

**CLINTON JOHN VAN DER LOON**  
and  
**JASON KEITH STILL**  
"Trustee"

**CLINTON JOHN VAN DER LOON and JACQUELYN KATE RICHMOND**  
as trustee for the  
**PANGEA SUPERFUND**  
and  
**JASON KEITH STILL and TARA MICHELLE STILL**  
as trustee for the  
**JT STILL SUPERFUND**  
"Initial Unitholders"

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**DEED OF UNIT TRUST SETTLEMENT**  
**BOWMAN STREET UNIT TRUST**

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**FIXED AND NON GEARED UNIT TRUST**

For the purposes of the Superannuation Industry (Supervision) Act 1993 and  
Superannuation Industry (Supervision) Regulations 1994

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Ref: 20181641

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THIS DEED dated 27<sup>th</sup> day of August 2018

**BETWEEN**

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**CLINTON JOHN VAN DER LOON** of 19B Sulman Avenue, Salter Point, Western Australia **AND JASON KEITH STILL** of 29 Gilbreth Bend, Tapping, Western Australia (**Trustee**);

**AND:**

**CLINTON JOHN VAN DER LOON and JACQUELYN KATE RICHMOND** as trustee for the **PANGEA SUPERFUND** of 19B Sulman Avenue, Salter Point, Western Australia; and

**JASON KEITH STILL and TARA MICHELLE STILL** as trustee for the **JT STILL SUPERFUND** of 29 Gilbreth Bend, Tapping, Western Australia (**Initial Unitholder**).

**RECITALS**

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- A. The Initial Unitholder has paid the initial amount to the Trustee to establish a trust on the terms of this Deed.
- B. The Trustee has agreed to act as trustee of the Trust and to hold all moneys and investments on the trusts and terms set out in this Deed.
- C. The provisions of this Deed apply to bind the unit holders and also to benefit them.

**OPERATIVE PART**

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**Definitions and Interpretation**

**1.1 Definitions**

**Act** means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth) as amended from time to time, taken together.

**Deed** means this trust deed and all amendments and variations of the terms of this trust deed which may properly be made from time to time.

**Financial Year** means a financial year for which income tax of a person, other than a company, is levied under the Act.

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**Initial Amount** means the amount of \$1 per unit paid by the Initial Unitholder to the Trustee on the signing of this Deed to initially constitute the Trust Fund as outlined in the First Schedule.

**Person** includes a company, corporation, firm or body of persons.

**Register** means the register of unit holders and other unit trust records required to be maintained by clause 5.1.

**Schedule** means a schedule to this Deed as appropriately identified within the terms of the Deed.

**Termination Date** means the date the Trust is to be wound up in accordance with this Deed.

**Trust** means the unit trust established by this Deed.

**Trustee** means the trustee for the time being of this Trust.

**Trust Fund** means:

- (a) the Initial Amount and all other moneys which are paid to the Trustee in respect of the issue of units; and
- (b) all other money and investments which become subject to the trusts of this Deed,

and includes a part of the Trust Fund.

**Unit** means an undivided part or share of the trust fund evidenced by a unit held by a unit holder in accordance with this Deed.

**Unit Holder** means the person for the time being registered under the provisions of this Deed as the holder of a Unit and includes persons jointly so registered.

**Unit Price** means the amount payable by the Trustee to a Unit Holder on redemption of a Unit calculated in accordance with clause 7.3.

## 1.2 Interpretation

In this Deed unless the contrary is expressly provided:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes each other gender;
- (c) headings are for convenience only and do not affect interpretation;
- (d) reference to legislation or a provision of any legislation includes modifications or re-enactments of the legislation, or any legislative provision substituted for, and all legislation and statutory instruments and regulations issued under the legislation; and

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(e) an expression not otherwise defined has the same meaning as in the Interpretation Act 1984 (WA).

### 1.3 **Governing law**

Unless the Trustee, with the unanimous consent of the Unit Holders, may otherwise determine, the Trust is to be governed by, and this Deed is to be interpreted under the laws of Western Australia

## **Trust**

### 2.1 **Name of Trust**

The Trust is to be known as the "BOWMAN STREET UNIT TRUST".

### 2.2 **Initial Amount**

The Trustee acknowledges receipt of the Initial Amount which entitles the Initial Unitholder to be entered in the register as the holder of the units as defined in the First Schedule.

### 2.3 **Trust Fund**

The Trustee holds the Trust Fund on trust for the Unit Holders on the trusts and subject to the terms of this Deed.

### 2.4 **Overriding Provisions**

This Deed is subject to the provisions contained in the Overriding Schedule and to the extent that the Overriding Schedule or any part of it is inconsistent with any provision of the Trust Deed, the Overriding Schedule shall prevail.

## **Beneficial interest of Unit Holders**

### 3.1 **Beneficial interest in the Trust Fund**

Subject to any contrary right of holders of Units of a class, or to any special rights, restrictions or conditions attaching to the issue of particular Units as permitted by this Deed, the beneficial interest in the Trust Fund as existing from time to time is vested:

- (a) in the Unit Holders for the time being; and
- (b) if there is more than one Unit Holder, in the Unit Holders in proportion to the number of Units each holds disregarding the issue price of those Units.

### 3.2 **No entitlement to any part of the Trust Fund**

Subject to any contrary rights of holders of Units of a class or special rights, restrictions or conditions attaching to the issue of particular Units as permitted by this Deed:

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- (a) a Unit does not entitle the holder of the Unit to any particular asset comprised in, or any particular part of, the Trust Fund; and
  - (b) each Unit entitles a Unit Holder equally with all other Unit Holders to the beneficial interest in the Trust Fund as an entirety.

## **Issue and classification of Units**

### **4.1 Additional Units**

Subject to any restrictions or conditions on the issue of additional Units and the provisions as to the issue of Units as set out in this Deed, the Trustee may create and issue additional Units at an issue price and to such persons as the Trustee by resolution may determine. The issue price received on issue of a Unit becomes part of the Trust Fund.

### **4.2 Bound by Deed**

Each person upon becoming registered as the holder of a Unit is entitled to the benefit of and is bound by the terms of this Deed and all special rights, restrictions and conditions (if any) attaching to the Unit from time to time.

### **4.3 Classification of Units**

The Trustee may, with the written consent of all Unit Holders, classify or reclassify all or some of the Units already issued or to be issued by attaching special rights, restrictions, or other conditions to those Units. The Trustee must enter the terms of the special rights, restrictions or other conditions affecting a classified or reclassified Unit in the register and, where practicable, on or annexed to the Unit certificate in respect of the classified or reclassified Units.

### **4.4 Application form**

Before Units are issued (other than to the Initial Unitholder and persons to whom Units may be issued as provided in clause 12.1(f)), the applicant for the Units must sign an application for Units in such form as the Trustee may determine.

### **4.5 Restriction on issue of Units**

- (a) A Unit may not be issued to a person who is the Trustee or one of a number of Trustees of the Trust. Nothing in this clause 4.5(a) is to be taken as restricting the issue of Units to a director, officer or shareholder of a corporate trustee of the Trust or to a sole director or a sole shareholder of a corporate trustee of the Trust.
- (b) A Unit may not be issued if the issue would result in a breach of clause 4.6.

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- (c) Before issuing Units of a particular class, the Trustee must offer them to the existing Unit Holders of Units of that class as follows:
- (i) as far as practicable, the number of Units offered to each Unit Holder must be in proportion to the number of Units of that class that they already hold;
  - (ii) to make the offer, the Trustee must give the Unit Holders a statement setting out the terms of the offer, including the number of Units offered and the period for which it will remain open (being not less than 14 days or other period agreed to by all of the holders of Units of that class);
  - (iii) the Trustee may issue any Units not taken up by the Unit Holders as the Trustee determines;
  - (iv) all of the Unit Holders may, by instrument signed by all of them, authorise the Trustee to make a particular issue of Units without complying with clause 4.5(c)(i)–4.5(c)(iii); and
  - (v) this clause 4.5(c) does not apply to an issue of units on, or immediately after, the date of this Deed as part of the Initial Unitholder issue

#### 4.6 **Restriction on number of Unit Holders**

The number of Unit Holders must not exceed 20.

#### **Register of Unit Holders**

##### 5.1 Details of register

- (a) The Trustee must maintain an up-to-date register of the Unit Holders in which is entered:
  - (i) the name and address of each Unit Holder as provided to the Trustee;
  - (ii) the number of Units in respect of which each Unit Holder (or joint holders) is registered;
  - (iii) the date of issue of Units;
  - (iv) where distinctive numbers are used by the Trustee, the numbers of the Units or certificates;
  - (v) particulars of transfers of Units;
  - (vi) particulars of redemption of Units;
  - (vii) special rights, restrictions or other conditions (if any) affecting or attaching to particular Units and changes to same; and
  - (viii) such other particulars as the Trustee may decide.

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(b) The Trustee may record the above information in separate journals kept with a register of Unit Holders.

**5.2 Consequence of registration**

Except if expressly provided otherwise in this Deed, a person who is entered in the register as the holder of a Unit is the only person recognised by the Trustee as entitled to the Unit.

**5.3 Change of address**

If a Unit Holder gives the Trustee notice in writing of a change of address, the Trustee must delete the previous address of that Unit Holder as shown in the register as soon as may be practicable and insert the new address as notified in its place.

**5.4 No recognition of Trust**

Unit Holders have an absolute right to the Units registered in their name. The Trustee shall use its best endeavours to recognise the unit Holders entitlement but is not bound to recognise, even when having notice, any equitable, contingent or future interest, or a severable part interest, in a Unit, or a trust in relation to the holding of a Unit, except if expressly provided otherwise in this Deed.

**Certificates**

**6.1 Issue of certificates**

Each sole Unit Holder is entitled to be issued with one or more certificates for the Units registered in their name. Where Units are held jointly, the joint holders are entitled only to a certificate in their joint names and delivery of that certificate to any one of the joint Unit Holders is sufficient delivery to all those joint holders.

**6.2 Form of certificate**

A certificate may be in such form as the Trustee determines and must be signed by the Trustee.

**6.3 Surrender of certificates**

When a Unit is transferred as permitted by this Deed, the certificate with respect to the Unit, or evidence as to its loss or destruction satisfactory to the Trustee, must be given to the Trustee. A Unit Holder must deliver a certificate, or evidence as to its loss or destruction, to the Trustee upon request following the redemption of the Unit, or to note a change in any special right, restriction or condition attaching to the Unit.

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## **Redemption of units**

### **7.1 Redemption at request of a Unit Holder**

If:

- (a) a Unit Holder requests the Trustee in writing to redeem all or part of the Units held by the Unit Holder at the Unit Price or at a lesser amount as the Unit Holder may agree to; and
- (b) the Trustee determines that the Units may be redeemed without detriment or disadvantage to the other Unit Holders or to the Trust Fund,

the Trustee may redeem those Units and advise the Unit Holder accordingly.

### **7.2 Redemption without the request of a Unit Holder**

The Trustee may at any time by resolution redeem all or any Units at the Unit Price without being requested to do so by the Unit Holder of those Units provided:

- (a) the redemption is approved by Unit Holders holding not less than 75% of the Units;
- (b) within 14 days of the resolution of the Trustee to redeem being properly passed, a copy of the resolution is served on all Unit Holders;
- (c) where a Unit Holder, including the Unit Holder whose Units are to be redeemed, within 14 days of service on it of a copy of the resolution, notifies the Trustee in writing that it objects to the redemption and states reasons for the objection, the Trustee must further consider the matter having regard to all objections and reasons;
- (d) if no objections under clause 7.2(c) are received, the Trustee may without further considering the matter, proceed to redeem the Units;
- (e) where a Unit Holder has objected in writing under clause 7.2(c), the Trustee must within 1 month of service being effected as required by clause 7.2(c), reconsider the matter having regard to all objections of Unit Holders and advise the Unit Holder whose Units are to be redeemed in writing of its decision with respect to its reconsideration;
- (f) where on reconsideration the Trustee determines to proceed with the redemption, the Units may be redeemed; and
- (g) where a Unit is redeemed under this sub-clause, the Trustee must pay the Unit Holder the Unit Price for each Unit redeemed.



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### 7.3 Calculation of unit price

The following provisions apply with respect to calculating the Unit Price:

- (a) if:
  - (i) the Trustee determines an amount which it considers to be a fair and reasonable value of a Unit to be redeemed;
  - (ii) all of the Unit Holders in writing consent to the determination; and
  - (iii) redemption takes place within 90 days of the consents being given, the value as so determined will be the Unit Price for the purposes of the proposed redemption;
- (b) in all other cases the Unit Price must be fixed in accordance with the following clauses of this sub-clause and there is no requirement on the Trustee to first act under clause 7.3(a);
- (c) the Trustee must have the Trust Fund and the Units which are to be redeemed valued by a person who in the reasonable opinion of the Trustee is competent to carry out such valuations and unless the Unit Holder whose Units are to be redeemed objects to the appointment, the auditor or the external accountant responsible for preparation of the financial statements and tax returns of the Trust may be appointed to carry out the valuation;
- (d) in determining the value of a Unit to be redeemed, regard must be had to:
  - (i) the value of the Trust Fund and the ratio of the relevant Unit compared to the number of issued Units;
  - (ii) special rights, restrictions or conditions attaching to the Unit and to other Units, including rights to income or capital of the Trust Fund; and
  - (iii) expenses incidental to a deemed realisation by the Trustee of investments, even if the appropriate method of valuation is on a going concern basis; and
- (e) where a Unit is to be redeemed otherwise than on the last day of a financial year, the Trustee may prior to redemption pay to the Unit Holder whose Units are to be redeemed by way of an income distribution, so much of the income of the Trust Fund as the Trustee considers could reasonably be attributed to the Unit for the current financial year, and the amount of income to be so paid must be taken into account in any valuation under this sub-clause.

### 7.4 Redemption

On redemption of a Unit:

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- (a) the Trustee must pay the moneys due to a Unit Holder on redemption of Units to the relevant Unit Holder after deducting moneys owing by the Unit Holder to the Trustee on any account;
  - (b) an entry must be made in the register to the effect that the Unit is redeemed and that the Unit Holder ceases to be the holder of the Unit; and
  - (c) where the unit certificate for the redeemed Units is returned to the Trustee, the certificate must be destroyed or shown on its face as having been cancelled.

#### 7.5 **Payment of Unit Price**

In order to pay the moneys due to a Unit Holder on redemption of Units held by the Unit Holder, the Trustee may:

- (a) raise moneys by borrowing in exercise of its powers in that regard;
- (b) raise moneys by an issue of Units;
- (c) sell any investment comprised in the Trust Fund; or
- (d) pay the moneys due out of funds on hand comprising the Trust Fund.

### **Transfer of Units**

#### 8.1 **General restriction on transfer of Units**

- (a) A transfer of Units cannot be effected if registration of the transfer would result in there being more than the maximum number of Unit Holders permitted under this Deed unless unanimous consent of the Unit Holders is obtained.
- (b) In the event of a compulsory transfer event or at any time a Unit Holder wishes to sell its Units in the Trust, then the outgoing Unit Holder or their legal personal representative must:
  - (i) Offer in writing, all of its units in the case of a compulsory transfer event, or otherwise such of the Units in the trust as it wishes to sell, to the other Unit Holders in the proportion that the other Unit Holders hold Units in the Trust (**continuing unit holders**) at the value determined as set out below;
  - (ii) The continuing unit holders may purchase the units offered by written acceptance of the offer within 28 days of receipt of the offer;
  - (iii) If the outgoing unit holder has not received acceptances of the offer for all of the units it wishes to sell within 28 days, then the outgoing unit holder may offer the remaining units for sale on the open market place at the same price as first offered;

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- (iv) The outgoing unit holder must re-offer its units to the continuing unit holders in proportion to their existing holdings at the same price and upon the same terms as those on which it intends to sell the units to an outside purchaser should they be on lesser terms than the initial offer. The continuing holders must accept the re-offer within 14 days of receiving the offer in writing;
- (v) If the outgoing unit holder has not sold, all of the units in the case of a compulsory transfer event, or those it otherwise wishes to sell, within 90 days of the date of the original offer then the Trustee must redeem the units at the price determined as set out in the valuation provisions above, failing which the Trust must be determined in accordance with the provisions below;
- (vi) A compulsory transfer event occurs when:-
- i. a Unit Holder fails to observe or perform the provisions of this Deed in a way which has or could reasonably be expected to have a substantial adverse effect upon the Trust or the other Unit Holders and where that failure continues unremedied for a period of 30 days after receipt of a notice from the remaining Unit Holders requiring that it be remedied;
  - ii. The identity of the unit holders being a matter of fundamental importance to the unit holders a compulsory transfer event occurs if there is a change in the persons having the effective control of a unit holder that is a corporation or trust;
  - iii. a unit holder not being a joint tenant dies, is declared bankrupt or of unsound mind or being a corporation goes into liquidation or receivership;
- (vii) An outgoing unit holder, having become bound to transfer any units pursuant to this Deed, must deliver to the continuing unit holders duly executed transfers in respect of such units in favour of the continuing unit holders against payment by them of the price due in respect thereof. If the outgoing unit holder makes default in transferring the same, the Trustee is hereby irrevocably and unconditionally appointed as the attorney of the outgoing unit holder to complete and execute the necessary instrument of transfer of such units and may deliver them on

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its behalf and the Trustee will receive the purchase money on Trust for the outgoing unit holder and will thereupon cause the continuing unit holders to be registered as the holder of such units.

## **8.2 Form of transfer**

A Unit, with the consent of the Trustee, may be transferred by instrument in writing. The Trustee is not required to give any reason for disallowing a transfer or refusing to give consent. The transfer shall be in the form of transfer (if any) appearing on the unit certificate for the Units or in such other form approved by the Trustee.

## **8.3 Transferor holder while registered**

Every instrument of transfer must be executed by both the transferor and the transferee. Where a party to the transfer is a corporation, the Trustee may require execution by that party in the manner set out in section 127 of the Corporations Act 2001 (Cth). The Trustee may only deal with the transferor which remains the holder of the Units to be transferred until the name of the transferee is entered in the register as the holder of the Units.

## **8.4 Issue of new certificate**

Upon production to the Trustee of a properly executed instrument of transfer together with the certificate for the Units to be transferred and compliance with the provisions of this Deed concerning the transfer of the Units, the Trustee must:

- (a) enter the name and address of the transferee as shown in the transfer in the register as the holder of the Units transferred;
- (b) cancel the unit certificate in the name of the transferor;
- (c) issue a new certificate to the transferee for the Units transferred;
- (d) if all of the Units comprised in the original certificate have not been transferred, issue to the transferor a new certificate for the balance of the Units comprised in the cancelled certificate; and
- (e) if a certificate is claimed to be lost or destroyed, the Trustee may dispense with production upon receiving evidence satisfactory to it of the loss or destruction.

## **Transmission of Units**

### **9.1 Death of a Unit Holder**

- (a) In the case of the death of one joint Unit Holder, the survivor(s) is the only person whom the Trustee may recognise as having any title to, or interest in, the

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Units held by the joint Unit Holders. Evidence must be given to the Trustee as it may require to enable it to verify the death of a joint Unit Holder.

- (b) In the case of the death of any other Unit Holder, the legal personal representative of the deceased Unit Holder is the only person whom the Trustee may recognise as having any title to, or interest in, the Units held by the deceased Unit Holder. Evidence must be given to the Trustee as it may require to enable it to verify the validity of the appointment of a legal personal representative.

## **9.2 Election by representative**

A person becoming entitled to a Unit (Person Entitled) in consequence of the death, liquidation or legal incapacity of a Unit Holder (each of which in this clause is called a Nominated Event) may, upon such information being provided and evidence being produced as may be required by the Trustee, elect in writing to be registered as the holder of the unit.

## **9.3 Effect of election**

- (a) Where an election is made under clause 9.2 and the person entitled to a Unit has provided the Trustee with all information and evidence as the Trustee requires, that person alone is entitled to become registered as the holder of the Unit by transmission and the Trustee must make an entry to that effect in the register.
- (b) Where an election under clause 9.2 is not made, the provisions of this Deed relating to the transfer of Units apply as if the Nominated Event had not occurred, except that the person entitled will be the transferor.

## **9.4 Rights on transmission**

A person entitled to a Unit by transmission may receive and give a good discharge for all moneys payable in respect of the Unit but, except as otherwise provided in this Deed, is not entitled to any other rights or privileges of a Unit Holder unless and until he or she becomes registered in respect of the Unit.

## **Income and capital**

### **10.1 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.

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- (b) In determining the income of the Trust Fund for a financial year, the Trustee may so far as is reasonably possible exercise the powers conferred on it under this sub-clause so as to minimise the liability to income and capital gains tax of the Unit Holders.
- (c) If the Trustee fails to make a determination under this sub-clause prior to midnight on 30 June in a financial year, 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 income of the Trust Fund for the purposes of this Deed.

#### 10.2 **Accumulation of income**

- (a) The Trustee may before the end of a financial year resolve to accumulate a part of the 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, to provide for repairs or maintenance, for depreciation or for any other purpose, whereupon the amount, will, subject to clause 10.2(b), form part of capital.
- (b) The Trustee may pay tax in respect of an accumulation out of the amount accumulated or out of capital.

#### 10.3 **Distribution of income to unit holders**

- (a) Subject to clause 10.2 and to any special rights as to sharing of income attached to any Units, the persons who at midnight on the last day of the financial year are the Unit Holders will be presently entitled to the income of the Trust Fund for the financial year in proportion to the Units registered in their respective names.
- (b) If the Trustee has not, prior to midnight on 30 June of a financial year, paid or applied income due to a Unit Holder in one or more of the means available to it under clause 12.1(a) to 12.1(f), the income must be set aside in a separate account in the books of the Trust in the name of the Unit Holder in which event the provisions of clause 12.4 will apply.

#### 10.4 **Application 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

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must be added to and held as capital of the Trust Fund upon the trusts of this Deed and applied, invested and dealt with under the provisions of this Deed.

#### **10.5 Distribution of capital prior to termination date**

The Trustee may in its discretion determine at any time that the whole or any part of the capital of the Trust Fund be distributed, set aside or applied by the Trustee firstly in accordance with any special rights as to sharing capital attached to any Units and then for the persons who at the time of the determination are the Unit Holders in proportion to the Units registered in their respective names.

### **Categories of income and capital**

#### **11.1 Categories of income and capital**

The Trustee may separately record the following categories of income or capital (or their proceeds) in the accounts of the Trust which under the Act are:

- (a) income on which a credit is available for tax withheld — managed investment trust fund payments;
- (b) income for which franking credits are available from an Australian or New Zealand company;
- (c) Australian sourced dividends, or distributions from trusts of Australian dividend sourced income, in either case which is fully franked;
- (d) Australian sourced dividends, or distributions from trusts of Australian dividend sourced income, in either case which is partly franked;
- (e) net capital gains;
- (f) net Australian small business entity income;
- (g) other Australian sourced non-primary production income;
- (h) other Australian sourced primary production income;
- (i) attributed foreign income;
- (j) income to which a foreign tax or other credit, offset or withholding attaches;
- (k) other assessable foreign source income;
- (l) other income which is exempt from tax or subject to differing rates of tax or tax treatment;
- (m) other income which has or gives rise to any other separately identifiable taxation consequence or benefit; and
- (n) for each category, a further category representing income in the category which has been accumulated by the Trustee and on which it has paid tax.

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## 11.2 **Other categories**

The Trustee may identify and separately record and maintain in the books of accounts of the Trust, income or capital (or its proceeds) having, or in respect of which there is attached, individual or unique characteristics other than as referred to in clause 11.1.

## 11.3 **Allocation of income or capital of a category**

Subject to any contrary rights of holders of Units of a class or a determination of the Trustee made with the written consent of all of the Unit Holders, income or capital of a category which is distributed pursuant to a determination of the Trustee or by any provision of this Deed is to be taken to have been distributed pro rata to all Unit Holders.

## 11.4 **Allocation of expenses**

Expenses and outgoings of the Trust may at the discretion of the Trustee be allocated against and deducted from income or capital of any one or more categories.

## 11.5 **Effect of allocation on categories of income**

If the Trustee does not exercise its discretion as provided in clause 11.4, outgoings and expenses of the Trust Fund for a financial year must be allocated firstly against, and deducted from, income which is not income of a category. To the extent to which that income is insufficient to absorb all expenses and outgoings, then the part which is not so absorbed must be allocated against any income of a category to which a tax credit, rebate or exemption does not attach and thereafter against the remaining income.

## 11.6 **Distributed income retains categorisation**

Income or capital to which a Unit Holder becomes entitled and which can be identified as being of a category, retains its separate identity on passing to or being received by the Unit Holder or when the Unit Holder otherwise becomes entitled to it.

## **Distribution to Unit Holders**

### 12.1 **Means of payment**

A requirement in this Deed to distribute, pay, apply or set aside any amount for a Unit Holder may be effected by the Trustee by any one or more of the following means:

- (a) with the consent of the Unit Holder, by placing the amount to the credit of the Unit Holder in a 24 hour call account;
- (b) by drawing a cheque for the amount made payable to the Unit Holder or paying the moneys into a bank account nominated by the Unit Holder by cash or electronic transfer;



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- (c) with the consent of the Trustee, by paying the amount by cheque, electronic funds transfer or in cash to a third party at the direction of the Unit Holder;
  - (d) by applying all or part of the amount in or towards satisfaction of moneys owing by the Unit Holder to the Trustee on any account;
  - (e) if the Trustee in its discretion thinks fit, by transferring any of the investments of the Trust Fund in specie to the Unit Holder on receiving in cash the difference between the amount to which the Unit Holder is entitled and the value of the investment at the valuation made by a valuer appointed by the Trustee for that purpose;
  - (f) if the Trustee, with the consent of all of the Unit Holders, so resolves, by issuing Units to the Unit Holder entitled to the amount as though the amount not distributed had been first paid to the Unit Holder and thereafter paid to the Trustee as consideration for the issued Units; or
  - (g) by setting the amount aside to a separate account in the books of the Trust in the name of the Unit Holder in which event the provisions of clause 12.4 will apply.

#### **12.2 Payment by cheque**

Moneys payable by the Trustee to a Unit Holder by cheque may be sent through the post to the registered address of the Unit Holder or in the case of joint Unit Holders to the registered address of the joint Unit Holder who is first named in the register.

#### **12.3 Payment to joint Unit Holders**

If two or more persons are entered in the register as joint holders of any Unit, the receipt of one of these persons for the moneys payable in respect of the Unit will be as effective a discharge to the Trustee as if the person signing the receipt was the sole Unit Holder.

#### **12.4 Moneys set aside for a Unit Holder**

If income is set aside for a Unit Holder pursuant to clause 10.3(b) or the Trustee makes a determination to set aside capital for a Unit Holder pursuant to clause 10.5, from midnight on 30 June of the relevant financial year in the case of income and from the date of that determination being made in the case of capital, those moneys until paid to the Unit Holder:

- (a) become the unpaid entitlement of that Unit Holder;
- (b) must be recorded in the accounts of the Trust at the end of each financial year as the Unit Holder's entitlement;
- (c) are held by the Trustee on trust for the Unit Holder;
- (d) may be mixed with the Trust Fund as provided in clause 21.1(h); and

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- (e) will not be entitled to any income which may accrue in respect of those moneys or any payment of interest.

## **Statements and accounts**

### **13.1 Accounting records**

The Trustee must:

- (a) establish and maintain proper books of account which accurately record all receipts and outgoings in relation to the Trust Fund; and
- (b) separately record all income and capital of different categories or classes as are referred to or provided for in this Deed.

### **13.2 Financial statements**

- (a) The Trustee must cause financial statements to be prepared by a qualified public or chartered accountant, including a profit and loss account and a balance sheet as at the end of each financial year certified by the accountant to be a true and proper statement of the affairs of the Trust Fund setting out all:

- (i) income of the Trust Fund;
- (ii) capital of the Trust Fund;
- (iii) costs and disbursements and other outgoings paid or payable out of the Trust Fund and chargeable against income;
- (iv) capital expenditure and liabilities chargeable to capital;
- (v) investments and money comprised in the Trust Fund;
- (vi) the amount (if any) held in the accumulated income account;
- (vii) amounts distributed to Unit Holders pursuant to clause 10.3(a);
- (viii) amounts held in separate accounts for Unit Holders pursuant to clause 10.3(b); and
- (ix) income accumulated by the Trustee, including the tax paid on and deducted from such accumulation.

- (b) The Unit Holders may inspect the financial statements and books of account in relation to the Trust Fund.

### **13.3 Election to appoint auditor**

- (a) Unit Holders holding 51% or more of the Units may, by resolution evidenced in writing and signed by those Unit Holders, require that an auditor be appointed to:
  - (i) examine the accounts of the Trust Fund;

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- (ii) ascertain the correctness of any financial statement in respect of the Trust Fund; or
  - (iii) make inquiry into the financial affairs of the Trust Fund as may be required.
- (b) The auditor named in the resolution referred to in paragraph 13.3(a), or failing which an auditor appointed by the Trustee, must make the audit or inquiry as required.
- (c) Every auditor appointed pursuant to paragraph 13.3(a):
- (i) has a right of access to the register, the accounts and other records of the Trustee in relation to the Trust Fund; and
  - (ii) may require, and is entitled to be given, any information or explanation as he or she desires.
- (d) The costs of an auditor are to be paid out of the Trust Fund.
- (e) The Trustee may terminate the services of an auditor after completion of the audit or enquiry.

#### **13.4 Collection of accounts receivable**

The Trustee must collect, receive and get in all moneys due to be paid to the Trustee arising out of the Trust (including dividends, rents and other income from investments of the Trust Fund) and from the carrying on of any business by the Trustee under this Deed.

#### **13.5 Payment of accounts payable**

The Trustee must pay out of the Trust Fund all accounts due to be paid by the Trustee arising out of the Trust including costs and disbursements, commissions, fees, rates, taxes, insurance premiums, expenses for repairs, administration and management charges and all other proper outgoings in respect of the investments and administration of the Trust Fund and the carrying on of any business by the Trustee under this Deed.

### **Appointment and removal of Trustee**

#### **14.1 Power to appoint and remove Trustee**

- (a) The Trustee may retire by giving notice to the Unit Holders.
- (b) The Unit Holders may by resolution passed by persons holding not less than 75% of the Units appoint a new trustee or an additional trustee to act in addition to and jointly with an existing trustee.
- (c) The Unit Holders may by unanimous resolution remove any Trustee.

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#### 14.2 **Restriction on appointment**

The power of appointing a new Trustee may not be exercised in favour of any person who is, at the time the power is exercised, a Unit Holder.

#### 14.3 **Provisions on appointment**

The place of a Trustee or Trustees who have retired, resigned or been removed, irrespective of their number may be filled by a sole appointment or by the appointment of more than one new Trustee.

#### 14.4 **Transfer of records and property**

Upon the resignation, retirement or removal of the Trustee, the Trustee (if a company, by its responsible officer) must promptly, at the expense of the Trust:

- (a) hand to the new Trustee all books, records, documents and other property of or pertaining to the Trust;
- (b) do all things necessary to transfer the legal title in the assets of the Trust Fund to the new Trustee;
- (c) sign authorities and give directions as the new Trustee reasonably requires to give possession or control of the Trust Fund as may be in the hand of third parties; and
- (d) give other assistance as the new Trustee may reasonably require to put the new Trustee into full knowledge of the affairs of the Trust.

#### 14.5 **Exercise of power of appointment**

The power of appointment of trustee under this clause can only be exercised by an instrument in writing but unless it is otherwise required by law for a change of trustee to be effective, it is not necessary for the retirement of a Trustee or the appointment of a new Trustee to be effected by a registered deed.

#### 14.6 **Trust Fund vests in new Trustee**

Where a Trustee or an additional Trustee is appointed pursuant to the power of appointment contained in this clause 14, the Trust Fund at that time vests in the person, or jointly in the persons, who become(s) the Trustee without the necessity for any vesting, declaration, transfer, conveyance or other assurance.

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## Variation of Trust

### 15.1 Variation of Trust Deed

- (a) At any time prior to the termination date, the trusts, powers or provisions of this Deed may be altered, modified, varied, amended, revoked or added to (all of which are referred to in this clause as a Variation) as provided in this clause.
- (b) All Variations must be by deed or other instrument in writing signed by the Trustee following the passing of a resolution by the Trustee approving the Variations.
- (c) A Variation which concerns:
  - (i) a provision of clause 3 (the beneficial interest of Unit Holders);
  - (ii) the issue, transfer or redemption of Units;
  - (iii) appointment or removal of a Trustee;
  - (iv) a provision of this clause 15 (Variation of this Deed);
  - (v) voting rights at meetings of the Unit Holders;
  - (vi) a provision of clause 19 (limitation on liability of unit holders); or
  - (vii) a provision of clause 22.1 (termination of the Trust),is not effective unless, on or before the instrument of Variation is entered into, the consents in writing of Unit Holders are obtained in accordance with clause 15.1(d).
- (d) The consents of Unit Holders under the preceding clause are to be taken to have been given only where a unanimous Unit Holder resolution has occurred and have signified their consent in writing to the proposed Variation in one or a number of separate documents that are a part of, or annexed to, or endorsed on, the instrument of Variation.
- (e) A Variation may not prejudicially affect the rights of a Unit Holder to income of the Trust Fund previously set aside for it or held for its benefit, or prejudicially affect the rights of Unit Holders, whether of a class of Units or not, to participate in the income or capital of the Trust Fund under the provisions of this Deed, unless:
  - (i) the consent of the Unit Holder prejudicially affected; or
  - (ii) the consents of all Unit Holders whose rights are to be prejudicially affected,are obtained at, or prior to, the time the Variation is made.

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## 15.2 Rule against perpetuities

A Variation must not infringe any applicable law or rule against perpetuities.

## 15.3 Time Variation takes effect

If the requirements of this clause have been complied with, the Variation will have effect on and from the date appearing in the instrument of Variation referred to in clause 15.1(b).

## Modification of class rights

### 16.1 Variation of class rights

The Trustee may at any time modify or vary the rights attached to a class of Units in the Trust Fund provided:

- (a) the modification or Variation does not affect the rights of other Unit Holders; and
- (b) all the Unit Holders of that class at that time consent in writing to the modification or Variation.

### 16.2 Effect of Variation

Upon a class of Units being modified or varied in accordance with this clause:

- (a) the Units of the class will be held subject to any preferred, deferred or other special rights or any restrictions whether in regard to the income or the amount payable on redemption or on termination of the Trust Fund, as so modified or varied; and
- (b) the Trustee must note the register accordingly.

## Provisions relating to Trustee

### 17.1 Restrictions on receipt of income

Other than remuneration permitted under clause 17.2 and 17.3 or payments permitted under clauses 17.4 and 21.1(i):

- (a) income or capital may not be paid or transferred beneficially to, or applied for the benefit of, the Trustee; and
- (b) no discretion or power conferred by this Deed may be exercised or is capable of being exercised and no provision of this Deed operates so as to confer or be capable of conferring any direct or indirect benefit in the Trust Fund on the Trustee.

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## 17.2 Remuneration

The Trustee is entitled to remuneration for the Trustee's services in such amount out of the income or capital of the Trust Fund, whether by way of periodical fee, salary, commission or otherwise, as may be approved by Unit Holders holding 75% or more of the Units.

## 17.3 Administration expenses

The Trustee may pay all costs, charges and expenses of administering the Trust out of the Trust Fund whether from capital or income as the Trustee may determine. If the Trustee is an accountant, solicitor or other person engaged in any profession, the Trustee is entitled:

- (a) to be reimbursed for all costs, charges and expenses of administering the Trust Fund incurred by the Trustee; and
- (b) to charge and be paid all usual professional charges for business transacted, time expended and acts done by the Trustee or any employee or partner in connection with the Trusts of this Deed including any acts which the Trustee not being in any profession could have done personally.

## 17.4 Indemnity

- (a) The Trustee acting in good faith is entitled to be indemnified out of the Trust Fund in respect of all liabilities:
  - (i) incurred by the Trustee relating to the execution of any powers, duties, authorities or discretions vested in it by virtue of this Deed;
  - (ii) arising in or about the investment and administration of the Trust Fund;
  - (iii) incurred in the conduct and management of any business forming part of the Trust Fund;
  - (iv) arising from the acquisition of any authorised investment under any contract entered into by the Trustee; and
  - (v) all actions, proceedings, costs, claims and demands in relation to any matter or thing done or omitted to be done concerning the Trust.
- (b) The right of the Trustee to be indemnified in respect of any such liability incurred by the Trustee is limited to the assets of the Trust Fund in the hands of or under the control of the Trustee and does not extend to enable the Trustee to recover any loss or obtain reimbursement for any liability incurred from any unit holder or other person beneficially entitled to any Unit.

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### 17.5 **Exercise of powers by company Trustee**

Except where a provision of this Deed specifically provides otherwise, the Trustee, being a company, may:

- (a) exercise or concur in exercising any discretion or power conferred by this Deed by a majority resolution of its board of directors or governing body; or
- (b) may delegate the right and power to exercise or concur in exercising any discretion or power to one or more of its directors appointed unanimously from time to time by the board of directors or governing body for that purpose and may by majority resolution of its directors terminate any delegated authority.

### 17.6 **Exercise of powers regardless relationship with Unit Holder**

All powers and discretions conferred upon the Trustee by this Deed or by law may be exercised regardless that any person being a director or shareholder, or a sole director or sole shareholder, of a corporate Trustee:

- (a) is or may have been a Unit Holder;
- (b) has or may have a direct, indirect or personal interest (whether as shareholder, director, member or partner of any company or partnership or otherwise) in the manner or result of exercising a power or discretion; or
- (c) may benefit directly or indirectly as a result of the exercise of any power or discretion, regardless that the Trustee for the time being is the sole Trustee of the Trust.

### 17.7 **Release of power**

Unless a power or discretion which may be exercised by the Trustee is by the terms of this Deed required to be irrevocable or the exercise is subject to conditions, the Trustee may release or revoke any power conferred upon it by this Deed. Any other person upon whom any power is conferred by this Deed may release or revoke any power conferred upon them. Upon the exercise of any release or revocation under this sub-clause, the power to release or revoke as so exercised is determined until the power or discretion is again granted to the Trustee unless the determination is made on an irrevocable basis.

### 17.8 **Unfettered power**

Where in this Deed the Trustee is entitled to exercise a power or a discretion, the power or discretion is an absolute unfettered power or discretion and no Unit Holder or other person, except as provided in this Deed, is entitled to:

- (a) call into question the exercise of the power or discretion;
- (b) the failure to exercise the power or discretion; or



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- (c) require the Trustee to assign any reason for its exercise of the power or discretion or failure to exercise the power or discretion.

#### 17.9 Professional advice

- (a) The Trustee may take and act upon the opinion of a solicitor or barrister of at least six years standing who has continuously during that time practised in the jurisdiction where interpretation of the provisions of:
- (i) this Deed;
  - (ii) any document;
  - (iii) any statute; or
  - (iv) matter concerning the administration of the Trust, is to be determined, without being liable to any Unit Holder in respect of any act done by the Trustee in accordance with the opinion.
- (b) Nothing in this sub-clause prohibits or impedes the Trustee from applying to any court if the Trustee thinks fit.

#### 17.10 Manager

The Trustee is not bound to act personally but may employ a manager or other person to transact all or any business required to be done or performed by the Trustee including the receipt and payment of money and the Trustee may determine the remuneration to be paid to that person or manager.

#### 17.11 Vacation of office

The office of Trustee is determined and vacated:

- (a) if the Trustee, being an individual, loses capacity to act or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health or if the Trustee becomes bankrupt or makes any arrangement or composition with creditors generally; or
- (b) if the Trustee, being a company, enters into liquidation, whether compulsory or voluntary (not being a voluntary liquidation for the purposes of amalgamation or reconstruction), or have an administrator, receiver or official manager or receiver and manager appointed.

#### 17.12 Custodian Trustee

It is not necessary for property, including a security, being part of the Trust Fund to be registered in the name of the Trustee but the property may, at the discretion of the Trustee, be registered in the name of a nominee without the necessity of disclosing that the nominee holds the property as nominee for and on behalf of the Trustee and the

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Trustee has the same powers and discretions in respect of the property as if they were registered in its own name.

### **17.13 Documents of title**

The Trustee may from time to time deposit the documents of title to property or securities for the time being subject to the Trust with a solicitor, accountant, bank, trust company, financial adviser or stock broker or like institution in any part of the world in which the Trust Fund is invested or situated and the Trustee will not be liable or responsible for any loss not caused by its own fault which may in any manner occur in relation to so depositing the documents of title.

## **Meetings of Unit Holders**

### **18.1 Convening and adjourning a meeting of Unit Holders**

- (a) The Trustee may whenever it thinks fit convene a meeting of Unit Holders.
- (b) The Trustee must convene a meeting of Unit Holders if required to do so by a requisition signed by or on behalf of Unit Holders registered as the holders in the aggregate of 25% or more of Units.
- (c) The Trustee may adjourn a meeting of Unit Holders, whether called by itself or the Unit Holders, to a date and time, being within 21 days of the date of the adjourned meeting, and at a place, as the Trustee may determine.

### **18.2 Notice of meetings**

- (a) Not less than 14 days' notice must be given of every meeting of Unit Holders and the notice must be given to all Unit Holders specifying the general nature of the business to be transacted. The date of service of the notice is to be counted as the first day but the day of the meeting is not to be counted.
- (b) A meeting may be held at shorter notice being not less than twenty-four hours with the consent of Unit Holders holding 75% or more of the Units entitled to receive notice and attend the meeting.
- (c) A meeting may be held at less than twenty-four hours' notice with the consent of all Unit Holders entitled to receive notice and attend the meeting.

### **18.3 Appointment of chairman**

At every meeting of Unit Holders the Trustee must nominate some person, whether a Unit Holder or not, to preside as chair. If there is an equality of votes, the chair does not have a casting vote.

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#### 18.4 **Determination of questions**

Every question arising at a meeting of Unit Holders is to be decided in the first instance by a show of hands unless:

- (a) it be a question which under this Deed must be decided by the holders of a prescribed percentage or more of the Units in which case a poll is to be taken; or
- (b) a poll is demanded.

#### 18.5 **Calling a poll**

A poll may be demanded by Unit Holders holding not less than 25% of the Units entitled to vote at meetings of the Unit Holders.

#### 18.6 **One vote per Unit**

Upon a poll every Unit Holder present in person or by proxy, subject to any contrary special right, restriction or condition attaching to a Unit, will have one vote for every Unit held.

#### 18.7 **Giving of votes**

Votes may be given either personally, by proxy, by attorney or, in the case of a Unit Holder which is a company, by a representative of the company if the company has previously given the Trustee evidence of the appointment of the representative.

#### 18.8 **Proxies**

- (a) An appointment of a proxy is valid if it is signed, or otherwise authenticated (including electronically) in a manner approved by the Trustee, by the Unit Holder making the appointment and contains the Unit Holder's name and address, the name of the Trust, the proxy's name or the name of the office held by the proxy and the meetings at which the appointment may be used.
- (b) An appointment may be a standing one.
- (c) The Trustee may accept an appointment is valid even if it contains only some of the information required by paragraph 18.8(a).
- (d) An undated appointment is taken to have been dated on the day it is given to the Trustee.
- (e) An appointment may specify the way the proxy is to vote on a particular resolution. If it does, the proxy must vote that way.
- (f) If a proxy is also a Unit Holder, this sub-clause does not affect the way that the person can cast any votes they hold as a Unit Holder.
- (g) An appointment does not have to be witnessed.

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- (h) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
  - (i) The instrument appointing a proxy must be delivered, or sent by fax or email, to the office of the Trustee not less than 24 hours, or a lesser period as the Trustee may set out in the notice of meeting or agree to, before the time of holding the meeting or adjourned meeting as the case may be at which the person named as proxy proposes to vote.
  - (j) The Trustee receives an instrument appointing a proxy when it is received at the place, fax number or electronic address specified for the purpose in the notice of meeting and failing which at the business address or fax of the Trustee.

#### 18.9 **Quorum**

The quorum for a meeting is 2 or more Unit Holders present personally or by proxy or by representative or attorney who so represent in the aggregate not less than 51% of the Units.

#### 18.10 **Joint Unit Holders**

If there be joint Unit Holders of any Unit;

- (a) any of the joint holders may vote either personally or by proxy as if the joint holder were solely entitled to the Units comprised in the joint holding; and
- (b) if more than one of the joint holders is present at any meeting either personally or by proxy, the joint holder whose name stands first in the register in respect of the joint holding is alone entitled to vote in respect of the holding.

The executors or administrators of a deceased holder are, for the purposes of this clause, to be taken to be joint holders.

#### 18.11 **Minors**

A Unit Holder who is a minor or a person under a legal disability may vote only by a parent or his legal guardian or by a person as properly has the management of his or her affairs. The parent, legal guardian or other person may vote either personally or by proxy and may vote both on a show of hands and in a poll and may be counted in determining a quorum.

#### 18.12 **Circulating resolutions**

- (a) The Unit Holders may pass a resolution without a meeting being held if all the Unit Holders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. All joint Unit Holders must sign.

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- (b) Separate copies of a document may be used for signing by Unit Holders if the wording of the resolution and statement is identical in each copy.
  - (c) The resolution is passed when the last Unit Holder signs.
  - (d) The passage of the resolution satisfies all requirements in this Deed with respect to the passing of a resolution at a Unit Holders' meeting.
  - (e) A body corporate representative of a Unit Holder may sign a circulating resolution on behalf of that Unit Holder.
  - (f) Passage of a resolution under this sub-clause must be recorded in the Trust's minute book.

### **18.13 Limitation of rights of Unit Holders**

Nothing in this clause 18 is to be taken as limiting the powers of the Trustee as otherwise provided in this Deed.

### **Limitation on liability of unit holders**

#### **19.1 No partnership**

Nothing in this Deed constitutes or is to be taken to constitute:

- (a) the relationship of principal and agent between the Trustee and the Unit Holders;
- (b) the relationship of partners as between the Trustee and the Unit Holders; or
- (c) the relationship of partners as between the Unit Holders among themselves.

#### **19.2 No indemnity from Unit Holders**

- (a) Regardless any other provision of this Deed or any rule of law to the contrary, no Unit Holder by reason of holding Units or of the relationship created by this Deed is under any obligation personally to indemnify the Trustee or any creditor of the Trustee in the event of there being any deficiency of the assets of the Trust Fund as compared with the liabilities of the Trustee in relation to the Trust Fund.
- (b) The rights of indemnity of the Trustee or of a creditor are limited to recourse to the assets of the Trust Fund.
- (c) A Unit Holder is not liable for any loss or damage howsoever incurred or suffered by the Trustee in acting as Trustee of the Trust or otherwise in connection with the Trust to the extent to which the loss or damage exceeds so much of the consideration (if any) payable for issue of the Units held by the Unit Holder as may be unpaid and outstanding.

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- (d) The Trustee expressly waives, releases, forfeits and abandons all rights and remedies which it otherwise might have at law or in equity to recover from a Unit Holder moneys by reason of any right of indemnity or subrogation notwithstanding that the right may not be able to be satisfied or discharged in whole or in part out of the assets comprising the Trust Fund.

### **19.3 No right of action if Unit Holders consent to investment**

If all of the Unit Holders consent in writing to the Trustee acquiring an investment as part of the Trust Fund, the Unit Holders are to be taken as having waived all rights they may have against the Trustee at law or under this Deed with respect to the Trustee's acquisition of the investment. This sub-clause applies whether the consent of the Unit Holders was obtained on, prior to or after the date the investment was acquired by the Trustee.

## **Investment powers**

### **20.1 Power to invest and vary investments**

The Trustee may invest the Trust Fund in any form of investment and vary an investment at any time as Trustees are so authorised by law and as if the Trustee was the absolute owner of the Trust Fund and acting in its personal capacity.

### **20.2 Diminishing the duty of care**

Unless the Trustee's profession, business or employment is or includes acting as a Trustee or investing money on behalf of other persons, there is no obligation on the Trustee in exercising a power of investment to exercise the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

### **20.3 Review of investment performance**

The Trustee may, but is not required to, review at any time or at fixed intervals the performance (individually or as a whole) of the investments comprising the whole or part of the Trust Fund.

### **20.4 Broadening of investment power**

- (a) The Trustee may exercise the power to invest the Trust Fund or vary an investment without the need to comply with any rule or principle of law or equity including a duty to invest the Trust Fund in investments which are not speculative, hazardous or involving waste.

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- (b) For the purposes of this and the next sub-clause, the expressions vary an instrument and varying an investment includes realising an investment or a change of the terms upon which an investment is held.

#### 20.5 **Investment advice**

In exercising the power of investment, the Trustee may, but is not required to, having regard to the size and nature of the Trust Fund, do either or both of the following:

- (a) obtain and consider independent and impartial advice for the investment of the Trust Fund, varying an investment or the management of the investment from a person whom the Trustee reasonably believes to be competent to give the advice; and
- (b) pay out of the Trust Fund the reasonable costs of obtaining the advice.

### **General powers**

#### 21.1 **General powers**

In the administration of the Trust and in the exercise of the powers, authorities and discretions conferred by this Deed or by law, the Trustee has the following powers which are in addition to the powers, authorities and discretions vested in it by any other provision of this Deed or by law and which do not limit the powers, authorities and discretions otherwise vested in the Trustee by this Deed or by law which the Trustee may exercise either alone or jointly with any other person including any Unit Holder and such powers may be delegated to the intent that the exercise of all or any of the Trustee's powers duties and discretions may be delegated to any person:

- (a) generally deal with Trust Fund: to sell, call in, convert into money, grant options or rights to purchase, mortgage, charge, sub-charge, grant security interests in, carry on business or otherwise deal with, dispose of or transfer any item or asset comprising the whole or part of the Trust Fund or otherwise held by the Trustee under the terms of the Trust for the consideration and on such terms as it may think fit as if it were the absolute and beneficial owner of the Trust Fund;
- (b) power to lend: to lend moneys forming part of the Trust Fund, or give credit to any person or company on such terms as the Trustee may decide, in particular without limiting the generality of the foregoing, to any Unit Holder or person having an interest in or to the holder of an office in the Trustee and the lending or giving of credit may be made at call or for a period of time and may be made

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at a rate of interest or at no interest, and may involve the taking of security in any form or without security;

- (c) power to borrow: to raise or borrow moneys either alone or jointly with another or others, from any person including a firm or company, either bearing or free of interest and on terms and for purposes as the Trustee may decide, and to secure the repayment of any moneys or other indebtedness by mortgage, charge or other security or encumbrance over the whole or part of the Trust Fund as the Trustee may decide or to have the repayment secured over property of a third party which may include property of the Trustee or a Unit Holder whether the third party collateral security is given alone or jointly with property of the Trust Fund and no lender is required to inquire as to whether the necessity for the borrowing has arisen or as to the purpose for which it is required, or as to the application of moneys borrowed;
- (d) commercial bills: to draw, endorse, accept, guarantee or be a party in any way to a commercial bill or other bill of exchange, promissory note, letter of credit, hypothecation or other facility involving the raising, borrowing or lending of moneys by or to the Trustee;
- (e) attorney: to appoint any person as the representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke any appointment;
- (f) delegate: to authorise any person to act as its agent or delegate to hold any investment being part of the Trust Fund as custodian and to perform any act or exercise any discretion within the Trustee's power including the power to appoint in turn its own agent or delegate. The appointment may be in respect of more than one delegate or severally and may include provisions to protect those dealing with the agent or delegate;
- (g) guarantees and indemnities: power, whether with or without security and whether alone or jointly or severally or both jointly and severally with any other person, to guarantee, indemnify, secure by way of mortgage, charge or otherwise over the whole or part of the Trust Fund or undertake in any way the payment or repayment of money or debts (including any interest whether existing or to accrue) previously or then lent or to be advanced or any existing or future duties, undertakings, liabilities or obligations incurred or which may at any future time be incurred by any person whether a Unit Holder or not and



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to guarantee, indemnify or secure, with or without security, the due performance of any contract, agreement, covenant or obligation of any person whether a Unit Holder or not;

(h) to mix funds: to mix the Trust Fund including its income and any other moneys held from time to time by the Trustee pursuant to these trusts with other moneys held by the Trustee under any provision of this Deed or under any other trust and:

(i) to invest the moneys so mixed in any investment, property, interest, arrangement or business or in any other mode or manner in which the Trustee may by law or by this Deed be empowered to invest the Trust Fund;

(ii) to exercise all powers authorities and discretions with respect to the mixed fund which the Trustee is by this Deed or by law authorised to exercise with respect to the Trust Fund; and

(iii) to make arrangements with respect to the moneys and their investment with any other person as the Trustee would be authorised or empowered by law or by this Deed to make or enter into;

(i) trustee's power to deal with itself: regardless any rule of law to the contrary, to acquire as property of the Trust Fund real or personal property the beneficial interest in which is at the date of acquisition the absolute property of the Trustee in its own right or as Trustee of another trust provided that any property so acquired is acquired for a consideration being not greater than the current market value of the property and upon acquisition the beneficial interest in the property will be held by the Trustee upon the trusts contained in this Deed;

(j) determination between capital and income: to determine whether real or personal property, or any increase or decrease in value of any property, or any receipts or payments from, for or in connection with real or personal property, is to be treated as and credited or debited to capital or to income and generally to determine all matters as to which any doubt may arise in relation to the execution of the Trust and powers of the Trust and every determination of the Trustee in relation to any of these matters, whether upon a question formally or actually raised or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund, binds all interested parties and may not be objected to on any ground;

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- (k) power to appropriate Trust Fund in specie: to appropriate in specie any portion of the Trust Fund, or any investment to or towards the share or entitlement of a Unit Holder and to charge the share or entitlement with a sum of money by way of equality as the Trustee may think fit and for these purposes the Trustee may fix the value of any real or personal property forming part of the Trust Fund and the appropriation, charge and valuation will be binding on all persons who may at any time be entitled to any interest in the Trust Fund; and
  - (l) release of powers: by irrevocable deed to renounce and release any power conferred on the Trustee under the Trust in respect of the whole or part of the Trust Fund or the income and upon the renunciation and release coming into effect, the power is to be taken to be at an end and no longer exercisable by the Trustee to the extent of the renunciation and release.
  - (m) To open in the name of the Trustee or in the name of a person or corporation as nominee of the Trustee, or in the joint names of the Trustee and another, any cheque, savings or other account with any bank or financial institution wherever situated as the Trustee thinks fit, with full power to operate on any such account, including without limiting the generality of the foregoing, power to sign, draw and endorse cheques and other negotiable or transferable instruments on any such account and to close the same;

#### **21.2 Power to act as a director**

The Trustee, being a natural person, may become a director of any company in which any moneys forming part of the Trust Fund are from time to time invested and may receive the remuneration attached to the office without being liable to account.

#### **21.3 Power to act regardless personal interest**

The Trustee may exercise or concur in exercising all powers and discretions given under this Deed or by law regardless that it, or any person being a director or shareholder of the Trustee:

- (a) has or may have a direct or indirect interest in the mode or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly as a result of the exercise of the power or discretion, notwithstanding that the Trustee for the time being is the sole Trustee.

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## **Termination of Trust**

### **22.1 Termination of Trust**

The Trust must wind-up and terminate on the first to occur of:

- (a) the date the Trustee determines if in the best interests of the Unit Holders;
- (b) the date the Unit Holders holding not less than 75% of the Units notify the Trustee of in writing providing at least 90 days notice shall be given; or
- (b) the 80th anniversary of the day before the date of this Deed.

### **22.2 Procedure on termination**

The Trustee must on the termination date:

- (a) as soon as practicable sell, call in and convert into money the investments and property constituting the Trust Fund;
- (b) pay out all debts and liabilities in relation to the Trust; and
- (c) pay the remainder, less all proper costs, disbursements, fees and other outgoings and less all proper provisions for future liability, to the Unit Holders (subject to any right, restriction or condition affecting the Units into which the Trust Fund is divided relating to the right to share in the capital of the Trust Fund on the termination of the Trust Fund) in proportion to the number of Units of which they are at the termination date respectively registered as the holders.

### **22.3 Postponement of sale**

In winding up the Trust, the Trustee may postpone the sale, calling in and conversion of any part of the investments and property of the Trust Fund for a period of time as it thinks desirable in the interests of the Unit Holders and the Trustee will not be responsible for any loss attributable to a postponement authorised by this sub-clause.

### **22.4 Provision for liabilities**

In winding up the Trust, the Trustee may make any provision as in its discretion it considers necessary to provide for any outgoings or liabilities (actual or contingent) in respect of the Trust Fund or any of the investments of the Trust Fund before making a distribution to the Unit Holders and subject to this, the Trustee must hold the part of the Trust Fund or the investment so retained in Trust for the Unit Holders otherwise entitled.

## **Notices and service**

### **23.1 Notices**

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Subject to the provisions of clause 23.3, for a notice or demand given under this Deed to be properly made it must be in writing; and

- (a) where the notice or demand is given by an individual, it must be signed by that party personally or by a solicitor acting for the individual or by any agent or attorney of that party authorised in writing; and
- (b) where the notice or demand is given by a company, it must be executed in accordance with section 127 of the Corporations Act 2001 (Cth) or signed by a director or secretary of the company or by a solicitor acting for the company or by any agent or attorney of the company who is duly authorised in writing in that regard.

### 23.2 Service

In addition to any method of service authorised by the law governing this Deed, service of a notice or demand is sufficient and effective if:

- (a) where service is to be on a company, the notice or demand is:
  - (i) delivered or sent by pre-paid post to the registered office or a place of business of that company;
  - (ii) served personally on any director of that company;
  - (iii) where the company to be served is a Unit Holder, the notice or demand is delivered or sent by prepaid post to the address of the Unit Holder as shown in the register; or
  - (iv) served by email or facsimile in accordance with clause 23.4; and
- (b) where service is to be upon a natural person, the notice or demand is:
  - (i) served personally;
  - (ii) delivered or sent by pre-paid post to the place of business or residence of that person;
  - (iii) where the person to be served is a Unit Holder, the notice or demand is delivered or sent by prepaid post to the address of the Unit Holder as shown in the register; or
  - (iv) served by facsimile in accordance with clause 23.4.

### 23.3 Provisions regarding service

Regardless the provisions of clauses 23.1 and 23.2:

- (a) service of a notice or demand on any one of several joint Unit Holders is to be taken to be effective service on all joint holders;

- 
- (b) a notice or demand to be served at an address in Australia and sent by pre-paid post from within Australia is properly served only if it is sent by prepaid ordinary, express or security post and is to be taken to have been served on the next business day following the date of posting; and
  - (c) a notice or demand to be served at an address outside Australia and sent by pre-paid post from within Australia is properly served only if it is sent by any form of pre-paid airmail post and is to be taken to have been served on the third business day following the date of posting.

#### 23.4 **Email / Facsimile service**

- (a) Service of a notice or demand:
  - (i) may be effected by email or facsimile transmission to the last known email address or a facsimile number known by the sender of the notice or demand to be a current facsimile number of the person or company (Receiver) to be served; and
  - (ii) subject to paragraph 23.4(b), is to be taken to have been served when a receipt is shown on the senders server of email or the facsimile machine of the sender produces a report showing the date and time of the transmission and the facsimile number of the receiver.
- (b) Where the Receiver within 24 hours of transmission notifies the sender that the transmission was not wholly received in legible form, service by facsimile is effective where a retransmission is sent in conformity with this clause, and no such notice is given by the Receiver.
- (c) An email or facsimile communication transmitted after 5 pm, Western Australia standard time, or on a day other than a Saturday, Sunday or public holiday in Western Australia (Business Day) is to be taken to have been transmitted and received on the next business day in Western Australia.

**FIRST SCHEDULE**

<b>Initial Unit Holders</b>	<b>Number of units</b>
<b>CLINTON JOHN VAN DER LOON and JACQUELYN KATE RICHMOND as trustee for the PANGAEA SUPERFUND</b> of 19B Sulman Avenue, Salter Point, Western Australia	4000 fully paid \$1 ordinary units
<b>JASON KEITH STILL and TARA MICHELLE STILL as trustee for the JT STILL SUPERFUND</b> of 29 Gilbreth Bend, Tapping, Western Australia	1000 fully paid \$1 ordinary units
<b><u>TOTAL</u></b>	5000 fully paid \$1 ordinary units

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## OVERRIDING SCHEDULE

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**Notwithstanding any other provision contained in this Deed the following clauses shall apply and to the extent of any inconsistency between these clauses and the other provisions of this Deed these clauses shall prevail to the extent of the inconsistency and shall apply to that part of the deed to which the following clauses relate:**

1. The Trust Fund as originally constituted shall be divided into Units each of which shall have the cost base described in the First Schedule and the Unit Holders shall each hold the number of Units set out opposite their names in the First Schedule to the intent that each Unit Holder shall have a fixed vested and indefeasible entitlement to a share of the income or capital of the Trust Fund in the manner more particularly described in Section 272-5(1) of Schedule 2F of the Income Tax Assessment Act 1936;
2. Subject to clause 1 of this Overriding Schedule, the Trustee may with the unanimous approval of all the Unit Holders, shall only be allowed to allot further Units which shall:-
  - (a) have the same rights and obligations attached to them as those attached to the Units held by the Initial Unitholders;
  - (b) be issued for a price determined on the basis of the net asset value of the Trust Fund in accordance with Australian accounting principles.
3. The Trustee may at any time and from time to time with the unanimous consent of all the Unit Holders redeem the whole or any part of the Units held by any Unit Holder (the "**Retiring Unit Holder**") by giving the Retiring Unit Holder notice in writing of the redemption and such Units (the "**Redeemed Units**") shall be deemed to be redeemed as from the expiration of seven days from the date of such notice whereupon the following provisions shall take effect:-
  - (a) the value of the Trust Fund less any liabilities shall be determined by the Trustee or by an independent valuer appointed by the Trustee for that purpose and the decision as to such valuation by the Trustee or such independent valuer who shall respectively be deemed to be acting as an expert and not as an arbitrator and who shall value the Redeemed Units;
  - (b) the value shall be based on the net asset value of the Trust fund in accordance with Australian accounting principles and otherwise in such a way as to ensure that the Unit Holders continue to have a fixed entitlement in the manner contemplated in Section 272-5 of Schedule 2F of the Income Tax Assessment Act 1936 and such valuation shall be final and binding upon all Unit Holders.

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4. Where a Unit is held by the trustee of a regulated self managed superannuation fund (“SMSF”) as defined by the Superannuation Industry (Supervision) Act 1993 (“SIS”) and the Superannuation Industry (Supervision) Regulations 1994 (“Regulations”) the Trustee shall, subject to the operation of Section 82 of SIS at all times:

4.1 ensure that the Trust satisfies at all relevant times the provisions of Division 13.3A of the Regulations which, inter alia;

(a) prohibits the acquisition of in-house assets as defined by Section 71 of SIS; and

(b) requires the Trustee to ensure that the Trust does not, contrary to Regulation 13.22C(f);

(i) invest in another entity including the purchase of listed shares;  
or

(ii) loan to another entity, unless the loan is a deposit with an authorised deposit taking institution within the meaning of the Banking Act 1959; or

(iii) acquire an asset in relation to which there is a charge; or

(iv) acquire an asset that was acquired from a related party (as defined by SIS) of the SMSF after 11<sup>th</sup> August 1999 unless that asset was business real property (as defined in SIS) acquired at market value; or

(v) acquire an asset that had been at any time (unless it was business real property acquired by the Trustee at market value) an asset of a related party of the SMSF since the later of:-

a) the end of 11 August 1999; and

b) the day 3 years before the day on which the SMSF acquired Units in the Unit Trust; and

4.2 ensure that the Trust does not, contrary to Regulation 13.22 D(1):-

(a) borrow money;

(b) give a charge in relation to any Investments comprised in the Trust Fund;

(c) conduct a business including property development and primary production;

(d) become a party to a lease with a related party to a SMSF unless the lease relates to business real property;



(e) conduct any transaction otherwise than on an arms length basis.

4.1 ensure that the Trust satisfies all other conditions for purposes of Division 10.3A of the Regulations which include:

(a) acquire an asset in relation to which there is a change of control;

(b) acquire an asset that was acquired from a related party (as defined by 212) of the SMSP after 17 August 1999 unless that asset was business real property (as defined in 212) acquired at market value or

(c) acquire an asset that had been at any time (unless it was business real property acquired by the Trust at market value) an asset of a related party of the SMSP since the later of:

(i) the end of 31 August 1999; and

(ii) the day 5 years before the day on which the SMSP assumed title in the land, trust and

4.2 ensure that the Trust does not, contrary to Regulation 1.51 (1)(a) borrow money;

(b) give a charge in relation to any investment comprised in the Trust fund;

(c) conduct a business including property development and property production;

(d) become a party to a lease with a related party (as a SMSP unless the lease relates to business real property).

(e) invest in another entity involving the purchase of listed shares;

(f) loan to another entity, unless the loan is a deposit with an authorized deposit taking institution within the meaning of the Banking Act 1959;

(g) acquire an asset in relation to which there is a change of control;

(h) acquire an asset that was acquired from a related party (as defined by 212) of the SMSP after 17 August 1999 unless that asset was business real property (as defined in 212) acquired at market value or

(i) acquire an asset that had been at any time (unless it was business real property acquired by the Trust at market value) an asset of a related party of the SMSP since the later of:

(j) the end of 31 August 1999; and


(k) the day 5 years before the day on which the SMSP assumed title in the land, trust and

**EXECUTED AS A DEED**

**SIGNED by CLINTON JOHN VAN )**

**DER LOON as Trustee in the presence of: )**

Witness:

X 

Full Name:

X Kevin Robert Shackleton

Address:

X 5 Peak Court Leeming

Occupation:

X Consultant

**SIGNED by JASON KEITH STILL )**

**as Trustee in the presence of: )**

Witness:

X 

Full Name:

X Kevin Robert Shackleton

Address:

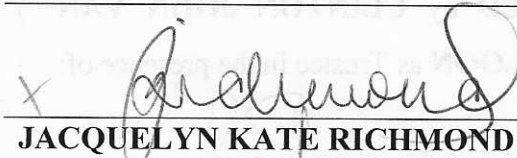
X 5 Peak Court Leeming


Occupation:


X Consultant

SIGNED by CLINTON JOHN VAN )  
DER LOON and JACQUELYN KATE )  
RICHMOND as trustee for the )  
PANGEA SUPERFUND as Initial Unit )  
Holder in the presence of: )

X   
CLINTON JOHN VAN DER LOON

X   
JACQUELYN KATE RICHMOND

X   
Witness

X   
Witness

X Kevin Robert Shackleton  
Full Name

X Kevin Robert Shackleton  
Full Name

X 5 Peak Court Leeming  
Address


X 5 Peak Court Leeming  
Address

X Consultant  
Occupation


X Consultant  
Occupation

SIGNED by JASON KEITH STILL )  
and TARA MICHELLE STILL as )  
trustee for the JT STILL SUPERFUND )  
as Initial Unit Holder in the presence of: )

X   
JASON KEITH STILL

X   
TARA MICHELLE STILL

X   
Witness

X   
Witness

X Kevin Robert Shackleton  
Full Name

X Kevin Robert Shackleton  
Full Name

X 5 Peak Court Leeming  
Address

X 5 Peak Court Leeming  
Address

X Consultant  
Occupation

X Consultant  
Occupation