

U Ethical International Equities Trust

Trust Deed

Uniting Ethical Investors Limited ABN 46 102 469 821

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Date 2019

Parties

Uniting Ethical Investors Limited ABN 46 102 469 821 of Level 5, 130 Little Collins Street, Melbourne VICTORIA 3000 (**U Ethical**)

Recitals

This Deed is declared by the Trustee to be the trust deed for a trust to be known as the U Ethical International Equities Trust.

By deed poll it is declared that:

1 Definitions and Interpretation

1.1 Definitions

In this Deed the following terms, unless the context otherwise indicates, shall have the following meanings:

Adviser includes any adviser, consultant or expert including any investment or asset manager, architect, project manager, barrister, solicitor, underwriter, accountant, auditor, valuer, banker, information technology or systems adviser, real estate agent, surveyor, broker, administrator, custodian or property manager and any other person appointed by the Trustee or its related entities to provide advice or services in relation to the Fund.

AMIT means a trust which is an Attribution Managed Investment Trust under section 276-10 of the Tax Act.

AMIT Choice means a choice made by the Trustee pursuant to section 276-10(1)(e) of the Tax Act.

AMIT Regime means the regime for the taxation of AMITs and Unit Holders contained in the:

- (a) Tax Act;
- (b) Income Tax Rates Amendment (Managed Investment Trusts) Act 2016;
- (c) Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016; and
- (d) Income Tax (Attribution Managed Investment Trusts – Offsets) Act 2016.

AMMA Statement has the meaning given to that phrase in section 276-460 of the Tax Act.

Applicant for Commitments means a person (other than a Unit Holder) who has made an Application for Commitments which has been accepted by the Trustee and pursuant to which the person makes a Commitment.

Application for Commitments means an application for a Commitment made pursuant to an application form approved or required by the Trustee or any other method determined by the Trustee at its absolute discretion.

Application Price of a Unit on any day means the amount determined under clause 8.

ASIC means the Australian Securities and Investments Commission.

ASIC Exemption includes:

- (a) an exemption or modification granted by ASIC in accordance with Part 5C.11 of the Corporations Act; and
- (b) any other instrument issued by ASIC under a power conferred on ASIC which relates to the Fund or the Trustee.

Assets means any loans, cash, investments, rights, income and other property of each Class of the Fund from time to time.

Associate has the meaning given in the Corporations Act.

ASX means Australian Stock Exchange Limited ACN 008 624 691.

Attribution Income Tax Liability of a person in relation to a managed investment scheme means a tax liability of the person that results from the scheme being operated as a MIT.

Australian Accounting Standards means:

- (a) the accounting standards from time to time approved under the Corporations Act;
- (b) the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) generally accepted accounting principles and practices in Australia consistently applied, except those principles and practices which are inconsistent with the standards or requirements referred to in paragraphs (a) or (b).

Books Closing Date has the meaning given in clause 14.16

Business Day means the days that most trading banks are open for business in Melbourne excluding any weekend or public holiday.

Call means, depending on the context, either:

- (a) **Call on Partly Paid Units** means a written request from the Trustee to a Unit Holder to pay all or any part of the unpaid Application Price of a Partly Paid Unit; or
- (b) **Call on Commitments** means a written request from the Trustee to an Applicant for Commitments or Unit Holder requiring the Applicant for Commitments or Unit Holder to pay part or all of the Applicant for Commitments' or Unit Holder's Uncalled Commitment.

Call Default Interest means interest payable in respect of an Applicant for Commitments or Unit Holder's failure to pay a Call.

Class means a class of Units as determined by the Trustee under clause 4.5.

Clearly Defined Rights means where the rights to income and capital arising from each of the Units in the Fund are "clearly defined" at all times when the Fund is in existence during the relevant Financial Year, for the purposes of section 276-10(1)(b) of the Tax Act.

Commencement Date means the date of commencement of the Fund, being the date on which Units are first issued.

Commitment means, in respect of:

- (a) an Applicant for Commitment or Unit Holder, the dollar amount the Applicant or Unit Holder has agreed to subscribe for Units; and
- (b) the transferee of Units or Commitments, the dollar amount the transferee has agreed to subscribe for Units pursuant to an agreement as contemplated by clause 11.1(h).

Complaint has the same meaning as in Australian Standard ISO 10002-2006 (or such other instrument which replaces it) and includes a dispute.

Compliance Committee means a compliance committee for the Fund established in accordance with section 601JA of the Corporations Act.

Compliance Committee Member means a member of the Compliance Committee.

Compliance Plan means the compliance plan for the Fund as required by section 601HA of the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cth), as amended from time to time.

Deed means this trust deed, as amended from time to time.

Defaulting Applicant for Commitments means an Applicant for Commitments that has failed to pay a Call on Commitments as required under this deed.

Defaulting Unit Holder means a Unit Holder that has failed to pay a Call as required under this deed.

Default Notice means a notification to an Applicant for Commitment or a Unit Holder that they have failed to pay a Call in accordance with clause 7.1(a).

Determined Member Component has the meaning given to that term in the Tax Act.

Determined Member Component Choice means a choice made by a Unit Holder under section 276-205 of the Tax Act.

Determined Trust Component has the meaning given to that term in the Tax Act.

Distributable Amount means the amount determined in accordance with clause 14.7 or clause 14.16 (as applicable).

Distribution Calculation Date means 31 March, 30 June, 30 September and 31 December or any other dates the Trustee nominates.

Distribution Date means the day two months after the Distribution Calculation Date for the relevant Distribution Period or any other date nominated by the Trustee.

Distribution Entitlement means the entitlement of a Unit Holder to the Distributable Amount determined in accordance with clause 14.7(c).

Distribution Period means the period commencing on the Commencement Date and ending on the following Distribution Calculation Date and each subsequent period commencing on the day after a Distribution Calculation Date and ending on the next Distribution Calculation Date or on termination of the Fund.

Due Date has the meaning given in clause 6.6(b)(iii).

EDR Service means the Australian Financial Complaints Authority or such other ASIC-approved external dispute resolution service which replaces it.

Expenses includes all expenses, costs, charges, fees, commissions, liabilities, losses, damages, Tax and all amounts payable in respect of any of these. Examples of Expenses are set out in Schedule 1.

Financial Year means, unless otherwise determined by the Trustee, the period beginning on the Commencement Date and ending on the following 30 June, and each subsequent period commencing on 1 July and ending on the following 30 June or on the date of distribution on termination of the Fund.

Fully Paid Unit means a Unit which has an Application Price that has been paid in full to the Trustee.

Fund means each of the trusts constituted by each Class created under this Deed and, collectively, that are known as the U Ethical International Equities Trust.

Gross Asset Value means the consolidated total assets of the Fund and its controlled entities as a consolidated entity, applying Australian Accounting Standards.

GST has the meaning given to that expression in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999*, as amended from time to time.

GST Law has the meaning given to that expression in the GST Act.

IDPS means an investor directed portfolio service.

Income has the meaning given in clause 14.4

Interest Rate means the rate set under section 2 of the *Penalty Interest Rates Act 1983* (Vic) from time to time plus two point zero (2.0%) per year, calculated and accrued daily.

Investment Entities has the meaning given to it in any current product disclosure statement.

Issue Date means the date determined by the Trustee or disclosed in an offer document.

Liabilities mean the aggregate of the following at that time, as calculated by the Trustee:

- (a) each liability of the Trustee in respect of each Class of the Fund or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability;
- (a) each other amount payable out of the Assets or, where appropriate, a proper provision in accordance with Australian Accounting Standards in respect of that liability; and
- (b) other appropriate provisions in accordance with Australian Accounting Standards;

but does not include liabilities:

- (a) attached to application money or property in respect of which Units have not yet been issued; or
- (b) representing Unit Holders' capital, undistributed profits, interest attributable to Unit Holders accruing on Unit Holders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Fund.

For the avoidance of doubt, this definition of “Liabilities” applies to the operation of the Fund under this Deed only and is not intended to affect any other meaning of “liabilities” of the Fund which the Trustee may be required to adopt for financial reporting purposes.

Liquid has the meaning given in section 601KA(4) of the Corporations Act.

Material Interest means 5% or more of the Units on issue.

Material Interest Redemption means a redemption of units comprising a Material Interest of a Material Interest Unit Holder.

Material Interest Unit Holder means a Unit Holder who has a Material Interest in the Fund.

Managed Investment Trust has the meaning given by section 995-1 of the Tax Act.

Member Component has the meaning given to that term in the Tax Act.

Minimum Subscription Amount means any amount determined by the Trustee or such other amount as specified in the current product disclosure document or other offering document for the Fund.

MIT includes a trust that is (at any time during a Financial Year) any one or more of the following: an AMIT, a Managed Investment Trust or a Withholding MIT.

Month means a calendar month.

Net Asset Value mean the Gross Asset Value less the following:

- (a) all amounts required to meet Liabilities (including the amount of any provisions the Trustee determines should be made); and
- (b) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unit Holders on the day which the Net Asset Value is determined,

provided that the Trustee may determine the Net Asset Value for each Relevant Class separately in accordance with clause 4.5.

Net Income means the total assessable income of each Class of the Fund less all deductions of that Class of the Fund (as calculated in accordance with the Tax Act), which may be reduced or increased by the amount of any reserves, provisions or other amounts that, in the determination of the Trustee, need to be made. If the total amount is less than zero, then the total amount is taken to be zero.

Partly Paid Unit means a Unit which has an Application Price which is payable by instalments and in respect of which all instalments have not been paid.

Register means each of the registers established and kept by the Trustee under clause 22.

Registered Scheme means a managed investment scheme that is registered as a managed investment scheme under section 601EB(1) of the Corporations Act.

Relevant Class means a particular Class.

Relevant Liabilities means the Liabilities referable to the Relevant Class. Where Liabilities are referable to more than one Relevant Class, then for the purposes of the definition of Relevant Liabilities, such amount of the Liabilities will be included as the Trustee determines is properly referable to the Relevant Class.

Relevant Person means a person who at any time was, is, or shall become a Unit Holder and that person's executors, administrators, successors and assigns.

Relevant Class Assets means the Assets referable to the Relevant Class. Where an Asset is referable to more than one Relevant Class, then for the purposes of this definition of Relevant Class Assets, such amount of the Asset will be included as the Trustee determines is properly referable to the Relevant Class.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

Special Resolution has the meaning given to that expression in the Corporations Act.

Tax means any income tax, capital gains tax, capital tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, GST, value added tax, withholding tax, municipal rates, stamp duty, financial institutions duty (including financial institutions duty paid or reimbursed), bank accounts debits tax or any other tax, duty, levy, impost, deductions or charges assessable or chargeable by or payable in any jurisdiction to any federal, state or municipal taxation or excise authority, including any interest, fine, penalty, charge, fee or other amount imposed on or in respect of the failure to file a return in respect of or to pay any of them in any jurisdiction.

Tax Act means each of the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997, the Income Tax (Transitional Provisions) Act 1997 or the Tax Administration Act 1953 (Cth), as the context requires.

Transaction Charge means, in relation to a Unit (where appropriate), an amount determined by the Trustee which reflects a fair estimate of Expenses incurred or that would be incurred:

- (a) for the purchase or acquisition of Assets on the issue of Units;
- (b) for the sale or disposal of Assets on the redemption of Units; or
- (c) for the transfer of Units or Assets to a Unit Holder,

as the case requires. Provided that the Trustee may determine different Transaction Charges for different classes in accordance with clause 4.5.

Transferee Subscription Agreement means a subscription agreement in the form required by the Trustee in its absolute discretion which requires the transferee to be bound by the terms of this Deed and any other term as determined by the Trustee.

Trust Component has the meaning given to that term in the Tax Act.

Trustee means U Ethical or any other person acting as the trustee or responsible entity of the Fund in accordance with the provisions of this Deed and, where appropriate, includes any agent or Adviser appointed by the Trustee.

Uncalled Commitment means in respect of an Applicant for Commitments or Unit Holder the Commitment of the Applicant for Commitments or Unit Holder less the dollar amount of Calls on Commitment made on the Applicant for Commitments or Unit Holder.

Unders and Overs Rules means the provisions which are set out in the Tax Act which prescribe how underestimates and overestimates of characters at the Fund level are to be carried-forward and dealt with in future income years.

Unit means a unit in the Fund created under this Deed and includes a Partly Paid Unit.

Unit Holder means a person registered as the holder of a Unit (including any persons jointly registered as Unit Holders).

Unit Holding means the total Units held by a Unit Holder.

Unpaid Call means any amount in respect of a Call which remains unpaid by an Applicant for Commitments or Unit Holder by the due date specified in a default notice.

Valuation Time means any time the Net Asset Value is determined by the Trustee.

Withdrawal Date means 3pm every Business Day unless otherwise determined by the Trustee.

Withdrawal Offer means an offer made by the Trustee in respect of the Fund in accordance with section 601KB of the Corporations Act.

Withdrawal Price means the amount determined under clause 10.

Withholding MIT has the meaning given by section 995-1 of the Income Tax Assessment Act 1997 (Cth).

1.2 Interpretation

In this Deed, unless the context indicates a contrary intention:

- (a) words importing the singular include the plural and vice versa and words importing any gender include all other genders;
- (b) a reference to a person includes a firm, corporation, trust, partnership or unincorporated body;
- (c) a reference to a clause or schedule is a reference to a clause of and a schedule to this Deed and a reference to this Deed includes any schedule;
- (d) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (e) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) a reference to an agreement or document (including, without limitation, a reference to this Deed) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document;
- (g) a reference to conduct includes, without limitation, an omission, statement or undertaking whether or not in writing;
- (h) a reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (i) words and expressions defined in the Corporations Act have the meanings given to them in that law; and
- (j) headings contained in this Deed are for convenience and do not affect the interpretation of this Deed.

1.3 General compliance provision

- (a) Where the Fund is a Registered Scheme, a provision of this Deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) This clause 1.3 is subject to any declarations made by or exemptions granted by the ASIC which are current in respect of or applicable to this Deed.
- (c) This clause 1.3 prevails over all other provisions of this Deed including any that are expressed to prevail over it.
- (d) If the terms of any current ASIC Exemption are applicable on the basis that the Deed contains certain provisions, then such provisions are deemed to be contained in this Deed.

2 The Fund

2.1 Trustee

As from the Commencement Date, U Ethical is and has agreed to act as the responsible entity and/or trustee of the Fund.

2.2 Declaration of Trust

- (a) The Assets shall vest in the Trustee on the Commencement Date and the Trustee declares that it shall hold the Assets on trust for the Unit Holders in accordance with the terms of this Deed.
- (b) The Trustee shall clearly identify the Assets as property of the Fund and hold the Assets separately from the assets of the Trustee and any other managed investment scheme.

2.3 Name of fund

- (a) The name of the Fund is the 'U Ethical International Equities Trust' or such other name as the Trustee may from time to time determine.
- (b) If for any reason, U Ethical is no longer the responsible entity of the Fund, the responsible entity that replaces U Ethical covenants that it will remove "U Ethical" from the name of the Fund as referred to in paragraph 2.3(a).

3 Application of the AMIT Regime to the Fund

- (a) The Trustee may make an AMIT Choice.
- (b) If an AMIT Choice is made then, subject to clause 3(c), the provisions in Schedule 2 will prevail over any other provisions of this Deed to the extent of any inconsistency.
- (c) If the Fund ceases to be an AMIT for any reason, including but not limited to the Fund ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:
 - (i) the provisions of Schedule 2, except those in clause 1 of Schedule 2 which will continue to be applied by the Trustee, will cease to apply to the extent that they are not permitted to operate or are not relevant to the Fund when it is not an AMIT; and

- (ii) any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Fund.
- (d) Nothing in this clause 3 imposes an obligation on the Trustee to:
 - (i) enter into or facilitate the entry of the Fund into the AMIT Regime;
 - (ii) make any changes to this Deed; or
 - (iii) make an AMIT Choice.

4 Units and Unit Holders

4.1 Units

- (a) The beneficial interest in the Fund is divided into Units and Classes.
- (b) Each Unit Holder has a beneficial interest in the Fund only to the extent of the Assets referable to those Classes in which it holds interests.
- (c) Unit Holders do not have any interest in the Assets of the Fund as a whole nor do they have any interest, right or entitlement in any particular Fund assets referable to any Class.

4.2 Power to issue Units

The Trustee has the power to issue Units and different Classes of Units.

4.3 Fractional Units

- (a) The Trustee may issue fractions of a Unit calculated to the third (3rd) decimal place or such other number of decimal places as the Trustee determines.
- (b) This Deed applies to fractions of Units in proportion to which the fraction bears to one (1) Unit.

4.4 Consolidation, subdivision and conversion of Units

- (a) Subject to clause 4.4(b), the Trustee may consolidate, divide or convert the number of Units on issue into any number of Units other than the number into which the Fund is for the time being divided.
- (b) A division, consolidation or conversion of a kind referred to in clause 4.4(a) must not change the ratio of Units in a Class registered in the name of any Unit Holder to the Units on issue in that Class.
- (c) The Trustee must amend the Register to record any consolidation, division or conversion of Units.

4.5 Classes of Units

- (a) Subject to this Deed and the Corporations Act, the Trustee may create different Classes, with different rights, obligations and restrictions, or convert Units from one Class to another Class.
- (b) The Trustee may make a determination that specific variables (including Assets, Liabilities and Expenses), are referable to a specific Class and that:

- (i) any variable which relates only to a particular Class, and does not relate to other Classes, is solely referable to the Class to which it relates; and
 - (ii) any variable that relates to more than one Class is apportioned between those Classes in the same proportions as the aggregate value of Units on issue in each Class as at the most recent Valuation Time bears to the aggregate value of Units in all Classes to which the variable relates on issue at the most recent Valuation Time.
- (c) Notwithstanding the generality of this clause 4.5, the Trustee may issue Classes of Units on the following terms:
- (i) the Relevant Class Assets for each Class comprise a particular Asset or Assets and all proceeds and income received by the Trustee in respect of, or relating to, that particular Asset or Assets;
 - (ii) the Relevant Liabilities are attributed to a Class such that they can only be met from Relevant Class Assets;
 - (iii) Relevant Class Assets for a Class are not encumbered in relation to Relevant Liabilities of another Class;
 - (iv) the Trustee is not entitled to be indemnified out of the Relevant Class Assets of a Class in relation to Relevant Liabilities of another Class; and
 - (v) each Class that is constituted by a particular Asset or Assets will commence on the date determined by the Trustee and will expire on the maturity for the particular Asset or Assets or as otherwise determined by the Trustee.
- (d) For the avoidance of doubt, to the extent that a Class of Units is issued, the Assets vested in each Class are intended to represent a separate and distinct trust.

4.6 Beneficial interest

At any time, all the Units of the same Class are of equal value and rank.

4.7 Reorganisation and division of Units

- (a) Subject to the Corporations Act, Units may be consolidated, divided or converted in a ratio as determined by the Trustee (**Reorganisation**).
- (b) Each Unit Holder, by subscribing for or taking a transfer or, or otherwise acquiring, a Unit will be taken to have consented to Reorganisations.
- (c) To effect any Reorganisation of a Unit of a Unit Holder, the Unit Holder appoints the Trustee as the Unit Holder's attorney in the Unit Holder's name and on the Unit Holder's behalf to do all acts and things which the Trustee considers necessary, desirable or reasonably incidental to effect the Reorganisation of the Unit.

4.8 Rights attaching to Units

- (a) A Unit Holder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Each Unit Holder agrees not to:
 - (i) interfere with or question the rights, powers, authority, discretion or obligations of the Trustee under this Deed;

- (ii) exercise any right, power or privilege in respect of an Asset;
 - (iii) lodge a caveat in respect of any Asset; or
 - (iv) require that any Asset be transferred to the Unit Holder or any other person.
- (c) A Unit Holder may not create any Security Interest over a Unit without the consent of the Trustee.

4.9 Unit Holder directions

The Trustee will be under no obligation to act in accordance with any direction of a Unit Holder, if it would require the Trustee to do or omit to do anything which:

- (a) may result in the Trustee acting contrary to the law; or
- (b) would otherwise not be within the scope of any discretion or power expressly conferred on the Trustee by this Deed.

4.10 Joint holders of Units

Where two (2) or more persons are registered as the holders of a Unit they are, for the purpose of the administration of the Fund and not otherwise, deemed to hold the Unit as joint tenants and not tenants in common, on the following conditions:

- (a) the Trustee shall not be bound to register more than three (3) persons as joint Unit Holders of the Unit;
- (b) the joint Unit Holders shall be jointly and severally liable in respect of all payments including payments of Tax that ought to be made in respect of the Unit;
- (c) on the death of a joint Unit Holder, the survivor or survivors shall be the only person or persons whom the Trustee will recognise as having any title to the Unit, subject to the production of any evidence of death that the Trustee requires;
- (d) any one of the joint Unit Holders may give an effective receipt that discharges the Trustee in respect of any payment or distribution; and
- (e) only the person whose name appears first (1st) in the Register as one of the joint Unit Holders of a Unit shall be entitled to delivery of any notices, cheques or other communications from the Trustee and any notice, cheque or other communication given to that person is deemed to be given to all the joint Unit Holders,

unless the Trustee determines otherwise.

4.11 Benefits and obligations of Unit Holders

Except where expressly provided in this Deed to the contrary, all benefits and obligations contained in this Deed apply for the benefit of and bind each Unit Holder to the extent provided in this Deed.

4.12 Perpetuities

The Trustee cannot issue any Units after the eightieth (80th) anniversary from the day before the Commencement Date if that issue would cause a contravention of the rule against perpetuities or any other rule of law or equity. The preceding sentence prevails over all provisions of this Deed.

5 Application Procedure

5.1 Offers

The Trustee may at any time offer Units for subscription or sale and may invite persons to make offers to apply for or buy Units.

5.2 Minimum amounts

The Trustee may specify a minimum initial application amount, minimum further application amount, and minimum holding amount in respect of Units for the Fund as a whole or a Class and vary those amounts at its discretion.

5.3 Form of application

- (a) Each application for Units will, unless the Trustee approves otherwise:
 - (i) conform with the form and content requirements of any relevant disclosure document;
 - (ii) if there is no relevant disclosure document, be made in such manner as the Trustee approves; and
 - (iii) be accompanied by application moneys as required by any relevant disclosure document.
- (b) The Trustee may authorise an application to be transmitted electronically.

5.4 Reinvestment

The Trustee may, at its absolute discretion, allow a Unit Holder to reinvest some or all of the Unit Holder's Distribution Entitlement by acquiring Units under a distribution reinvestment plan on terms and conditions prescribed by the Trustee.

5.5 Acceptance or rejection

The Trustee may, without being bound to give any reason:

- (a) accept an application;
- (b) reject an application; or
- (c) reject part of an application.

5.6 Uncleared funds

Units issued against application money paid other than in cleared funds are void if the funds are not cleared within five (5) Business Days of being presented for payment.

5.7 Payment of application money

- (a) Payment of the application money must be 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 required by the Trustee).

- (b) If the Trustee accepts a transfer of property other than cash, any costs associated with the valuation or transfer of the property are payable or reimbursable out of the Assets, or if required by the Trustee, by the Unit Holder.

5.8 Receipt of application

The Trustee may determine that an application for Units or application money or property received by the Trustee after a particular time will be deemed to have been received on the next Business Day.

5.9 Issue of Units

Unless otherwise determined by the Trustee, Units are taken to be issued:

- (a) in the case of a Unit issued under a distribution reinvestment arrangement referred to in clauses 5.4 and 14.17, the first (1st) Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated; or
- (b) in all other cases, on the Issue Date immediately after the later of the day on which:
 - (i) the Trustee accepts the application for Units and the applicant is registered as the Unit Holder of the Unit on the Register; or
 - (ii) the Trustee receives the application money, or the property (which is acceptable to the Trustee) against which the Units are to be issued is vested in the Trustee,

and for the avoidance of doubt, the relevant Distribution Entitlement, application money or property against which the Units are issued (as applicable) become Assets at the time of issue.

5.10 Number of Units issued

Subject to clause 5.11 and the terms of issue of a Unit, the number of Units issued to any person on any Issue Date in respect of an application for Units (including a reinvestment of a Unit Holder's Distribution Entitlement) shall be determined in accordance with the following formula:

$$N = (A / B)$$

where:

- N is the number of Units issued;
- A is the application money or the value of the property transferred to the Trustee by the applicant (including a reinvestment of the Unit Holder's Distribution Entitlement); and
- B is the Application Price for the Unit,

and the number of Units issued shall be calculated to the third (3rd) decimal place or such other number of decimal places as the Trustee determines from time to time.

5.11 Units as consideration

Where an investment is acquired (on behalf of the Fund) for consideration which includes the issue of Units by the Trustee, the number of Units created and issued by the Trustee is determined in accordance with the following formula:

$$N = (A - B) / C$$

where:

- N is the number of Units issued;
- A is the value of the investment being acquired as determined in accordance with clause 13;
- B is the amount of the cash consideration paid in respect of the investment (if any); and
- C is determined as the Application Price of the Units being issued (as determined in accordance with clause 8.2).

5.12 Certificates

No certificates will be issued for Units, unless determined otherwise by the Trustee.

5.13 Defective applications

Where, within ten (10) Business Days (or such other period as the Trustee determines) of the creation and issue of Units in the Fund, the Trustee determines that:

- (a) the applicant was not entitled to hold the Units issued;
- (b) the application was incorrectly executed or executed without power or authority; or
- (c) the application form was defective and was accepted in error,

then the Trustee may in its sole discretion cancel those Units, make an appropriate entry in the Register and repay the application money to the applicant out of the Assets. If Units are cancelled under this clause 5.13, the Trustee is not required to adjust any Application Price or Withdrawal Price determined before the cancellation of the Units in the Fund.

6 Commitments

6.1 Application for Commitments

A person may agree to make a Commitment to subscribe for Units and must:

- (a) complete and execute an Application for Commitments in respect of the Commitment on such terms and conditions and in such form as the Trustee determines; and
- (b) undertake to pay Calls on Commitments as and when required by the Trustee.

6.2 Form of Application

- (a) Each Application for Commitments will, unless the Trustee approves otherwise conform with the form and content requirements of any relevant disclosure document.
- (b) The Trustee may authorise an Application for Commitments to be transmitted electronically.

6.3 Trustee may reject

The Trustee may reject an Application for Commitments in whole or in part without giving any reason for the rejection.

6.4 Minimum and maximum amounts

The Trustee may specify a minimum or maximum Commitment amount for each Applicant for Commitments, a minimum or a maximum aggregate Commitment amount for all Commitments for the Fund and vary those amounts at its discretion.

6.5 Receipt of Application

The Trustee may determine that an Application for Commitments received by the Trustee after a particular time will be deemed to have been received on the next Business Day.

6.6 Calls on Commitments

- (a) The Trustee may make a Call on Commitment on all or part of any Uncalled Commitment:
 - (i) in accordance with any disclosure document; or
 - (ii) by giving not less than 14 days' notice to each Applicant for Commitments or Unit Holder.
- (b) If the Trustee makes a Call on Commitment in accordance with clause 6.6(a)(ii), the Call on Commitment made to each Applicant for Commitments or Unit Holder must set out:
 - (i) the total amount of the Call on Commitment;
 - (ii) the portion of the Call on Commitment payable to the Trustee by that Applicant for Commitments or Unit Holder; and
 - (iii) the due date for payment of the Call on Commitment (**Due Date**).
- (c) Clause 7 applies to Unit Holders and Applicants for Commitments who do not pay a Call on Commitment on or before the Due Date.
- (d) An Applicant for Commitments or a Unit Holder must comply with a Call on Commitment made on it in accordance with this Deed.

6.7 Making a Call

Without affecting the liability of an Applicant for Commitments or a Unit Holder to pay the amount of any Call on Commitment, the liability of an Applicant for Commitments or a Unit Holder in respect of its Uncalled Commitment is reduced by the amount of any Call on Commitment made on the Applicant for Commitments or Unit Holder.

6.8 Liability on termination

Upon termination of the Fund, an Applicant for Commitments or a Unit Holder has no liability to subscribe for Units or additional Units pursuant to the Commitment except to the extent of Calls on Commitments made prior to the termination.

6.9 Revocation or postponement

The Trustee may at any time:

- (a) revoke a Call on Commitment, in which case the amount of the Commitment will be adjusted accordingly; or
- (b) postpone a Call on Commitment or extend the time for payment of a Call on Commitment.

6.10 Payment

Payment of Calls on Commitments must be in a form acceptable to the Trustee and be received by, or made available, to the Trustee or a custodian appointed by the Trustee by the Due Date.

6.11 Receipt of Payment

The Trustee may determine that a payment in respect of a Call on Commitment received by the Trustee after a particular time will be deemed to have been received on the next Business Day.

7 Forfeiture

7.1 Failure to pay Call

- (a) If an Applicant for Commitments or Unit Holder does not pay a Call on the Due Date:
 - (i) the Trustee must serve the Defaulting Applicant for Commitments or Defaulting Unit Holder with a notice (**Default Notice**) not later than 5 Business Days after the Due Date that:
 - (A) contains a demand for payment of all amounts due and payable in respect of the Call and any Call Default Interest payable under clause 7.1(a)(ii); and
 - (B) specifies a further due date for payment which is not earlier than 5 Business Days after the date of service of the notice.

The omission to give a Default Notice by the Trustee or the non receipt of such notice by the Defaulting Applicant for Commitments or Defaulting Unit Holder does not in any way affect the obligation of the Defaulting Applicant for Commitments or Defaulting Unit Holder to pay the Call;

- (ii) Call Default Interest:
 - (A) shall be charged on the amount in respect of the Call and other amounts due from the Defaulting Applicant for Commitments or Defaulting Unit Holder from the Due Date until the date the Trustee receives payment of the overdue amount in full; and
 - (B) is payable at the Interest Rate accruing daily and being capitalised monthly, in arrears.
- (b) In the case of a Call on a Defaulting Applicant for Commitments, if payment in full is not received by the due date specified in the Default Notice:
 - (i) the Defaulting Applicant for Commitments is liable for the unpaid amount in respect of the Call (**Unpaid Call**), all damages and losses suffered by the Fund as a result of the non payment of the Call or any future Calls, Call Default Interest and all Expenses associated with any proceedings necessary to recover the amount due from the Defaulting Applicant for Commitments. The Defaulting Applicant for Commitments is, and remains, liable for any future Calls made on the Defaulting Applicant for Commitments' Uncalled Commitment; and
 - (ii) the Trustee may assign the Defaulting Applicant for Commitments' Uncalled Commitment and Unpaid Calls in accordance with clause 7.4.

- (c) In the case of a Call on a Defaulting Unit Holder, if payment in full is not received by the due date specified in the Default Notice:
- (i) all the Units held by the Defaulting Unit Holder are forfeited (**Forfeited Units**) and the Trustee may, at its absolute discretion:
 - (A) offer all or some of the Forfeited Units for sale in accordance with clause 7.3; and/or
 - (B) where the Call relates to a Call on Commitments, assign all or part of the Uncalled Commitment or Unpaid Call of the Defaulting Unit Holder to the transferee of the Forfeited Units or a third party pursuant to clause 7.4;
 - (ii) where Forfeited Units are sold pursuant to clause 7.3, the Trustee may, at its absolute discretion, apply the proceeds of the sale of part or all of the Forfeited Units in accordance with clause 7.7;
 - (iii) subject to clause 7.4, the Defaulting Unit Holder forfeits any entitlement to all distributions payable pursuant to this Deed (including distributions on the winding up of the Fund) until the Defaulting Unit Holder ceases to be a Defaulting Unit Holder pursuant to clause 7.2 and 7.7(a)(v)(A);
 - (iv) the Defaulting Unit Holder is liable for all Expenses associated with the forfeiture and any proceedings that may be necessary to recover the amount due from the Defaulting Unit Holder;
 - (v) notwithstanding forfeiture:
 - (A) in the case of the Forfeited Units being sold, the Defaulting Unit Holder remains liable for any shortfall between the amount received on sale of the Forfeited Units and the amounts applied in accordance with clause 7.7(a) in reduction of the Unpaid Call, Call Default Interest and the Expenses referred to in clause 7.1(c)(iv) unless the Trustee determines otherwise; and
 - (B) in the case of the Forfeited Units not being sold, the Defaulting Unit Holder, remains liable for the amount of Unpaid Call, Call Default Interest, the Expenses referred to in clause 7.1(c)(iv), any future Calls made on the Defaulting Unit Holder's in accordance with the terms and conditions of the issue of the Partly Paid Units or the Commitment and all damages and losses suffered by the Fund as a result of the non payment of the Call or future Calls; and
 - (vi) for the avoidance of doubt, where all of the Units of a Defaulting Unit Holder have been forfeited pursuant to this clause 7 the Defaulting Unit Holder's rights as a Unit Holder pursuant to this Deed are suspended until the Defaulting Unit Holder ceases to be a Defaulting Unit Holder pursuant to clause 7.2. Notwithstanding this, the Defaulting Unit Holder shall remain liable for all of its obligations as Unit Holder under this Deed.

7.2 Cancellation of forfeiture

- (a) The Trustee must cancel the forfeiture of a Unit before a sale if the Defaulting Unit Holder in respect of the Forfeited Unit pays the Trustee the full amount of the Call due together with Call Default Interest calculated under clause 7.1(a)(ii) and any other amount payable in respect of the forfeiture referred to in clause 7.1(c)(iv).

- (b) If the Trustee cancels the forfeiture of a Unit, the Unit Holder in respect of the Unit, so far as that Unit is concerned, will cease to be a Defaulting Unit Holder.

7.3 Sale of Forfeited Unit

- (a) At least 10 Business Days but no more than 15 Business Days before the date appointed for sale under clause 7.3(d), the Trustee must give notice of the sale of a Forfeited Unit to all Applicants for Commitments and Unit Holders in writing.
- (b) If the Trustee offers a Forfeited Unit for sale, it does so as agent for the Defaulting Unit Holder in respect of the Forfeited Unit.
- (c) If the Trustee intends to sell the Forfeited Units, the Trustee must first offer the Forfeited Units to the other Unit Holders and Applicants for Commitments in proportion to each Unit Holder or Applicant for Commitments' Commitment compared with the aggregate Commitment made by all Applicants for Commitments and Unit Holders at a price determined by the Trustee acting reasonably and in accordance with the Corporations Act and ASIC policy. Unit Holders and Applicants for Commitments may offer to purchase more than their proportionate share of the Forfeited Units in the event that other Unit Holders and Applicants for Commitments do not wish to purchase their proportionate share of the Forfeited Units.
- (d) If the Trustee has completed the procedure set out in clause 7.3(c) and there are Forfeited Units of the Defaulting Unit Holder which have not been transferred to other Unit Holders or Applicants for Commitments, it may sell the remaining Forfeited Units in any manner at a price determined by the Trustee acting reasonably and in accordance with the Corporations Act and ASIC policy, provided that such price is no less than the price which was offered to Unit Holders and Applicants for Commitments pursuant to clause 7.3(c).
- (e) If the Trustee has completed the procedures set out in clauses 7.3(c) and 7.3(d) and there are Forfeited Units of the Defaulting Unit Holder which have not been transferred, the Trustee may, acting reasonably and in accordance with the Corporations Act and ASIC policy, redetermine the sale price for the remaining Forfeited Units and offer them first to Unit Holders and Applicants for Commitments in accordance with clause 7.3(c) and then to other persons in accordance with clause 7.3(d).
- (f) On completion of the sale of a Forfeited Unit, the Trustee must apply the consideration paid for the Forfeited Unit in accordance with clause 7.7.
- (g) The Trustee is not liable to a Defaulting Unit Holder for any loss suffered by the Defaulting Unit Holder as a result of the sale of a Forfeited Unit.

7.4 Assignment of Uncalled Commitment and Unpaid Calls

- (a) At least 10 Business Days but no more than 15 Business Days before the date appointed for an assignment of Uncalled Commitments and Unpaid Calls under clause 7.4(d), the Trustee must give notice of the proposed assignment of an Uncalled Commitment or Unpaid Call to all Applicants for Commitments and Unit Holders in writing.
- (b) If the Trustee offers to assign an Uncalled Commitment or Unpaid Call, it does so as agent for the Defaulting Applicant for Commitments or Defaulting Unit Holder in respect of the Uncalled Commitment or Unpaid Call.
- (c) If the Trustee intends to assign all or part of the Uncalled Commitment or Unpaid Call of a Defaulting Unit Holder or Defaulting Applicant for Commitments, it must first offer the Uncalled Commitment or Unpaid Call to the other Unit Holders and Applicants for Commitments in proportion to each Unit Holder or Applicant for Commitments' Commitment compared to the aggregate Commitments made by all Unit Holders and

Applicants for Commitments. Unit Holders and Applicant for Commitments may take up more than their proportionate share of the Uncalled Commitment or Unpaid Call in the event that other Applicant for Commitments and Unit Holders do not wish to take up their proportionate share of the Uncalled Commitment or Unpaid Call.

- (d) If the Trustee has completed the procedure set out in clause 7.4(c) and there are Uncalled Commitments and Unpaid Calls of the Defaulting Unit Holder or Defaulting Applicant for Commitments which have not been assigned to other Unit Holders or Applicants for Commitments, it may assign the remaining Uncalled Commitments and Unpaid Calls in any manner determined by the Trustee acting reasonably.
- (e) The Trustee is not liable to a Defaulting Unit Holder or Defaulting Applicant for Commitments for any loss suffered by the Defaulting Unit Holder or Defaulting Applicant for Commitments as a result of the assignment of an Uncalled Commitment or Unpaid Call.
- (f) The assignee of any Uncalled Commitment or Unpaid Call must undertake, in a form required by the Trustee, to pay to the Trustee the amount of the Defaulting Unit Holder or Defaulting Applicant for Commitments' Uncalled Commitments or Unpaid Call as agreed between the assignee and the Trustee.

7.5 Income and capital of a Forfeited Unit

Any distribution of income and capital to be made under this Deed:

- (a) to which, but for clause 7.1(c)(iii), the Defaulting Unit Holder in respect of a Forfeited Unit would have been entitled; and
- (b) which has not been paid to the Defaulting Unit Holder prior to forfeiture,

must be applied in accordance with clause 7.7 as if the distribution formed part of the proceeds of sale of a Forfeited Unit, provided that no payment is to be made to the Defaulting Unit Holder under clause 7.7(a)(v)(A) unless all damages, losses and Expenses suffered by the Fund as a result of the non payment of the Call have first been paid or settled to the satisfaction of the Trustee.

7.6 Transfer of Forfeited Units

- (a) A statement signed by a director or secretary of the Trustee:
 - (i) stating that a Unit has been forfeited; and
 - (ii) stating the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (b) Subject to clause 11, the Trustee is authorised to, and must, execute a transfer of a Forfeited Unit to the transferee of the Forfeited Unit.
- (c) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must, subject to clause 11, register the transferee as the Unit Holder of the Forfeited Unit.
- (d) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.

7.7 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 7.3, the Trustee must apply the proceeds of the sale in the following order and manner:

- (i) by paying any Expenses incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
- (ii) by paying any Expenses incurred by the Trustee associated with the forfeiture and any proceedings brought against the Unit Holder in respect of the Forfeited Unit to recover Unpaid Calls;
- (iii) by holding as an Asset, the Call Default Interest accrued in respect of the outstanding Calls calculated under clause 7.1(a)(ii);
- (iv) by holding as an Asset, an amount equal to any other damages, losses and Expenses otherwise suffered by the Fund as a result of the non-payment of Calls by the Defaulting Unit Holder;
- (v) the Trustee may, at its absolute discretion, apply the balance of the proceeds in the following manner:
 - (A) by applying the balance, if any, to the payment of any Unpaid Calls by the Defaulting Unit Holder. Subject to the full payment of the Unpaid Calls, the Unit Holder shall cease to be a Defaulting Unit Holder and be issued additional Units in the Fund at the Application Price set out in the relevant Call or Calls; and /or
 - (B) subject to the full payment of any Unpaid Calls by the Defaulting Unit Holder or a person who is assigned the Unpaid Calls of the Defaulting Unit Holder pursuant to clause 7.4, by paying the balance, if any, to the Defaulting Unit Holder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the Expenses referred to in clause 7.7(a)(i) and 7.7(a)(ii) in proportion to the number of Forfeited Units being sold.

7.8 Action

The Trustee may take such action as it thinks fit to enforce, or claim any damages in respect of any application or Commitment and may settle any such action or claim on such terms as it thinks fit.

7.9 Lien

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unit Holder, including:

- (a) any fees or Unpaid Calls which are payable in respect of those Units; and
- (b) for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unit Holders.

The lien extends to distributions from time to time declared in respect of such Units, but if the Trustee registers any transfer of any Units upon which there is a lien, those Units are freed and discharged from the lien.

7.10 Liability

Joint holders of Units are jointly and severally liable for all amounts due and payable on their Units.

8 Application Price

8.1 Application Price

- (a) Unless otherwise determined by the Trustee and subject to the Corporations Act, the Application Price for the initial issue of Units is one dollar (\$1.00) for each Class.
- (b) At any other time, and unless determined otherwise by the Trustee, but subject to clause 8.1(d) and the rights, obligations and restrictions attaching to any particular Units or Class, the Application Price for a Unit shall be determined in accordance with the following formula:

$$AP = (A + B) / C$$

where:

- AP is the Application Price;
- A is the Net Asset Value as at the Issue Date;
- B is any relevant Transaction Charge; and
- C is the number of Units on issue,

and for the purposes of the formula in this clause 8.1(b), where there is more than one Class on issue, "Net Asset Value", "Transaction Charge" and the "number of Units on issue" are variables determined by the Trustee in respect of the Relevant Class in accordance with clause 4.5.

- (c) Each of the variables in clause 8.1(b) must be determined:
 - (i) as at the next Issue Date after the later of the day on which the Trustee:
 - (A) accepts the completed application for Units; or
 - (B) receives the application money or the property against which the Units are to be issued is vested in the Trustee; or
 - (ii) in the case of a Unit issued under a distribution reinvestment plan, the first (1st) Business Day of the next Distribution Period following the Distribution Period in respect of which the Distribution Entitlement was calculated.
- (d) The Trustee may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Fund is a Registered Scheme it is permitted to do so by the Corporations Act and any applicable ASIC Exemption (and in such case, subject to the terms of that ASIC Exemption).

8.2 Issue of Units to acquire an Asset

Subject to clause 8.2(b), where Units are consideration (in whole or in part) for the acquisition of an investment (on behalf of the Fund):

- (a) the Application Price for those Units must be calculated in accordance with clause 8.1(b) on the date of the agreement under which there will be an issue of Units; and
- (b) the Trustee may determine a different Application Price in relation to some Units, a Class or all Units provided that where the Fund is a Registered Scheme it is permitted to do so under the Corporations Act and any applicable ASIC Exemption.

8.3 Rounding

The Application Price may be rounded as the Trustee determines.

9 Withdrawal procedures

9.1 Withdrawal request while Fund is Liquid

Subject to this clause 9 and the *Corporations Act* (where the Fund is a Registered Scheme), a Unit Holder may make a request for the withdrawal of some or all of its Units, or to realise a specified amount, in writing and delivered to the registered office (or other place nominated by the Trustee) and:

- (a) while the Fund is a Registered Scheme and not Liquid, the Trustee must only give effect to that withdrawal request in the circumstances set out in clause 9.3; and
- (b) at any other time, the Trustee may give effect to that request at the time and in the manner set out in clause 9.2, provided that the withdrawal request has been given to the Trustee prior to the Withdrawal Date to which the request relates, unless otherwise agreed by the Trustee.

9.2 Withdrawal while Fund is Liquid or not a Registered Scheme

- (a) This clause 9.2 shall apply in respect of the withdrawal of Units unless clause 9.3 applies.
- (b) Within a reasonable time of receiving the withdrawal request under clause 9.1, the Trustee must consider that request and, subject to the *Corporations Act*, in the Trustee's absolute discretion:
 - (i) deny the request and notify the Unit Holder accordingly;
 - (ii) effect the withdrawal request by causing the number (or value) of Units held by the Unit Holder that are subject of the request to be redeemed at the applicable Withdrawal Price out of the Assets;
 - (iii) subject to the *Corporations Act*, purchase or arrange for another person to purchase the number (or value) of Units held by the Unit Holder that are the subject of the withdrawal request; or
 - (iv) partially effect the withdrawal in the manner described in clause 9.2(b)(ii) and partially purchase Units or arrange for Units to be purchased in the manner described in clause 9.2(b)(iii).
- (c) Irrespective of clause 9.2, the Trustee may prescribe a minimum investment term during which withdrawals of Units in the Fund or Units in a Class will not be permitted and vary the minimum investment term at its absolute discretion.
- (d) If the Unit Holder has made a withdrawal request which complies with this Deed and the Trustee accepts the withdrawal request, the Trustee must satisfy the withdrawal request in respect of a Unit by payment from the Assets the Withdrawal Price calculated in accordance with clause 10. The payment must be made within 21 Business Days following the day on which the withdrawal request was accepted by the Trustee.
- (e) Notwithstanding clause 9.2(c), the Trustee may extend the period allowed for satisfying a withdrawal request until a later Withdrawal Date if in the opinion of the Trustee:

- (i) the Trustee has taken all reasonable steps to realise sufficient Assets to satisfy a withdrawal request and is unable to do so due to one or more circumstances outside its control such as restricted or suspended trading in the market for an Asset;
 - (ii) the Trustee does not consider it to be in the best interests of the Unit Holders as a whole to realise sufficient Assets to satisfy the withdrawal request; or
 - (iii) it is, for any reason, impractical to calculate the Net Asset Value of the Assets, including because of the closure of an exchange or trading or withdrawal restrictions in respect of a security.
- (f) The Trustee may specify a minimum withdrawal amount for the Fund or a Class and vary that amount at its discretion.
- (g) Unless otherwise determined by the Trustee, the Trustee need not give effect to a withdrawal request if:
- (i) the aggregate Withdrawal Price of the Units to be redeemed is less than any minimum withdrawal amount determined by the Trustee; or
 - (ii) the withdrawal would result in the aggregate Withdrawal Price of the Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Trustee.
- (h) If compliance with a withdrawal request would result in the aggregate Withdrawal Price of a Unit Holder's remaining Unit Holding being less than any minimum holding amount determined by the Trustee, the Trustee may treat the withdrawal request as relating to the Unit Holder's entire Unit Holding.
- (i) If the Trustee increases the minimum holding amount, the Trustee may, after giving 30 days' notice, redeem the entire Unit Holding of a Unit Holder if the aggregate Withdrawal Price of that Unit Holding is less than the then current minimum holding amount, without the need for a withdrawal request.
- (j) The Trustee may redeem the Unit Holding of a Unit Holder without the need for a withdrawal request after giving 30 days' notice to a Unit Holder who holds Units with an aggregate Withdrawal Price less than the then current minimum holding amount.
- (k) Any balance realised representing a fraction of the proceeds of withdrawal of a Unit will be retained by the Trustee to be added to any further application money received from the Unit Holder or to the proceeds of withdrawal of any other Units of the Unit Holder as the Trustee may determine.
- (l) If the application money for the Units which are the subject of a withdrawal request is paid by cheque, the Trustee may refuse to act on that request until the cheque has cleared.

9.3 Withdrawal while Fund is a Registered Scheme and not Liquid

- (a) This clause 9.3 shall apply when the Fund is a Registered Scheme and not Liquid.
- (b) While the Fund is not Liquid, a Unit Holder may withdraw from the Fund in accordance with the terms of any current Withdrawal Offer made by the Trustee in accordance with Part 5C.6 of the *Corporations Act*.
- (c) If there is no Withdrawal Offer currently open for acceptance by Unit Holders, a Unit Holder has no right to withdraw from the Fund.

- (d) The Trustee is not at any time obliged to make a Withdrawal Offer.

9.4 Clauses applicable whether or not the Fund is Liquid

The following clauses 9.5 to 9.12 are applicable in respect of withdrawals of Units regardless of whether or not the Fund is Liquid.

9.5 The Trustee may deny a request for withdrawal

Subject to the *Corporations Act* (where the Fund is a Registered Scheme) and clause 9.3 and irrespective of anything in clause 9.2, the Trustee may deny a request for withdrawal of Units where:

- (a) the Fund has been terminated under clause 25;
- (b) accepting the request would constitute a breach of this Deed, the *Corporations Act*, or an offer document;
- (c) accepting the request would cause the Fund to cease to be Liquid;
- (d) accepting the request would unfairly prejudice another Unit Holder; or
- (e) the Trustee does not consider it to be in the best interests of the Unit Holders as a whole to realise sufficient Assets to satisfy the withdrawal request.

9.6 Restrictions on Unit Holder

- (a) Upon making a withdrawal request under clause 9.1, the Unit Holder will have no right to deal with the Units that are the subject of the request (unless and until the request is denied by the Trustee).
- (b) A Unit Holder may not withdraw a withdrawal request unless the Trustee agrees.

9.7 Trustee discretion to redeem

Subject to the *Corporations Act* (where the Fund is a Registered Scheme) and clause 9.3, the Trustee may at any time in its absolute discretion redeem some or all of the Units held by a Unit Holder without being requested to do so at the Withdrawal Price by giving at least 30 days' notice to the Unit Holder of its intention to redeem such Units.

9.8 No obligation to pay out of own funds

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

9.9 Sums owed to the Trustee

Subject to the *Corporations Act* (where the Fund is a Registered Scheme), the Trustee may deduct from the proceeds of withdrawal or money paid pursuant to a Withdrawal Offer any money due to it by the Unit Holder.

9.10 Transfer of Assets

- (a) The Trustee may transfer Assets to a Unit Holder rather than pay cash in satisfaction of all or part of the aggregate Withdrawal Price due to Unit Holder pursuant to a withdrawal request or acceptance of a Withdrawal Offer.
- (b) Assets transferred to a Unit Holder under clause 9.10(a) together with any cash paid must be of equal value to the total amount due to the Unit Holder pursuant to the withdrawal

request or Withdrawal Offer (based on a valuation of the Assets which is consistent with the range of ordinary commercial practice for valuing assets of that type and be reasonably current). If the Trustee requires, the reasonable costs involved in transfer of these Assets must be paid by the Unit Holder or deducted from the amount due to the Unit Holder.

- (c) The Trustee may direct an amount arising from the sale of an Asset to a particular Unit Holder, who shall be taken to have a present entitlement in that amount, if the Unit Holder redeems one or more of their Units and the direction is made to fund the redemption.

9.11 Order of withdrawal

Unless the Trustee determines otherwise, the first Units issued to a Unit Holder are the first to be redeemed.

9.12 Liquid or not Liquid

The Trustee will determine whether the Fund is Liquid. Such a determination is binding on Unit Holders and no Unit Holder will challenge it.

9.13 Determination of income and capital

Unless the Trustee otherwise determines, the proceeds of withdrawal paid to a Unit Holder will comprise of capital only. Subject to the law, the Trustee may however determine at its absolute discretion that the proceeds of withdrawal comprise part capital and part income of the Fund in the Financial Year in which the withdrawal occurs.

9.14 Cooling off

Where the Fund is a Registered Scheme, nothing in this clause 9 prevents the Trustee from complying with any requirement to return application money to Unit Holders in accordance with Part 7.9 of the Corporations Act or with any similar requirement that applies to the responsible entity of the Fund.

10 Withdrawal Price of Units

10.1 Withdrawal Price

A Unit must only be redeemed at a Withdrawal Price calculated in accordance with the following formula:

$$WP = (A / B) \times (C / D)$$

Where:

- WP is the Withdrawal Price;
- A is Net Asset Value less any relevant Transaction Charges;
- B is the number of Fully Paid Units on issue;
- C is the amount paid up on that Unit; and
- D is the Application Price of that Unit.

Where there is more than one Class on issue, “Net Asset Value”, and the “number of Units on issue” are variables determined by the Trustee in respect of the Relevant Class in accordance with clause 4.5 and any relevant ASIC Exemption.

10.2 Determination of Withdrawal Price

Each of the variables in clause 10.1 must be determined:

- (a) while the Fund is a Registered Scheme and not Liquid, as at the day on which the Withdrawal Offer closes; and
- (b) at any other time, as at:
 - (i) the next Withdrawal Date after the Trustee received (or is taken to have received) a withdrawal request; or
 - (ii) where the period allowed for withdrawal has been extended pursuant to clause 9.2(e), the Withdrawal Date on which the withdrawal request is processed.

10.3 Receipt of withdrawal request

The Trustee may determine that a withdrawal request received by the Trustee after a particular time will be deemed to have been received on the next Business Day.

10.4 Material Interest Redemption

- (a) If, during a Financial Year, the Trustee accepts a request for a Material Interest Redemption, the Trustee may determine the amount (if any) of the Withdrawal Price which represents Income.
- (b) Where the Trustee makes a determination under clause 10.4(a), the Trustee must make the determination by reference to capital gains or amounts which reflect gains (which are not capital gains) on the disposal or realisation of Assets that arise as a result of the Trustee realising sufficient Assets to satisfy the Material Interest Redemption request.
- (c) The amount determined under clause 10.4(a) will, for the purposes of this Deed, be taken to have been paid, applied or set aside (as the case may be) to the Material Interest Unit Holder if that amount is applied to or for the Material Interest Redemption in accordance with clause 9.
- (d) The amount taken to have been paid, applied or set aside (as the case may be) to the Material Interest Unit Holder under clause 10.4(c) is an amount of the Income of the Fund to which the Material Interest Unit Holder has a present entitlement in and for the Financial Year in which the Material Interest Redemption of their Units occurs.

10.5 Rounding

The Withdrawal Price may be rounded as the Trustee determines.

11 Transfers

11.1 Transferability

- (a) Unit Holders may not transfer or assign their interest in the Fund other than with the prior written consent of the Trustee.
- (b) A transfer of Units is not effective until it has been recorded in the Register.

- (c) All transfers of Units will be effected by an instrument of transfer in writing in a form and in a manner approved by the Trustee provided that, where the Fund is a Registered Scheme, the form of transfer must not be prohibited by the Corporations Act.
- (d) The Trustee may refuse to register a transfer (whether voluntarily or by operation of law) of Units without being bound to provide any reason for any refusal.
- (e) A transferor of Units remains the holder of the Units until the transfer is registered and the name of the transferee is entered in the Register in respect of those Units.
- (f) The Trustee may charge Unit Holders a fee to register a transfer of Units.
- (g) The Trustee may require a transferee of Units to execute a Transferee Subscription Agreement before allowing the transfer of Units to the transferee.
- (h) A Commitment or a Unpaid Call may be assigned:
 - (i) by an assignment agreement; or
 - (ii) in any form that the Trustee approves or requires.

11.2 Refusal to register a transfer

Without limiting the generality of clause 11.1, subject to the Corporations Act (where the Fund is a Registered Scheme), the Trustee may refuse to register any transfer of Units without being bound to provide a reason for such refusal and the Trustee may refuse to register a transfer of Units if:

- (a) the transferee is not a Wholesale Client;
- (b) the Trustee would or may be required to prepare a product disclosure statement in respect of the transfer of the Units; or
- (c) the transfer is required to be, but is not, duly stamped.

11.3 Registration of transfers

- (a) Unless the Trustee determines otherwise, where Units are transferred, the following documents must be lodged for registration with the Trustee:
 - (i) a proper instrument of transfer (duly stamped if relevant);
 - (ii) the certificate (if any) for the Units; and
 - (iii) any other information that the Trustee may require to establish the transferor's right to transfer the Units.
- (b) The Trustee may charge Unit Holders a fee to cover administrative costs involved in registering a transfer of Units.

12 Transmission of Units

12.1 Entitlement on death

- (a) Subject to clause 12.1(b), if a Unit Holder or Applicant for Commitments dies:
 - (i) the survivor (or survivors, where the Unit Holder or Applicant for Commitments was a joint Unit Holder or joint Applicant for Commitments); and

- (ii) the legal personal representatives of the deceased, where the Unit Holder or Applicant for Commitments was a sole Unit Holder or Applicant for Commitments,

will be the only persons recognised by the Trustee as having any title to the Unit Holder's interest in the Units or the Applicant for Commitments' Commitment.

- (b) The Trustee may refuse to recognise any person referred to in clause 12.1(a) or to recognise any claim without providing any reason. The Trustee may require evidence of a Unit Holder's or Applicant for Commitments death as it thinks fit.

- (c) This clause 12 does not release:

- (i) the estate of a deceased joint:

- (A) Unit Holder from any liability in respect of a Unit that had been jointly held by the Unit Holder with other persons;

- (B) Applicant for Commitments from any liability in respect of a Commitment that had been jointly made with other persons; or

- (ii) where the Unit Holder was a sole Unit Holder, the legal personal representative or the trustee of the Unit Holder's estate from any liability in respect of Units held by the deceased Unit Holder

- (iii) where the Applicant for Commitments was a sole applicant, the legal personal representative or the trustee of the Applicant for Commitments' estate from any liability in respect of Commitments made by the deceased Applicant for Commitments.

12.2 Registration of persons entitled

- (a) Subject to the Corporations Act, the *Bankruptcy Act 1966* (Cth) and the production of any information that is properly required by the Trustee, a person becoming entitled to a Unit or Applicant for Commitments' Commitment in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Unit Holder or Applicant for Commitments may elect:

- (i) by written notice to the Trustee, to be registered as the Unit Holder in respect of that Unit or Applicant for Commitment in respect of that Commitment; or

- (ii) to nominate some other person to be registered as the Unit Holder of the Unit or the Applicant for Commitments of the Commitment.

- (b) All the limitations, restrictions and provisions of this Deed relating to:

- (i) the right to transfer;

- (ii) the registration of the transfer of; and

- (iii) the issue of certificates for,

Units and Commitments apply to any relevant transfer as if the death, bankruptcy, insolvency (or other legal disability) of the Unit Holder or Applicant for Commitments had not occurred and the notice or transfer were a transfer signed by that Unit Holder or Applicant for Commitments.

12.3 Distributions and other rights

- (a) If a Unit Holder dies or suffers a legal disability, the Unit Holder's legal personal representative or the trustee of the Unit Holder's estate (as the case may be) is, on the production of all information as is properly required by the Trustee, entitled to the same distributions, entitlements and other advantages and to the same rights (whether in relation to meetings of the Fund or to voting or otherwise) as the Unit Holder would have been entitled to if the Unit Holder had not died or suffered a legal disability.
- (b) Where two (2) or more persons are jointly entitled to any Unit as a result of the death or legal disability of a Unit Holder, they will, for the purposes of this Deed, be taken to be joint Unit Holders of the Unit.

13 Valuation of Assets

13.1 Valuation of Assets

- (a) The Trustee may, at any time, cause the valuation of any Asset and (if the Fund is a Registered Scheme) shall do so as and when required by the Corporations Act.
- (b) The Trustee must cause an Asset to be valued if and when required by ASIC or the Corporations Act and the valuation must be carried out in accordance with those requirements.

13.2 Determination of Net Asset Value

- (a) The Trustee may determine the Net Asset Value at any time including more than once (1x) each day.
- (b) The Trustee must determine the Net Asset Value:
 - (i) if and when required by ASIC or the Corporations Act (if the Fund is a Registered Scheme);
 - (ii) on each Issue Date and any other day on which Units in the Fund are issued; and
 - (iii) on each Withdrawal Date.

13.3 Method of valuation

- (a) The Trustee may determine valuation methods and policies for each category of Asset and change them from time to time.
- (b) Where the Fund is a Registered Scheme, unless the Trustee decides otherwise, the value of an Asset for the purpose of calculating the Net Asset Value will be its market value. Where the Trustee values an Asset at other than its market value, or where there is no market value and whilst the Fund is a Registered Scheme, the valuation methods and policies applied by the Trustee must be capable of resulting in a calculation of an Application Price or Withdrawal Price that is independently verifiable.

14 Income and distributions

14.1 Collection of income

The Trustee shall receive and collect all dividends, interest, rents and all other income of the Fund.

14.2 Payment of expenses

The Trustee shall pay out of the gross income of the Fund all costs and disbursements, commissions, fees, Tax (including any GST, land tax or income tax), management charges and other proper outgoings in respect of the Assets and administration of the Fund.

14.3 Nature of receipts

The Trustee may determine whether any receipt, profit, gain (whether realised or unrealised), payment, loss, outgoing, provision or reserve or any sum of money or investment in a Financial Year is or is not to be treated as being on income or capital account and whether and the extent to which any provisions or reserves need to be made for the Financial Year on a fair and reasonable basis to ensure that the Unit Holder pays any relevant Tax and not the Trustee.

14.4 Trustee must determine Net Income

- (a) The Trustee may determine or classify an item of receipt, gain, expense, deduction, loss or any such like amounts as being either the income of the Fund (**Income**) or capital of the Fund.
- (a) In each Financial Year the Trustee must determine the Income of the Fund in accordance with this clause.
- (b) The Income of the Fund is calculated as the Net Income of the Fund.

14.5 Distribution of income

For each Distribution Period, the Trustee shall calculate the Distributable Amount and distribute each Unit Holder's Distribution Entitlement.

14.6 Present entitlement

The persons who are Unit Holders at 5.00 p.m. on the last day of a Distribution Period shall have an absolute vested and indefeasible interest in the Distributable Amount for that Distribution Period, irrespective of the number of days they have been a Unit Holder in that Distribution Period.

14.7 Distributable Amount

- (a) The Distributable Amount for a Distribution Period (other than a Distribution Period that is the last Distribution Period in a Financial Year) shall be determined in accordance with the following formula:

$$DA = I + C$$

Where:

DA is the Distributable Amount;

I is the Income of the Fund for that Distribution Period (as determined by the Trustee pursuant to clause 14.4 and taking into account any adjustments required as a result of any direction made by the Trustee under clause 9.10(c)); and

C is any additional amount (including capital) that the Trustee has determined is to be distributed,

provided in accordance with Clause 4.5, the Trustee may determine a different Distributable Amount for each Relevant Class, in which case, all variables in the paragraph above shall refer to the Relevant Class.

- (b) The Distributable Amount for the last Distribution Period in a Financial Year shall be the difference between:
- (i) the Income of the Fund for the Financial Year (as determined by the Trustee pursuant to clause 14.4 and taking into account any adjustments required as a result of any direction made by the Trustee under clause 9.10(c)); and
 - (ii) the total of the Distributable Amounts for all the prior Distribution Periods in that Financial Year,

plus any additional amount (including capital) that the Trustee has determined is to be distributed. In accordance with Clause 4.5, the Trustee may determine a different Distributable Amount for each Relevant Class, in which case, all variables in the paragraph above shall refer to the Relevant Class.

- (c) Subject to the rights, obligations and restrictions attaching to any particular Unit or a Class, each Unit Holder's Distribution Entitlement for a Distribution Period shall be determined in accordance with the following formula:

$$\frac{A \times B}{C}$$

Where:

- A is the Distributable Amount;
- B is the aggregate of the number of Units held by the Unit Holder at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of Units held by that Unit Holder at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 14.18 (if any), multiplied by the relevant proportion; and
- C is the aggregate of the total number of Units on issue at 5.00 p.m. on the Distribution Calculation Date which are entitled to a full income distribution for that period, plus the aggregate of the number of total Units on issue at 5.00 p.m. on the Distribution Calculation Date which have a proportionate income entitlement in accordance with clause 14.18 (if any), multiplied by the relevant proportion.

14.8 Distribution Entitlement

- (a) The Trustee shall pay to each Unit Holder its Distribution Entitlement for a Distribution Period on or before the Distribution Date for that Distribution Period.
- (b) The Trustee shall retain from each Unit Holder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date, with any sum so retained for all purposes treated as Income for the following Distribution Period.
- (c) The Trustee may retain from the amount to be distributed to a Unit Holder an amount in or towards satisfaction of any amount payable by the Unit Holder to the Trustee under this Deed or that is required to be deducted by law.

14.9 Minimum distribution

The Trustee may transfer capital to enable distribution to Unit Holders of the minimum amount necessary to avoid the Trustee as trustee of the Fund being assessable to pay Tax.

14.10 Discharge of Trustee's obligation

It is acknowledged by Unit Holders that payments of Distributable Amounts in accordance with clause 14.9 shall be a good and complete discharge of any liability owed by the Trustee to any person in respect of an entitlement to the Distributable Amount.

14.11 Capital distributions

- (a) The Trustee may distribute the capital of the Fund to the Unit Holders in addition to a distribution made under clause 14.9. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, a Unit Holder is entitled to that proportion of the capital to be distributed as is equal to the number of Units held by that Unit Holder on a date determined by the Trustee divided by the number of Units on issue on that date.
- (b) A distribution under this clause may be in cash or by way of Assets or by way of bonus Units and will be made on a date determined by the Trustee.

14.12 Grossed up Tax amounts

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class, the grossed up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Unit Holders in proportion to the Distributable Amount for a Distribution Period which is referable to a dividend or other income to which they are presently entitled.

14.13 Excess distribution

If at the end of a Financial Year the amount distributed as the Distributable Amount under this clause 14 exceeds the aggregate of the Income of the Fund for the Financial Year, the excess will be taken to be a distribution of capital.

14.14 Categories and source of income

The Trustee may keep separate accounts for any category or source of Income and capital and distribute the income from any category or source to any Unit Holder.

14.15 Receipt

- (a) For the purposes of this clause 14, the Trustee is entitled to treat any amount which the Trustee is entitled to receive but has not actually received before the Distribution Calculation Date as actually received:
 - (i) before the Distribution Calculation Date; or
 - (ii) after the Distribution Calculation Date.

14.16 Public trading Trust

If the Fund is to be taxed as if it were a company because it is or becomes a public trading trust for the purposes of Division 6C of Part III of the Tax Act and any provisions which amend or replace it, the following provisions of this clause 14.16 will apply instead of clauses 14.1 to 14.15. If it does so:

- (a) as soon as practicable after the end of the Distribution Period the Trustee must determine the taxable income of the Fund and of each Class (if relevant) in respect of the Distribution Period;
- (b) the Trustee must provide for, and pay from the Assets of the Fund when appropriate, all taxation attributable to the taxable income of the Fund;
- (c) the Unit Holders will not have a present entitlement at the end of a Distribution Period to any Income of the Fund;
- (d) the Trustee may, in its discretion from time to time, determine to pay an amount as a distribution to Unit Holders holding Units in a Class in respect of the Distribution Period (each a Distributable Amount) to the Unit Holders on the register holding Units in that Class on any date determined by the Trustee (if relevant) (**Books Closing Date**);
- (e) in respect of a Distributable Amount being paid to Unit Holders pursuant to this clause 14.16:
 - (i) the Trustee may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
 - (ii) 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; and
- (f) a Unit Holder who holds Units in a Class is entitled to a portion of the Distributable Amount for that Class, calculated as follows:

$\frac{A \times B}{C}$

C

where

- A is the aggregate of the number of Units held by the Unit Holder in the Class at the Books Closing Date for the Distributable Amount for that Class;
- B is the aggregate of the number of Units in issue in that Class; and
- C is the Distributable Amount for the Class.

14.17 Reinvestment

A Unit Holder may, if the Trustee approves, elect to reinvest some or all of their Distribution Entitlement by acquiring Units and the amount of the distribution must be applied on behalf of the Unit Holder to acquire additional Units. In those cases, the Trustee is treated as having received an application to reinvest the Unit Holder's Distribution Entitlement on the first Business Day after the distribution is paid at an Application Price determined in accordance with clause 8. The procedure for reinvestment of distributions is to be determined by the Trustee and notified to Unit Holders from time to time.

14.18 Other rights or restrictions

For the removal of doubt and despite anything else contained in this clause 14, the rights of a Unit Holder under this clause 14 are subject to the rights, obligations and restrictions attaching to each Class of the Units which they hold. Without limitation, but provided the Trustee is entitled to do so under the Corporations Act, the Trustee may issue:

- (a) Partly Paid Units which for the purposes of determining the Unit Holder's Distribution Entitlement, are to be treated according to:
 - (i) that proportion of a whole Unit as the amount paid up bears to the total Application Price for that Unit rounded to the nearest two decimal places; and
 - (ii) the length of time during the Distribution Period for which the proportion or different proportions of the Application Price were paid up;
- (b) Units on terms which entitle the Unit Holder to a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued in an amount which is not greater than the proportion of the Distributable Amount to which a Unit Holder holding a Unit during the whole of that period is entitled, multiplied by the number of days from the date of issue of those Units to the end of that period divided by the total number of days in that period; or
- (c) Units on terms which do not entitle the Unit Holder to receive a distribution of the Distributable Amount in respect of a Distribution Period in which such Units are issued.
- (d) Partly Paid Units on such other terms as to the above matters or otherwise that the Trustee determines.

14.19 Withholding Tax

- (a) The Trustee may deduct from any amount dealt with under this clause 14 any Tax that is required by law to be deducted from such amount.
- (b) The Trustee may recover from the Unit Holder an amount that the Trustee has paid in Tax on behalf of or in respect of a Unit Holder (including in respect of a distribution or an amount attributed to a Unit Holder) as a debt.
- (c) The Trustee is entitled to set off an amount that the Trustee can recover from the Unit Holder under clause 14.19(a) against debts due, or owed, by the Trustee to the Unit Holder.

15 Powers of the Trustee

15.1 General powers of Trustee

- (a) Subject to this Deed, the Trustee has all the powers in respect of the Fund that are possible under law to confer on a trustee as though it were the absolute and beneficial owner of the Assets and acting in its personal capacity.
- (b) The generality of this clause 15.1 is not limited by anything in the remainder of this clause 15.
- (c) To the maximum extent permitted by law:
 - (i) any rules and principles of law or equity that impose a duty on a trustee exercising a power of investment (other than those duties imposed under section 601FC of the Corporations Act) are hereby excluded; and
 - (ii) without limiting the generality of clause 15.1(c)(i), section 6 of the *Trustee Act 1958* (Vic) is hereby expressly excluded from operation in relation to this Deed and the Fund.

15.2 Specific powers of the Trustee

Without limiting the generality of clause 15.1, the Trustee in its capacity as trustee of the Fund may:

- (a) borrow or raise money (whether or not on security) and incur any and all types of obligations and liabilities and issue debt instruments;
- (b) create Security Interests over all or any part the Assets;
- (c) invest in any form of investment in any region or market and may vary an investment at any time in its absolute discretion, including without limitation:
 - (i) purchasing or disposing of Assets for cash or other consideration; and
 - (ii) entering into any swap, forward rate agreement, currency exchange agreement or any other form of hedge, derivative or other transaction (for speculative purposes or otherwise);
- (d) subject to clause 2.2(b), mix Assets with assets of any other person or trust;
- (e) share risk and returns with any other person or trust;
- (f) vary, replace or deal with the Assets in any way;
- (g) buy-back Units;
- (h) fetter future discretions, such as by the granting of options;
- (i) enter into any arrangement or agreement with underwriters in relation to the Fund;
- (j) exercise all voting rights conferred by the Assets as it thinks fit; and
- (k) give guarantees and/or indemnities to any person,

as if it were dealing with its own assets.

15.3 Investments in Fund and related trusts

- (a) Subject to the Corporations Act (where the Fund is a Registered Scheme), the Trustee may invest in a trust or scheme in respect of which the Trustee is the trustee or an associate of a trustee. The Trustee and investment manager (if any) may be remunerated and reimbursed out of such trust or scheme to the extent permitted by the Corporations Act.
- (b) The Trustee and its associates may invest in the Fund.

15.4 Delegation

- (a) Without limiting clause 15.1, the Trustee may appoint any person as its delegate, attorney or agent to:
 - (i) perform any act;
 - (ii) carry out any obligation; or
 - (iii) exercise any power,

that the Trustee has under this Deed.

- (b) The Trustee may appoint an agent, manager, custodian or other person (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with Assets on behalf of the Trustee and perform any action incidental or ancillary thereto or otherwise approved by the Trustee.
- (c) Any person appointed under clauses 15.4(a) or 15.4(b) may be an Associate or employee of the Trustee.
- (d) An appointment under clauses 15.4(a) or 15.4(b) may be joint.
- (e) Subject to section 601FB of the Corporations Act (where the Fund is a Registered Scheme), the Trustee will not be liable for the acts or omissions of any delegate.

15.5 Advisers

Without limiting this clause, the Trustee may engage an Adviser to assist with its duties and functions under this Deed. An Adviser may be an Associate or employee of the Trustee.

15.6 Exercise of discretion

The Trustee shall in its absolute discretion decide how and when to exercise its powers.

15.7 Exercise of powers

In exercising its powers under this Deed, the Trustee must:

- (a) act in the best interests of Unit Holders, and if there is a conflict between the Unit Holders' interests and its own interests, give priority to the Unit Holders' interests; and
- (b) treat the Unit Holders who hold interests of the same Class equally and Unit Holders who hold interests of different Classes fairly, except to the extent that the Trustee directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 9.10(c).

16 Holding of Assets

16.1 How held

Subject to clauses 16.2 and 16.3, all Assets will be held in the name of the Trustee.

16.2 Custodian

If the Trustee considers it necessary or desirable, the Assets (or any Asset) may be held by a custodian or nominee appointed by the Trustee and acting as agent for the Trustee.

16.3 Holding of Assets

A custodian appointed by the Trustee in respect of a particular Asset must hold that Asset:

- (a) directly in its name; or
- (b) indirectly by means of any asset title transfer or holding system approved by the Trustee (and while the Trust is a Registered Scheme, to the extent permitted by Corporations Act and any applicable ASIC Exemption).

17 Remuneration and Expenses of Trustee

17.1 Fees relating to the Fund

Subject to clause 17.9, the Trustee is entitled to fees as described in the current product disclosure document or other offering document for the Fund.

17.2 Differential fees for different Classes

The Trustee may determine that different fees apply to different Classes.

17.3 Waiver or deferral of remuneration

The Trustee may accept a lower fee than it is entitled to receive under this Deed, may waive any such fee, or may defer payment for a period on such terms as the Trustee determines at its sole discretion.

17.4 Priority of Trustee's remuneration

The reimbursement of expenses under clause 17.8 to the Trustee shall have priority over the payment of the fees under clause 17.1, which will have priority over the payment of all other amounts payable from the Assets.

17.5 Differential fee arrangements

Subject to the Corporations Act and any applicable ASIC Exemption, the Trustee may agree with any Unit Holder any fee arrangements with that Unit Holder which are different to those provided for under this Deed or which apply to other Unit Holders.

17.6 Units as payment for fees

- (a) Subject to the Corporations Act, the Trustee may elect that it is to be issued Units on commercial terms instead of cash in payment of its fees or reimbursement of its expenses under this Deed.
- (b) Pursuant to this clause, the Trustee is entitled to receive distributions from the commencement of a Distribution Period, a nominated date in an offer document or as otherwise determined by the Trustee and thereafter in accordance with clause 14.

17.7 Fees paid to the Trustee in a different capacity

Subject to the Corporations Act, the Trustee may be paid a fee for work performed in connection with the Fund in its personal capacity and not in its capacity as the trustee of the Fund. The Trustee may retain any such fee for its own purposes and is not required to account for the fee to the Fund or to Unit Holders.

17.8 Reimbursement of Expenses

All Expenses incurred by the Trustee in relation to the proper performance of its duties in respect of the Fund shall be payable or reimbursable out of the Assets to the extent that such payment or reimbursement is not prohibited by the Corporations Act, including, without limitation, Expenses arising in connection with the matters listed in Schedule 1, but not including any internal operational costs of the Trustee.

17.9 Proper performance of duties

The rights of the Trustee to be paid fees out of the Assets, or to be reimbursed or indemnified out of the Assets for liabilities or expenses incurred in relation to the performance of its duties as Trustee, are only available in relation to the proper performance of those duties.

17.10 GST

- (a) Expressions that have defined meanings under the GST Law bear the same meaning for the purpose of this clause 17.10 as those expressions in the GST Law.
- (b) Any amount paid or payable or any consideration provided or to be provided under or in connection with this Deed represents the value of the taxable supply and does not include GST.
- (c) If the Trustee makes a taxable supply in connection with or arising under this Deed (including the performance of any of its obligations) for consideration which, under clause 17.10(b), represents its value:
 - (i) the Trustee shall be entitled to be paid or reimbursed from the Assets for an amount equal to the amount of the GST payable on that taxable supply in addition to any other amount to which the Trustee is entitled; or
 - (ii) the recipient of the supply must pay to the Trustee, at the same time and in the same manner as the consideration is otherwise payable, an additional amount equal to the amount of the GST payable on that taxable supply,

at the Trustee's discretion.
- (d) The supplier of a taxable supply shall issue a valid tax invoice to the recipient of the supply on request.
- (e) If this Deed entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of GST for which the party is entitled to an input tax credit.

17.11 Taxes in other jurisdictions

- (a) Without limiting clause 17.10, any amount paid or payable or any consideration provided or to be provided under or in connection with this Deed does not include any goods and services tax, value added tax or other similar tax payable in any jurisdiction.
- (b) In addition to any other amount to which the Trustee is entitled under this Deed, the Trustee shall be entitled to be paid or reimbursed for an amount equal to any goods and services tax, value added tax or other similar tax payable by the Trustee in any jurisdiction:
 - (i) from the Assets; or
 - (ii) by the Unit Holder, where the Trustee has an obligation to pay such goods and services tax, value added tax or other similar tax in relation to a supply of goods and/or services made to the Unit Holder or other event that triggers a liability for goods and services tax, value added tax or other similar tax,

at the Trustee's discretion.
- (c) If this Deed entitles a party to be reimbursed or indemnified, the amount to be reimbursed or indemnified does not include any amount on account of any goods and

services tax, value added tax or other similar tax payable in any jurisdiction for which the party is entitled to any input tax credit or similar credit in any jurisdiction.

17.12 Sums owed to the Trustee

The Trustee may redeem such number of a Unit Holder's Units (including a fraction, if necessary) as have a value (based on the Net Asset Value at that time) equal to any amount of money due to it by the Unit Holder and deduct such amounts from the Withdrawal Price of the Units.

18 Change in Trustee

18.1 Voluntary retirement while the Fund is a Registered Scheme

While the Fund is a Registered Scheme, the Trustee may retire as the trustee of the Fund as permitted by section 601FL of the Corporations Act.

18.2 Voluntary retirement while the Fund is not a Registered Scheme

While the Fund is not a Registered Scheme, the Trustee may retire as the trustee of the Fund by giving at least 3 months' notice to Unit Holders (or such shorter period as they agree). On retirement, the Trustee may appoint in writing another person to be the trustee of the Fund.

18.3 Compulsory retirement

The Trustee shall retire as the trustee of the Fund when required by law.

18.4 New trustee

- (a) Any proposed replacement trustee shall execute a deed by which it covenants to be bound by this Deed as if it had originally been a party to it.
- (b) On retirement or removal the Trustee shall give the new trustee or responsible entity all books, documents and records relating to the Fund.
- (c) On retirement or removal the Trustee shall be released from all obligations in relation to the Fund arising after the time it retires or is removed.
- (d) Upon retirement or removal of the Trustee, all fees and other amounts owing to the Trustee and all amounts deferred by the Trustee pursuant to clause 17.2 become due and payable to the Trustee from the Assets and the new Trustee must take such action as is necessary to promptly effect all such payments.

19 Limitation of liability

19.1 Limitation of Trustee's liability

- (a) Subject to the Corporations Act (where the Fund is a Registered Scheme), none of the Trustee or its directors, officers or members of the Compliance Committee is liable for any loss or damage to any person (including any Unit Holder), arising out of any matter unless, in respect of that matter, it acted both:
 - (i) otherwise than in accordance with this Deed; and
 - (ii) without a belief held in good faith that it was acting in accordance with this Deed.

- (b) In particular, subject to the Corporations Act (where the Fund is a Registered Scheme), none of the Trustee or its directors or officers is liable for any loss or damage to any person arising out of any matter where, in respect of that matter:
 - (i) to the extent permitted by law, it relied in good faith on the services of, or information or advice from, or purporting to be from, any person appointed by the Trustee; or
 - (ii) it acted as required by law; or
 - (iii) it relied in good faith upon any signature, marking or documents.

19.2 Limitation of Unit Holders' liability

- (a) Subject to:
 - (i) clauses 19.2(c) and 19.2(e),
 - (ii) the Unit Holders' obligation to pay the amount of a Call; and
 - (iii) the liability of a Defaulting Unit Holder or Applicant for Commitment under clause 7,

the liability of each Unit Holder shall be limited to the amount, if any, which remains unpaid in relation to the Unit Holder's subscription for Units in the Fund (including unpaid amounts in relation to a Partly Paid Unit) and any Unpaid Calls.
- (b) A Unit Holder shall not be required to indemnify the Trustee if there is a deficiency in the Assets or to meet the claim of any creditor of the Trustee in respect of the Fund.
- (c) The Trustee, on its own account and on account of the Fund, shall be entitled to be indemnified by each Relevant Person for any Tax, bank fees or charges of the Relevant Person paid out of the Fund, except to the extent to which the Trustee is reimbursed out of the Fund.
- (d) Joint Unit Holders shall be jointly and severally liable in respect of all payments, including payments of Tax to which clause 19.2(c) applies.
- (e) In the absence of a separate agreement with a Unit Holder, the recourse of the Trustee and any creditor shall be limited to the Assets.

20 Indemnity

20.1 Trustee's indemnity

In addition to any indemnity available to the Trustee under the law or this Deed, but subject to the Corporations Act (where the Fund is a Registered Scheme), the Trustee has a right to be fully indemnified out of the Assets, in respect of all expenses, liabilities, costs and any other matters in connection with the Fund and against all actions, proceedings, costs, claims and demands brought against the Trustee in its capacity as trustee of the Fund in respect of any matter or thing done or omitted (**Indemnified Matter**) except:

- (a) in the case of the Trustee's own fraud, negligence or wilful default; and
- (b) in respect of the overhead expenses of the Trustee.

20.2 Trustee's indemnity continuing

- (a) The right of indemnity of the Trustee in respect of a particular Indemnified Matter will not be lost or impaired by reason of a separate act or omission (whether before or after the particular Indemnified Matter) in breach of trust or in breach of this Deed.
- (b) The indemnity provided under clause 20.1 will continue in favour of the Trustee after it has ceased to be the Trustee and will apply even if at any time the value of the Liabilities exceed the Assets.
- (c) For the avoidance of doubt, the Trustee may be entitled to an indemnity under clause 20.1 in respect of any act or omission of a delegate or agent appointed by the Trustee for which the delegate or agent is not obliged to fully indemnify the Fund.

20.3 Payment

The Trustee may pay out of the Assets any amount for which it would be entitled to be indemnified under clause 20.1.

20.4 Trustee not to incur liability

The Trustee is not required to do anything (including enter into any contract or commitment) which involves it incurring any liability (actual or contingent) unless its liability is limited in a manner satisfactory to it in its absolute discretion.

20.5 Compliance Committee

If a Compliance Committee Member incurs a liability in connection with the Fund acting in that capacity in good faith, the Trustee may indemnify the Compliance Committee Member out of the Assets, to the extent permitted by the Corporations Act.

21 Trustee's indemnity against Tax liability

21.1 Indemnity

- (a) The Trustee is entitled to be indemnified by a Unit Holder and any former Unit Holder to the extent that the Trustee incurs a liability for Tax as a result of the Unit Holder's or former Unit Holder's action or inaction or as a result of an act or omission requested by the Unit Holder or former Unit Holder.
- (b) For the avoidance of doubt, clause 21.1(a) includes an indemnity by a Unit Holder or former Unit Holder in favour of the Trustee in respect of any Tax that may arise as a result of:
 - (i) the Trustee issuing Units to the Unit Holder or a former Unit Holder;
 - (ii) the Trustee redeeming any Unit;
 - (iii) the transfer of Units by a Unit Holder or a former Unit Holder; or
 - (iv) any person acquiring an interest in a Unit or a former Unit Holder(as the case may be).

21.2 Joint Unit Holders

Joint Unit Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 21.1 applies.

22 Register

22.1 Keeping Registers

- (a) The Trustee shall establish and keep, or cause to be kept, a register of Unit Holders at its registered office.
- (b) Where the Trust is a Registered Scheme, the Register must be kept in a form which, to the extent applicable, complies with the requirements of section 169 (*Register of Members*) of the Corporations Act.

22.2 Trustee's powers

If the Corporations Act applies, the Trustee has the powers conferred under the Corporations Act in relation to the Register.

22.3 Inspection

Where the Fund is a Registered Scheme, the Trustee will make the Register available for inspection without charge to Unit Holders at all times when the Trustee's registered office is open for business to the public.

22.4 Changes

Every Unit Holder shall promptly notify the Trustee of any change of name or address and the Trustee must alter the Register accordingly.

22.5 Register conclusive

Except where this Deed or the law requires otherwise, the Trustee is entitled to treat the registered Unit Holder as absolute owner of the relevant Unit for all purposes. The entry in the Register shall be conclusive except where the Trustee is satisfied of manifest error and the Trustee is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest attaching to any Unit.

23 Amendments to this Deed

23.1 Overriding provision

This clause 23 shall be read subject to clause 24.

23.2 Amendments to this Deed

Subject to the Corporations Act (where the Fund is a Registered Scheme and, where the Fund is not a registered managed investment scheme, the Corporations Act and any relevant ASIC Exemption are to apply with modifications as if the Trustee were a responsible entity and the Fund were a registered managed investment scheme) and any other approval that may be required by law, this Deed (including this clause) may be replaced or amended:

- (a) by Special Resolution of the Unit Holders of the Fund; or

- (b) by the Trustee if the Trustee reasonably considers the change will not adversely affect Unit Holders' rights.

23.3 Compliance with the AMIT Regime

For the avoidance of doubt, the Trustee may modify this Deed to the extent that the Trustee reasonably considers that the modification is necessary for or incidental to the Fund being able to be operated in a manner permitted by the Tax Act as an AMIT with the Trustee as its trustee and, had the Fund been a Registered Scheme, the Trustee would not be precluded from making that modification.

23.4 Statutory requirements

Clause 23.2 does not apply to provisions deemed by clause 24 to be incorporated into this Deed.

24 Corporations Act and ASIC Exemptions

24.1 Corporations Act

Notwithstanding any other provision of this Deed, a provision of this Deed which is expressed to apply subject to the Corporations Act, is only so subject while the Fund is a Registered Scheme (and the provision is to be read accordingly) unless a provision of this Deed expressly provides otherwise.

24.2 Agreed amendments

If any part of this Deed (**Required Part**) is included to comply with the requirements of the Corporations Act or ASIC (**Regulatory Requirement**) and that Regulatory Requirement ceases or changes, the Unit Holders:

- (a) agree that unless the Trustee determines otherwise, this Deed will be automatically amended by removing the Required Part (or amending it to reflect the altered Regulatory Requirement) and authorise the Trustee to make that amendment in a deed made for that purpose (**Regulatory Requirement Amendment**); and
- (b) acknowledge that a Regulatory Requirement Amendment will not adversely affect their rights.

24.3 ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this Deed contain certain provisions, then, notwithstanding any amendment to this Deed effected under clause 23, those provisions are taken to be incorporated into this Deed at all times at which they are required to be included and prevail over any other provisions of this Deed to the extent of any inconsistency. However, if the relief is granted by class order (rather than specifically in relation to the Fund) then the ASIC Exemption (and the provisions it requires) will not be taken to be incorporated if the Trustee declares in writing that this is the case. This declaration may be made at any time.

25 Termination of Fund

The Fund terminates on the earlier of:

- (a) unless otherwise permitted by law, the day eighty (80) years less one (1) day from the Commencement Date;

- (b) the date determined by the Trustee as the date on which the Fund is to be terminated, being a date at least three (3) months after the date of the provision of notice of such termination to all Unit Holders; or
- (c) the date on which the Fund is otherwise terminated by law.

26 Termination and Winding Up of Fund

26.1 Realisation of Assets

On the termination and winding up of the Fund, the Trustee shall:

- (a) not issue or redeem Units;
- (b) not convert, substitute or replace Units with other Units or Classes;
- (c) not vary any rights attaching to Units; and
- (d) sell and realise the Assets and, subject to clauses 26.3, 26.4 and 26.5, distribute to the Unit Holders the amount calculated in accordance with clause 26.2(a).

26.2 Procedure on winding up of Fund

- (a) Subject to the terms of issue of any Unit or Class, the net proceeds of realisation, after making allowance for all Liabilities of the Fund (actual and anticipated) and meeting the expenses (including anticipated expenses) of the termination, shall be distributed to Unit Holders in proportion to the number of Units they hold less the value of any Assets transferred to or to be transferred to each Unit Holder under clause 26.2(b). The Trustee may distribute proceeds of realisation in instalments.
- (b) If a Unit Holder and the Trustee agree, the Trustee may transfer to the Unit Holder specified Assets in full or partial satisfaction of that Unit Holder's entitlement on winding up of the Fund, such specified Assets to be transferred at a value reasonably determined by the Trustee to be the value of the relevant Assets as at the date of the transfer to the Unit Holder and the Unit Holder being liable to pay any Transaction Charge associated with the transfer.
- (c) Subject to the Corporations Act, the provisions of this Deed shall continue to apply from the date of termination of the Fund until the date of final distribution under clause 26.2(a), but during that period the Trustee may not accept any applications for Units from a person who is not an existing Unit Holder.

26.3 Trustee may recover Expenses

The Trustee shall be entitled to be indemnified out of the Fund for, and to be paid and retain from the proceeds, all Expenses incurred or likely to be incurred:

- (a) by the Trustee in connection with the winding up of the Fund or a Class (as applicable);
- (b) by or on behalf of any creditor of the Trustee in relation to the Fund or a Class (as applicable); and
- (c) by or on behalf of any agent, solicitor, banker, accountant or other person engaged by the Trustee in connection with the winding up of the Fund or a Class (as applicable).

26.4 Retention of Assets

The Trustee may retain under its control for so long as it thinks fit that part of the Assets which in its opinion may be required to meet any outgoing or liabilities (actual or contingent) in respect of the Fund or a Class (as applicable). If any part of the Assets retained is ultimately found not to be required, then it will remain subject to realisation and distribution under clauses 26.1 and 26.2.

26.5 Postponement of realisation

The Trustee may postpone the realisation of any part of the Assets for such period as is reasonably necessary or desirable to effect a reasonable and orderly realisation of the Assets and will not be responsible for any loss attributable to that postponement.

26.6 Trustee's obligation to make distributions

The Trustee shall not be obliged to make a distribution to a Unit Holder under this clause 26 unless the Unit Holder delivers to the Trustee any evidence of title required by the Trustee together with any form of receipt and discharge required by the Trustee.

26.7 Cancellation of Units

Unless the Trustee determines otherwise, all Units will be cancelled and taken to be redeemed from the date the final distribution of the net proceeds from the realisation of the Assets is made.

26.8 Continuation of powers

The powers, duties and rights of the Trustee (including the rights to remuneration and to any indemnities under this Deed or the law) continue following termination to the extent to which they are not inconsistent with this clause 26.

26.9 Audit of accounts of Fund

If the Fund is a Registered Scheme, to the extent that the Corporations Act or ASIC policy requires, the Trustee shall arrange for the final accounts of the Fund following the winding up to be audited by a registered company auditor, or a firm at least one (1) of whose members is a registered company auditor, who is independent of the Trustee.

27 Meetings of Unit Holders

27.1 Convening meetings

The Trustee may at any time convene a meeting of Unit Holders and shall do so if required by the Corporations Act.

27.2 Calling and holding meetings while the Fund is a Registered Scheme

While the Fund is a Registered Scheme, meetings of Unit Holders must be called and held in accordance with Part 2G.4 of the Corporations Act. However:

- (a) despite section 252G(4) of the Corporations Act, a notice of meeting sent by post is taken to be given the Business Day after it is posted;
- (b) despite section 252R(2) of the Corporations Act, if at any time there is only one Unit Holder, the quorum for a meeting is one Unit Holder;
- (c) despite section 252R(3) of the Corporations Act, if an individual is attending a meeting both as a Unit Holder and as a proxy or body corporate representative, the Trustee may, in

determining whether a quorum is present, count the individual in respect of each such capacity more than once; and

- (d) despite section 252Y(2) of the Corporations Act, an appointment of a proxy:
 - (i) is valid even if it does not specify the Unit Holder's address; and
 - (ii) may be a standing one.

27.3 Calling and holding meetings while Trust is not a Registered Scheme

While the Fund is not a Registered Scheme, meetings of Unit Holders must be called and held in accordance with this clause 27.3.

- (a) Decisions that relate only to a particular Class of Unit Holders must only be voted on by Unit Holders of that Class.
- (b) The Trustee may convene a meeting of Unit Holders or Unit Holders of a Class at any time and shall convene a meeting of Unit Holders on receiving a request in writing to do so signed by a Unit Holder or Unit Holders holding not less than twenty percent (20%) of the issued Units or Units in the Class (as the case may be).
- (c) Not less than fourteen (14) days' notice shall be given of every such meeting (unless all the Unit Holders shall agree in writing to dispense with notice) and such notice shall specify the general nature of the business to be transacted at the same.
- (d) No business shall be transacted at any general meeting unless at the time when the meeting proceeds to business there are present (in person or by proxy) a quorum of at least two (2) Unit Holders who between them hold at least eighty percent (80%) of the issued Units of the classes entitled to vote at the meeting.
- (e) A resolution to remove the Trustee will only be effective if approved by Unit Holders who between them hold at least eighty percent (80%) of the issued Units of the Fund and who are entitled to vote at the meeting.
- (f) If, within fifteen (15) minutes from the time appointed for the meeting, a quorum is not present:
 - (i) the meeting, if convened on the requisition of Unit Holders, shall be dissolved; and
 - (ii) in any other case, the meeting shall stand adjourned to the same day in the next week at the same time and place and if at an adjourned meeting a quorum is not present within fifteen (15) minutes from the time appointed for the meeting, the meeting shall be dissolved.
- (g) A person nominated by the Trustee shall preside as chairperson at each meeting.
- (h) The chairperson shall not have any casting vote (in the event of an equality of votes) in addition to any vote or votes to which he or she may be entitled as a Unit Holder.
- (i) Every question at any meeting shall be decided in the first instance by a show of hands, but a poll may be demanded before or immediately after any question is put to a show of hands by a Unit Holder or Unit Holders holding between them not less than ten percent (10%) of the issued Units.

- (j) Subject to any special rights or restrictions in relation to Units of any Class, each Unit Holder present shall on a show of hands have one (1) vote and on a poll have one (1) vote for every Unit held by that Unit Holder.
- (k) Votes may be given either personally or by proxy.
- (l) Without the consent of the Trustee, no person shall be appointed a proxy who is not a Unit Holder provided that where a corporation is a Unit Holder, the proxy may be an officer of such corporation.
- (m) In the case of joint Unit Holders, any one of such joint Unit Holders may vote either personally or by proxy as if that Unit Holder were solely entitled to the Units comprised in the Unit Holding, but if more than one (1) of such joint Unit Holders be present at any meeting, either personally or by proxy, that one of the joint Unit Holders so present whose name stands first (1st) on the register in respect of the joint holding shall alone be entitled to vote in respect of the same.
- (n) The accidental omission to give notice or sufficient notice to any Unit Holder shall not invalidate any meeting or any of the proceedings at the same, nor shall any irregularity which does not unfairly prejudice any person.

27.4 Resolution binding on Unit Holders

A resolution passed at a meeting of Unit Holders is binding on all Unit Holders.

27.5 Written resolution

Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of Unit Holders, a resolution in writing signed by Unit Holders together holding that number of votes necessary for the resolution to be passed is a valid resolution of the Unit Holders and is effective when signed by the last of the Unit Holders constituting the majority. The resolution may consist of several documents in the same form, each signed by one or more Unit Holders. A facsimile transmission or other document produced by mechanical or electronic means under the name of the Unit Holder with the Unit Holder's authority is considered to be a document in writing signed by that Unit Holder.

27.6 Adjournments

The Trustee may adjourn a meeting for any reason to such time and place as determined by the Trustee.

27.7 Joint Unit Holders

For the purposes of this clause 27, joint Unit Holders are counted as a single Unit Holder.

28 Notices

28.1 Notices to Unit Holders

- (a) Subject to the Corporations Act, a notice or other communication from the Trustee to a Unit Holder must be given in writing and may be sent to the Unit Holder's physical or electronic address (which includes facsimile numbers and electronic mail addresses) as recorded on the Register.

- (b) Subject to the Corporations Act, a notice or other communication from the Trustee to a Unit Holder sent by:
 - (i) post, is taken to be received on the Business Day after it is posted;
 - (ii) facsimile, is taken to be received one (1) hour after the transmitter receives confirmation of transmission from the receiving facsimile machine; and
 - (iii) other means, is taken to be received at the time the Trustee determines.

28.2 Notices to joint Unit Holders

The Trustee may give a notice or other communication to joint Unit Holders by giving it to the Unit Holder first (1st) named in the Register for that holding.

28.3 Notices to successor

The Trustee may give a notice or other communication to the persons entitled to a Unit in consequences of the death or legal disability of a Unit Holder by sending it to the legal personal representatives of the Unit Holder or trustee of the deceased Unit Holder's estate at the address supplied for the purpose by the representative or trustee (as the case may be). Until such an address has been supplied, notice may be given by sending the notice or other communication to the Unit Holder's address as recorded in the Register.

28.4 Signature on notice

The signature on any notice or other communication by the Trustee may be written, printed, stamped or produced electronically and the signature may be that of Trustee or of any director, secretary or other authorised officer of the Trustee.

28.5 Notices to Trustee

Notices to the Trustee by Unit Holders must be given in writing or in any other manner the Trustee determines. A notice is effective when it is received by the Trustee. A notice must be signed by the Unit Holder or a duly authorised representative (unless the Trustee waives this requirement).

29 Complaints

29.1 Complaints Handling for Retail Clients

Where a Complaint is made by a Unit Holder who is a Retail Client, the Trustee will, as an Australian financial services licensee, comply with the dispute resolution requirements under section 912A(2) of the Corporations Act.

29.2 Handling of Complaints

If a Unit Holder submits to the Trustee a Complaint, the Trustee:

- A. shall acknowledge receipt of the complaint immediately or, where immediate acknowledgement is not possible, as soon as practicable;
- B. shall 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. shall 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 a third party;

- D. may, in its discretion, give any of the following remedies to the Unit Holder:
- i. information and explanation regarding the circumstances giving rise to the Complaint;
 - ii. an apology; or
 - iii. compensation for loss incurred by the Unit Holder as a direct result of the breach (if any); and
- E. shall communicate to the Unit Holder as soon as practicable and, in any event, not more than 45 days after receipt by the Trustee of the Complaint (or 21 days for disputes involving default notices):
- i. the determination in relation to the Complaint;
 - ii. the remedies (if any) available to the Unit Holder; and
 - iii. information regarding any further avenue for Complaint including the name and contact details of the EDR Service (where applicable),
 - iv. except that the requirement to provide such a communication to the Unit Holder does not apply where the Complaint (except for a Complaint relating to hardship) is resolved to the Unit Holder's complete satisfaction by the end of the fifth Business Day after the Complaint is received and the Unit Holder has not requested a response in writing.

29.3 Time for final response not met

If the Trustee cannot provide a final response to the Unit Holder within 45 days (or 21 days for disputes involving default notices) as required by clause E, the Trustee must inform the Unit Holder of:

- (a) the status of the Complaint;
- (b) the reasons for the delay; and
- (c) the right to complain to the EDR Service; and
- (d) provide the name and contact details of the EDR Service to the Unit Holder.

30 Rights of Trustee

30.1 Right to hold Units

The Trustee and/or any of its Associates may hold Units in any capacity.

30.2 Other capacities

Subject to the Corporations Act and the law generally, nothing in this Deed restricts the Trustee (in its personal capacity or in any other capacity other than as responsible entity or trustee of the Fund) and/or any of its Associates:

- (a) acquiring investments for the Fund from the investment manager (if any) or any of its Associates;
- (b) dealing with the Trustee (as responsible entity or trustee of the Fund or in another capacity), an Associate of the Trustee or with any Unit Holder;

- (c) borrowing from the Trustee in its personal capacity or in any other capacity other than as responsible entity or trustee of the Fund;
- (d) being interested in any contract or transaction or matter with the Trustee (as responsible entity or trustee of the Fund or in another capacity), an Associate of the Trustee or with any Unit Holder or retaining for its or their own benefit any profits or benefits derived from any such contract or transaction;
- (e) acting in the same or a similar capacity in relation to any other trust or managed investment scheme; or
- (f) any dealings with any entity in which the Assets are invested,

and in each case the Trustee (or any Associate) may retain for its own benefit all profits or benefits derived from that activity.

30.3 Trustee may rely

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 Deed or any other document (whether statutory or otherwise) or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers and any 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 the Trustee of a person to act as their agent for any purpose connected with the Fund; and
- (d) any other document provided to the Trustee in connection with the Fund upon which it is reasonable for the Trustee to rely,

and the Trustee shall not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statement, information or documents.

31 Deed legally binding

This Deed binds the Trustee and each present and future Unit Holder and any person claiming through any of them in accordance with its terms (as amended from time to time) as if each of them had been a party to this Deed.

32 Other obligations excluded

Except as required by the Corporations Act, all obligations of the Trustee which may otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including, without limitation, any obligation of the Trustee in its capacity as trustee of the Fund arising under any statute.

33 Payment

- (a) Any money payable by the Trustee to a Unit Holder under this Deed may be paid by a crossed not negotiable cheque made payable to the Unit Holder and posted to the Unit Holder's address as supplied in the Register.
- (b) A Unit Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this Deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Unit Holder which is presented and paid, or where the payment is to a financial institution or nominated person payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within six (6) months or any electronic fund transfer which is unsuccessful is cancelled. If the Trustee so determines the amount of the cheque or electronic fund transfer may be reinvested in Units under a distribution reinvestment arrangement referred to in clause 5.4. The reinvestment is deemed to be made on the day the cheque or electronic fund transfer is cancelled.
- (e) The Trustee is entitled to keep any interest accrued on money payable to a Unit Holder or former Unit Holder.
- (f) Money payable to the Trustee may from time to time be paid in a manner other than that described in this clause 33 with the Trustee's consent.
- (g) The Trustee may deduct from any amount to be paid, or received from, a Unit Holder or a person who was previously a Unit Holder any amount the Trustee is authorised or required to deduct by law, the Deed or any product disclosure document for the Fund of which the terms are binding on the Unit Holder.

34 Severability

If any provision of this Deed is held or found to be void, invalid or otherwise unenforceable, so much hereof as is necessary to render it valid and enforceable shall be deemed to be severed but the remainder of this Deed will remain in full force and effect.

35 Governing law

This Deed is governed by the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

EXECUTED as a deed.

EXECUTED by **UNITING ETHICAL INVESTORS LIMITED ABN 46 102 469 821** in accordance with section 127 of the *Corporations Act 2001* (Cth) by being signed by the following officers:



Signature of director

Mathew Browning

Name of director *(please print)*



Signature of company secretary

Leeanne Lukaitis

Name of company secretary *(please print)*

Schedule 1 - Examples of Expenses

The following are examples of Expenses for which the Trustee may be reimbursed out of the Assets or the assets of any controlled entity of the Fund and are not intended to limit the Expenses which may be payable:

Expenses in any way connected with:

- (a) the preparation, approval, execution, interpretation and enforcement of this Deed, the formation of the Fund and any supplemental deed or proposed supplemental deed to amend this Deed, including Advisers' fees;
- (b) the preparation approval, implementation, audit and interpretation of a Compliance Plan;
- (c) the preparation, review, approval, distribution and production of any disclosure document or offering memorandum in respect of Units or any marketing material or other documents whether required by law or otherwise to be prepared in respect of the Fund;
- (d) the acquisition, disposal, insurance, custody and any other dealing with Assets or the assets of any controlled entity of the Fund;
- (e) the sale or proposed sale, purchase or proposed purchase, holding, valuation, insurance, custody, development, project management, property management, leasing and any other dealing with Assets or the assets of any controlled entity of the Fund;
- (f) establishing Investment Entities;
- (g) the administration, management, valuation or promotion of the Fund or its Assets or the assets of any controlled entity of the Fund and Liabilities, including without limitation:
 - (i) the establishment and maintenance of accounts and Registers;
 - (ii) issuing Units by the Trustee or any sales of Units by one or more Unit Holders, including underwriting costs, including brokerage and commission payable to any person for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for Units;
 - (iii) computer operation and development and data processing;
 - (iv) office expenses associated with printing, postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Unit Holder under this Deed;
 - (v) dealing with Unit Holder enquiries;
 - (vi) communications with Unit Holders (written or otherwise);
 - (vii) investor tours, analyst tours, publications and other promotional costs, whether in relation to the establishment of the Fund or on an ongoing basis;
 - (viii) any travel expenses incurred in connection with the Fund;
 - (ix) arranging and maintaining appropriate professional indemnity insurance;
- (h) convening and holding meetings of Unit Holders and carrying out the direction of the meetings;

- (i) Taxes (provided they are not on the personal account of the Trustee and including any GST charged to the Trustee), stamp duty and financial institution fees;
- (j) the inclusion of the Fund on any IDPS list;
- (k) the engagement of delegates, agents, Advisers;
- (l) without limiting paragraph (k), the payment of management fees, performance fees, acquisition fees, disposition fees or other fees associated with the engagement of any investment or asset manager;
- (m) preparation and audit of the taxation returns and accounts of the Fund;
- (n) termination of the Fund and the retirement or removal of the Trustee and the appointment of a replacement;
- (o) any court proceedings, arbitration or other dispute concerning the Fund 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 (o) shall be repaid;
- (p) the establishment and operation of an investment committee in connection with the investments of the Fund;
- (q) the establishment and operation of a Compliance Committee in connection with the Fund, including costs and expenses reasonably incurred by and any fees paid to or insurance premiums in respect of Compliance Committee Members;
- (r) while 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 carried out by a Compliance Committee, including (if the Fund is a Registered Scheme) any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
- (s) admission of the Fund to the ASX or any other stock exchange, its continuing compliance with the rules of any such exchange, or in relation to any removal of the Fund from the official list of the ASX or any other exchange or the suspension of any Units from trading by the ASX or any other exchange;
- (t) complying with any law or any request or requirement of ASIC;
- (u) fees payable to ASIC or any other regulatory authority in relation to the Fund, Units;
- (v) the assigning or maintaining of a credit rating to the Fund;
- (w) raising money or otherwise obtaining financial accommodation for the Fund or any controlled entity of the Fund, including a capital raising by the Fund, including fees payable to any underwriter or broker; and
- (x) calculations and determinations under this Deed.

Schedule 2 - AMIT provisions

1 Unit Holders' clearly defined interests

- (a) The provisions that follow (without seeking to be exhaustive) are intended to ensure that the terms of this Deed provide that the rights to income and capital of each Unit held by a Unit Holder in the Fund constitute Clearly Defined Rights.
- (b) To the extent required by the AMIT Regime in order for the Unit Holders to have Clearly Defined Rights:
 - (i) the Trustee may not exercise any right or power, whether it is one provided to the Trustee under this Deed or under any statutory or general law rights or powers of a trustee, which would result in the rights to the income and capital of the Fund arising from each Unit in each relevant AMIT for the Fund to not be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
 - (ii) the Trustee must treat Unit Holders who hold Units of the same class equally and Unit Holders who hold Units of a different class fairly, except to the extent that the Trustee directs an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 9.10(c); and
 - (iii) in addition to the requirements of clause 23, no amendment can be made to this Deed (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.5, of this Deed) which would or may cause the requirements of this clause to not be met.

2 Trustee powers in relation to AMIT Regime

- (a) The Trustee has all of the powers and rights which are necessary and expedient to enable the Fund to comply with and effectively operate as an AMIT for the purposes of the AMIT Regime.
- (b) Without limiting the Trustee's other powers or seeking to be exhaustive, for the purposes of the AMIT Regime, the Trustee has the power to:
 - (i) work out the Trust Component of each applicable character of the Fund, or each Class, for a Financial Year;
 - (ii) attribute all of the Trust Components and Determined Trust Components of the Fund, or each Class, to Unit Holders for the Financial Year under the AMIT Regime, including make an attribution of income of a particular category, source or character for tax purposes;
 - (iii) make an alteration to the Trustee's attribution of the Trust Components and Determined Trust Components of the Fund, or each Class, to Unit Holders under the AMIT Regime including, without limitation, making alterations as a result of the Trustee applying the Unders and Overs Rules;
 - (iv) issue (or reissue as the case may be) an AMMA Statement;
 - (v) where the Fund has more than one Class of Units on issue, to make a choice that each Class be treated as a separate AMIT. If the Trustee has made a choice that each Class is to be treated as a separate AMIT for the purposes of the AMIT

Regime, only include the relevant income and expenses that relate to that Class in calculating the Trust Components and Determined Trust Components of each Class;

- (vi) make a determination in relation to and maintain accounts for each of the separate categories of income and/or capital depending on the character of that income and/or capital for the purpose of working out a Trust Component and a Member Component as required under the AMIT Regime;
 - (vii) allocate costs, expenses, deductions and other similar amounts directly against the categories of income or capital to which they relate or, in any other case, perform the allocation on a reasonable basis; and
 - (viii) issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime.
- (c) Subject to the Corporations Act, the Trustee is not liable to any Unit Holder or former Unit Holder with respect to adjustments it makes to any Trust Component in applying the Unders and Overs Rules provided that the Trustee makes those adjustments in accordance with the AMIT Regime and irrespective of whether any choice made by the Trustee results in a different attribution outcome for the Unit Holder than if the Trustee had not made the choice, or had made the choice in a different way.

3 Attribution of trust components

- (a) The Trustee must attribute all of the Trust Components and Determined Trust Components of:
- (i) the Fund; or
 - (ii) if the Trustee has made a choice that each Class will be treated as a separate AMIT, each Class in the Fund,
- in respect of a Financial Year, to the Unit Holders or former Unit Holders under the AMIT Regime.
- (b) The Trustee undertakes to perform attribution under clause 3(a) in accordance with the following principles:
- (i) the amount of each Unit Holder's or former Unit Holder's Member Components and Determined Member Components of a particular character is so much of the Fund's Determined Trust Component of that particular character as is attributable to the Units in the Fund held by the Unit Holder or former Unit Holder, having regard to the provisions of this Deed;
 - (ii) subject to 3(b)(iv), the attribution must be worked out on a fair and reasonable basis, in accordance with this Deed and any other documents that constitute constituent documents for the Fund;
 - (iii) subject to 3(b)(iv), the Trustee must not attribute any part of a Determined Trust Component to a Unit Holder or former Unit Holder because of the tax characteristics of the Unit Holder or former Unit Holder;
 - (iv) the Trustee may direct an amount arising from the sale of an Asset to a particular Unit Holder in the circumstances described in clause 9.10(c).

- (v) if there is more than one Class on issue in the Fund and the Trustee has made a choice that each Class will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under clause 3(a) and the Trustee must only attribute Determined Trust Components of a particular Class to Unit Holders of that Class (and not any other Class); and
 - (vi) the Trustee must attribute to each Unit Holder or former Unit Holder, so much of the Determined Trust Components of the Fund or the relevant Class (if relevant) as are reflected in any Distribution Entitlements that the Unit Holder or former Unit Holder has become entitled to during the Financial Year.
- (c) Where the Trustee exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:
- (i) it is not intended the Trustee make any material alteration to the quantum or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement provisions or amount payable to a Unit Holder under this Deed (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Deed);
 - (ii) the attribution of a Determined Trust Component of a particular AMIT character should reflect that rights and entitlements to income and capital contemplated in the existing Distribution Entitlement provisions under this Deed (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 4.4 of this Deed) and should not be materially different from those rights and entitlements.

4 Ceasing to be an AMIT

If the Fund ceases to be an AMIT in respect of any Financial Year, then in determining the Income of the Fund for that or any subsequent Financial Year and to the extent required by the AMIT Regime, an appropriate adjustment must be made in the discovery year to take into account any over or under distributions of any tax component from any prior period in which the Fund was an AMIT.

5 Determined Member Component Choice

- (a) If a Unit Holder makes or intends to make a Determined Member Component Choice (in this clause, a **Choice**) for the purposes of the AMIT Regime, the Unit Holder must:
- (i) before providing notice of such Choice to the Commissioner of Taxation, provide the Trustee not less than seven days' notice of its intention to do so and a summary of the reasons why the Unit Holder considers the attribution to be inappropriate;
 - (ii) provide to the Trustee all information the Trustee reasonably requests in relation to any act, matter or thing relating to any Choice; and
 - (iii) consent to the Trustee becoming a party to any proceedings with the Commissioner of Taxation relating to the Choice.
- (b) The Unit Holder acknowledges that if a Unit Holder makes a Choice it may be necessary or desirable for the Trustee to issue an amended AMMA Statement to deal with the proper attribution of the relevant income or tax attribute amongst the Unit Holders for the purposes of the AMIT Regime.

- (c) The Trustee shall have no liability in respect of any act, matter or thing done or omitted to be done by a Unit Holder in relation to a Choice.
- (d) The Trustee has the right to issue or reissue any AMMA Statement to the Unit Holder or other Unit Holders if a Unit Holder makes a Choice.

6 Debt-like AMIT instruments

The Unit Holders and holders of the debt-like AMIT instruments acknowledge that the attribution rules in the AMIT Regime that apply in relation to the attribution of a particular AMIT character do not apply in relation to the holding of a debt-like AMIT instrument.

7 AMIT indemnity

Pursuant to this clause 7, the Trustee is entitled to be indemnified out of the Assets for any liability that:

- (a) is incurred by the Trustee in relation to the proper performance of its duties; and
- (b) either:
 - (i) is an Attribution Income Tax Liability of the Trustee; or
 - (ii) results from a Unit Holder or former Unit Holder making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Unit Holder or former Unit Holder (as the case may be) that results from an attribution by the Trustee under section 276-210 of the Income Tax Assessment Act 1997 (Cth) to the interests held by the Unit Holder or former Unit Holder.