

# MERCHANT BIOTECH FUND

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TRUST DEED

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**BY**

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**CIP LICENSING LIMITED** (ACN 603 558 658) of 103 Bolsover Street, Rockhampton QLD 4700 (Trustee)

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**RECITALS**

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- A.** Fund - The Trustee has agreed to establish a trust on the terms of this deed, the Fund.
- B.** Trustee - The Trustee has agreed to act as trustee (and, while the Fund is a Registered Scheme, as responsible entity) of the Fund, and to hold all monies and investments of the Fund, on the trusts and other terms, and subject to the conditions, set out in this deed.
- C.** Members - The provisions of this deed apply to bind the Members and also to benefit them and are legally enforceable as between the Members and the Trustee.

**IT IS AGREED** as follows:

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**1. DEFINITIONS AND INTERPRETATION****1.1 Definitions**

In this deed, unless the context otherwise requires:

**ABN** means Australian Business Number.

**ACN** means Australian Company Number.

**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, manager, broker, administrator, custodian or property manager, and any other person appointed by the Trustee to provide advice in relation to the Fund.

**AFSL** means an Australian financial services licence within the meaning of the Corporations Act.

**Applicant** means a person who has submitted an Application to the Trustee (including persons registered jointly or with another entity).

**Application** means a request submitted to the Trustee to become a Member, or by a Member to make an additional investment in the Fund, in accordance with clause 4.

**Application Price** means the Net Asset Value of the Fund divided by the number of Units on issue, in accordance with clause 13.3.

**ARSN** means Australian Registered Scheme Number.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC Exemption** means:

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

**Assets** means the Property, Investments, rights and income of the Fund from time to time.

**Asset Value** at any time, means the aggregate of the following at that time as calculated by or on behalf of the Trustee:

- (a) **Assets:** the gross value of all Assets in the Trust Fund at that time, as most recently calculated in accordance with clause 13;
- (b) **money:** the amount of money held in the Trust Fund (to the extent not included in paragraph (a) above); and
- (c) **other:** the gross value of any other Assets (to the extent not included in paragraphs (a) or (b) above).

**ASX** means ASX Ltd (ABN 98 008 624 691) or the financial market operated by that company (whichever the context requires).

**Australian Accounting Standards** means:

- (a) **standards:** the accounting standards from time to time approved under the Corporations Act;
- (b) **preparation:** the requirements of the Corporations Act in relation to the preparation and content of accounts; and
- (c) **GAAP:** 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 paragraph (a) or (b) above.

**Business Day** means a day on which the Trustee is open for business, other than a Saturday, Sunday or public holiday in the capital city of the State.

**Cash** includes cheques, electronic funds transfers and Crypto Assets, as determined by the Trustee from time to time.

**Class** means a class of Units, being Units which have the same rights, and if all Units have the same rights, there is only one (1) Class.

**Commodity** means any tangible personal property, currency, interest or other rate, financial or other indices (including any share index) and such other tangible or intangible thing determined by the Trustee to be a 'Commodity' for the purposes of this definition.

**Company Distribution Date** has the meaning given in clause 11.11(d).

**Company Distribution Period** has the meaning given in clause 11.11.

**Compliance Committee** means, while the Fund is a Registered Scheme, a committee of persons appointed by the Trustee from time to time to review regularly the Trustee's compliance with the Compliance Plan.

**Compliance Officer** means, while the Fund is a Registered Scheme, the person from time to time appointed to that role by the Trustee.

**Compliance Plan** means, while the Fund is a Registered Scheme, the compliance plan of the Fund.

**Compliance Plan Auditor** means, while the Fund is a Registered Scheme, the last person appointed under clause 20.1(b) to audit the Compliance Plan as required by section 601HG (Audit of compliance plan) of the Corporations Act.

**Constitution** means, while the Fund is a Registered Scheme, this deed, and in such circumstances all references in this deed to "this deed" will be taken to be references to this Constitution;

**Corporations Act** or **Act** means the Corporations Act 2001 (Cth) and the Corporations Regulations 2001 (Cth) as modified by any ASIC Exemption.

**Custodian** means, while the Fund is a Registered Scheme, a custodian or nominee appointed under clause 14.2.

**Delegate** has the meaning given in clause 12.2(a).

**Derivative** means:

- (a) **contract:** any contract (including a master agreement) commonly known as a derivative, futures contract or synthetic under which there are rights in respect of the acquisition, disposal or trading of any Property or Investment and under which delivery, settlement, payment or adjustment is to be made at a future date at a price, or based on a formula, agreed on when the contract is made; or
- (b) **arrangement:** any financial instrument or arrangement, contract or transaction that relates to any Property or Investment and is, in the opinion of the Trustee, for the purpose or anticipated or intended purpose of:
  - (i) *risk* - managing, limiting or reducing perceived risks or anticipated costs relative to returns;
  - (ii) *return* - augmenting or improving returns having regard to perceived risks or anticipated costs; or
  - (iii) *protection* - securing a profit or avoiding a loss, associated with any Property or Investment;

associated with any Property or Investment.

**Disclosure Document** means any disclosure document (including an information memorandum and/or supplementary information memorandum, or, while the Fund is a Registered Scheme, a product disclosure statement and/or supplementary product disclosure statement) issued by the Trustee (or its Delegate) in respect of the Fund (as may be amended, supplemented and/or replaced from time to time).



**Distributable Amount** has the meaning given in [clause 11.2](#).

**Distributable Sum** has the meaning given in clause 11.11(c).

**Distribution Period** means the period of a Financial Year.

**Establishment Cost** means all and any Expenses incurred in connection with the establishment and initial promotion of the Fund, including the production and distribution of the first (1st) Disclosure Document.

**Expenses** includes any expenses, costs, commissions, brokerage, fees and Taxes (and examples of Expenses are given in Schedule 2).

**Extraordinary Resolution** has the meaning given to that term in section 9 (Definitions) of the Corporations Act while the Fund is, and otherwise as if the Fund were, a Registered Scheme.

**Fee** means any investment management, performance or other fee which the Trustee (or its Delegate) is entitled to receive, as described in clause 25.1.

**Financial Year** means a year ending on 30 June in each year, but the following periods will also be Financial Years:

- (a) **first:** the period starting on the Start Date and ending on the following 30 June; and
- (b) **last:** the period starting on 01 July immediately before the ending of the Fund and ending on the day on which the Fund ends.

**Fund** means the unit trust constituted by this deed.

**Fund Auditor** means, while the Fund is a Registered Scheme, the last person appointed under clause 20.1(a).

**GST** has the meaning given in section 195-1 (Dictionary) of the GST law.

**GST Group** has the meaning given in the GST law.

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

**Income** means Net Income, unless otherwise determined by the Trustee in its absolute discretion.

**Indemnified Matter** has the meaning given in clause 17.2.

**Input Tax Credit** has the meaning given in the GST law.

**Interim Distribution Period** means any period determined by the Trustee, so long as the period begins and ends during the same Financial Year (but does not end on the last day of that Financial Year).

**Investment** means any type of investment, whether in Australia or elsewhere, which a person may make on its own behalf and includes:

- (a) **products:** without limiting paragraph (b) below, financial products as defined in Chapter 7 (Financial services and markets) of the Corporations Act; and

(b) **gain / loss:** the pursuit of gain or the protection against loss by way of any of the following:

- (i) *Property* - acquiring or holding of any Property;
- (ii) *finance* - making available financial accommodation; or
- (iii) *contracts* - entering into any contract or a Derivative, and may involve incurring a liability or obligation of any kind;

and may involve incurring a liability or obligation of any kind.

**Law** includes:

- (a) **legislation:** the Corporations Act and any statute; and
- (b) **law:** any rule of common law, rule of equity or judgement which applies to the Fund and/or the Trustee (as the case may be).

**Liabilities** means all present liabilities of the Fund, including any provision which the Trustee decides should be taken into account in determining the liabilities of the Fund, but excluding the amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' 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.

**Liquid** has the meaning given in section 601KA (Members' rights to withdraw) of the Corporations Act, while the Fund is, and otherwise as if the Fund were, a Registered Scheme.

**Manager** or **Investment Manager** means such person as is appointed by the Trustee to manage the Investments of the Fund from time to time, being as at the date of this deed, the party set out in Item 4 of Schedule 1.

**Member** means a person whose name is entered in the Register as the holder of a Unit (including persons registered jointly or with another entity).

**Member Proportion** means the proportion which the number of Units a Member holds, bears to the total number of Units in issue.

**Month** means a calendar month.

**Net Asset Value** at any time, means the Asset Value, less the Liabilities at that time.

**Net Income** has the meaning given in [clause 9.1](#).

**Net Proceeds From Realisation** means the proceeds from sale or other realisation of the Assets after paying or providing for:

- (a) **Liabilities:** all Liabilities;
- (b) **Fees:** any unpaid Fees payable (or to be payable) to the Trustee and/or Manager; and
- (c) **Expenses:** the Expenses of ending the Fund.

**Property** means property of any description and includes:

- (a) **products:** any security, Derivative or other financial product;
- (b) **interests:** any debt or chose in action or any other right or interest;
- (c) **rights:** any permit, licence or authority or any patent, copyright, design, trademark or other form of intellectual property; and
- (d) **assets:** anything regarded as an asset for the purposes of Australian Accounting Standards;

**Redemption Amount** means the amount which a Member accepts to redeem from the Fund under a Redemption Offer as calculated in accordance with clause 6.

**Redemption Offer** means an offer made by the Trustee in accordance with section 601KB (Non-liquid schemes - offers) of the Corporations Act, whether or not the Fund is a Registered Scheme.

**Redemption Request** means a Member's request to redeem part or all of the Member's Units in a form which is approved by the Trustee.

**Register** means the register of Members to be kept under clause 15.

**Registered Scheme** has the meaning given in section 9 (Dictionary) of the Corporations Act.

**Related Entity** means:

- (a) **Act:** a 'related entity' as defined in section 9 (Dictionary) of the Corporations Act (the first (1st) person); and
- (b) **trust:** a trust of which the first (1st) person is a trustee or which is managed by the first (1st) person.

**Representative Member** has the meaning given in the GST law.

**Retail Client** has the meaning given in section 761G (Meaning of retail client and wholesale client) of the Corporations Act.

**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, including a 'security interest' within the meaning of the Personal Property Securities Act 2009 (Cth).

**Significant Unrealised Gains or Losses** means a potential unrealised gain or loss of ten percent (10%) or more of Asset Value.

**Special Resolution** has the meaning given to that term in section 9 (Definitions) of the Corporations Act while the Fund is, and otherwise as if the Fund were, a Registered Scheme;

**Start Date** means the date set out in Item 5 of Schedule 1.

**State** means the State of the Commonwealth of Australia set out in Item 6 of Schedule 1.

**Tax** or **Taxation** means all 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, withholding tax, municipal rates, stamp duties and other tax, impost, rates, duties, charges and levies assessed or charged or assessable or chargeable by or payable to any federal, state or municipal taxation or excise authority, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, impost, rates, duties, charges or levies.

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

**Term** means the term of the Fund, as set out in Item 7 of Schedule 1, but subject to clause 23.1.

**Transaction Costs** means:

- (a) **investment:** when accepting a new Member or additional investment under clause 4, the Trustee's estimate of the total Expenses which would be incurred if all the Assets were to be acquired at the relevant time;
- (b) **redemption:** when accepting a Redemption Request under clause 5, the Trustee's estimate of the total Expenses which would be incurred if all the Assets were to be disposed of at the relevant time (in each case excluding the actual cost of the Assets); and
- (c) **less:** in either case, to the extent permitted by the Corporations Act if applicable, a lesser amount (including zero (0)) determined by the Trustee, and in estimating the total Expenses the Trustee may take account of any policy it has established regarding the amortisation of Asset acquisition and disposal costs.

**Trigger Event** means any of the following:

- (a) **Trustee removal:** a resolution is passed at a meeting of Members removing or replacing the Trustee without the recommendation of the existing Trustee;
- (b) **ending:** the Fund ends under clause 23;
- (c) **takeover:** (if relevant) the Units are the subject of a takeover bid which achieves the threshold for compulsory acquisition under Chapter 6A (Compulsory Acquisitions and buy-outs) of the Corporations Act; or
- (d) **merger:** the Members approve a formal or informal scheme of arrangement under which the Fund is to merge with any other managed investment scheme or entity or by which there is a change in the ownership or control of the Fund.

**Trustee** means such person as is appointed as trustee of the Fund (and, while the Fund is a Registered Scheme, recorded on the ASIC register as responsible entity of the Fund, and in such circumstances all references in this deed to Trustee will be taken to be references to **Responsible Entity**) from time to time, being as at the date of this deed, the party set out in Item 3 of Schedule 1.

**Trust Fund** means all Assets of the Fund (including money paid to the Trustee in respect of which the Trustee has issued Units).

**Unit** means an undivided share in the beneficial interest in the Trust Fund created under this deed.

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

**Wholesale Client** has the meaning given in sections 761G (Meaning of retail client and wholesale client) and 761GA (Meaning of retail client – sophisticated investors) of the Corporations Act.

**Withdrawal Price** means the Net Asset Value of the Fund divided by the number of units on issue calculated in accordance with clause 13.3.

## 1.2 Interpretations

In this deed, unless the context otherwise requires:

- (a) **headings:** the index and any headings are for ease of reference only and do not affect the interpretation of this deed;
- (b) **inclusion:** specifying anything in this deed after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included, unless there is express wording to the contrary;
- (c) **examples:** if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (d) **references:** a reference to a clause, party, attachment, exhibit, Annexure or Schedule is a reference to a clause of, and a party, attachment, exhibit, annexure and schedule to, this deed and a reference to this deed includes any attachment, exhibit, annexure and schedule;
- (e) **attachments:** the background, the execution page, the Schedules and the Annexures (if any) are each incorporated in and form part of this deed;
- (f) **number:** a reference to the singular includes the plural and the other way around;
- (g) **gender:** a reference to a given gender includes all other genders;
- (h) **grammar:** other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (i) **definitions:** words or phrases appearing in a certain context in this deed which, when used in a similar context in the Corporations Act would have a particular meaning as at the date of this deed, have that meaning in this deed;
- (j) **person:** a reference to a person or party includes a natural person, a company or any other type of entity or body recognised by law, whether or not it is incorporated or has a separate legal identity, and any executor, administrator, successor in law, permitted substitutes and permitted assigns of the person (and, where applicable, the person's legal personal representatives);

- (k) **legislation:** a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision, and includes all subordinate legislation, regulations or instruments issued under it;
- (l) **government:** a reference to any governmental or statutory body includes anybody which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
- (m) **documents:** a reference to any agreement or document (including this deed) is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time, except to the extent prohibited by the agreement or document;
- (n) **agreement:** a reference to an agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (o) **thing:** a reference to anything (including a right, obligation or concept) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to anyone (1) or more of them;
- (p) **writing:** - a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes a facsimile transmission and electronic mail, and any notification, demand, agreement, consent, approval or other communication required under this deed must be in writing;
- (q) **information:** a reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets;
- (r) **currency:** a reference to:
- (i) *AUD* - dollars, Australian dollars, \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia;
  - (ii) *USD* - United States dollars, US\$, \$US or USD is a reference to the lawful currency of the United States of America;
  - (iii) *GBP* - pounds, British pounds, Sterling, pounds Sterling, £, GPE, £GP or GBP is a reference to the lawful currency of the United Kingdom of Great Britain and Northern Ireland; and
  - (iv) *EUR* - euro, € or EUR is a reference to the lawful currency of the European Union;
- (s) **time:**
- (i) *general* - a reference to time is to local time in the capital city of the State; and

- (ii) *timing* - the expression 'at any time' includes reference to past, present and future time and the performance of any action from time to time;
- (t) **periods:** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (u) **action:** if the time for performing an obligation under this deed expires on a day which is not a Business Day, then:
  - (i) *payment* - if the act involves a payment that is due on demand, the person must do it on or by the previous Business Day; and
  - (ii) *other* - in any other case, the person must do it on or by the next Business Day;
- (v) **construction:** no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for proposing or preparing it or because that party relies on it to protect itself;
- (w) **language:** the language in all parts of this deed will be in all cases construed in accordance with its fair and common meaning and not strictly for or against any party;
- (x) **conduct:** a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (y) **liability:** unless the contrary intention appears:
  - (i) *binding* - if a party consists of more than one (1) person, this deed binds each of them separately and any two (2) or more of them jointly; and
  - (ii) *benefit* - an obligation or statement, representation, warranty or undertaking in favour of more than one (1) person is for the benefit of them separately and jointly; and
- (z) **legal terms:** a reference to any Australian legal term for any action, remedy, method or form of judicial proceeding, legal document, legal status, court, official or any other legal concept or thing will, in respect of any jurisdiction outside Australia relevant to the transactions contemplated by or the terms of this deed, be deemed to include a reference to the corresponding or most similar legal term in that jurisdiction.

### 1.3 Rounding and currency

- (a) **Rounding:** Subject to clause 1.3(b), all calculations under this deed may be rounded up or down to the number of decimal places (or nearest whole number) determined by the Trustee.
- (b) **Fractions:** Where total amounts payable to or by a person include a fraction of a cent, that amount may be rounded up or down to the nearest cent as determined by the Trustee.
- (c) **Currency:** Where the Trustee needs to convert an amount in a currency to another currency, it may calculate the conversion in such manner as it considers appropriate. In relation to conversions affecting a Units to be

issued to an Applicant, the Trustee must disclose the method of calculating the conversion to the Applicant.

#### 1.4 Deed binding

This deed binds the Trustee, each Member, any other person with an interest in the Fund, and any person claiming through any of them, as if each of them had been a party to this deed.

#### 1.5 Attorneys

Any appointment of the Trustee as an attorney under this deed is irrevocable.

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### 2. TRUST

#### 2.1 Trustee

The Trustee is the trustee of the Fund.

#### 2.2 Declaration of trust

- (a) **Fund:** The Trustee holds the Trust Fund on trust for the Members in accordance with this deed.
- (b) **Start Date:** The Fund begins on the Start Date.

#### 2.3 Name of Trust

The name of the Fund is set out in Item 2 of Schedule 1.

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### 3. UNITS AND MEMBERS

#### 3.1 Units

- (a) **Units:** The beneficial interest in the Trust Fund will be divided into Units which may be issued by the Trustee to Members at any time.
- (b) **Rights:** Subject to any rights attached to a Unit or Class of Units, each Unit confers on a Member an equally ranked, undivided interest in the Trust Fund.
- (c) **Whole:** For the avoidance of doubt, a Unit confers on a Member a beneficial proprietary interest in the Trust Fund as a whole. It does not confer on a Member an interest in any particular Asset comprised in the Trust Fund.
- (d) **Equal:** Subject to any rights attached to a Unit or Class of Units, all Units have the same rights attached to them.
- (e) **Entitlement:** A Member's entitlement to its beneficial interest in Fund Assets is equivalent to its Member Proportion, including in respect of Income, capital and voting.

#### 3.2 Classes

- (a) **Classes:** Different Classes of Units may be issued by the Trustee.



- (b) **Terms:** If the Trustee determines in relation to particular Units, the terms of issue of those Units may:
  - (i) *changes* - eliminate, reduce or enhance any of the rights or obligations which would otherwise be carried by such Units; and/or
  - (ii) *conversion* - provide for conversion of Units from one (1) Class to another Class.
- (c) **Equality / fairness:** While the Fund is, and otherwise as if the Fund were, a Registered Scheme, the Trustee must treat Members who hold Units of the same Class equally and Members who hold Units of a different Class fairly, in accordance with the section 601FC(1)(d) (regarding duties of a responsible entity).

### 3.3 Rights attaching to Units

- (a) **Rights / obligations:** A Member holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) **Restriction:** Each Member agrees not to:
  - (i) *interference* - interfere with any rights or powers of the Trustee under this deed;
  - (ii) *Assets* - purport to exercise a right in respect of, or claim any interest in, an Asset (for example, by lodging a caveat affecting an Asset); or
  - (iii) *transfers* - require an Asset to be transferred to the Member (or any other person).

### 3.4 Directions

Members may not give any directions to the Trustee if it would require the Trustee to do or omit doing anything which:

- (a) **Law:** may result in the Trustee acting contrary to Law; or
- (b) **discretion / power:** would otherwise be within the scope of any discretion or power expressly conferred on the Trustee by this deed.

### 3.5 Register

Subject to the Corporations Act (if relevant), only the persons entered on the Register are recognised as having any interest in a Unit.

### 3.6 Joint Members

Persons registered as joint Members in respect of a Unit hold the Unit as joint tenants and not as tenants in common, unless the Trustee otherwise agrees.

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## 4. APPLICATION FOR AND ISSUE OF UNITS

### 4.1 Types of Applications

- (a) **Non-Members:** Where the Applicant is not a Member, an Application is to become a Member and be issued a Unit.
- (b) **Members:** Where the Applicant is a Member, an Application is to acquire additional Units.

### 4.2 Applicant to become Member on acceptance

Where an Applicant is not a Member, upon an Application being approved by the Trustee in whole or in part:

- (a) **Member:** the Applicant will become a Member and be issued a Unit at the Application Price; and
- (b) **Register:** the Trustee will enter the Member on the Register.

### 4.3 Additional investment made by existing Members

Where an Applicant is an existing Member, upon an Application being approved by the Trustee in whole or in part:

- (a) **increase:** the number of the Member's existing Units will increase by the number of additional Units issued to the Member, which will reflect the value of that Member's increased investment into the Fund (as calculated in accordance with clause 4.8), less any applicable Fees;
- (b) **Register:** the increase in number of the Member's Units will be recorded in the Register; and
- (c) **consideration:** consideration paid for the increase in number of the Member's Units is the amount invested by the Member into the Fund, less any applicable Fees.

### 4.4 Trustee's ability to issue Units and prescribe minimum subscription

- (a) **New:** The Trustee may at any time issue a new Unit to an Applicant.
- (b) **Minimum:** The Trustee may determine a minimum amount which must be lodged with an Application for a Unit.
- (c) **Invitations:** The Trustee may invite persons to make offers to subscribe for or buy a Unit.

### 4.5 Form of application

Each Application for a Unit will, unless the Trustee approves otherwise:

- (a) **form / contents:** conform with the form and content requirements of any relevant Disclosure Document; and
- (b) **monies:** be accompanied by application consideration, in cash payable by electronic transfer and/or cheque, in property via an executed transfer form or other form as approved by the Trustee, as required by any relevant Disclosure Document (**Application Moneys**); or

- (c) **Trustee approval:** if there is no relevant Disclosure Document, be made in such manner as the Trustee approves.

#### 4.6 Acceptance or rejection

The Trustee may, without giving any reason:

- (a) **acceptance:** accept an Application; or
- (b) **rejection:** reject an Application,

in part or in full.

Any interest earned on Application Moneys must be treated in the manner set out in the Disclosure Document.

#### 4.7 Issue of Units

A Unit is taken to be issued on the later of the following (or at such other time as the Trustee determines):

- (a) **registration:** the Trustee accepts the Application and the Applicant's name is entered in the Register; or
- (b) **receipt:** the application consideration is received by the Trustee, provided that such consideration:
  - (i) *money* - where it consists of money, has been credited in the Trustee's account in cleared funds; or
  - (ii) *Property* - where it consists of Property which is acceptable to the Trustee against which a Unit is to be issued is transferred to, title to the Property has been transferred to the Trustee,

noting that the Trustee will issue no Units to an Applicant until such time as such money is so received or such Property is so transferred.

#### 4.8 Number of and consideration paid for Units

- (a) **Number:** The number of Units issued by the Trustee to an Applicant following the Trustee's acceptance of an Application will equal:
  - (i) *initial* - in the case of the first (1st) Units issued before the Trustee acquires any Assets on behalf of the Fund, such number of Units as is equal to one dollar (\$1.00) for each new Unit; and
  - (ii) *later* - afterwards, such number of Units as is equal to the Application Price, being the Net Asset Value divided by the total number of Units in issue, as adjusted in accordance with clause 13.3, for each new Unit.
- (b) **Consideration:** The consideration paid for those new Units is the amount invested by the Member for those Units, less any applicable Fees.

#### 4.9 Certificates

No certificates will be issued for Units, unless the Trustee determines otherwise in relation to some Units or Classes of Units.

#### 4.10 Defective applications

- (a) **Cancellation:** Where at any time the Trustee determines that:
- (i) *entitlement* - the applicant was not entitled to hold the Unit;
  - (ii) *execution* - the application form was incorrectly executed or executed without power or authority;
  - (iii) *error* - the application form was defective and was accepted in error;
  - (iv) *monies* - the application monies due were not credited to the Trustee's account or, if credited, were later reversed by the paying party; or
  - (v) *Property* - where, rather than application monies, Property is accepted as consideration for a Unit and title to the Property is not transferred to the Trustee,
- the Trustee may, in its sole discretion, cancel the Unit and make an appropriate entry in the Register and, if necessary, repay the application monies to the Applicant out of the Trust Fund.
- (b) **Repayment:** If a Unit is cancelled under this clause 4.10, the Trustee may elect to repay application monies by:
- (i) *return* - returning the amount of monies paid by the Applicant in its Application; or
  - (ii) *redemption* - process a redemption in accordance with clause 5, as though a valid Redemption Request has been received from the Member.

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## 5. REDEMPTION OF UNITS

### 5.1 Member's right to redeem

- (a) **Right:** Before the ending of the Fund under clause 23.1, Members have no rights to redeem units, wholly or partly, otherwise than in accordance with this deed.
- (b) **Liquid:** Clauses 5.2 and 5.3 only apply if the Fund is Liquid or not a Registered Scheme.
- (c) **Not Liquid:** Clauses 5.4, 5.5, 5.6 and 5.7 only apply if the Fund is not-Liquid.
- (d) **All times:** Clauses 5.8, 5.10 and 5.11 apply to all redemptions, regardless of whether the Fund is Liquid or not Liquid.
- (e) **Unregistered:** Clause 5.12 applies where the Fund is not a Registered Scheme.

### 5.2 Liquid Fund - Procedure for redemption of Units

Subject to clause 5.1, a Member may request to redeem a Unit by making a Redemption Request, and the Trustee must respond to this request in accordance with the following procedure:

- (a) **Redemption Request:** The Member must lodge a Redemption Request with the Trustee at a place and by a time fixed by the Trustee for that purpose. If approved by the Trustee, the request may be lodged with the Trustee electronically using such electronic method as may be prescribed by the Trustee.
- (b) **Validity:** To be valid, a Redemption Request must be:
- (i) *form* - given in a form approved by the Trustee; and
  - (ii) *signature* - if required by the Trustee or Law, signed by the Member or the Member's duly appointed attorney or the Member's authorised signatory.
- (c) **All / part:** A member may make a Redemption Request for all or part of its Units.
- (d) **Minimum:** If the Trustee has established a minimum number of Units for which an Application can be made, or a minimum number of Units which must be held at any time, and if acceptance by the Trustee of a Redemption Request made under this clause 5.2 would cause that Member to hold a lower number of Units than that minimum number of Units which must be held at any time, the Trustee may treat the acceptance as a request for redemption of all that Member's Units or it may reject the Redemption Request. If there is more than one (1) Class of Units, this clause 5.2(d) only applies to Units in the same Class.
- (e) **Determination:** The Trustee must decide whether to accept or reject a Redemption Request within sixty (60) Business Days after the Trustee receiving the Redemption Request, or earlier or later at the discretion of the Trustee.
- (f) **Rejection:** The Trustee must only reject a Redemption Request under clause 5.2(e), if:
- (i) *illiquid* - the Trust Fund does not contain sufficient liquid assets to fulfil the total amount of redemptions requested, or which the Trustee reasonably anticipates may be requested, to be made by Members;
  - (ii) *unrealised* - the Fund is exposed to Significant Unrealised Gains or Losses;
  - (iii) *interests* - the Trustee reasonably believes that it is in the best interests of the Members to do so;
  - (iv) *minimum* - it is in accordance with clause 5.2(d); or
  - (v) *unregistered* - where the Fund is not a Registered Scheme, the Trustee determines, in its sole and absolute discretion.
- (g) **Satisfaction:** Upon accepting a Redemption Request, the Trustee must satisfy the Redemption Request by:
- (i) *payment* - paying the Member the Redemption Amount out of the Trust Fund within 21 days, or earlier or later at the discretion of the Trustee; and

- (ii) *reduction* - reducing the number of a Member's Units by making an appropriate entry in the Register.

### 5.3 Liquid Fund - Alternative arrangements for large account holders

Subject to clause 5.1, the Trustee may provide alternative periodic redemption arrangements for Members whose investments in the Fund exceed two hundred and fifty thousand dollars (\$250,000) or such other amount specified in any Disclosure Document.

### 5.4 Not Liquid Fund - Redemption Offers

Subject to clauses 5.1 and 5.5, the Trustee may make a Redemption Offer to all Members.

### 5.5 Not Liquid Fund - Suspension of Redemption Offers

Subject to clause 5.1, the Trustee may decide not to make a Redemption Offer for a particular Month, or cancel a Redemption Offer in accordance with clause 5.6(h), if:

- (a) **illiquid:** the Trust Fund does not contain sufficient liquid assets to fulfil the total amount of redemptions requested to be made by Members;
- (b) **significant:** the Fund is exposed to Significant Unrealised Gains or Losses; or
- (c) **interests:** the Trustee reasonably believes that it is in the best interests of the Members to do so.

### 5.6 Not Liquid Fund - Redemption Offer

Subject to clause 5.1:

- (a) **Terms:** Subject to the Corporations Act and this deed, the Trustee may determine the terms of a Redemption Offer in its absolute discretion.
- (b) **Redemption:** A Member may redeem its Units in accordance with the terms of any current Redemption Offer made by the Trustee under this clause 5.6.
- (c) **Redemption Offer:** A Redemption Offer must be made in accordance with, and contain all the information required by, the Corporations Act, in particular (while the Fund is a Registered Scheme) Part 5C.6 (Members' rights to withdraw from a scheme) of the Corporations Act.
- (d) **Timing:** The Redemption Offer will be made at least fifteen (15) days before the last Business Day of the Month, or earlier or later at the discretion of the Trustee.
- (e) **Closing:** The Redemption Offer will close at 5:00 pm (Australian Eastern Standard Time) on the last Business Day of the Month.
- (f) **Acceptance:** A Member may not withdraw an acceptance of a Redemption Offer, unless the Trustee agrees.
- (g) **Making:** The Trustee may make the Redemption Offer by:

- (i) *publication* - publishing it (for example, on the internet website for the Fund, the Trustee or the Manager); or
  - (ii) *provision* - giving a copy to all Members (which may be electronically, including by electronic mail).
- (h) **Cancellation:** The Trustee may cancel a Redemption Offer in accordance with section 601KE (Non-liquid schemes - responsible entity may cancel withdrawal offer) of the Corporations Act, while the Fund is, and otherwise as if the Fund were, a Registered Scheme.

## 5.7 Not Liquid Fund - Procedure for redemption of Units

Subject to clause 5.1, the procedure to accept a Redemption Offer is as follows:

- (a) **Lodgement:** The Member must lodge a Redemption Request with the Trustee at a place and time fixed by the Trustee for that purpose. If approved by the Trustee, the request may be lodged with the Trustee electronically using such electronic method as may be prescribed by the Trustee.
- (b) **Validity:** To be valid, a Redemption Request must be:
  - (i) *form* - given in a form approved by the Trustee; and
  - (ii) *signature* - if required by the Trustee or Law, signed by the Member or the Member's duly appointed attorney or the Member's signatory.
- (c) **Amount:** A member may make a Redemption Request for all or part of its Units.
- (d) **Minimum:** If the Trustee has established a minimum number of Units for which an Application can be made or a minimum number of Units which must be held at any time, and if acceptance by a Member of a Redemption Offer made under clause 5.6 would cause that Member to hold a lower number of Units than that minimum amount, the Trustee may treat the acceptance as a request for redemption of all that Member's Units. If there is more than one (1) Class of Units, this clause 5.7(d) only applies to Units in the same Class.
- (e) **Satisfaction:** The Trustee must satisfy the Redemption Request by:
  - (i) *payment* - paying the Member the Redemption Amount out of the Trust Fund; and
  - (ii) *reduction* - reducing the number of the Member's Units by making an appropriate entry in the Register,

within two (2) Months after the Redemption Offer closes, or earlier or later at the discretion of the Trustee.

## 5.8 Closure of investment

The Trustee may, at any time, in its discretion, process a redemption as though a valid Redemption Request has been received from the Member, if the Trustee has established a minimum number of Units which must be held by a Member at any time and the number of a Member's Units falls below that minimum number.

## 5.9 Sums owed

The Trustee may deduct from the proceeds of redemption of a Unit any money due to the Trustee in relation to the relevant Member.

## 5.10 Cooling off

Nothing in this clause 5 prevents the Trustee from complying with any requirement to return application monies to a Member in accordance with the Corporations Act or with any similar requirement that applies to the Trustee or the Fund.

## 5.11 Use of Trustee's funds

The Trustee is not obliged to satisfy any part of a Member's acceptance of a Redemption Offer out of its own funds.

## 5.12 Suspension of Redemption

Notwithstanding any other provision of this deed, where the Fund is not a Registered Scheme, the Trustee may suspend Redemption Requests in its sole and absolute discretion.

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## 6. REDEMPTION AMOUNT

### 6.1 Liquid Fund - Full Redemption of Member's Units

- (a) **Amount:** When satisfying a Member's Redemption Request for all of a Member's Units under clause 5.2(g), the Redemption Amount will equal the value of that Member's Units, less any applicable Fees.
- (b) **Value:** The Withdrawal Price, being the value of that Member's Units will be calculated using the valuation methodology, specified in clause 13.3 as at the time the Redemption Request was accepted under clause 5.2(e).

### 6.2 Not Liquid Fund - Full Redemption of Member's Units

- (a) **Amount:** When satisfying a Member's Redemption Request for all of a Member's Units under clause 5.7(e), the Redemption Amount will equal the value of that Member's Units, less any applicable Fees.
- (b) **Value:** The Withdrawal Price, being the value of that Member's Units will be calculated using the valuation methodology, specified in clause 13.3 as at the time the relevant Redemption Offer closed.

### 6.3 Partial redemption of Member's Units

When satisfying a Member's Redemption Request for part of a Member's Units under clause 5, the Redemption Amount will equal the value of Units requested to be redeemed by the Member in the Redemption Request, less any applicable Fees.

### 6.4 Redemption Request exceeding number of Member's Units

If the amount requested by the Member in the Redemption Request exceeds the number of the Member's Units as at the time the relevant Redemption Offer closed, the Redemption Amount will be calculated in accordance with clause 6.1



(for a Redemption Request made under clause 5.2) or 6.2 (for a Redemption Offer made under clause 5.7).

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## 7. TRANSFERS

### 7.1 Transferability

- (a) **Instrument:** Subject to this deed and its terms of issue, a Unit may be transferred by instrument in writing, in any form authorised by the Corporations Act or, subject to the Corporations Act, in any other form that the Trustee approves.
- (b) **Registration:** A transferor of a Unit remains the holder of the Unit transferred until the transfer is registered.

### 7.2 Registration of transfers

- (a) **Documents:** Where a Unit is transferred, the following documents must be lodged for registration at the registered office of the Trustee or the location of the Register:
  - (i) *instrument* - the instrument of transfer (duly stamped if relevant);
  - (ii) *certificate* - the certificate (if any) for the Unit; and
  - (iii) *other* - any other information that the Trustee may require to establish the transferor's right to transfer the Unit.
- (b) **Registration:** On compliance with clause 7.2(a), the Trustee will, subject to the powers or obligations of the Trustee to refuse registration, register the transferee as the Member which holds the transferred Unit.
- (c) **Certificates:** The Trustee may waive compliance with clause 7.2(a)(ii) on receipt of satisfactory evidence of loss or destruction of the certificate (if any).
- (d) **Changes:** The Trustee has the discretion to vary the transfer process in clause 7.2(a) or determine an additional alternative transfer process.

### 7.3 Where registration may be refused

Subject to the Corporations Act, the Trustee may refuse to register any transfer of a Unit.

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## 8. TRANSMISSION OF UNITS

### 8.1 Entitlement to Unit on death

- (a) **Title:** If a Member dies:
  - (i) *joint* - the survivor (or survivors), where the Member was a joint Member; and
  - (ii) *sole* - the legal personal representatives of the deceased, where the Member was a sole Member,

will be the only persons recognised by the Trustee as having any title to the Member's interest in the Unit.

- (b) **Evidence:** The Trustee may require such evidence of a Member's death as it thinks fit.
- (c) **Liability:** This clause 8.1 does not release the estate of a deceased joint Member from any liability in respect of a Unit that had been jointly held by the Member with other persons.

## 8.2 Registration of persons entitled

- (a) **Registration:** Subject to the Bankruptcy Act 1966 (Cth), the Corporations Act and to the production of any information that is properly required by the Trustee, a person becoming entitled to a Unit in consequence of the death, bankruptcy, insolvency (or other legal disability) of a Member may elect to:
  - (i) *self* - be registered personally as a Member; or
  - (ii) *other* - have another person registered as the Member.
- (b) **Provisions:** All the limitations, restrictions and provisions of this deed relating to:
  - (i) *transfers* - the right to transfer;
  - (ii) *registration* - the registration of the transfer of; and
  - (iii) *certificates* - the issue of certificates for,a Unit apply to any relevant transmission as if the death, bankruptcy, insolvency (or other legal disability) of the Member had not occurred and any required notice or transfer were a transfer signed by that Member.

## 8.3 Distributions and other rights

- (a) **Representatives** - If a Member dies or suffers a legal disability, the Member's legal personal representative or the trustee of the Member's estate (as applicable) is, on the production of all information as may properly be 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 Member would have been entitled to if the Member had not died or suffered a legal disability.
- (b) **Joint entitlement** - Where two (2) or more persons are jointly entitled to any Unit as a result of the death or legal disability of a Member, they will, for the purposes of this deed, be taken to be joint Members in respect of the Unit.

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## 9. INCOME AND CAPITAL

### 9.1 Determination of Income

- (a) The Trustee may determine whether a receipt or outgoing is to be regarded as being on account of capital or income or partly on account of one and partly on account of the other.
- (b) If the Trustee fails or cannot make a determination under clause 9.1(a) on or prior to the end of any Interim Distribution Period(s) and/or the end of

the Distribution Period and/or the last day of the Financial Year (as applicable):

- (i) the amount which under the provisions of the Act represent the 'net income' within the meaning of section 95 of the Act for that year in relation to the Trust Fund is to be taken to be the Net Income of the Trust Fund for the purposes of this Deed, except for franking credits and any foreign tax credits available to the Trust, unless the Trustee expressly includes the same;
  - (ii) provided however that if the Trust is subject to the provisions of Division 6C of the Act for any Financial Year in respect of public trading trusts, then the Net Income of the Trust Fund for that Financial Year is to be taken to be the 'net income' as defined by 102M of the Act, except for franking credits and any foreign tax credits available to the Trust, unless the Trustee expressly includes the same.
- (c) For the avoidance of doubt:
- (i) in determining the Net Income of the Trust Fund of any Interim Distribution Period(s) and/or the end of the Distribution Period and/or the last day of the Financial Year, the Trustee does not have to take into account generally accepted accounting principles in Australia; and
  - (ii) the preparation of the Accounts of the Trust in accordance with generally accepted accounting principles in Australia is not to be regarded as a determination by the Trustee of the method for calculating the Net Income of the Trust Fund.

## 9.2 Accumulation of Income

- (a) The Trustee may, on or before on the last day of the Financial Year resolve to accumulate a part of the Net Income of the Trust Fund for that Financial Year:
- (i) to recoup any losses of the Trust Fund in any prior Financial Year; or
  - (ii) as reserves to meet contingencies or for any other purpose, whereupon such amount, will, subject to clause 9.2(b), form part of capital; or
  - (iii) to pay tax in respect of any part of the 'net income' of the Trust Fund as defined by s 102M of the Act, if applicable to the Trust in a Financial Year.
- (b) The Trustee may pay tax in respect of an accumulation out of the amount accumulated or out of capital.

## 9.3 Accumulation of Capital

All receipts, including bonus issues, dividends, sale of rights or other benefits received by the Trustee, which the Trustee considers to be in the nature of capital and any income which is not applied or distributed under the provisions of this Deed is not available for distribution as income of the Trust Fund while the Trust continues undetermined but must be added to and held as capital of the Trust

Fund upon the trusts of this Deed and applied, invested and dealt with as such under the provisions of this Deed.

#### 9.4 Distribution of capital prior to Termination Date

The Trustee may distribute or apply the whole or any part of the capital of the Trust Fund to the Unitholders in proportion to the Units registered in their respective names in its absolute discretion.

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### 10. APPLICATION OF AMIT REGIME TO FUND

#### 10.1 Definitions

In this clause 10 and Schedule 3, the following terms have the following meanings:

**AMIT** means a trust which is an 'Attribution Managed Investment Trust' under section 276-10 (*Meaning of attribution managed investment trust (or AMIT)*) of the Tax Act.

**AMIT Election** means an election made by the Trustee under section 276-10(1)(e) of the Tax Act.

**AMIT Regime** means the regime for the taxation of AMITs and Members contained in the:

- (a) Tax Act;
- (b) Income Tax Rates Amendment (Managed Investment Trusts) Act 2016 (Cth);
- (c) Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016 (Cth);
- (d) Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016 (Cth); and
- (e) any other ancillary legislation necessary or desirable for the operation for the AMIT provisions.

#### 10.2 AMIT Election

The Trustee may make an AMIT Election.

#### 10.3 Provisions

If the Trustee makes an AMIT Election then, subject to clause 10.4, the provisions of Schedule 3 will apply to this deed, and will prevail over any other provision of this deed to the extent of any inconsistency.

#### 10.4 Cessation

If the Fund ceases to be an AMIT for any reason, *including* the Fund ceasing to meet the qualification requirements to be an AMIT in respect of a Financial Year:

- (a) **disapplication**:: the provisions of Schedule 3, *except* those in paragraph 2 of Schedule 3 which the Trustee will continue to apply, 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

- (b) **application:** any provision of the AMIT Regime which applies to an entity that is a former AMIT will continue to apply to the Fund.

## 10.5 Qualifications

Nothing in this clause 10 imposes an obligation on the Trustee to:

- (a) **entry:** enter into or facilitate the entry of the Fund into the AMIT Regime;
- (b) **changes:** make any changes to this deed; or
- (c) **election:** make an AMIT Election.

## 10.6 Compliance with AMIT Regime

For the avoidance of doubt, and despite clause 30, 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.

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## 11. DISTRIBUTIONS

- (a) **Determination:** In accordance with Clause 9 the Trustee can determine or classify an item of receipt, gain, expense, deduction, loss or any such like amount as being either Income or capital of the Fund.
- (b) **Category:** The Trustee may keep separate accounts for any category or source of Income and capital and distribute the Income or capital from any category or source.
- (c) **Expenses:** - When allocating costs, expenses or other similar amounts (or parts of the same) to categories or classes of Income or capital, the Trustee must allocate:
  - (i) *attributable* - directly attributable costs, expenses or other similar amounts (or parts of the same) against the specific category or class of Income or capital to which they relate (as determined by the Trustee on a reasonable basis); and
  - (ii) *other* - other costs, expenses or other similar amounts (or parts of the same) on a fair and reasonable basis to the relevant category or class (as determine by the Trustee),

and to the extent that a category or class of Income or capital is less than nil after applying costs, expenses or other similar amounts, the excess amount may be re- allocated by the Trustee to other categories or classes using the principles outlined in this clause 11(c) (as determined by the Trustee).

- (d) **Sale of Assets:**
  - (i) *Redemption* - The Trustee may fund the redemption of a Unit under clause 5 from an amount or proceeds arising from the sale of an Asset, and may allocate the redemption proceeds as being a distribution of Income or capital to the Member in accordance with this clause 11.1.

- (ii) *Allocation* - To the extent that Income is allocated to a redemption, the amount is to be treated as a distribution of Income for a Distribution Period before the final distribution payable under clause 11.3.

## 11.2 Distributable Amount

- (a) **Distributions:** The Trustee may determine to make an interim distribution for any Interim Distribution Period and each Distribution Period.
- (b) **Trustee determination:** The Trustee must determine the Distributable Amount for any Interim Distribution Period and each Distribution Period.
- (c) **Distributable Amount:** Unless the Trustee determines otherwise before the end of any Interim Distribution Period and/or the Distribution Period (as applicable), the **Distributable Amount** of the Fund is:
  - (i) *interim* - for an Interim Distribution Period (the **Interim Distribution Amount**):
    - (A) *Income* - the Net Income of the Trust Fund as determined by reference to Clause [9.1\(b\)\(i\)](#); and
    - (B) *other amounts, including Capital of the Trust* - any additional amount which the Trustee considers appropriate for distribution for the Interim Distribution Period; and
  - (ii) *final* - for a Distribution Period (the **Final Distribution Amount**):
    - (A) *Income* - the Net Income of the Trust Fund as determined by reference to Clause [9.1\(b\)\(i\)](#) for that Distribution Period, less amounts of Income already included in an Interim Distribution Amount in relation to that Distribution Period; and
    - (B) *other amounts, including Capital of the Trust* - any additional amount which the Trustee considers appropriate for distribution for the Distribution Period.

## 11.3 Entitlement

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class of Units, on and from the last day of each Interim Distribution Period and Distribution Period (as applicable), the Members on the Register on the last day of that Interim Distribution Period or the Distribution Period (as applicable) have a vested and indefeasible interest in, and will be presently entitled to, the Distributable Amount of the Fund for that Interim Distribution Period or the Distribution Period (as applicable) in proportion to their Member Proportions.

## 11.4 Distributions

Within ninety (90) Business Days after the last day of each Interim Distribution Period and the Distribution Period (as applicable), the Trustee must pay the Interim Distribution Amount or the Final Distribution Amount (as applicable) to the Members on the Register at the end of the last day of the Interim Distribution Period or the Distribution Period (as applicable), in proportion to their Member Proportions.

## 11.5 Capital distributions

In accordance with Clause 9.4, the Trustee may distribute capital of the Fund to Members. Subject to the rights, obligations and restrictions attaching to any particular Unit or Class of Units, a Member is entitled to that proportion of the capital to be distributed as is equivalent to its Member Proportion. A distribution may be in Cash or Assets.

## 11.6 Grossed up Tax amounts

Subject to the rights, obligations and restrictions attaching to any particular Unit or Class of Units, the grossed-up amount under the Tax Act in relation to Tax credits or franking rebates is taken to be distributed to Members in proportion to the Distributable Amount for a Financial Year or an Interim Distribution, as the case may be, which is referable to a dividend or other income to which they are presently entitled.

## 11.7 Excess distribution

If at the end of a Financial Year, the amount distributed under this clause 11 as Distributable Amount of the Fund exceeds the aggregate of the Net Taxable Income for such Financial Year, the excess will be taken to be a distribution of capital.

## 11.8 Reinvestment

- (a) **Election:** A Member may, if the Trustee approves, elect to reinvest some or all of any distribution in the Fund and the amount of the distribution must be applied by the Trustee to increase the number of Member's Units.
- (b) **Application:** In those cases, the Trustee is treated as having received an application to reinvest distributions on the first (1<sup>st</sup>) Business Day after the distribution.
- (c) **Procedure:** The procedure for reinvestment of distributions is to be determined by the Trustee and notified to Members from time to time.

## 11.9 Automatic reinvestment

The Trustee will presume that a Member has elected to reinvest any distributions made under this clause 11 in accordance with clause 11.8, *unless* the Member instructs the Trustee otherwise.

## 11.10 Member's rights

For the avoidance of doubt and despite anything else in this clause 11, the rights of a Member under this clause 11 are subject to the rights, obligations and restrictions attaching to the Units which it holds.

## 11.11 Fund taxed as company

If the Fund is to be taxed as if it were a company, this clause 11.11 applies to the relevant period (a **Company Distribution Period**) instead of clauses 11 to 11.7 (inclusive):

- (a) **Income:** As soon as reasonably practicable after the end of the Company Distribution Period, the Trustee must determine the income in respect of the Company Distribution Period in accordance with Clause 9.

Unless the Trustee determines otherwise before the end of the Company Distribution Period, income will be calculated in accordance with applicable Australian Accounting Standards.

- (b) **Tax:** The Trustee must provide for and pay from the Assets of the Fund when appropriate, all Tax attributable to the income of the Fund.
- (c) **Distributions:** The Trustee may, in its discretion from time to time, determine to pay such amounts of income (if any) as a distribution in respect of the Company Distribution Period (each a **Distributable Sum**) to Members on the Register on any date determined by the Trustee (**Company Distribution Date**).
- (d) **Tax Act:** For each Distributable Sum being paid to Members under this clause 11.11, the Trustee:
  - (i) *compliance* - must comply with the Tax Act; and
  - (ii) *action* - may do anything required or permitted by the Tax Act in relation to trusts which are taxed as if they were companies.
- (e) **Payment:** A Member is entitled to a portion of the Distributable Sum equivalent to its Member Proportion. The Trustee must pay the Distributable Sum to Members within two (2) Months after the relevant Company Distribution Date.

## 11.12 Withholding Tax

- (a) **Deduction:** The Trustee may deduct from any amount dealt with under this clause 11 any Tax that it is required by Law to deduct from such amount.
- (b) **Recovery:** The Trustee may recover from a Member an amount that the Trustee has paid in Tax on behalf of or in respect of that Member (*including* in respect of a distribution or an amount attributed to a Member) as a debt.
- (c) **Set-off:** - The Trustee is entitled to set off an amount that the Trustee can recover from a Member under this clause 11.12 against debts due, or owed, by the Trustee to the Member.

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## 12. POWERS OF TRUST

### 12.1 Powers

- (a) **Comprehensive:** The Trustee has all the powers:
  - (i) *trustee* - in respect of the Fund that it is possible under the Law to confer on a trustee;
  - (ii) *owner* - as though it were the absolute owner of the Assets and acting in its personal capacity; and
  - (iii) *obligations* - necessary for fulfilling its obligations under this deed and at Law.
- (b) **Examples:** Without limiting clause 12.1(a), the Trustee's powers *include* the following:



- (i) *Investments* - to make any kind of Investment (*including* entering into Derivatives and dealing in Crypto Assets);
- (ii) *Property / Assets* - to acquire Property or dispose of Assets for Cash or other consideration;
- (iii) *Assets* - to develop, improve and otherwise deal with any Assets;
- (iv) *finance* - to borrow, raise money or otherwise obtain financial accommodation (for example, for the purposes of clauses 12.1(b)(i) and 12.1(b)(ii)) and to incur all types of obligations and liabilities;
- (v) *guarantees / indemnities* - to guarantee liabilities of any person or provide indemnities in respect of such liabilities;
- (vi) *security* - to create Security Interests over the Trust Fund or any Asset (for example, for the purposes of clauses 12.1(b)(iv) and 12.1(b)(v));
- (vii) *listing* - to apply for listing of the Fund, and quotation of the Units (or any other financial product), on any securities exchange, *including* the ASX, and for this purpose the Trustee is authorised on its own behalf and on behalf of each Member as the Member's agent or attorney to do all things necessary to effect a listing and quotation;
- (viii) *buy-backs* - to buy-back Units;
- (ix) *future* - to fetter future discretions, such as by the granting of options;
- (x) *underwriters* - to enter into any arrangement or agreement with underwriters in relation to the Fund;
- (xi) *proceedings* - to institute, defend and compromise legal proceedings, *including* arbitrations and investigations;
- (xii) *insurance* - to insure any Assets against all or any risks and for amounts the Trustee considers appropriate; and
- (xiii) *voting* - to attend and vote at meetings of any company or other entity.

## 12.2 Delegation

- (a) **Delegates:** The Trustee may appoint delegates or agents (*including* Custodians) to perform any act or exercise any power of the Trustee (*including* a power in turn to appoint its own agent or delegate), each such person being a **Delegate**.
- (b) **Associates:** A Delegate may be an associate or employee of the Trustee.
- (c) **Joint:** An appointment of a Delegate may be made jointly.
- (d) **Liability:** While the Fund is a Registered Scheme, subject to section 601FB (*Responsible entity to operate scheme*) of the Corporations Act, and otherwise, the Trustee will not be liable for the acts or omissions of any

Delegate so long as reasonable care is taken in selecting the Delegate. The Trustee may *include* provisions in the Delegate's appointment to protect and assist those dealing with the Delegate as the Trustee thinks fit.

### 12.3 Advisers

Without limiting clause 12.1, the Trustee may engage Advisers to assist it with its duties and functions under this deed. An Adviser may be an associate or employee of the Trustee.

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## 13. VALUATIONS

### 13.1 Valuation of an Asset

- (a) **Timing:** Subject to clause 13.1(b), the Trustee may cause an Asset to be valued at any time in its discretion, *including* more than once (1x) a day.
- (b) **Requirement:** The Trustee must cause an Asset to be valued if required by ASIC or under the Corporations Act, and the valuation must be undertaken in accordance with those requirements.
- (c) **Valuation method:** The value of an Asset must be determined by or on behalf of Trustee taking into consideration the following matters:
  - (i) *method* - the Trustee may determine and vary valuation methods and policies for each category of Asset;
  - (ii) *market value* - *unless* the Trustee determines otherwise, the value of an Asset will be its market value;
  - (iii) *other value* - where the Trustee does not value an Asset at its market value, the valuation methods and policies applied by the Trustee must be capable of being independently verifiable; and
  - (iv) *disclosure* - despite the above, any matters relating to valuation set out in any Disclosure Document.

### 13.2 Determination of Net Asset Value

The Trustee may cause the Net Asset Value to be determined at any time in its discretion, *including* more than once (1x) a day.

### 13.3 Valuation of a Unit

- (a) **Principals:** The value of a Unit will be the Net Asset Value divided by the number of Units in issue, as adjusted in relation to the Units of a particular Member by the Trustee taking into consideration the following matters:
  - (i) *contributions* - any amounts invested by the Member under an Application approved by the Trustee;
  - (ii) *redemptions* - any Units redeemed by the Member;
  - (iii) *costs* - any applicable Transaction Costs;
  - (iv) *Fees / Expenses* - Fees and Expenses which are attributable to a Member;

- (v) *other* - any other amount of gains or losses which are attributable to a Member by this deed or any Disclosure Document; and
  - (vi) *disclosure* - despite the above, any matters relating to valuation set out in any Disclosure Document.
- (b) **Timing:** The Trustee may cause a Unit to be valued at any time in its discretion, *including* more than once (1x) a day.

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## 14. HOLDING ASSETS

### 14.1 How held

Subject to clauses 14.2 and 14.3, all Assets will be held in the name of the Trustee.

### 14.2 Other Custodian

If the Trustee considers it necessary or desirable, and while the Fund is a Registered Scheme, the Assets (or any Asset) may be held by a Custodian or nominee appointed by the Trustee and acting as agent for the Trustee.

### 14.3 Holding of Assets

The Custodian or other holder of a particular Asset must hold that Asset either:

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

### 14.4 Pooling of monies

Money held by the Trustee for any of the Members may be pooled in any one (1) or more bank accounts with monies held on behalf of any other Members.

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## 15. REGISTER

### 15.1 Keeping Register

The Trustee must establish and keep a Register.

### 15.2 Information in Register

To the extent applicable, the Register must be kept in accordance with, and contain the information required by, the Corporations Act. Otherwise, the Trustee may decide what information is included in the Register. If the Corporations Act applies, the Trustee has the powers conferred under the Corporations Act in relation to the Register.

### 15.3 Changes

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

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## 16. TRUSTEE'S LIMITATION OF LIABILITY

### 16.1 General

- (a) **Limitation:** Subject to the Corporations Act, the Trustee is not liable for any loss or damage to any person (*including* any Member) arising out of any matter *unless*, in respect of that matter, it acted both:
- (i) *action* - in default of this deed; and
  - (ii) *belief* - without a belief held in good faith that it was acting in accordance with this deed.
- (b) **Assets:** In any case, subject to the Corporations Act, the liability of the Trustee in relation to the Fund is limited to the Assets, from which the Trustee is entitled to be, and is in fact, indemnified.

### 16.2 Specific

In particular, subject to the Corporations Act, the Trustee is not liable for any loss or damage to any person arising out of any matter where, in respect of that matter:

- (a) **reliance:** 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;
- (b) **Law:** it acted as required by Law; or
- (c) **reliance:** it relied in good faith upon any signature, marking or documents.

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## 17. INDEMNITIES

### 17.1 Trustee's indemnity

In addition to any indemnity under any Law, but subject to the Corporations Act, the Trustee has a right of indemnity out of the Trust Fund on a full indemnity basis, in respect of a matter *unless*, in respect of that matter, the Trustee has acted negligently, fraudulently or in breach of trust.

### 17.2 Trustee's indemnity continuing

Such right of indemnity in respect of a matter (an **Indemnified Matter**) will not be lost or impaired by reason of a separate matter (whether before or after the Indemnified Matter) in respect of which the indemnity does not apply. Also, the right of indemnity continues to be available after the Trustee retires or is removed as trustee of the Fund.

### 17.3 Payment

The Trustee may pay out of the Trust Fund any amount for which it would be entitled to be indemnified under clause 17.1 or clause 18.

### 17.4 Trustee not to incur liability

The Trustee is not required to do anything (*including* entering 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.

## 17.5 Compliance Committee

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

## 17.6 Indemnity

The Trustee is entitled to be indemnified by a Holder or a former Holder to the extent that it incurs a liability for Tax as a result of the Holder's action or inaction or as a result of an act or omission requested by the Holder or former Holder.

## 17.7 Joint Holders

Joint Holders are jointly and severally liable in respect of all payments including payments of Tax to which clause 17.6 applies.

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## 18. TRUSTEE'S INDEMNITY BY MEMBERS FOR TAX LIABILITY

### 18.1 Liability limited

The Trustee is entitled to be indemnified by a Member or a former Member to the extent that the Trustee incurs any liability for Tax as a result of the Member's or former Member's action or inaction or as a result of an act or omission requested by the Member or former Member.

### 18.2 Joint Members

Joint Members are jointly and severally liable in respect of all payments, *including* payments of Tax to which clause 18.1 applies.

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## 19. CHANGE OF TRUSTEE

### 19.1 Voluntary retirement

- (a) **Registered:** While the Fund is a Registered Scheme, the Trustee may retire as the responsible entity of the Fund as permitted by the Corporations Act.
- (b) **Not registered:** While the Fund is not a Registered Scheme, the Trustee may retire on not less than two (2) Months' notice to Members (or such shorter period as they may agree). On retirement, the Trustee may appoint in writing another person to be the Trustee of the Fund.

### 19.2 Compulsory retirement

The Trustee must retire as the trustee (or, while the Fund is a Registered Scheme, responsible entity) of the Fund when required by Law.

### 19.3 Removal

- (a) **Members:** The Members may by Special Resolution remove the Trustee as trustee of the Fund.
- (b) **Manager:** Where the Trustee has contractually enabled the Manager to require the removal of the Trustee, the Manager may remove the Trustee as trustee of the Fund, subject to payment to the Trustee of any Fees due to it for the balance of any term agreed to in such contract.

#### 19.4 Trustee to facilitate change of trustee

On the retirement or removal of the Trustee, the Trustee must do all things reasonably necessary to facilitate the change of trustee of the Fund.

#### 19.5 Release

When the Trustee retires or is removed, subject to the Corporations Act, the Trustee is released from all obligations in relation to the Fund arising after the time it retires or is removed.

#### 19.6 Replacement Trustee to be bound by this deed

A person cannot be appointed to act as a replacement trustee (and, while the Fund is a Registered Scheme, responsible entity), *unless* the person executes a deed by which it covenants to be bound by this deed as if it had originally been a party to it.

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### 20. STATEMENTS, ACCOUNTS AND AUDIT

#### 20.1 Appointment of auditors

- (a) **Fund Auditor:** The Trustee may (and while the Fund is a Registered Scheme, must) appoint a registered company auditor to audit the Trust's financial report for a Financial Year and perform the other duties required of the auditor under the Corporations Act.
- (b) **Compliance Plan Auditor:** While the Fund is a Registered Scheme, the Trustee must appoint a Compliance Plan Auditor.

#### 20.2 Retirement of auditors

- (a) **Registered:** While the Fund is a Registered Scheme, the Fund Auditor and the Compliance Plan Auditor may each retire or be removed in accordance with the Corporations Act.
- (b) **Not registered:** Otherwise, the Fund Auditor may retire or be removed in accordance with its terms of engagement or as agreed with the Trustee.

#### 20.3 Remuneration of auditors

The Trustee will fix the remuneration of the Fund Auditor and Compliance Plan Auditor.

#### 20.4 Accounts and reports

- (a) **Preparation:** The financial statements of the Fund must be kept and prepared by the Trustee in accordance with applicable Australian Accounting Standards.
- (b) **Reporting:** The Trustee must report to Members concerning the affairs of the Fund and their holdings as required by the Corporations Act. Subject to the Corporations Act, the person preparing a report may determine the form, content and timing of it.

#### 20.5 Audit

The Trustee will cause:

- (a) **financial statements:** the Fund Auditor (if appointed) to audit and report on the financial statements; and
- (b) **Compliance Plan:** while the Fund is a Registered Scheme, the Compliance Plan Auditor to audit and report on the Compliance Plan,

each in the manner required by the Corporations Act to the extent it applies.

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## 21. MEETINGS OF MEMBERS

### 21.1 Convening meetings

The Trustee may at any time convene a meeting of Members and, if the Fund is a Registered Scheme, must convene a meeting of Members when required to do so by the Corporations Act.

### 21.2 Calling and holding meetings

While the Fund is, and otherwise as if the Fund were, a Registered Scheme, meetings of Members must be called and held in accordance with Part 2G.4 (*Meetings of members of registered managed investment schemes*) of the Corporations Act, including that each Member will have (1) vote for every (1) Unit it holds. However, the following sections of the Corporations Act apply as follows:

- (a) **section 252G(4) - When notice by post or fax is given:** despite this section, a notice of meeting sent by post is taken to be given the day after it is posted and, subject to clause 22.1(a), a notice of meeting sent by electronic mail or other electronic means is taken to be given on the day it is sent;
- (b) **section 252R(2) - Quorum:** - despite this section, if at any time there is only one (1) Member, the quorum for a meeting is one (1);
- (c) **section 252R(3) - Proxies and representatives:** despite this section, if an individual is attending a meeting both as a Member 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 (1x);
- (d) **section 252W(2) - Proxy's right to vote:** a proxy is not entitled to vote on a show of hands and is only entitled to vote by a poll;
- (e) **section 252W(3) - Effect of member's presence on proxy's authority:** a proxy is entitled to speak and vote for a Member (to the extent allowed by the appointment) even if the Member is present, but only so long as the Member does not speak or vote (as the case may be) more than once (1x);
- (f) **section 252Y(2) - An appointment may be a standing one:** despite this section, an appointment of proxy:
  - (i) *validity* - is valid even if it does not specify the Member's address; and
  - (ii) *standing* - may be a standing one; and
- (g) **section 252Z(5) - Constitution or notice of meeting may provide for different notification period:** the Trustee may determine in relation to a

particular meeting or generally, that proxy documents may be received up to any period less than forty-eight (48) hours before the meeting.

### 21.3 Cancellation or adjournment

The chairman of a meeting of Members has power to cancel a meeting or to adjourn the meeting for any reason to such time and place as the chairman thinks fit.

### 21.4 Non-receipt

If a Member does not receive a notice (*including* if the notice was accidentally omitted to be given to the Member) the meeting is not invalidated.

### 21.5 Resolution binding on Members

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

### 21.6 Written resolution

- (a) **Resolution:** Except in circumstances where the Corporations Act requires a resolution to be passed at a meeting of Members, a resolution in writing signed by Members together holding that number of votes necessary for the resolution to be passed as a valid resolution of the Members and is effective when signed by the last of the Members constituting the required majority, and for the avoidance of doubt, other than for a unanimous resolution, only that number of Members holding that number of Units necessary to achieve the required majority are required to sign.
- (b) **Counterparts:** The resolution may consist of several documents in the same form, each signed by one (1) or more Members.
- (c) **Means:** A facsimile transmission or other document produced by mechanical or electronic means under the name of the Member with the Member's authority is considered to be a document in writing signed by the Member.

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## 22. NOTICES

### 22.1 Notice to Members

- (a) **Sending:** Subject to the Corporations Act, a notice or other communication from the Trustee to a Member must be given in writing and may be sent to the Member's physical or electronic address (which *includes* facsimile numbers and electronic mail addresses) as recorded on the Register.
- (b) **Receipt:** Subject to the Corporations Act, a notice or other communication from the Trustee to a Member sent by:
  - (i) *post* - is taken to be received on the Business Day after it is posted;
  - (ii) *fax* - is taken to be received one (1) hour after the transmitter receives confirmation of transmission from the receiving fax machine;
  - (iii) *email* - is taken to be received one (1) hour after being sent to the Member's nominated electronic mail address, *provided that*



no notification of failure of delivery is received by the sender's machine; and

(iv) *other* - is taken to be received at the time the Trustee determines.

## 22.2 Notice to joint Members

The Trustee may give a notice or other communication to joint Members by giving it to the Member first (1<sup>st</sup>) named in the Register for that holding.

## 22.3 Notice to successor

The Trustee may give a notice or other communication to the persons entitled to a Unit in consequence of the death or legal disability of a Member by sending it to the representatives or trustee of the Member at the address supplied for the purpose by the representative or trustee. Until such an address has been supplied notice may be given by sending the notice or other communication to the Member's address as recorded on the Register.

## 22.4 Signature on notice

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

## 22.5 Notices to Trustee

Notices to the Trustee by Members 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 Member or a duly authorised representative (*unless* the Trustee waives this requirement).

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## 23. ENDING OF FUND

### 23.1 Fund ending date

The Fund will continue for the Term, as set out in Schedule 1, but will otherwise end on the earliest of:

- (a) **notice:** a date specified by the Trustee before the end of the Term, as the date the Fund will end in a notice given to Members; and
- (b) **Law:** the date on which the Fund is ended in accordance with another provision of this deed or by operation of Law.

### 23.2 Corporations Act

The Trustee may end the Fund when permitted to do so, and must end it when required to do so, by the Corporations Act.

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## 24. PROCEDURE ON ENDING

### 24.1 Notice of ending

Within a reasonable time before, or as soon as reasonably practicable after, ending of the Fund under clause 23, the Trustee must give to each Member notice of the ending and of the Trustee's intention to distribute the Trust Fund.

## 24.2 Winding up

On ending of the Fund, the Trustee must wind it up in accordance with:

- (a) **deed:** this clause 24; and
- (b) **court:** any orders a court makes under the Corporations Act.

## 24.3 Procedure

To wind up the Fund, the Trustee must identify and liquidate the Assets and:

- (a) **expenses:** first (1<sup>st</sup>), pay the expenses of the winding up;
- (b) **(liabilities)** second (2<sup>nd</sup>), pay all other fees, expenses and liabilities of the Fund;
- (c) **preferences:** third (3<sup>rd</sup>), pay any preferential payments to Members in accordance with the rights attached to the Class of Units held by them; and
- (d) **balance:** fourth (4<sup>th</sup>), subject to the rights attached to a Class, distribute the balance to Members proportionately to their Member Proportions, in accordance with this clause 24, and in particular clause 24.5.

## 24.4 Realisation of Trust Fund

Subject to clauses 24.6 and 24.7, as soon as reasonably practicable (having regard to the interests of Members), and within nine (9) months after giving the notice required under clause 24.1, the Trustee must sell or realise the Assets in such manner as the Trustee considers appropriate.

## 24.5 Final distribution

- (a) **Net Proceeds From Realisation:** Subject to the terms of issue of any Unit or Class of Units, the Net Proceeds From Realisation must be distributed among the Members proportionately to their Member Proportions.
- (b) **Assets:** The Trustee may transfer Assets to a Member to satisfy the making of a payment or distribution under this clause 24.5 instead of making it in Cash.
- (c) **Valuation:** The value of the Assets to be transferred must be based on a valuation in accordance with clause 13.1 or carried out by a Valuer within one (1) Month before the date of transfer of the Assets. The Expenses incurred in relation to the valuation and transfer of the Assets are payable by the Member.
- (d) **Retention:** This clause 24.5 does not limit clause 24.8.

## 24.6 Transfer of Assets

- (a) **In kind:** Despite clause 24.5, the Trustee may transfer Assets to any Member holding Units having a value in excess of an amount as determined by the Trustee in satisfaction of that Member's entitlement in the Trust Fund.

- (b) **Value / Expenses:** The value of the Assets transferred will be calculated at market value, as determined by the Trustee, and the Expenses incurred in transferring the Assets will be borne by the relevant Member(s).

#### 24.7 Postponement of realisation

The Trustee may postpone the sale or realisation of any Asset for as long as it thinks it is desirable to do so in the interests of Members in accordance with its duties under the Corporations Act. The Trustee will not be responsible for any loss attributable to the postponement.

#### 24.8 Retention of property

- (a) **Retention:** The Trustee may retain for as long as it thinks fit sufficient Assets as, in its opinion, may be required to meet any outgoings or Liabilities (actual or contingent) in respect of the Fund.
- (b) **Distribution:** If any Asset retained is ultimately found not to be required, then it must be distributed to the Members in accordance with this clause 24.

#### 24.9 Continuation of powers and provisions

- (a) **Continuation:** The powers, duties and rights of the Trustee (*including* the rights to remuneration and to any indemnities under this deed or the Law) and all other provisions of this deed continue following ending of the Fund, to the extent to which they are not inconsistent with this clause 24 or the Corporations Act.
- (b) **Units:** Following ending of the Fund, the Trustee must not accept any applications for Units or Redemption Requests or make any Redemption Offers.

#### 24.10 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 Realisation is made.

#### 24.11 Audit

- (a) **Registered:** If, at the time it is wound up, the Fund is a Registered Scheme and ASIC policy requires it, the Trustee will provide for an independent audit by a registered company auditor of the final accounts of the Fund after winding up.
- (b) **Survival:** This clause 24.11 continues to apply after the date of ending of the Scheme until the audit is complete.

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## 25. REMUNERATION AND EXPENSES OF TRUSTEE

### 25.1 Trustee, Management and Performance Fees

Subject to clause 25.9, the Trustee and/or its Delegate is entitled to fees as described in the relevant offer document for the Fund.

## **25.2 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.

## **25.3 Priority of Trustee's remuneration**

The reimbursement of expenses under clause 25.8 to the Trustee shall have priority over the payment of the fees under clause 25.1, which will have priority over the payment of all other amounts payable from the Assets.

## **25.4 Establishment costs**

- (a) Without limiting clause 25.8, the Trustee may pay, on behalf of the Fund, any or all costs and expenses incurred in connection with the establishment and initial promotion of the Fund, including the production and distribution of the first disclosure document (**Establishment Costs**).
- (b) In such a case, the Trustee will be entitled to be reimbursed out of the Assets for all Establishment Costs that were reasonably and properly incurred.
- (c) The Trustee may waive recovery of any of the Establishment Costs or may be reimbursed from the Assets in a year or years later than the year in which the Establishment Cost was incurred.

## **25.5 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.

## **25.6 Units as payment for fees**

- (a) Subject to the Corporations Act, the Trustee may elect that it is to be issued Units in the Fund 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 11.

## **25.7 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.

## **25.8 Reimbursement of Expenses**

- (a) All Expenses incurred by the Trustee, or its Delegate, 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 2.

- (b) For the purposes of this clause 25.8 subject to the proper performance of the Trustee's duties in respect of the Fund, Expenses shall include the expenses associated with the Trustee's corporate existence, maintaining its Australian financial services licence and all other expenses required to be incurred by the Trustee as a result of being a trustee for the Fund. If the Trustee undertakes activities other than acting as the trustee of the Fund, then such Expenses will be reimbursable to the extent that they are referable to the Fund or allocated on a fair and reasonable basis. For example if the Trustee:
  - (i) becomes the trustee of another fund, then such Expenses shall be apportioned between the Fund and the other fund based on the Net Asset Value of the two funds; and
  - (ii) undertakes activities which do not relate to the Fund, then the Expenses (e.g. Expenses associated with the Trustee's corporate existence) shall be apportioned on a fair and reasonable basis.
- (c) Nothing in this clause 25.8 entitles the Trustee to be indemnified from the Assets for any personal tax liability or a liability to a third party which does not relate to, or is not in any way referable to or used in connection with the Fund or the Trustee acting as trustee of the Fund.

## **25.9 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.

## **25.10 GST**

- (a) Expressions that have defined meanings under the GST Law bear the same meaning for the purpose of this clause 25.10 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 25.10(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.

#### **25.11 Taxes in other jurisdictions**

- (a) Without limiting clause 25.10, 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 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.

#### **25.12 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 redemption price of the Units.

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## **26. MEMBERS' LIABILITY**

### **26.1 Liability**

Subject to this deed and to the extent permitted by Law, no Member will, in its capacity as Member, be personally liable for any obligation of, or liability incurred by, the Trustee.

### **26.2 Limitation of liability**

Subject to this deed and to the extent permitted by Law, each Member's liability to the Trustee or the Fund is limited to the amount, if any, which remains unpaid in relation to the Member's subscription for its Units.

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## 27. OTHER ACTIVITIES AND OBLIGATIONS OF TRUSTEE

### 27.1 Other activities

Subject to clause 27.4 and the Corporations Act, nothing in this deed restricts the Trustee (in its personal capacity or in any capacity other than as trustee (or, while the Fund is a Registered Scheme, responsible entity) of the Fund) or its Related Entities or other associates from:

- (a) **dealings:** dealing with the Trustee (as trustee (or, while the Fund is a Registered Scheme, responsible entity) of the Fund) or any Member;
- (b) **interests:** being interested in any contract, transaction, or matter with the Trustee (as trustee (or, while the Fund is a Registered Scheme, responsible entity) of the Fund) or with any Member;
- (c) **actions:** acting as trustee or responsible entity in relation to any other trust or managed investment scheme; or
- (d) **dealings:** dealings with any entity in which the Trustee holds an Investment on behalf of the Fund,

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

### 27.2 Other obligations

Subject to the Corporations Act, all obligations of the Trustee or restrictions on its power which might otherwise be implied by Law are expressly *excluded* to the extent permitted by Law.

### 27.3 Hold Units

Subject to the Corporations Act, the Trustee, its Related Entities and/or other associates may hold Units in any capacity.

### 27.4 Related party transactions

Where the Fund is a Registered Scheme, any acquisition of a material asset or material services by the Trustee from, or sale or supply of a material asset by the Fund to, a Related Entity or other associate of the Trustee, may only be made with the approval of Members by an Extraordinary Resolution, other than:

- (a) **disclosure:** a service provided by a Related Entity or other associate of the Trustee to the Fund that has been disclosed in any Disclosure Document; and/or
- (b) **low cost:** a service provided by a Related Entity or other associate of the Trustee to the Fund, where the annual fee payable out of the Fund for that service is no more than five percent (5%) of the total annual management costs of the Fund (as described in any Disclosure Document).

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## 28. PAYMENTS

### 28.1 Money payable

Money payable by the Trustee to a Member may be paid in any manner the Trustee decides.

### 28.2 Cancel cheques

- (a) **Cancellation:** The Trustee may cancel cheques drawn by the Trustee that are not presented within six (6) Months. Subject to the Corporations Act, when such a cheque was drawn in favour of a Member, the money may be:
- (i) *reinvestment* - in the case of a Member, reinvested after the day the cheque is cancelled;
  - (ii) *holding* - held by the Trustee for the benefit of the Member; or
  - (iii) *payment* - paid by the Trustee in accordance with applicable unclaimed money legislation.
- (b) **Electronic transfers:** The same applies where the Trustee attempts to make a payment to a Member by electronic transfer of funds and the transfer is unsuccessful three (3) times. However, the Trustee may also then draw a cheque in favour of the Member.

### 28.3 Joint Members

A payment to any one (1) of joint Members will discharge the Trustee for the payment.

### 28.4 Deductions for Tax or other payments

The Trustee may deduct from any amount payable to a Member or former Member (or received from a Member or former Member) any amount of Tax or other payment (or an estimate of it) which the Trustee reasonably believes it must or should deduct, in respect of that Member or former Member.

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## 29. COMPLAINTS

### 29.1 Complaints made by Retail Clients

While the Fund is a Registered Scheme, if a Member who is a Retail Client submits to the Trustee a complaint in relation to the Fund or its operation, the Trustee must deal with such complaint in compliance, as an AFSL holder, with the dispute resolution requirements in section 912A(2) (*General obligations*) of the Corporations Act.

### 29.2 Complaints made by Wholesale Clients

While the Fund is a Registered Scheme, if a Member who is a Wholesale Client submits to the Trustee a complaint in relation to the Fund or its operation, the Trustee must:

- (a) **acknowledgement:** acknowledge in writing receipt of the complaint as soon as reasonably practicable and in any event within fourteen (14) days after receipt;



- (b) **referral:** consider a complaint by referring it to either:
  - (i) *officer* - the Trustee's Compliance Officer, or
  - (ii) *board / committee* - if the Compliance Officer considers the complaint to be of a material nature, the board of directors or Compliance Committee of the Trustee; and
- (c) **communication:** communicate in writing to the complainant the determination and the reasons for that determination of either the Compliance Officer, board of directors or Compliance Committee or the Trustee (as the case may be) in relation to the complaint as soon as reasonably practicable and in any event not more than ninety (90) days after the Trustee received the complaint.

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## 30. AMENDMENTS TO DEED

### 30.1 Overriding provision

This clause 30 will be read subject to clause 31.

### 30.2 Amendments to deed

Subject to any other approval that may be required by Law, this deed (including this clause 30) may be replaced or amended by:

- (a) **Members:** Special Resolution of the Members; or
- (b) **Trustee:** the Trustee if:
  - (i) *Rights* - the Trustee reasonably considers the change will not adversely affect Members' rights; or
  - (ii) *Error* - the Trustee determines (acting reasonably) that this deed contains an error that requires rectification or a matter which requires clarification.

### 30.3 Statutory requirements

Clause 30.2 does not apply to provisions deemed by clause 31 to be incorporated into this deed.

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## 31. CORPORATIONS ACT AND ASIC EXEMPTIONS

### 31.1 Inconsistency

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.

### 31.2 ASIC Exemptions

If relief from the provisions of the Corporations Act granted by an ASIC Exemption requires that this deed contain certain provisions, then, despite clauses 30 and 27.2, 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 Trust) 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.

### 31.3 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.

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## 32. SEVERABILITY

If any provision of this deed is held or found to be void, invalid or otherwise unenforceable then:

- (a) **severance:** the portion of the provision which is held or found to be void, invalid or otherwise unenforceable is deemed to be severed to render the remainder of the provision valid and enforceable; and
- (b) **remainder:** the remainder of this deed remains in full force and effect.

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## 33. GOVERNING LAW

This deed is governed by the laws of the State. The Trustee and the Members submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**EXECUTED** by the Trustee as a Deed.

**SIGNED, SEALED AND DELIVERED** by CIP )  
**LICENSING LIMITED** )  
**ACN 603 558 658** )  
in accordance with section 127 of the )  
*Corporations Act 2001* (Cth):

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Signature of director

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Signature of director/company secretary\*

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Name of director

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Name of director/company secretary\*

\* please delete as applicable

## SCHEDULE 1 – KEY TERMS

Item	Information
Date of Unit Trust Deed	14/10/2021
Name of Fund (clause 2.3)	Merchant Biotech Fund
Trustee (clause 1.1)	CIP Licensing Limited (ACN 603 558 658)
Manager (clause 1.1)	Merchant Funds Management Pty Ltd (ACN 154 493 277)
Start Date (clause 1.1)	The date Units are first (1st) issued.
State (clause 1.1)	Western Australia
Term (clause 1.1)	Open ended, but in no circumstances may the Term extend beyond eighty (80) years less one (1) day, after the date of this deed.
Address for Notices (clause 22)	<p><b>Trustee</b></p> <p>Party: CIP Licensing Limited            Address: 103 Bolsover Street, Rockhampton QLD 4700            Telephone number: 1800 679 000            Facsimile number: 07 4922 9069            Website: <a href="http://www.investmentcollective.com.au">www.investmentcollective.com.au</a>            Email address: <a href="mailto:enquiries@investmentcollective.com.au">enquiries@investmentcollective.com.au</a>            Attention: The Directors</p> <p><b>Manager</b></p> <p>Party: Merchant Funds Management Pty Ltd Address:            Level 1, 441 Stirling Highway, Cottesloe WA 6011            Telephone number: 08 6277 0050            Facsimile number: -            Attention: The Directors</p> <p><b>Members</b></p> <p>In accordance with the Register.</p>

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## SCHEDULE 2 – EXPENSES

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The following are examples of Expenses and are not intended to limit the Expenses which may be payable.

Expenses in any way connected with:

- (a) **formation:** the preparation, approval, execution, interpretation and enforcement of this deed, the formation of the Fund, and any supplemental deed amending this deed or proposed supplemental deed to amend this deed, including Advisers' fees;
- (b) **Disclosure Document:** preparation, printing, review, distribution and promotion of any Disclosure Document, offering memorandum for Units or marketing material (in particular, all amounts disclosed in the Disclosure Document);
- (c) **Asset:** the sale or proposed sale, purchase, a proposed purchase, holding, valuation, insurance, custody, development, and any other dealing with Assets;
- (d) **Investments:** the investigation, negotiation or acquisition of any proposed Investment;
- (e) **management:** the administration, management, promotion or valuation of the Fund or its Assets and Liabilities, including:
  - (i) *accounts / registers* - the establishment and maintenance of accounts and registers;
  - (ii) *computers* - computer operation and development and data processing;
  - (iii) *office expenses* - office expenses associated with postage, cheques, transaction advices, accounts, distribution statements, notices, reports and other documents sent to a Member under this deed;
  - (iv) *enquiries* - dealing with Member enquiries and complaints;
  - (v) *communications* - communications with Members (written or otherwise); and
  - (vi) *travel* - any travel expenses incurred in connection with the Fund;
- (f) **listing:** admission of the Fund to the ASX or any other securities 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;
- (g) **fees:** fees payable to ASIC, the ASX and any other regulatory body in relation to the Fund or Units;
- (h) **credit:** the assigning or maintenance of a credit rating to the Fund or any Assets;
- (i) **meetings:** convening and holding meetings of Members, or of directors of the Trustee and the implementation of any resolutions;
- (j) **Tax:** Tax and bank fees;

- (k) **service providers:** the engagement of Custodians, Advisers, the Manager and others;
- (l) **accounts / reports:** preparation, lodgement and audit of the taxation returns and accounts, and other reports including compliance reports, of the Fund;
- (m) **ending / replacement:** ending of the Fund and the retirement or removal of the Trustee and the appointment of a new trustee of the Fund;
- (n) **proceedings:** any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Trustee; and
- (o) **funding:** raising money or otherwise obtaining financial accommodation for the Fund, including a capital raising by the Fund, including fees payable to any underwriter or broker.

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## SCHEDULE 3 – AMIT PROVISIONS

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### 1. Definitions

In this Schedule 3, the following terms have the following meanings:

**AMMA Statement** has the meaning given in section 995-1 (Definitions) of the Tax Act.

**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.

**Clearly Defined Rights** means where the rights to income and capital arising from each of the Units are 'clearly defined' at all times when the Fund is in existence during the relevant Financial Year, for the purposes of section 995-1 (Definitions) of the Tax Act.

**Determined Trust Component** has the meaning given in the Tax Act.

**Distribution Entitlement** means the entitlement of a Member to Distributable Amount determined in accordance with clause 11.3.

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

**MIT** includes a trust that is (at any time during a Financial Year) any one (1) or more of the following:

- (a) an AMIT;
- (b) a Managed Investment Trust; or
- (c) a Withholding MIT.

**Trust Component** has the meaning given in the Tax Act;

**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. and

**Withholding MIT** has the meaning given by section 995-1 (Definitions) of the Tax Act.

### 2. Members' Clearly Defined Rights

#### 2.1 Intention

The provisions that follow (without seeking to be exhaustive) are intended to ensure that this deed provides that the rights to income and capital of each Unit held by a Member constitute Clearly Defined Rights.

## 2.2 Qualifications

To the extent required by the AMIT Regime in order for the Members to have Clearly Defined Rights:

- (a) **restriction:** 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 not to be clearly defined for the purposes of section 276-10(1)(b) of the Tax Act;
- (b) **equality / fairness:** the Trustee must treat Members who hold Units of the same Class equally and Members who hold Units of a different Class fairly; and
- (c) **changes:** in addition to the requirements of clauses 10.6 and 30, 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 3.2) which would or may cause the requirements of this paragraph 2 not to be met.

## 3. Trustee powers in relation to AMIT Regime

### 3.1 Powers

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.

### 3.2 Examples

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:

- (a) **calculation:** work out the Trust Component of each applicable character of the Fund, or each Class, for a Financial Year;
- (b) **attribution:** attribute all of the Trust Components and Determined Trust Components of the Fund, or each Class, to Members for the Financial Year under the AMIT Regime, including make an attribution of income of a particular category, source or character for Tax purposes;
- (c) **alteration:** make an alteration to the Trustee's attribution of the Trust Components and Determined Trust Components of the Fund, or each Class, to Members under the AMIT Regime, including making alterations as a result of the Trustee applying the Unders and Overs Rules;
- (d) **AMMA Statement:** issue (or reissue as the case may be) an AMMA Statement;
- (e) **choice:** make a choice that each Class of Units be treated as a separate AMIT, and 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;



- (f) **categories:** 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;
- (g) **allocation:** 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
- (h) **debt-like:** issue particular Units on terms that those Units represent a debt-like AMIT instrument for the purposes of the AMIT Regime.

### 3.3 Liability

Subject to the Corporations Act, the Trustee is not liable to any Member or former Member 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 Member than if the Trustee had not made the choice, or had made the choice in a different way.

## 4. Attribution of trust components

### 4.1 Attribution

The Trustee must attribute all of the Trust Components and Determined Trust Components of:

- (a) **generally:** the Fund; or
- (b) **separately:** 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 Members or former Members under the AMIT Regime.

### 4.2 Principles

The Trustee undertakes to perform attribution under paragraph 4.1 in accordance with the following principles:

- (a) **amount:** the amount of each Member's or former Member'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 held by the Member or former Member, having regard to the provisions of this deed;
- (b) **calculation:** 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;
- (c) **no attribution:** the Trustee must not attribute any part of a Determined Trust Component to a Member or former Member because of the tax characteristics of the Member or former Member; and

- (d) **choice:** if the Trustee has made a choice that each Class of Units will be treated as a separate AMIT, each Class will be treated as a separate AMIT for the purposes of determining the attribution under paragraph 4.1 and the Trustee must only attribute Determined Trust Components of a particular Class to Members of that Class (and not any other Class).

#### 4.3 Attribution

Where the Trustee exercises its power to attribute a Determined Trust Component for the purposes of the AMIT Regime:

- (a) **alteration:** it is not intended the Trustee make any material alteration to the amount or basis of distribution of the income and/or capital contemplated in the existing Distribution Entitlement provisions or amount payable to a Member under this deed (including, for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3.2);
- (b) **attribution:** 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 of this deed (including for the avoidance of doubt, the rights attaching to Units of a particular Class issued under clause 3.2) and should not be materially different from those rights and entitlements.

#### 5. 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.

#### 6. Determined Member Component Choice

##### 6.1 Choice

If a Member makes or intends to make a Determined Member Component Choice (in this clause, a "Choice") for the purposes of the AMIT Regime, the Member must:

- (a) **notice:** before providing notice of such Choice to the Commissioner of Taxation, provide the Trustee not less than seven (7) days' notice of its intention to do so and a summary of the reasons why the Member considers the attribution to be inappropriate;
- (b) **information:** provide to the Trustee all information the Trustee reasonably requests in relation to any act, matter or thing relating to any Choice; and
- (c) **proceedings:** consent to the Trustee becoming a party to any proceedings with the Commissioner of Taxation relating to the Choice.

##### 6.2 AMMA Statement

The Member acknowledges that if a Member 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 Members for the purposes of the AMIT Regime.

### 6.3 Liability

The Trustee shall have no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to a Choice.

### 6.4 AMMA Statement

The Trustee has the right to issue or reissue any AMMA Statement to the Member or other Members if a Member makes a Choice.

## 7. Debt-like AMIT instruments

The Members 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.

## 8. AMIT indemnity

Under this paragraph 8, the Trustee is entitled to be indemnified out of the Assets for any liability that:

- (a) **Incurred:** is incurred by the Trustee in relation to the proper performance of its duties; and
- (b) **Liability:** – either:
  - (i) *liability* - is an Attribution Income Tax Liability of the Trustee; or
  - (ii) *claim* - results from a Member or former Member making a claim against the Trustee in relation to an Attribution Income Tax Liability of the Member or former Member (as the case may be) that results from an attribution by the Trustee under section 276-210 (Meaning of member component) of the Tax Act to the Units held by the Member or former Member.

## ANNEXURE

### (FS 5100)

This table cross-references this deed against requirements of sections 601GA (Contents of the Constitution) and 601GB (Constitution must be legally enforceable) of the Corporations Act (**CA**), in accordance with the guidance contained in ASIC Regulatory Guide (Managed Investments: Constitutions) (**RG 134**), while the Fund is a Registered Scheme.

No.	Requirement	Reference in CA and RG 134	Cross-reference in Deed
1.	Makes adequate provision for the consideration to acquire of an interest in the scheme.	CA s601GA(1)(a) RG 134 (Section B)	Clause 4.8
2.	Makes adequate provision for the powers and rights of the responsible entity, <i>including</i> for making investments, borrowing or dealing with scheme property.	CA s601GA(1)(b) CA s601GA(3) RG 134 (Section C)	Clause 12
3.	Makes adequate provision for the method for dealing with complaints about the scheme.	CA s601GA(1)(c) RG 134 (Section D)	Clause 29
4.	Makes adequate provision for winding up the scheme.	CA s601GA(1)(d) RG 134 (Section F)	Clause 24
5.	Makes adequate provision for the powers and rights of the responsible entity, <i>including</i> to be paid fees or be indemnified out of scheme property.	CA s601GA(2) RG 134 (Section C)	Clause 12 Clause 25 Clauses 16 and 17
6.	Makes adequate provision for any rights of members to withdraw from the scheme.	CA s601GA(4) RG 134 (Section E)	Clause 5 Clause 6
7.	The constitution of a Registered Scheme must be a document that is legally enforceable between the members and the responsible entity of the scheme.	CA s601GB RG 134 (Section G)	Clause 1.4 Execution clause