfer or dealing at the request of, or for the benefit of, a Unitholder, including Registering a transfer, unless the Unitholder has paid to the Trustee's satisfaction all duties, Taxes, governmental charges, transfer fees, registration fees, brokerage and other charges which may have become or may be payable in respect of the transaction, transfer or dealing.

Transfer of Options

- 7.9 Clauses 7.1 to 7.8 applies to Options, with the word "Unit" replaced by "Option" throughout.

8 Partly Paid Units

Application Price may be payable in instalments

- 8.1 The Application Price may be payable in instalments as set out in this clause 8.

- 8.2 The Trustee may determine at any time that Units, or a class of Units, to be offered for sale or subscription are to be offered on terms that the Application Price is payable by one or more instalments of such amounts and at such times for payment as the Trustee determines either at the time of offer or in the future.
- 8.3 Subject to the Corporations Act, where Units, or a class of Units, are offered for sale or subscription on terms and conditions determined in accordance with clause 8.2, those terms and conditions may be varied or compliance therewith waived only with the consent of the Trustee. The variation or waiver must not take effect during the currency of the offering document pursuant to which the Units, or class of Units were offered for sale or subscription.
- 8.4 Subject to any applicable law, the Trustee may extinguish in full or in part any liability in respect of any money unpaid on Partly Paid Units.

Interest

- 8.5 If a Unitholder does not pay an instalment by the due time and date then interest is payable on the sum due from the date payment was due to the time of payment at such rate as the Trustee determines, not exceeding BBSW plus 3% per annum. The Trustee may from time to time determine that a new rate of interest shall apply.
- 8.6 Interest under clause 8.5 is calculated daily and payable monthly in arrears and if unpaid is compounded. The Trustee may waive payment of interest in whole or part.

Payment of instalments

- 8.7 Subject to the Corporations Act:
- (a) the Trustee may postpone the payment of an instalment;
 - (b) an instalment is due on the date determined by the Trustee;
 - (c) the non-receipt of a notice that an instalment is due by, or the accidental omission to give a notice that an instalment is due to, a Unitholder, does not invalidate the instalment being due;
 - (d) any instalment which, under the terms of issue of the Unit, becomes payable on issue of the Unit or at any date fixed by or in accordance with such terms of issue is deemed to be an instalment of which the Trustee has given Unitholders notice in accordance with clause 8.5. In the case of non-payment, all the provisions of this Trust Deed as to payment of interest, forfeiture or otherwise apply as if such notice had been given.

Failure to pay instalments

- 8.8 If a Unitholder fails to pay in full any instalment due on any Partly Paid Units on or by the day specified for payment, the Trustee may, during such time as the instalment or any part of the instalment remains unpaid, serve a notice on that Unitholder requiring payment of so much of the instalment as is unpaid, any interest owing and all reasonable Expenses incurred by the Trustee as a result of the non-payment. The notice must:
- (a) specify a further time and day (not earlier than ten Business Days from the date of the notice) on or by which the payment as required by the notice is to be made;
 - (b) state that in the event of non payment on or by that specified time and day, the Partly Paid Units in respect of which the instalment or part instalment remains unpaid will be liable to be forfeited.

- 8.9 If the requirements of any notice issued under clause 8.8 are not complied with:
- (a) any Partly Paid Unit in respect of which the notice has been given (an **Affected Unit**) may, at any time after the date specified in the notice for payment of the amount required by the notice (and before payment of the instalment and any interest and Expenses owing), be forfeited on the Trustee so determining; and
 - (b) subject to the Corporations Act and this Trust Deed, all voting rights, entitlements to the distribution of income and other rights in connection with any Affected Unit are suspended until reinstated by the Trustee.
- 8.10 A forfeited Unit may be sold or otherwise disposed of by private treaty or public auction if and as permitted by the Corporations Act or ASIC Relief.
- 8.11 At any time before a sale or disposal, the forfeiture may be cancelled upon such terms as the Trustee thinks fit.
- 8.12 The holder of Partly Paid Units which have been forfeited remains liable to pay to the Trustee all moneys which, at the date of forfeiture, were payable by the former Unitholder to the Trustee in respect of the forfeited Units (including interest owing under clause 8.6 and Expenses). The former Unitholder's liability ceases if and when the Trustee receives payment in full of all such money in respect of the forfeited Units.
- 8.13 A statement signed by a duly authorised officer of the Trustee that a Partly Paid Unit has been duly forfeited on a particular date is conclusive evidence of the facts in that statement as against all persons claiming to be entitled to the forfeited Units.
- 8.14 Where a Partly Paid Unit is forfeited pursuant to this clause 8:
- (a) the Trustee may receive the consideration, if any, given for a forfeited Unit on the sale or disposal;
 - (b) the Trustee or any director of the Trustee may execute a transfer of such Unit in favour of the person to whom the Unit is sold or disposed of (the **Acquirer**);
 - (c) the Acquirer must then be Registered as the holder of that Unit and is not obliged to ensure that any part of the money which the Acquirer has paid for the Unit is paid to the former holder of the Unit;
 - (d) the Acquirer's title to that Unit shall not be affected by any irregularity or invalidity in the proceedings in relation to the forfeiture, sale or disposal of that Unit; and
 - (e) the Unitholder whose Units have been forfeited indemnifies the Trustee against any claim or liability the Trustee may incur in acting in accordance with this clause 8.15.
- 8.15 Where forfeited Units are sold or disposed of for Cash, the Trustee must deduct from the amount of the consideration:
- (a) first, the Expenses of the sale;
 - (b) second, any Expenses incurred in connection with the forfeiture, including any interest accrued and amounts payable in accordance with clause 8.9; and
 - (c) third, the amount of instalments then due and unpaid.

The Trustee may retain the amounts so deducted, but the balance remaining must be paid to the Unitholder whose Units were forfeited. If the proceeds of sale are not sufficient to cover the amounts referred to above, then the former Unitholder remains liable for the difference.

Joint holders

- 8.16 Joint holders of Partly Paid Units are jointly and severally liable to pay all amounts due and payable on or in respect of the Partly Paid Units held by them.

Partly Paid Units

- 8.17 Subject to the Corporations Act, the rights and obligations attaching to a Partly Paid Unit will be in proportion to the extent to which the Application Price has been paid.
- 8.18 The Trustee has a first and paramount lien upon every Partly Paid Unit for unpaid instalments and other moneys payable to the Trustee by the Unitholder in relation to a Partly Paid Unit. That lien extends to all distributions and other money from time to time payable in relation to that Unit.
- 8.19 For the purpose of enforcing a lien, the Trustee may sell the Partly Paid Units subject to the lien, in the same manner, so far as is applicable, as if the Partly Paid Units had been forfeited for non-payment of an instalment.

Prepayment of instalments

- 8.20 The Trustee may:
- (a) accept from a Unitholder the whole or a part of the amount unpaid on a Partly Paid Unit although no part of that amount has been called; and
 - (b) authorise payment by the Trust of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding BBSW plus 3% per annum, as is agreed on between the Trustee and the Unitholder paying the sum.

9 Classes of Units

- 9.1 The Trustee may:
- (a) issue different Classes of Units and may determine the rights, restrictions and obligations that will attach to the Units within each Class;
 - (b) alter the Class of a Unit by converting the entire Class of Units into another Class or by re-classifying or re-allocating particular Units to another Class; and
 - (c) vary or cancel all or any rights and privileges attached to any Class (unless otherwise provided by the terms of issue of the Units of that Class),
 - (d) provided such action will not adversely affect Unitholders' rights to income and capital or the Trust.
- 9.2 The rights conferred on the Unitholders of any Class will not, unless otherwise expressly provided by the terms of issue of the Units of that Class, be deemed to be varied by the creation or issue of further Units ranking equally in respect of those rights.
- 9.3 The Trustee must enter the terms of any rights or obligations of each Class in the Register.

- 9.4 The Assets for each Class of Units are held separate from the Assets referable to any other Class of Units. Unitholders will only have recourse to the Assets referable to the Class of Units the Unitholder holds and not to any other Assets. The Trustee must make reasonable endeavours to protect the Assets referable to a class from cross-liability to creditors of another Class.
- 9.5 The proportion of each variable properly referable to a Class under this Trust Deed is, where the variable relates:
- (a) only to a particular Class is solely referable to that Class; and
 - (b) to more than one Class, is apportioned between those Classes in the same proportions as:
 - (i) the aggregate value of Units on issue in each Class as at the most recent Valuation Time adjusted for the aggregate net value of Units issued at the Application Price and redeemed at the Redemption Price, both determined as at the last Valuation Time, in each Class
 - bears to
 - (ii) the aggregate value of Units in all Classes on issue at that Valuation Time adjusted for the aggregate net value of Units issued at the Application Price and redeemed at the Redemption Price, both determined as at the last Valuation Time, in all Classes,
 - to which the variable relates.
-

10 Application Price for Units

- 10.1 The Application Price for a Class of Units may be determined by the Trustee as appropriate for the relevant Assets corresponding to that Class.
-

11 Application procedure

Application form

- 11.1 An applicant for Units must complete a form approved by the Trustee if the Trustee so requires. The form may be transmitted electronically if approved by the Trustee.

Payment

- 11.2 Payment in a form acceptable to the Trustee, or a transfer of Property of a kind acceptable to the Trustee and able to be vested in the Trustee or a custodian appointed by it (accompanied by a recent valuation of the Property, if the Trustee requires), must:
- (a) accompany the application;
 - (b) be received by or made available to the Trustee or the custodian within such period before or after the Trustee receives the application form as the Trustee determines from time to time, or as specified in the terms of issue of the relevant Partly Paid Unit; or
 - (c) comprise a reinvestment of a distribution in accordance with this Trust Deed.

- 11.3 If the Trustee accepts a transfer of Property other than Cash, any costs associated with the valuation or transfer of the Property must be paid by the Unitholder either directly or by deducting them from the market value of the Property before the number of Units to be issued is calculated, as the Trustee decides.

Trustee may reject

- 11.4 The Trustee may reject an application in whole or in part without giving any reason for the rejection.

Minimum amounts

- 11.5 The Trustee may set a minimum application amount and a minimum holding for the Trust and alter or waive those amounts at any time.

Issue Date

- 11.6 Except in the case of a reinvestment of distribution in accordance with this Trust Deed, Units are taken to be issued when the Trustee effects the Registration of the Units against the name of the applicant.
- 11.7 The Trustee may only effect the Registration of Units against the name of an applicant if the Trustee:
- (a) accepts the application under the terms of issue; and
 - (b) as the case requires:
 - (i) receives the application money; or
 - (ii) has vested in it the Property against which Units are to be issued; or
 - (iii) receives a Commitment.
- 11.8 Subject to the Corporations Act, the Trustee may hold applications and application moneys without accepting them for such period as it determines.
- 11.9 Without limiting clause 11.8, the Trustee is authorised to hold application moneys for the term of any offer period.
- 11.10 Units which are issued on a reinvestment of distribution in accordance with this Trust Deed are taken to be issued on the day the distribution is paid or applied in payment for the Units.

Uncleared funds

- 11.11 Units issued against application money paid other than in cleared funds, or in consideration of a transfer of Property or Commitment, are void if the funds are not subsequently cleared or received or the Property does not vest in the Trustee:
- (a) within five Business Days of receipt of the application or such other period specified in the terms of any offer; or
 - (b) by the time specified in the Commitment.

Register

- 11.12 Subject to the Corporations Act, a single register in which details of the holders of Units are recorded may be kept.

12 Redemption Price of Units

Redemption Price

- 12.1 Subject to clause 12.4, a Class of Unit must only be redeemed at a Redemption Price calculated as:

$$A = \frac{(B - C)}{D}$$

where:

- A** is the Redemption Price for that Class of Unit;
- B** is the Net Asset Value of the Assets of that Class of Unit;
- C** is the amount of Transaction Costs for that Class of Units (if any);
- D** is the number of Units in issue in that Class,

less, in the case of a Partly Paid Unit, the amount of the Application Price which has not been paid.

- 12.2 Each of the variables in clause 12.1 must be determined:

- (a) while the Trust is a registered scheme and Liquid or not a registered scheme, as at the next Valuation Time after the Trustee determines that the Class of Units are to be redeemed; or
- (b) while the Trust is a registered scheme, but not Liquid, at the time the withdrawal offer closes.

- 12.3 The Redemption Price may be rounded as the Trustee determines. The amount of the rounding must not be more than one cent.
- 12.4 Immediately prior to the redemption of a Unit the Trustee is to distribute to the Unitholder the Accrued Income Entitlement in respect of the Unit. The Accrued Income Entitlement is a reduction to the amount of the Redemption Price payable at that time.

13 Redemption procedures

Request for redemption

- 13.1 A Unitholder may make a Redemption Request in respect of some or all of their Units in any manner approved by the Trustee and, while the Trust is Liquid or not a registered scheme, the Trustee may (but is not required to) give effect to that Redemption Request at the time and in the manner set out in this clause 13.
- 13.2 Subject to the Corporations Act, a Redemption Request may not be revoked without the consent of the Trustee.
- 13.3 Upon making a Redemption Request, the Unitholder will have no right to deal with the Units (unless and until the Redemption Request is denied by the Trustee).
- 13.4 Subject to the Corporations Act, the Trustee may delay the redemption of Units if:

- (a) there is a circumstance outside its control which it considers impacts on its ability to properly or fairly calculate the Redemption Price or realise Assets, including where the Assets or relevant currencies are subject to restrictions or if there is material market uncertainty, and in such case it may delay the redemption of Units for so long as the circumstance continues;
- (b) it has determined to give effect to Redemption Requests in relation to a particular time the Trust is valued and the total redemption moneys which would be payable at this time represent more than 10% of the Net Asset Value of the Trust (before taking into account redemption moneys payable), and in such a case the Trustee can redeem the Units at such future time, or at times over such period, as it determines subject to payments of redemption moneys to each Unitholder being in the proportion that their redemption moneys bear to all other redemption moneys which were payable at that time; or
- (c) the terms of issue contemplate the delay in the redemption of Units.

13.5 If the Trustee delays redemption of Units:

- (a) under clause 13.4(a), the Redemption Price is that next calculated after the circumstance ceases;
- (b) under clause 13.4(b), the Redemption Price is that next calculated after the time or times it determines the Units will be redeemed; and
- (c) under clause 13.4(c), the Redemption Price is calculated according to the terms of issue of the Units.

While the Trust is a registered scheme and Liquid or not a registered scheme

13.6 Clauses 13.7 to 13.10 apply while the Trust is:

- (a) a registered scheme and Liquid; or
- (b) not a registered scheme.

13.7 The Trustee may decide to satisfy a Redemption Request either in relation to all or some of the Units which are the subject of the request. The Trustee will give notice of a decision to reject a Redemption Request.

13.8 If the Trustee decides to satisfy a Redemption Request in respect of a Unit it must pay the Redemption Price, calculated in accordance with this Trust Deed, from the Assets. The payment must be made within 3 Business Days, unless otherwise specified in the notice by the Trustee of the decision to accept a Redemption Request or the Offer Document, of the Trustee's decision.

13.9 If compliance with a Redemption Request would result in the Unitholder holding Units with an aggregate Redemption Price which is less than the then current Minimum Holding, the Trustee may treat the Redemption Request as including the balance of the Unitholder's holding.

13.10 If the Trustee increases the Minimum Holding, the Trustee may after giving 30 days' notice to a Unitholder who holds Units with an aggregate Redemption Price less than the then current Minimum Holding, redeem that Unitholder's holding without the need for a Redemption Request.

While Trust is a registered scheme, but not Liquid

- 13.11 Clauses 13.12 to 13.16 apply while the Trust is a registered scheme, but not Liquid.
- 13.12 A Unitholder may withdraw from the Trust in accordance with the terms of any current withdrawal offer made by the Trustee in accordance with the provisions of the Corporations Act.
- 13.13 If there is no withdrawal offer currently open for acceptance by Unitholders, a Unitholder has no right to withdraw from the Trust.
- 13.14 The Trustee is not at any time obliged to make a withdrawal offer.
- 13.15 The Trustee may cancel a withdrawal offer in accordance with the Corporations Act.
- 13.16 If the Trustee receives a Redemption Request before it makes a withdrawal offer, it may treat the request as an acceptance of the withdrawal offer effective as at the time the withdrawal offer is made.

Liquid or not Liquid

- 13.17 The Trustee will determine whether or not the Trust is Liquid in its absolute discretion.

Trustee not obliged to pay out of its own funds

- 13.18 The Trustee is not obliged to pay any part of the Redemption Price out of its own funds.

Amounts owed to the Trustee

- 13.19 The Trustee may deduct from the proceeds of a Redemption Request or money paid pursuant to a withdrawal offer any money due to it by the Unitholder.

Transfer of Assets

- 13.20 The Trustee may transfer Assets other than Cash to a Unitholder rather than pay Cash in satisfaction of all or part of a Redemption Request or pursuant to a withdrawal offer. These Assets, together with any Cash paid, must be of equal value to the total amount due to the Unitholder pursuant to the Redemption Request (as determined by the Trustee) or withdrawal offer (based on a valuation done within one month before the date of the proposed transfer). If the Trustee requires, the costs involved in transfer of these Assets must be paid by the Unitholder or deducted from the amount due to the Unitholder.

Redemption date

- 13.21 Units are taken to be redeemed when the Trustee cancels the relevant Units against the name of the Unitholder, or former Unitholder, in the Register.

14 Valuation of Assets, Financial Statements and Tax matters

Trustee may value

- 14.1 The Trustee may cause an Asset to be valued at any time, and must do so as and when required by the Corporations Act.
- 14.2 The Trustee may determine Net Asset Value at any time, including more than once on each day. For the avoidance of doubt, Net Asset Value is determined on the basis of Assets

referable to each individual Class of Units only. The Net Asset Value of the Trust itself will not be calculated.

Valuation methods

- 14.3 The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.
- 14.4 Unless the Trustee determines otherwise, the value of an Asset for the purpose of calculating Net Asset Value will be its market value, determined in accordance with the valuation methods and policies determined under clause 14.3.
- 14.5 Where the Trustee values an Asset at other than its market value, or where there is no market value, the valuation methods and policies applied by the Trustee must be capable of resulting in a calculation of the Application Price or Redemption Price that is independently verifiable.

Preparation of Financial Statements

- 14.6 The Trustee must prepare Financial Statements as and when required by the Corporations Act.
- 14.7 The Trustee must also cause the Annual Financial Statements for the Trust (including any entity required to be consolidated with the Trust in accordance with the Corporations Act and the Accounting Standards) to be prepared and provided to the Unitholders within 28 Business Days after the end of the relevant Financial Year, in the form agreed between the Trustee and the Unitholders from time to time. The Financial Statements must include:
 - (a) a consolidated balance sheet of the Trust;
 - (b) a consolidated income statement of the Trust for the Financial Year;
 - (c) a statement of each Unitholder's capital;
 - (d) a status report of the Trust's investments and activities during the Financial Year, including summary descriptions of investments made and disposed of by the Trust and amounts withheld for expenses or reserves upon disposition of an investment during the Financial Year;
 - (e) a report on the activities of the Trust;
 - (f) a copy of the Annual valuation;
 - (g) a summary and description of committed investments and what amounts the Trustee has determined are committed to be invested by the Trust but that are unfunded;
 - (h) a description of all Liabilities of the Trust incurred and outstanding as at the end of the Financial Year; and
 - (i) a summary of all fees paid to the Trustee or its Associates.
- 14.8 Within 90 calendar days after the end of each Financial Year, the Trustee must prepare (or cause to be prepared) and distribute to each Unitholder, an audited report setting out as of the end of such Financial Year. The Trust's auditor must be an internationally recognised audit firm (which must be one of the "Big Four" accounting firms).

Tax matters

- 14.9 The Trustee must cause all required Australian Tax returns and statements in relation to the Trust (including any entity consolidated under the Tax Act or being a member of a GST Group with the Trust) to be prepared and filed with the relevant Tax authorities in each completed Financial Year.
- 14.10 The Trustee must cause the Tax affairs of the Trust (including any entity consolidated under the Tax Act or being a member of a GST Group with the Trust), including any Tax audit or Tax dispute, to be managed which includes the co-ordination and the filing on a timely basis of, all the returns, claims, applications for relief, forms and other documentation to the relevant Tax authorities on behalf of the Trust as may be required or desirable in the opinion of the Trustee and in facilitating the payment of any Tax.

Record keeping

- 14.11 The Trustee must ensure that at any time, copies of the Trust's:
- (a) income tax, GST or information returns and reports (if any);
 - (b) Financial Statements; and
 - (c) books and records, including financial records and accounts,
- are kept for the current and past seven Financial Years.
- 14.12 The Trustee must ensure that complete books of account and records for the Trust and its Assets are maintained to comply with its auditing reporting and other obligations under this Trust Deed and any obligations imposed by law.

15 Payments

Payment by electronic transfer

- 15.1 Money payable by the Trustee to a Unitholder must be paid by the Trustee by electronic means.
- 15.2 Payments made by electronic transfer must be made to the account, details of which are provided to the Trustee in writing by the Unitholder. Where the Trustee attempts to make a payment to a Holder by electronic transfer of funds or any other electronic means and the payment to the Holder is unsuccessful, the money is to be held by the Trustee for the Holder or paid by the Trustee in accordance with the legislation relating to unclaimed money unless, in the case of a Unitholder, the Trustee in its discretion decides to reinvest the money in Units in which case clauses 16.14 to 16.18 will apply.

Rounding of amounts to be paid

- 15.3 Subject to clause 15.4, only whole cents are to be paid, rounded as the Trustee determines.
- 15.4 If the amount to be paid is less than one cent (or such other amount as the Trustee determines), the money representing the fraction of a cent (or such other amount so determined by the Trustee) will be held for payment in the future at the discretion of the Trustee. The Trustee must credit that money to an account which is an Asset.

Payments to joint Unitholders

- 15.5 A payment to any one of joint Unitholders will discharge the Trustee in respect of the payment.

Deductions from payments

- 15.6 The Trustee may deduct from any amount to be paid to a person who is or has been a Unitholder, or received from a person who is or has been a Unitholder:
- (a) any amount of Tax (or an estimate of it); or
 - (b) any other amount, which the Trustee is required or authorised to deduct in respect of that payment or receipt or which the Trustee considers should be deducted or owed by the Unitholder to the Trustee or any other person.

Currency

- 15.7 Where the Trustee needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting the number of Units or Options to be issued to an applicant, the Trustee will disclose the method of calculating the conversion to the applicant.

16 Income and Distributions

Determination of Distributable Income

- 16.1 The Trustee must determine the Distributable Income of the Trust for each Distribution Period in accordance with clause 16.2.
- 16.2 Unless the Trustee determines otherwise prior to the end of the Financial Year, Distributable Income for a Distribution Period is the greater of:
- (a) the minimum amount which, if distributed to Unitholders for the period, would, to the extent possible, prevent the Trustee being liable to tax under section 99 or section 99A of the Tax Act for that Distribution Period on the assumption that the Distribution Period were a year of income; and
 - (b) the net income of the Trust for the Distribution Period or the Financial Year (as the case requires) determined in accordance with the Accounting Standards adjusted such that any unrealised gains and losses are excluded until (and only to the extent to which) they are realised plus or minus any Prior Year Adjustment Amounts.

Classification of income components

- 16.3 The Trustee may decide the classification of any item as being on income or capital account and the extent to which reserves or provisions need to be made. If an accretion to the Trust does not form part of the Distributable Income, it will be capital.

Separate accounts

- 16.4 The Trustee may keep separate accounts of different categories or sources of income, deductions or credits for tax purposes.

Present entitlement

- 16.5 Subject to the restrictions attaching to any particular Unit, a person who, at any time during a Financial Year, is or has been a Unitholder, is presently entitled to the Distributable Income for that Financial Year (on the last day of that Financial Year), in the proportion that the sum of the Income Distributions and Accrued Income Entitlements of the Unitholder in respect of that Financial Year bears to the sum of the Income Distributions and Accrued Income Entitlements in respect of that Financial Year of all persons who are or have been Unitholders at any time during that Financial Year.

Income Distributions

- 16.6 The Income Distribution for a Unitholder for a Distribution Period is an amount calculated by the Trustee as follows:

- (a) in respect of a Distribution Period ending on a Distribution Calculation Date other than the last day of the Financial Year in any year, an amount calculated as follows:

$$A = \left(\frac{B}{C} \right) \times D$$

where:

- A** is the Income Distribution of the Unitholder for the Distribution Period;
- B** is the aggregate of:
- (a) the number of Fully Paid Units held by the Unitholder at the end of the Distribution Period; plus
 - (b) the number obtained by multiplying the number of Partly Paid Units held by the Unitholder as at the end of the Distribution Period by the Relevant Percentage as at that time,
- but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period;
- C** is the aggregate of the number of Fully Paid Units in issue plus the Paid-up Proportion of the Partly Paid Units at the end of the Distribution Period, but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period;
- D** is an estimate of the Distributable Income for the Distribution Period less any Accrued Income Entitlements for that Distribution Period; and

- (b) in respect of a Distribution Period ending on the last day of the Financial Year in any year, an amount calculated as follows:

$$A = \left(\frac{B}{C} \right) \times D$$

where:

- A** is the Income Distribution of the Unitholder for the Distribution Period;
- B** is the aggregate of:
- (a) number of Fully Paid Units held by the Unitholder at the end of the Distribution Period; plus
 - (b) the number obtained by multiplying the number of Partly Paid Units held by the Unitholder at the end of the Distribution Period by the Relevant Percentage at that time,
- but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period.
- C** is the aggregate of the number of Fully Paid Units in issue plus the Paid-up Proportion of the Partly Paid Units at the end of the Distribution Period, but ignoring Units which are not entitled to participate in Distributable Income in respect of the Distribution Period; and
- D** is the amount (if any) by which the Distributable Income for the Financial Year exceeds the aggregate of (a) variable **D** in clause 16.6(a) and Accrued Income Entitlements in respect of the previous Distribution Periods of the Financial Year; and (b) any Accrued Income Entitlements for that Distribution Period.

- 16.7 For the purposes of variables B and variable C in clause 16.6, if any Units have been issued in the Distribution Period, that Unit will not be counted as a whole Unit, rather it will be counted as a fraction of a Unit based on the number of days in the Distribution Period it was on issue for which it is entitled to Distributable Income.

Satisfaction of present entitlement

- 16.8 Income Distributions for a Distribution Period must be paid to a Unitholder within two months after the Distribution Calculation Date, or if the review or audit (if any) for that Distribution Period has not been completed, as soon as possible after the completion of the review or audit but in no circumstances later than three months after the Distribution Calculation Date.

Entitlement to capital

- 16.9 The Trustee may distribute any amount of capital (not included in Distributable Income) to Unitholders of the Trust by the payment of Cash or the issue of Units of an amount determined in accordance with the following formula (rounded down to the nearest whole cent or as the Trustee otherwise determines):

$$A = \left(\frac{B}{C} \right) \times D$$

where:

- A** is the amount of the distribution to which the Unitholder is entitled;

- B** is the aggregate of:
- (a) the number of Fully Paid Units held by the Unitholder at the time determined by the Trustee relevant to the return of capital (**relevant day**); plus
 - (b) the number obtained by multiplying the number of Partly Paid Units held by the Unitholder on the relevant day by the Relevant Percentage on that day;
- C** is the aggregate of the number of Fully Paid Units in issue plus the Paid-up Proportion of the Partly Paid Units; and
- D** is the amount of Cash or the value of Assets (determined by the Trustee) to be distributed.

Trust taxed as company

16.10 If the Trust is to be taxed as if it was a company during a Distribution Period, none of the foregoing provisions in this clause 16 will apply and the Trustee may determine that this clause 16.10 applies to a Distribution Period instead of clauses 16.1 to 16.9. If it does so:

- (a) as soon as practicable after the end of the Distribution Period the Trustee must determine the Distributable Income in respect of the Distribution Period;
- (b) the Trustee must provide for, and pay from the Assets of the Trust when appropriate, all Tax payable by the Trustee in accordance with the Tax Act;
- (c) the Trustee may, in its discretion from time to time determine to pay such amount or amounts (if any) of income as a distribution in respect of the Distribution Period (each a **Distributable Amount**) to the Unitholders on the Register on any Distribution Calculation Date;
- (d) in respect of a Distributable Amount being paid to Unitholders pursuant to this clause 16.10 the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies, including the franking of the distributions;
- (e) a Unitholder is entitled to a portion of the Distributable Amount, calculated as follows:

$$A = \left(\frac{B}{C} \right) \times D$$

where:

- A** is the amount of the Distributable Amount to which the Unitholder is entitled;
- B** is the aggregate of the number of Units held by the Unitholder at the Distribution Calculation Date for the Distributable Amount, but ignoring Units which are not entitled to participate in the Distributable Amount in respect of the Distribution Period;
- C** is the aggregate of the number of all Units on issue as at the Distribution Calculation Date, but ignoring Units which are not

entitled to participate in the Distributable Amount in respect of the Distribution Period; and

D is the Distributable Amount.

Position on transfer of Units

- 16.11 Income in the Distribution Account when a transfer or transmission of Units is Registered remains credited to the transferor.

Liability

- 16.12 The Trustee does not incur any liability and is not obliged to account to anyone (including any Unitholder or former Unitholder) nor is it liable for any loss or damage as a result of the exercise of any discretion or power under this clause 16 or in respect of any determination of fact or law made as part of, or as a consequence of, the exercise of such discretion or power notwithstanding any error or miscalculation in any provision made for Tax.

Rounding

- 16.13 If the Unitholder's entitlement to a distribution includes a fraction of a cent the entitlement is to be rounded down to the nearest cent below the amount of the Unitholder's entitlement.

Reinvestment

- 16.14 The Trustee may decide to permit Unitholders to reinvest some or all of any distribution to acquire Units. The offer to permit reinvestment must be made in the same terms to all Unitholders. Any Units acquired by Unitholders through reinvestment of distributions will be issued at the Application Price.
- 16.15 If the Trustee decides to permit reinvestment, it must notify Unitholders of the procedure for reinvestment and any change in the procedure.
- 16.16 If the amount to be reinvested in additional Units results in a fraction of a Unit, the money representing the fraction will be held for future reinvestment in the Trust at the next time that reinvestment is to occur. The Trustee must credit that money to an account to be designated as the "Distribution Account".
- 16.17 Whenever, under this Trust Deed or by law, money is held on behalf of a Unitholder for future reinvestment, the money so held may, in the discretion of the Trustee be aggregated and, on each occasion on which the aggregated amount reaches the Application Price of a Unit, be applied in the subscription for a new Unit for issue to the Unitholder.
- 16.18 Units issued under clauses 16.14 to 16.17 inclusive are to participate fully for income in respect of the Distribution Period in which they are issued.

17 AMIT taxation regime

Election

- 17.1 If the Trust qualifies as an AMIT during the Financial Year, the Trustee may make an election for the Trust to be taxed under the AMIT Regime by the Trustee:
- (a) providing a notice in writing to Unitholders that the Trust will be taxed as an AMIT; and
 - (b) preparing the tax returns of the Trust on the basis that the Trust is an AMIT.

- 17.2 If the Trustee makes an election under clause 17.1 and the Trust is an AMIT during the Financial Year, this clause 17 will apply to the Trust.

Trustee powers

- 17.3 The Trustee has all of the powers and rights which are necessary and desirable to ensure compliance with and the effective operation of the Trust as an AMIT for the purposes of the AMIT Regime, including any steps necessary to determine each Unitholder's Determined Member Component.

Identifying the Trust Components

- 17.4 The Trustee must identify the Trust Components of the Trust, in a document that meets the requirements of section 276-255(2) of the Tax Act. Each Trust Component will have an identified character for tax purposes, as contemplated in the AMIT Regime.

Allocating Trust Components to Unitholders

- 17.5 The Trustee must allocate a portion of each Determined Trust Component to each Unitholder on a fair and reasonable basis and without regard to a Unitholder's tax characteristics.
- 17.6 A Member Component must be calculated for each particular character that is identified in respect of the Determined Trust Component.
- 17.7 If the Trustee, for whatever reason, does not make a determination to allocate the Determined Trust Components to the Unitholders in accordance with clauses 17.5 and 17.6, then the Trustee is deemed to have determined to have attributed the Determined Trust Components proportionately to each Unitholder's holding of Units as held at the end of the Financial Year.

AMMA statements

- 17.8 The Trustee must issue an AMMA Statement to each Unitholder in respect of the Financial Year. The AMMA Statement will set out the Unitholder's Member Component in respect of each Determined Trust Component as well as all of the other information required under the AMIT Regime to be included in the statement. The AMMA Statement must be given to each Unitholder no later than three months after the end of the Financial Year to which the AMMA Statement relates.
- 17.9 The Trustee may re-issue revised AMMA Statements to a Unitholder in respect of a Financial Year which effectively replaces the previous AMMA Statement(s) issued in respect of that Financial Year. A revised AMMA Statement must be issued by the Trustee no later than four years after the end of the Financial Year to which the AMMA Statement relates.

18 Powers of the Trustee

General powers

- 18.1 Subject to this Trust Deed, the Trustee has all the powers of a natural person in respect of the Trust as though it were the absolute owner of the Assets.

Specific powers

- 18.2 Without limiting the effect of clauses 18.1, the Trustee in its capacity as trustee of the Trust has power to:

- (a) invest in, dispose of or otherwise deal with Property and rights in its absolute discretion, including the power to invest in a Sub Trust and derivatives;
- (b) borrow or raise money whether or not on security of the Assets;
- (c) incur all types of obligations and liabilities including guarantees;
- (d) enter into an arrangement with a person to underwrite the subscription or purchase of Units on such terms as the Trustee determines;
- (e) apply for quotation of any Units, Options or other financial instruments on any exchange where similar instruments are listed and traded; and
- (f) make any elections in relation to Tax or qualify the Trust for any Tax purposes, including electing to apply any regime applicable to attribution managed investment trusts.

Power of delegation

- 18.3 The Trustee may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate.
- 18.4 The Trustee may include in the authorisation provisions to protect and assist those dealing with the agent or delegate as the Trustee thinks fit.
- 18.5 Subject to the Corporations Act, the agent or delegate may be an associate of the Trustee.

Discretion as to exercise of powers

- 18.6 Subject to this clause 18, the Trustee may in its absolute discretion decide how and when to exercise its powers.

Investment management activities

- 18.7 The Trustee undertakes to use its best endeavours to ensure that a substantial proportion of all investment management activities (for the purposes of subdivision 12-383(b) of Schedule 1 of the *Taxation Administration Act 1953* (Cth)) undertaken by the Trustee, or an entity appointed by the Trustee, with respect to the Trust will be carried out in Australia.

Investment Management Agreement

- 18.8 The Trustee is entitled to enter into and perform in accordance with an Investment Management Agreement.
- 18.9 The Trustee and Unitholders acknowledge that if the Trustee has entered into an Investment Management Agreement:
 - (a) a substantial proportion of the investment management activities may be performed by the Investment Manager for the Trust as part of the services it is to provide under an Investment Management Agreement; and
 - (b) nothing in this Trust Deed affects or modifies the Investment Management Agreement or the activities or services to be provided under it.

General matters relating to the Trustee's appointment as trustee

18.10 The Trustee represents and warrants to the Unitholders that each of the following is and will remain true and correct:

- (a) it holds such licences and authorities as are necessary to lawfully perform its obligations under this Trust Deed and the Investment Management Agreement (including the Licence); and
- (b) it has sufficient financial resources to perform its obligations under this Trust Deed and the Investment Management Agreement, and to satisfy its obligations under the Licence.

Wholesale Clients

18.11 The Trust is established and will be managed for Wholesale Clients.

19 Change of Trustee

Retirement and removal while the Trust is not a registered scheme

19.1 Clauses 19.2 and 19.3 only apply while the Trust is not a registered scheme.

19.2 The Trustee may be removed from office:

- (a) as provided by law; or
- (b) by Resolution of Unitholders,

provided that:

- (c) the Trustee is given three months' prior written notice; and
- (d) a new Trustee is appointed by Resolution of Unitholders and complies with clause 19.10.

19.3 The Trustee may retire as the trustee of the Trust on not less than three months' notice to Unitholders (or any shorter period as the Unitholders agree).

19.4 The Unitholders may only appoint a person that has all necessary authorisations and approvals required to operate the Trust and undertake its activities as a new Trustee.

19.5 Where the Trustee is removed from office in accordance with subclause 19.2(b), the Trustee will be entitled to a termination fee calculated in accordance with the following:

$$T = A \times B$$

Where: T is the termination fee

A is 1%;

B is the Net Asset Value of the Fund.

Retirement and removal while the Trust is a registered scheme

19.6 Clauses 19.7 to 19.9 only apply while the Trust is a registered scheme.

19.7 The Trustee may retire in the way and at the time the Corporations Act contemplates.

19.8 The Trustee must retire when required by the Corporations Act.

19.9 Subject to the Corporations Act, Unitholders have no right to remove the Trustee.

Replacement Trustee to execute deed

19.10 Any proposed replacement Trustee must execute a deed by which it agrees to be bound by this Trust Deed.

Obligations of the outgoing Trustee

19.11 Upon the retirement or removal of the Trustee, the outgoing Trustee must promptly, at the expense of the Trust:

- (a) hand to the new Trustee all books, records, documents and other property of or relating to the Trust;
- (b) do all things necessary to transfer the legal title in the Assets to the new Trustee;
- (c) sign authorities and give directions reasonably required by the new Trustee to give possession or control of any part of the Trust in the hands of third parties; and
- (d) give any assistance reasonably required by the new Trustee to put the new Trustee into full knowledge of the affairs of the Trust.

Release

19.12 When the Trustee changes, the outgoing Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed except those which the Corporations Act continues to impose.

Retirement benefits

19.13 The Trustee may agree with the proposed replacement Trustee to be remunerated by, or to receive a benefit from, the proposed replacement Trustee in relation to:

- (a) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders, and nominating to the Unitholders the incoming Trustee as its replacement; or
- (b) its retirement as Trustee,

and is not required to account to Unitholders for such remuneration or benefit.

20 Communications

Communications to a Unitholder

20.1 Subject to the Corporations Act, communications between the Trustee and Unitholders must be in writing which includes any electronic means (including sending an electronic link to a document to a Unitholder) and fax and must be sent to the Unitholder at the Unitholder's physical, postal or electronic address.

Communications to joint Unitholders

20.2 For joint Unitholders, the physical or electronic address is that of the Unitholder first named in the Register.

Receipt of communications to a Unitholder

- 20.3 Without limiting any other means by which a Trustee may be able to prove that a notice has been received by a Unitholder, communications to a Unitholder will be considered to have been received:
- (a) if sent by hand, when left at the address of the recipient;
 - (b) if sent by pre-paid post, three days (if posted within Australia to an address in Australia) or seven days (if posted from one country to another) after the date of posting;
 - (c) if sent by facsimile, on receipt by the sender of an acknowledgement or transmission report generated by the sender's machine indicating that the whole facsimile was sent to the recipient's facsimile number; or
 - (d) if sent by electronic means, on the date and time at which it enters the addressee's information system as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purposes of this clause,
- but if a notice is served by hand, received by the recipient's facsimile or received by the recipient's information system via electronic means on a day that is not a Business Day, or after 5.00pm (recipient's local time) on a Business Day, the notice will be considered to have been received by the recipient at 9.00am (recipient's local time) on the next Business Day.
- 20.4 Proof of actual receipt is not required.

Communications to the Trustee

- 20.5 Communications to the Trustee must be sent to the Trustee at the last advised electronic address.
- 20.6 The notice is effective only at the time of actual receipt.
- 20.7 Communications to the Trustee must carry the actual, facsimile or electronic signature of the Unitholder or someone authorised by the Unitholder, unless the Trustee waives this requirement.

21 Meetings of Unitholders

Convening of meetings

- 21.1 The Trustee may at any time convene a meeting of Unitholders and must do so if the Corporations Act requires.
- 21.2 While the Trust is a registered scheme, meetings of Unitholders must be convened and conducted in accordance with Part 2G.4 of the Corporations Act and this Trust Deed.
- 21.3 While the Trust is not a registered scheme, meetings of Unitholders will be convened and conducted in accordance with this Trust Deed as if Part 2G.4 applied with any necessary modifications.

Trustee may determine

- 21.4 Subject to the specific provisions of this Trust Deed relating to meetings of Unitholders and to the Corporations Act, the Trustee may determine the time and place at which a meeting of Unitholders will be convened and the manner in which the meeting will be conducted.

Notice of meeting

- 21.5 Notice of a meeting of Unitholders must be given in accordance with the Corporations Act. If a Unitholder does not receive a notice of a meeting or a cancellation or postponement of a meeting (including if the notice was accidentally omitted to be given to them), the meeting is not invalidated.

Calculation of period of notice

- 21.6 In computing the period of notice under clause 21.5, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

Quorum

- 21.7 The quorum for a meeting of Unitholders is at least two Unitholders present in person or by representative or proxy, attorney or representative who are entitled to vote unless the Trust has only one Unitholder who may vote on a Resolution, in which case that one Unitholder constitutes a quorum. If an individual is attending a meeting both as a Unitholder and as a proxy, attorney or representative, the Trustee may, in determining whether a quorum is present, count the individual in respect of each such capacity.

No quorum

- 21.8 If a quorum is not present within 15 minutes after the scheduled time for the meeting, the meeting is:
- (a) if convened on the requisition of Unitholders - dissolved; or
 - (b) otherwise - adjourned to the same day in the next week and same time and place, or to such other day, time and place as the Trustee decides by notice to the Unitholders and others entitled to notice of the meeting.

At any adjourned meeting, those Unitholders present in person or by proxy, attorney or representative constitute a quorum. If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

Chair

- 21.9 Subject to the Corporations Act the Trustee may appoint a person to chair a meeting of Unitholders.
- 21.10 The chair of a meeting of Unitholders:
- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (b) may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chair under this clause 21.10 is final.

Postponement or cancellation

- 21.11 The chair has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chair thinks fit, subject to the Corporations Act.

Proxies and voting

- 21.12 The provisions of the Corporations Act governing proxies and voting for meetings of Unitholders of registered schemes apply to the Trust. A proxy is entitled to speak and vote for a Unitholder (to the extent allowed by the appointment) even if the Unitholder is present at the meeting, but only so long as the Unitholder does not speak or vote.
- 21.13 Subject to the Corporations Act, an appointment of proxy is valid even if it contains only some of the information required by the proxy form.

Adjournment of meeting

- 21.14 The chair of a meeting of Unitholders may at any time during the meeting adjourn the meeting or any business, motion, question, Resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the Unitholders present. Unless required by the chair, no vote may be taken or demanded by the Unitholders present in respect of any adjournment.
- 21.15 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Notice of adjourned meeting

- 21.16 It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

Questions decided by majority

- 21.17 Subject to the requirements of the Corporations Act, a Resolution is taken to be carried if a simple majority of the votes cast on the Resolution are in favour of it.

Meetings by technology

- 21.18 A meeting of Unitholders or any class of Unitholders may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

22 Rights and liabilities of Trustee

Holding Units

- 22.1 Any member of the Trustee Group and their associates may hold Units in the Trust in any capacity.

Other capabilities

22.2 Subject to the Corporations Act, nothing in this Trust Deed restricts the Trustee (or its associates) from:

- (a) dealing with itself (as trustee of the Trust or in another capacity), any of the Trust's Controlled entities, any member of the Trustee Group, an associate or with any Holder;
- (b) being interested in any contract or transaction with itself (as trustee of the Trust or in another capacity), any of the Trust's Controlled entities, any member of the Trustee Group, an associate or with any Holder;
- (c) acting in the same or a similar capacity in relation to any other managed investment scheme, company or other entity; or
- (d) dealing with any other entity in which the Trustee holds an investment on behalf of the Trust or dealing with any Units,

and in each case the Trustee or any associate may retain all profits or benefits derived from that activity.

Trustee may rely

22.3 The Trustee may take and may act upon:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this Trust Deed or any other document (whether statutory or otherwise) or generally in connection with the Trust;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and other persons consulted by the Trustee who are in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted;
- (c) a document which the Trustee believes in good faith to be the original or a copy of an appointment by a Holder of a person to act as their agent for any purpose connected with the Trust; and
- (d) any other document provided to the Trustee in connection with the Trust upon which it is reasonable for the Trustee to rely,

and, to the extent legally permitted (and in no way limiting or precluding the Corporations Act in particular) the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or document.

23 Limitation of liability and indemnity in favour of Trustee

Limitation on Trustee's liability

23.1 Subject to the Corporations Act, whilst the Trustee acts without fraud, breach of trust or negligence in the proper performance of its duties, the Trustee is not liable in contract, tort or otherwise to Holders for any loss suffered in any way relating to the Trust.

23.2 Subject to the Corporations Act, the liability of the Trustee to any person other than a Holder in respect of the Trust (including in respect of any contracts entered into as Trustee of the

Trust or in relation to any Assets) is limited to the amount the Trustee actually receives under its right to be indemnified from the Assets.

Indemnity in favour of Trustee

- 23.3 The Trustee is entitled to be indemnified out of the Assets for any liability incurred by it in properly performing any of its duties and in properly exercising any of its powers in relation to the Trust. This right of indemnity is not lost by reason of a separate incident that was itself a breach of trust.
- 23.4 To the extent permitted by the Corporations Act, the indemnity under clause 23.3 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.
- 23.5 The indemnity under clause 23.3:
- (a) is in addition to any indemnity allowed by law; and
 - (b) continues to apply after the Trustee retires or is removed from the office it holds in relation to the Trust.
-

24 Liability of Unitholders

Recourse of the Trustee

- 24.1 In the absence of any other separate agreement with a Unitholder or any separate agreement with a creditor, the recourse of the Trustee and any creditor of the Trust against a Unitholder in connection with the Trust is limited to the Assets of the relevant Class.

Liability limited

- 24.2 Subject to clause 24.3, the liability of a Unitholder is limited to the amount, if any, which remains unpaid in relation to the Unitholder's subscription for their Units.

Indemnity for Tax or User Pays Fees

- 24.3 The Trustee is entitled to be indemnified by a Unitholder or former Unitholder to the extent that the Trustee incurs any liability for Tax or User Pays Fees as a result of the Unitholder's action or inaction, or as a result of an act or omission requested by the Unitholder or former Unitholder. The Trustee may redeem some or all of the Units held by a Unitholder to satisfy any amount of money due to it by the Unitholder.

Joint Unitholders

- 24.4 Joint Unitholders and former joint Unitholders are jointly and severally liable in respect of all payments including payments of Tax and User Pays Fees to which clause 24.3 applies. Amounts so payable are payable on demand.

No indemnity

- 24.5 A Unitholder need not indemnify the Trustee if there is a deficiency in the Assets or meet the claim of any creditor of the Trustee in respect of the Trust.

Restrictions on Holders

- 24.6 Except as otherwise set out in this Trust Deed, a Holder:

- (a) must not interfere with any rights or powers of the Trustee under this Trust Deed;
 - (b) must not exercise a right in respect of an Asset or lodge a caveat or other notice affecting an Asset or otherwise claim any interest in an Asset; and
 - (c) may not require an Asset to be transferred to the Holder.
-

25 Fees and Expenses

Trustee's fee

- 25.1 The Trustee is entitled to receive out of the Assets of the Trust and retain for its own use and benefit from the Commencement Date until the Assets are all distributed under clauses 26.5 to 26.7, a fee calculated and paid in accordance with the Offer Document.

Waiver of fees

- 25.2 The Trustee may waive or postpone the receipt of any fee (or any part of a fee) or charge a lesser fee than it would otherwise have been entitled to receive under this Trust Deed. Where the Trustee postpones any fee or any part of a fee the Trustee can charge interest.

Establishment Fees and Costs

- 25.3 Unless paid prior to the commencement of the Trust, the Trustee is entitled to an establishment fee for the establishment of this Trust and any Sub Trust in accordance with the Offer Document.

Expenses

- 25.4 Notwithstanding any other provisions in this Trust Deed, all Expenses reasonably and properly incurred by the Trustee in connection with the Trust are payable or reimbursable out of the Assets, and while the Trust is a registered scheme reimbursement or payment is only available in relation to the proper performance of the Trustee's duties as responsible entity of the Trust and is reimbursable out of the Assets to the extent that reimbursement is not prohibited by the Corporations Act. This includes the following expense or expenses connected with the following:
- (a) this Trust Deed, the formation of the Trust and any investment vehicle in which the Trust expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
 - (b) registration of the Trust as a registered scheme;
 - (c) the preparation, review, distribution and promotion of any product disclosure statement or offering memorandum in respect of Units or other promotion of the Trust;
 - (d) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
 - (e) any proposed acquisition, disposal or other dealing with any investment;
 - (f) borrowing arrangements and raising money on behalf of the Trust or guarantees in connection with the Trust, including hedging costs, and costs relating to interest rate swaps or any gearing facility;

- (g) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (h) the services of asset managers, property or facilities managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real property or related assets in which the Trust has a direct or indirect interest, which may include an associate of the Trustee;
- (i) the Investment Management Agreement, including any fees and expenses payable to the Investment Manager;
- (j) rates, development, repair, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses not paid by tenants, costs of leasing (including marketing) and leasing incentives in relation to any real property or related assets in which the Trust has a direct or indirect interest;
- (k) travel and accommodation expenses of directors and employees of the Trustee in connection with the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed disposal or any transaction in connection with any Asset or proposed Asset;
- (l) the administration or management of the Trust or its Assets and Liabilities, including expenses in connection with maintaining the Register and dealings with Units;
- (m) underwriting or managing any subscription or purchase of Units, including underwriting, offer management and brokerage fees and commission, handling fees, costs and expenses, amounts payable under indemnity or reimbursement provisions in an underwriting, offer management or broking agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under such agreement;
- (n) convening and holding meetings of Unitholders, the implementation of any Resolutions and communications with Unitholders;
- (o) Tax (including any amount charged by a supplier of goods, services or other things to the Trustee by way of or as a reimbursement for GST) and financial institution fees;
- (p) the engagement of agents, valuers, contractors and Advisers (including legal advisers) whether or not the agents, valuers, contractors or Advisers are associates of the Trustee;
- (q) accounting and compliance with taxation laws and procedures (whether internal expenses of the Trustee or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Trust;
- (r) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;

- (s) any court proceedings, arbitration or other dispute concerning a Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph must be repaid;
- (t) all damages, expenses, payments, legal and other costs and disbursements incurred by the Trustee in relation to or in connection with any claim, dispute or litigation (**Claim**) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Trustee;
- (u) any Compliance Committee established by the Trustee in connection with the Trust, including any fees paid to or insurance premiums in respect of Compliance Committee Members;
- (v) while the Trust is a registered scheme and there is no compliance committee, any costs and expenses associated with the board of directors of the Trustee carrying out the functions which would otherwise be earned out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors whose appointment or tenure satisfies the requirements of Chapter 5C of the Corporations Act;
- (w) fees payable to any audit committee for the Trust;
- (x) the preparation, implementation, amendment and audit of the compliance plan;
- (y) the cost of handling complaints from Unitholders and resolving disputes with them, including the cost of membership of an external dispute resolution system;
- (z) the cost of the Trustee employing a compliance officer to carry out compliance duties under the compliance plan, in so far as the allocation of their time is attributable to matters connected with the Trust;
- (aa) complying with any law, and any request or requirement of ASIC; and
- (bb) in connection with any Reorganisation Proposal.

In this clause 25.4, Expenses:

- (i) includes amounts paid by the Trustee to related bodies corporate for services where the expenses would have been reimbursable had they been incurred by the Trustee; and
- (ii) excludes internal expenses of the Trustee incurred in connection with the matters listed in paragraph (a) (including appointing and maintaining staff).

25.5 Amounts payable under clause 25.4 are in addition to other fees payable under this clause 25 and rights to indemnification or reimbursement conferred under this Trust Deed or by law.

Waiver of Expenses

25.6 The Trustee may waive or postpone reimbursement of any or all Expenses under clause 25.4.

GST

- 25.7 The fees payable to the Trustee under this Trust Deed do not include any amount referable to GST.
- 25.8 If the Trustee is or becomes liable to pay GST in respect of any supply under or in connection with this Trust Deed, then, in addition to any fee or other consideration payable to the Trustee in respect of the supply, the Trustee is entitled to be paid an additional amount on account of GST. The additional amount is to be calculated by multiplying the fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Trustee will be entitled to be reimbursed or indemnified for such amount of GST out of the Assets.

Liability net of GST

- 25.9 Where a party is entitled to be indemnified or reimbursed for any cost, expense or other liability that it has incurred, the amount of the indemnity or reimbursement shall not include the amount of any Input Tax Credit to which that party is entitled in relation to the relevant cost, expense or other liability. Any reference to a party's liability to pay GST or an entitlement to an Input Tax Credit includes a liability or entitlement of the Representative Member of that party's GST Group.

Availability of fees and indemnity

- 25.10 The Trustee will only be entitled to the fees set out in this clause 25 or the payment or reimbursement of Expenses incurred under this clause 25 in relation to the performance of its duties under this Trust Deed where it has properly performed those duties.

26 Procedure on termination

Realisation of Assets

- 26.1 The Trustee must realise the Assets following the Termination Commencement Date.
- 26.2 The realisation of the Assets must be completed within 180 days of the Termination Commencement Date if practicable, and in any event, to the extent reasonably practicable.
- 26.3 The Trustee may postpone the sale of any Asset if the Trustee considers it would be in the best interests of Unitholders to do so.

Audit of termination of winding-up of the Trust

- 26.4 The Trustee must arrange for an independent audit of the final accounts of the Trust by a registered company auditor after winding-up.

Distribution following termination

- 26.5 The net proceeds of realisation, after making allowance for all Liabilities of the Trust (actual and anticipated), Expenses (including anticipated Expenses) of the termination and Accrued Income Entitlements must be distributed, subject to the rights, obligations and restrictions attaching to any particular Units, to Unitholders in accordance with the following formula:

$$A = \left[\left(\frac{B}{C} \right) \times D \right] - E$$

where:

- A* is the amount to be distributed to the Unitholder (subject to the rights, obligations and restrictions attaching to any particular Units);
 - B* is the aggregate of the number of Units held by the Unitholder as at termination, including both Fully Paid Units and Partly Paid Units;
 - C* is the aggregate of the total number of Units in issue as at termination, including both Fully Paid Units and Partly Paid Units;
 - D* is the amount remaining in the Trust after deduction of the Liabilities, Expenses and Accrued Income Entitlements referred to in this clause 26.5. This amount can not be less than zero; and
 - E* is the aggregate of the amounts remaining unpaid on all Partly Paid Units held by the Unitholder (if any) as at termination.
- 26.6 The Trustee may distribute proceeds of realisation to Unitholders in instalments, with each such instalment to be calculated in accordance with clause 26.5.
- 26.7 If the calculation of the entitlement to distribution of capital in respect of a particular Unitholder who holds Partly Paid Units in accordance with the formula in clause 26.5 results in a negative dollar amount, then that Unitholder must pay to the Trustee, within 30 days of the date of a written request to do so, that dollar amount, and the amount so required to be paid will become an Asset available for distribution on the termination of the Trust.

Distribution by transfer of Assets

- 26.8 The Trustee may transfer Assets to a Unitholder rather than pay Cash or part of the Cash otherwise payable as a distribution under this clause 26.

Provisions of this Trust Deed continue to apply

- 26.9 Subject to the Corporations Act, the provisions of this Trust Deed continue to apply from the Termination Commencement Date until the date of final distribution under clauses 26.5 to 26.6, but during that period the Trustee may not accept any applications for Units from a person who is not an existing Unitholder.
- 26.10 The Trust terminates on the date of final distribution under clauses 26.5 and 26.6.

27 Amendments to this Trust Deed

Trustee may amend

- 27.1 While the Trust is a registered scheme, this Trust Deed may be amended, if the Corporations Act allows by:
- (a) Resolution by the Unitholders holding the required majority of the Units in the Trust; or
 - (b) deed executed by the Trustee.
- 27.2 While the Trust is not a registered scheme, the Trust Deed may only be amended by deed executed by the Trustee. If the amendments are not materially adverse to Unitholders, the Trustee may amend without seeking the Unitholders' consent or holding a Unitholders' meeting.

- 27.3 If the Trust Deed is amended by Resolution, the Trustee must give effect to the amendments by executing a supplemental deed poll and complying with any requirements of the Corporations Act that apply.

ASIC Relief

- 27.4 Subject to clause 27.5, where the Corporations Act, as modified or varied in its application from time to time by any ASIC Relief, requires that this Trust Deed contain certain provisions or can only be relied upon if this Trust Deed contains certain provisions, then those provisions are deemed to be incorporated into this Trust Deed at all times at which they are required to be included and prevail over any other provisions of this Trust Deed to the extent of any inconsistency.
- 27.5 Where the ASIC Relief is granted by class order (rather than specifically in relation to the Trust) then the ASIC Relief (and the provisions it requires) will only be taken to be incorporated if the Trustee declares in writing that it will apply.
- 27.6 Clause 27.1 does not apply to provisions deemed by clause 27.4 to be incorporated in the Trust Deed.
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28 Compliance Committee

- 28.1 If any Compliance Committee Member incurs a liability in that capacity in good faith, the Compliance Committee Member is entitled to be reimbursed by the Trustee in respect of that liability to the extent permitted by the Corporations Act.
-

29 Complaints

- 29.1 If a Holder or former Holder submits to the Trustee a complaint in relation to the Trust or its operations, the Trustee:
- (a) must, if the complaint is in writing, acknowledge in writing receipt of the complaint as soon as possible;
 - (b) must ensure that the complaint receives proper consideration resulting in a determination by a person or body designated by the Trustee as appropriate to handle complaints;
 - (c) must act in good faith to deal with the complaint by endeavouring to correct any error which is capable of being corrected without affecting the rights of third parties;
 - (d) may in its discretion give any of the following remedies to the complainant that it considers appropriate, including:
 - (i) information and explanation regarding the circumstances giving rise to the complaint;
 - (ii) an apology; or
 - (iii) compensation for loss incurred by the Holder or former Holder as a direct result of the breach (if any); and

- (e) must respond to complaint promptly in accordance with the urgency of the complaint and in any event not more than 45 days after receipt by the Trustee of the complaint:
 - (i) provide a final response in relation to the complaint by informing the Holder or former Holder of:
 - (A) the outcome of their complaint;
 - (B) their right to take their complaint to EDR; and
 - (C) the name and contact details of the relevant EDR scheme to which they can take their complaint;
 - (ii) if no final response can be provided in that period, inform the Holder or former Holder of:
 - (A) the status of their complaint;
 - (B) the reasons for the delay;
 - (C) their right to complain to the relevant EDR scheme;
 - (D) the name and contact details of the relevant EDR scheme to which they can complain.

29.2 This clause only applies if the Trust is a registered scheme.

30 Miscellaneous

Severance

30.1 If all or part of any provision contained in this Trust Deed is void or invalid or would otherwise result in all or part of this Trust Deed being void or invalid for any reason, then such part is to be severed from this Trust Deed without affecting the validity or operation of any other provision of this Trust Deed.

Governing law

30.2 This Trust Deed is governed by the law of New South Wales. The Trustee and Holders submit to the non-exclusive jurisdiction of the courts of that jurisdiction.

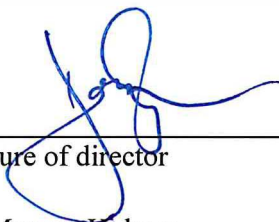
Other obligations excluded

30.3 Except as required by the Corporations Act, all obligations of the Trustee which might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including any obligation of the Trustee in its capacity as Trustee of the Trust arising under any statute.

Execution

Executed as a deed poll

Signed sealed and delivered
by **Spire Capital Limited**
in accordance with section 127 of the
Corporations Act 2001 by a director and
secretary/director:



Signature of director

Dale Morgan Holmes

Name of director (please print)



Signature of secretary/director

Matthew James Cook

Name of secretary/director (please print)

