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Sunsuper Pty Ltd

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**Deed of Variation to  
the Trust Deed of the  
Sunsuper Pooled  
Superannuation Trust  
(formerly the Suncorp  
Metway Investment  
Management World  
Equities Pooled  
Superannuation Trust)**

Date

5 JULY 2006

## Parties

Sunsuper Pty Ltd ABN 88 010 720 840 of Level 6, 30 Little Cribb Street,  
Milton, Queensland (Trustee)

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## Background

- A The Suncorp Metway Investment Management World Equities Pooled Superannuation Trust (**Fund**) was established pursuant to a trust deed dated 29 February 1996 as amended by deeds of amendment dated 30 April 1996, 26 October 1998, 29 June 2005 and 22 March 2006 (**Trust Deed**).
  - B Suncorp Metway Investment Management Limited ABN 31 068 147 651 was the previous trustee of the Fund (**Retiring Trustee**).
  - C By a deed of retirement and appointment of trustee the Retiring Trustee resigned from office and appointed the Trustee as trustee of the Fund with effect from 31 March 2006.
  - D The Trustee now wishes to amend the Trust Deed in the manner set out in this Deed.
  - E The Trustee is of the opinion that the amendment of the Trust Deed in the manner set out in this Deed is authorised under clause 29.1 of the Trust Deed.
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## Agreed terms

- 1 This Deed is supplemental to and constitutes an amendment of the Trust Deed, and the Trust Deed shall be construed and take effect as amended in this Deed from 31 March 2006.
- 2 The Trust Deed is amended by:
  - (a) the deletion of all of the provisions of the Trust Deed, including:
    - (i) any clauses of the Trust Deed;
    - (ii) any rules set out in or annexed to the Trust Deed; and
    - (iii) any other schedules and appendices to the Trust Deed (other than a schedule or appendix which describes the date of and parties to the Trust Deed, or which describes the name of the Fund); and
  - (b) the replacement of those provisions with the provisions attached to this Deed.

- 3 The date of the Fund's commencement is 29 February 1996. The Fund continues under the terms adopted in this Deed. The Trustee is not by this Deed redeclaring or resettling the Fund.

**Executed** as a deed.



**Executed by Sunsuper Pty Ltd**

*G.D. Wilson*  
.....  
Company Secretary/Director

*G.D. Wilson*  
.....  
Name of Company Secretary/Director  
(print)

*John Battams*  
.....  
Director

*JOHN BATTAMS*  
.....  
Name of Director (print)

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# 1 Definitions and interpretation

## 1.1 Definitions

In this deed:

**Act** means the *Superannuation Industry (Supervision) Act 1993*.

**Amend** includes delete or replace.

**Application Money** means cash, or any form of valuable consideration accepted by the Trustee, tendered as consideration for the issue of Units.

**Asset** means:

- (a) cash;
- (b) Authorised Investments;
- (c) amounts owing to the Trust by debtors (excluding bad debts);
- (d) income accruing from Authorised Investments to the extent not included in the preceding paragraphs of this definition;
- (e) any prepayment of expenditure; and
- (f) any realised or unrealised capital losses that have a contingent value,

but for the purposes of calculating Unit Value, does not include money in respect of applications for which Units have not been created.

**Authorised Investments** means investments of the type described in **clause 7.1**.

**Business Day** means a day other than a Saturday, Sunday, bank holiday or public holiday in Brisbane, Queensland.

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

**Corporations Act** means the *Corporations Act 2001*.

**deed** means this trust deed as originally executed and as from time to time amended.

**Derivative** means any financial instrument or arrangement whose economic performance is dependent on any change in interest rate, currency value or exchange rate or the economic performance of another security or Commodity.

**Disclosure Document** means an information memorandum or other disclosure document issued in relation to an offer of Units.

**Disqualified Person** means a body corporate which is in respect of the Trust a disqualified person for the purposes of Part 15 of the Act.

**Distributable Income** means an amount determined in accordance with **clause 8.5**.

**Distribution Calculation Date** means 30 June in each year, and such other dates as the Trustee determines.

**Distribution Period** means the period beginning the day after the preceding Distribution Calculation Date to the next Distribution Calculation Date.

**Financial Year** means each successive period of twelve calendar months commencing on 1 July and ending on 30 June

except that:

(a) the first Financial Year is the period commencing on the commencement of the Trust and ending on the next 30 June; and

(b) the last Financial Year is the period ending on the date of termination of the Trust and commencing on 1 July preceding the date of termination.

**Fund** means Sunsuper Pty Ltd ABN 88 010 720 840 as trustee of the Sunsuper Superannuation Fund.

**Index Linked Securities** means any investment whose economic performance is dependent on changes in any index.

**Insurance Investments** means any investment offered by an insurance company, whether the same involves a deposit, a loan, payment of premiums, acquisition of a right or interest in or arising out of insurance or life policies, or in a statutory fund or any similar investment.

**Investment Portfolio** means a portfolio established by the Trustee under **clause 7.4(b)(i)**.

**Issue Price** means the Unit Value at the time of issue of the Unit less any Transaction Cost Allowance rounded up to the nearest cent or fraction of a cent as determined by the Trustee.

**Liabilities** means in relation to the Trust, all present liabilities of the Trust, including liabilities accrued but not yet paid and any provision which the Trustee decides should be taken into account in determining the liabilities of the Trust and such provision, if any, as the Trustee considers appropriate in respect of taxation in relation to unrealised capital gains but not including any amount representing Unitholders' capital, undistributed profits, interest attributable to Unitholders accruing on Unitholders' capital, capital reserves, or any other amount representing the value of rights attaching to Units, whether or not able to be withdrawn, regardless of whether characterised as equity or debt in the accounts of the Trust.

**Net Asset Value** of the Trust, means the Value of the Assets of the Trust less the Liabilities of the Trust, calculated in accordance with **clause 7.3**.

**Pooled Superannuation Trust** has the same meaning as in section 10 of the Act.

**Public Offer Date** means a date determined by the Trustee as the date from which Units may be subscribed for and issued to Regulated Superannuation Funds other than the Fund.

**Prescribed Application Time** means 3.00pm local time on a Business Day or such other time on a Business Day as the Trustee designates in relation to the lodgement of Applications but any change in the Prescribed Application Time to an earlier time will only take effect if, by the date which the Trustee designates as the commencement date for such change, the Trustee has given notice of such change to all Unitholders.

**Prescribed Redemption Time** means 3.00pm local time on a Business Day or such other time on a Business Day as the Trustee designates in relation to the lodgement of notices of redemption but any change in the Prescribed Redemption Time in relation to the lodgement of notices of redemption as to an earlier time will only take effect if, by the date which the Trustee designates as the commencement date for such change, the Trustee has given notice of such change to all Unitholders.

**Redemption Price** of a Unit means the Unit Value at the time of redemption of the Unit less any Transaction Cost Allowance, rounded down to the nearest cent or fraction of a cent as determined by the Trustee.

**Register** means the register of Unitholders maintained under **clause 9.1**.

**Regulated Superannuation Fund** has the same meaning as in section 10 of the Act.

**Regulation** or the **Regulations** means the regulations made under the Act.

**Regulator** means the government body responsible for the regulation of, or the administration of tax concessions available to, superannuation funds in Australia, including:

- (a) the Australian Prudential Regulation Authority;
- (b) the Australian Securities and Investments Commission;
- (c) the Australian Taxation Office.

**Relevant Law** means:

- (a) the Act and Regulations;
- (b) the Corporations Act;
- (c) the Tax Act;
- (d) the *Superannuation (Resolution of Complaints) Act 1993*;
- (e) the *Superannuation Entities (Taxation) Act 1993*;
- (f) such other circulars, rulings and prudential and reporting standards published from time to time by the Regulator or announced or proposed by the Regulator applicable to the operation of the Trust; and
- (g) any other present or future law of the Commonwealth of Australia or any State or Territory which the Trustee determines to be Relevant Law for the purposes of this deed.

**Repos** means agreements, arrangements or understandings with a person whereby any Authorised Investments are transferred to or Authorised

Investments are acquired from that person on the basis that the transaction will be reversed on a predetermined rate and at an agreed price.

**RITS** means the Reserve Bank Information & Transfer System.

**RSE licence** has the same meaning as in section 10 of the Act.

**Tax** means all forms of taxes, duties and governmental imposts together with interest, penalties, charges, fees and other amounts payable on or in respect of them.

**Tax Act** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*.

**Transaction Costs Allowance** means:

- (a) when calculating an Issue Price, the Trustee's estimate of the total cost which would be incurred in investing the Application Money tendered for the Unit;
- (b) when calculating a Redemption Price, the Trustee's estimate of the total cost which would be incurred in realising Assets of the Trust to redeem the Unit,

but the Trustee may in connection with any particular application for Units or request for redemption of Units deem these costs to be a lesser sum, an estimated average percentage or zero.

**Trust** means the Pooled Superannuation Trust constituted under this deed.

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

**Unit** means an undivided share in the beneficial interest in the Trust.

**Unitholder** means a person recorded on the Register as a holder of Units.

**Unit Value** means:

- (a) in relation to the Trust, the Net Asset Value of the Trust at the last Valuation Time divided by the total number of issued Units at that Valuation Time;
- (b) in relation to an Investment Portfolio, the Net Asset Value of the Trust attributable to the Investment Portfolio at the last Valuation Time divided by the total number of issued Units in that Investment Portfolio at that Valuation Time.

**Valuation Time** means a time at which the Trustee calculated Net Asset Value of the Trust.

**Value of the Assets** means the total value on a particular day of the Assets of the Trust.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and

- (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors, assigns and substitutes, including, without limitation, persons substituted by novation;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
  - (v) "\$" or "dollars" is a reference to the lawful currency of Australia; and
  - (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions.

### **1.3 Headings**

Headings are for convenience only and do not affect the interpretation of this deed.

### **1.4 Compliance with Relevant Law**

- (a) The Trustee may comply with any requirement of the Relevant Law despite any other provision of this deed.
- (b) The Trustee is not taken to have committed any breach of trust:
  - (i) by complying with a requirement of the Relevant Law; or
  - (ii) by failing to comply with any requirement of the Relevant Law.
- (c) Despite any other provision of this deed:
  - (i) the Trustee in the exercise of its powers is not subject to the direction of any other person except where Relevant Law permits the direction to be given to the Trustee by that person;
  - (ii) where any provision of this deed would permit the person to give a direction to the Trustee other than as permitted by Relevant Law:
    - (A) the Trustee must disregard any direction given by that person; and

- (B) the Trustee may alone exercise the power, authority or discretion which is by the terms of this deed subject to the direction of that other person.
- (d) Despite any other provision of this deed, where any discretion under this deed may be exercised by a person other than the Trustee:
  - (i) the person on whom the discretion is conferred may not exercise that discretion unless the Trustee consents to the exercise of the discretion in the manner in which the person proposes to exercise the discretion;
  - (ii) the provision conferring the discretion is deemed to require the consent of the Trustee to the exercise of the discretion; and
  - (iii) the person on whom the discretion is conferred may exercise the discretion with the Trustee's consent.

## **1.5 Severance**

If any provision of this deed is void or voidable or unenforceable or illegal, but would not be so if:

- (a) it were read-down and is capable of being read-down; or
  - (b) severed and is capable of being severed,
- it shall be read-down accordingly.

## **2 The Trust**

### **2.1 Name**

The name of the Trust is the "**Sunsuper Pooled Superannuation Trust**", or any other name the Trustee determines.

### **2.2 Declaration of Trust**

The Trustee:

- (a) agrees to act as trustee of the Trust; and
- (b) declares that it holds the Assets of the Trust on trust for the Unitholders.

### **2.3 Segregation of Assets**

The Trustee may treat any part of the Trust as a separate trust fund for any purpose.

## **3 Units**

### **3.1 Trust divided into Units**

- (a) The beneficial interest in the Trust is divided into Units.

- (b) Each Unit confers an equal undivided interest in the Trust but does not confer any interest in any particular part of the Trust or any Assets of the Trust.
- (c) At any time all the issued Units are of equal value..
- (d) Units confer identical rights and obligations in the Trust, except as expressly provided in this deed.
- (e) Fractions of a Unit of up to 100 parts may be issued.

### **3.2 Consolidation and division of Units**

The Trustee may consolidate or divide Units, but proportions immediately before consolidation or division must be maintained.

### **3.3 Addition of Classes of Units**

The Trustee may at any time establish different classes of Units by executing a memorandum establishing the new class of Units and setting out the following particulars:

- (a) the name of the new class of Units;
- (b) the investment policy to be established in respect of the new class of Units;
- (c) the fee payable to the Trustee in respect of the new class of Units; and
- (d) any other matters determined by the Trustee including any special or other rights attaching to the new class of Units,

and the new class of Units is created on the date set in the memorandum.

### **3.4 Beneficial interest of Unitholders**

Each Unitholder has a beneficial interest in the Trust, but that interest does not:

- (a) entitle the Unitholder to:
  - (i) interfere with the rights or powers of the Trustee;
  - (ii) exercise any rights, powers or privileges in respect of any Assets of the Trust; or
  - (iii) require the transfer to the Unitholder of any of the Asset of the Trust;
- (b) confer any interest in any particular part or asset of the Trust.

### **3.5 Unitholders bound by deed**

Each Unitholder, and any person claiming through a Unitholder, is bound by this deed as if the Unitholder were a party to this deed.

## **4 Issue of Units**

### **4.1 Application for Units**

A person subscribing for Units must:

- (a) be a person who is eligible under Relevant Law to invest in a Pooled Superannuation Trust;
- (b) provide information required by the Trustee;
- (c) satisfy any additional conditions prescribed in a Disclosure Document;
- (d) subscribe no less than the minimum subscription amount prescribed in the Disclosure Document;
- (e) lodge an application for Units in the form prescribed by the Trustee.

### **4.2 Application Money other than cash**

If the Trustee accepts as Application Money property other than cash:

- (a) the applicant must provide such evidence of the value of the property as the Trustee requires;
- (b) the value of the property for the purpose of the issue of Units to the applicant is the market value determined by the Trustee less costs incurred in valuing and transferring the property to the Trustee or the custodian.

### **4.3 Discretion to accept or refuse**

- (a) The Trustee may accept or refuse an application for Units in whole or in part, and is not required to give any reason or ground for refusal of an application.
- (b) The Trustee must accept or reject the application for Units within ten (10) Business Days of receipt of the application or otherwise deal with the application for Units in accordance with this deed.
- (c) The Trustee must reject an application for Units if the applicant is not a person eligible under the Relevant Law to invest in a Pooled Superannuation Trust.
- (d) If an application is rejected, the Trustee must return the Application Money (or the Application Money applicable to the part of the application rejected).
- (e) If an application is accepted, the Trustee must notify the Unitholder of the acceptance in a form acceptable to the Trustee.

### **4.4 Time of acceptance**

The Trustee may suspend accepting applications:

- (a) after the Prescribed Application Time on a Business Day until the time on the next Business Day on which the Issue Price applicable to that Business Day has been determined; or

- (b) any time during which the Register is closed.

#### **4.5 Issue of Units**

- (a) If the Trustee accepts an application, the number of Units issued is the number determined by dividing the Application Money by the Issue Price at the time the issue of the Units is recorded in the Register. The number of Units will be rounded down to the nearest whole Unit unless there are fractional Units, in which case the number will be rounded down to the nearest fractional part of a Unit as determined by the Trustee.
- (b) A Unit issued is regarded as allotted to the person entitled to the Unit when the person's name is recorded in the Register.
- (c) No rights attach to a Unit until it is issued.

#### **4.6 Daily Unit Values**

Where the Net Asset Value of the Trust is determined more than once on a Business Day the Issue Price to be used for calculating the number of Units to be created and issued in the Trust shall be determined by reference to the Net Asset Value of the Trust most recently determined at the Prescribed Application Time on that day.

#### **4.7 Defective applications**

- (a) If after the issue of Units, the Trustee determines that:
  - (i) the applicant is not eligible under the Relevant Law to invest in the Trust or is otherwise not entitled to hold the Units issued;
  - (ii) the application was incorrectly executed or executed without power or authority;
  - (iii) the application was defective and was accepted in error;
  - (iv) the Trustee has not received clear title to any property tendered as Application Money,the Trustee may cancel those Units and return the Application Money to the applicant.
- (b) If the Trustee issues Units against Application Money not paid in cleared funds, the Trustee may cancel those Units if cleared funds are not subsequently received.
- (c) If Units are cancelled under this **clause 4.7**, the Trustee is not required to adjust any Unit Value, Issue Price or Redemption Price determined before the cancellation of the Units.

#### **4.8 Power of attorney**

Each Unitholder irrevocably appoints the Trustee as the Unitholder's attorney to act on behalf of the Unitholder in relation to all matters concerning the Trust.

#### **4.9 Unit certificates**

- (a) No certificates will be issued for Units.
- (b) The Trustee must on acceptance of an application for Units:
  - (i) enter in the Register the name of the applicant as a Unitholder; and
  - (ii) notify the Unitholder of the number of Units issued and the Issue Price.

#### **4.10 No issue other than to Fund before Public Offer Date**

Notwithstanding the preceding provisions of this **clause 4**, the Trustee must not issue Units to any person other than the Fund before the Public Offer Date.

### **5 Redemptions**

#### **5.1 Request for redemption**

- (a) A Unitholder may request the redemption of all or some of their Units by lodging a redemption notice in a form acceptable to the Trustee.
- (b) A redemption notice can only be revoked if the Trustee agrees.

#### **5.2 Redemption of specified sum**

A request to redeem a specified sum is deemed to be a request to redeem the number of Units necessary to satisfy the specified sum.

#### **5.3 Minimum holding**

If the Trustee has determined minimum redemption or minimum holding amounts:

- (a) if the total amount payable to satisfy the redemption notice would be less than the minimum redemption amount, the Trustee will deem the request to be for the redemption of the minimum number of Units, unless the redemption notice requests redemption of all of a Unitholder's Units or unless the Trustee otherwise determines;
- (b) if processing a redemption notice would result in the value of a Unitholder's remaining Units being less than the minimum holding amount, the Trustee may treat the redemption notice as relating to the Unitholder's total Units in the Trust;
- (c) the Trustee may give one month's notice to any Unitholder whose total Units are valued at less than the minimum holding amount and then redeem that Unitholder's Units without having received any redemption notice.

#### **5.4 No redemption from own money**

The Trustee is not obliged to satisfy any request to redeem from its own money.

### **5.5 Deduction of amounts**

The Trustee may deduct from the proceeds of redemption any amount owed by the Unitholder to the Trustee.

### **5.6 Transfer of Assets**

The Trustee may transfer to a Unitholder, in satisfaction of a redemption notice, Assets equivalent in value to the Redemption Price less costs incurred in the transfer.

### **5.7 Time of Redemption**

If a request for redemption of Units is accepted before the Prescribed Redemption Time on a Business Day then:

- (a) where the request for redemption seeks redemption of a specific dollar amount, the Trustee shall on the next Business Day cancel that number of Units (rounded up to the nearest whole number of Units or if there are fractional units rounded up to the nearest fraction of a Unit as determined by the Trustee) held by the Unitholder which equals the amount sought by the Unitholder divided by the Redemption Price applicable on that next Business Day; or
- (b) where the request for redemption seeks redemption of all or a specified number of Units, the Trustee shall on the next Business Day cancel that number of Units held by the Unitholder which are sought to be redeemed and calculate the amount payable to the Unitholder at the Redemption Price applicable on that next Business Day.

If a request for redemption is accepted after the Prescribed Redemption Time on a Business Day, the Trustee shall process the request in accordance with this clause 5.7 as if it were made on the next Business Day.

### **5.8 Suspension of redemptions**

- (a) The Trustee may suspend the redemption of Units for such period as the Trustee determines, where in the Trustee's opinion it is impractical for the Trustee to calculate the Net Asset Value of the Trust for any one or more of the following reasons:
  - (i) the closure of a securities exchange or trading restrictions on a securities exchange;
  - (ii) an emergency or other state of affairs;
  - (iii) the declaration of a moratorium in a country where the Trust has Assets;
  - (iv) for the purpose of conversion of any currency, a closure or restrictions on trading in the relevant foreign exchange markets;
  - (v) the realisation of Assets not being able to be effected at prices which would be realised if Assets were realised in an orderly fashion over a reasonable period in a stable market; or

- (vi) the Trustee for any other reason believes it is in the best interests of the Unitholders as a whole to suspend redemptions.
- (b) A redemption notice received while the redemption of Units is suspended is taken to be received on the first Business Day after the suspension ceases.

## **6 Transfers**

### **6.1 Transfer of Units**

A Unitholder may only transfer a Unit:

- (a) to a person eligible under Relevant Law to invest in a Pooled Superannuation Trust; and
- (b) with the consent of the Trustee.

### **6.2 Change of trustee**

Where a change of trustee occurs in relation to a Regulated Superannuation Fund of which a Unitholder is a trustee, the new trustee of that Regulated Superannuation Fund may apply to the Trustee for registration as the Unitholder.

### **6.3 Instrument of transfer**

All transfers of Units must be effected by an instrument of transfer in a form approved by the Trustee. An instrument of transfer must be executed by or on behalf of both the transferor and the transferee of the Units.

### **6.4 Transferor remains registered until transfer recorded**

The transferor of Units remains the Unitholder of the Units until the name of the transferee is entered in the Register as the Unitholder of those Units.

### **6.5 Stamping and eligibility**

The Trustee may decline to recognise any instrument of transfer unless it is:

- (a) stamped; and
- (b) accompanied by such evidence as the Trustee requires of the transferee's eligibility under Relevant Law to invest in a Pooled Superannuation Trust.

### **6.6 Restriction on registering transfers**

The Trustee may decline to register any transfer during the 14 days immediately preceding:

- (a) the closing of the Register for any purpose; or
- (b) the end of the Financial Year.

## **6.7 Trustee must decline to register transfer if breach of Relevant Law**

The Trustee must decline to register any transfer if it considers that the transfer may breach the Relevant Law.

## **6.8 General powers in relation to transfer**

- (a) The Trustee may accept or refuse to register any transfer, subject to Relevant Law, and is not required to give any reason or ground for a refusal.
- (b) Before the Public Offer Date, the Trustee must refuse to register any transfer of Units which would have the effect that the Fund is not the sole Unitholder.

# **7 Investment and valuation**

## **7.1 Authorised investments**

- (a) The Trustee may invest the Assets of the Trust in any manner in which the Trustee could invest if it were personally entitled to the Assets of the Trust.
- (b) Without limiting **clause 7.1(a)**, the Trustee may invest the assets of the Trust:
  - (i) in any investment in which by the laws of Queensland or any State or Territory of Australia trustees are authorised to invest;
  - (ii) deposits (whether for a term or at call) with any financial institution (with or without interest) or with any person, including short term money market investments;
  - (iii) in stock, bonds, shares, notes, options, debentures, loan securities or any other securities of any corporation or securities of any government, semi-governmental body or public authority, whether in Australia or any other country, and whether or not listed on a securities exchange in Australia or any other country;
  - (iv) in Commodities;
  - (v) in cash;
  - (vi) in the purchase, lease or other acquisition of real property and any improvements, fixtures and fittings erected or installed or to be erected or installed, or rights conferring options, rights of first refusal or otherwise relating to the acquisition of real property;
  - (vii) in the purchase, lease, hire or other acquisition of any personal property and any share or estate or interest in personal property;
  - (viii) in units or sub-units or other rights or interests (however described) in any trust, managed investment scheme or other mutual or common fund or pooled superannuation trust;

- (ix) in bills of exchange, promissory notes and other negotiable instruments whether purchased or discounted which have been either drawn, issued, endorsed or accepted by a corporation;
  - (x) in any Derivative including but not limited to any one or more of:
    - (A) a futures contract including share price index futures contracts;
    - (B) a currency futures contract;
    - (C) a swap, cap, floor or collar;
    - (D) a swaption;
    - (E) a spot or forward foreign exchange agreement;
    - (F) an option; or
    - (G) options over any of the above Derivatives;

whether or not entered into or acquired for the purpose of hedging against or minimising any loss concerning Authorised Investments held by the Trustee;
  - (xi) in Insurance Investments;
  - (xii) in the investment of money on security (by way of a registrable or registered first mortgage) of any real property;
  - (xiii) in discounting of loans, mortgages or leases;
  - (xiv) in the purchase of a secondary mortgage market security;
  - (xv) in RITS in respect of investments mentioned elsewhere in this definition and included in RITS;
  - (xvi) in Repos;
  - (xvii) in Index Linked Securities;
  - (xviii) in the lending of securities to a bank as defined in the *Banking Act 1959* (Commonwealth);
  - (xix) in the making of any other investments the Trustee considers to be appropriate in the circumstances.
- (c) The Trustee may:
- (i) undertake any activity (including carrying on or participation in a business);
  - (ii) encumber or otherwise deal with any Assets of the Trust;
  - (iii) exercise any right attaching to any Assets of the Trust,
- as if the Trustee were personally entitled to the Assets of the Trust.
- (d) The Trustee may:
- (i) underwrite or sub-underwrite, or join with others in underwriting or sub-underwriting, the subscription of any investment;

- (ii) delegate to any investment manager general authority to enter into and carry out underwriting or sub-underwriting agreements and the like, whether for the Trust alone or for the Trust in conjunction with other funds and institutions.

## **7.2 Investment restrictions**

Despite **clause 7.1**, the Trustee:

- (a) must not make any investment unless:
  - (i) the Trustee and the other party to the investment are dealing with each other at arm's length; or
  - (ii) where the investment is not at arm's length, it complies with the Relevant Law; and
- (b) must ensure that a Trust's investments comply with the Relevant Law.

## **7.3 Valuation of Assets**

- (a) The Trustee must ensure that the Assets are valued at regular intervals appropriate to the nature of the Assets, having due regard to accepted accounting principles, the Relevant Law (excluding the Corporations Act) and any Disclosure Document.
- (b) If the Trustee forms the opinion the value of an Asset currently recorded in the books of the Trust is not a true reflection of its value, the Trustee must take steps to determine the fair value of the Asset.
- (c) The valuation method for an Asset is to be determined by the Trustee.

## **7.4 Investment strategy**

- (a) The Trustee must set investment objectives for the Trust, and formulate an investment strategy to achieve those objectives, in accordance with the Relevant Law.
- (b) Despite **clause 7.4(a)**, the Trustee may:
  - (i) set different investment objectives for two or more Investment Portfolios;
  - (ii) formulate an investment strategy for each Investment Portfolio;
  - (iii) divide the Assets of the Trust between the different Investment Portfolios;
  - (iv) invite Unitholders to nominate the manner in which the Unitholder's Application Money will be invested between Investment Portfolios;
  - (v) determine:
    - (A) when, how and in what manner Unitholders may change their nominations;
    - (B) the minimum amount which may be invested in an Investment Portfolio; and
    - (C) any other matters which the Trustee considers appropriate;

- (vi) change the investment objectives, strategies, Investment Portfolios and the Assets of the Trust which comprise the Investment Portfolios.
- (c) Units in an Investment Portfolio shall be issued at an Issue Price, and redeemed at a Redemption Price, calculated on the basis of the Net Value of the Assets of the Trust attributable to that Investment Portfolio.

## **7.5 Investment register**

The Trustee must keep a current register of all investments held by the Trust, including details of the Value of those investments.

# **8 Distribution of income and capital**

## **8.1 Determination of net income**

The Trustee must determine the net income of the Trust for each Distribution Period in accordance with generally accepted accounting principles.

## **8.2 Determination of income and capital**

The Trustee may determine whether any item is income or capital of the Trust.

## **8.3 Provisions**

The Trustee may maintain any reserves or provisions which the Trustee considers appropriate, and may retain such amounts from any amount of income or capital otherwise available for distribution to Unitholders.

## **8.4 Determination to distribute**

The Trustee may determine that a distribution is to be made for a Distribution Period. Where the Trustee makes such a determination, the Trustee must calculate the Distributable Income and distribute to each Unitholder that Unitholder's share of the Distributable Income determined under **clause 8.6**.

## **8.5 Distributable Income**

- (a) The Distributable Income of the Trust for a Distribution Period is:
  - (i) such of the net income after tax of the Trust as the Trustee has determined to distribute for that Distribution Period; and
  - (ii) any additional amount (including capital) that the Trustee determines is to be distributed for that Distribution Period.
- (b) Where the Trust has more than one Investment Portfolio, the Trustee shall calculate the Distributable Income attributable to each Investment Portfolio.

## **8.6 Distribution entitlement**

- (a) Where there is a single investment strategy for the Trust, the distribution entitlement of each Unitholder is a proportion of the Distributable Income of the Trust, being the proportion that the total number of Units held by

the Unitholder at midnight on the Distribution Calculation Date bears to the total number of Units issued in the Trust at that time.

- (b) Where the Trust has more than one Investment Portfolio, the distribution entitlement of each Unitholder is a proportion of the Distributable Income of the Trust attributable to each Investment Portfolio in which the Unitholder holds Units, being for each Investment Portfolio the proportion that the total number of Units held by the Unitholder in that Investment Portfolio at midnight on the Distribution Calculation Date bears to the total number of Units issued in the Investment Portfolio at that time.
- (c) Unitholders on the Register at midnight on a Distribution Calculation Date are presently and absolutely entitled to their distribution entitlement for the Distribution Period ending on that Distribution Calculation Date.

### **8.7 Distribution accounts**

The Trustee:

- (a) must maintain a distribution account; and
- (b) may maintain separate accounts for different categories and sources of income and may allocate income from any category or source to any Unitholders.

### **8.8 Payment of distributions**

The Trustee must pay to each Unitholder its entitlement to any part of the Distributable Income for a Distribution Period as soon as practicable after the Distribution Calculation Date.

### **8.9 Reinvestment of distribution**

- (a) Unless a Unitholder elects not less than one month prior to a Distribution Calculation Date to receive the Unitholder's distribution entitlement in cash, all of the distribution entitlement for the period ending on the Distribution Calculation Date will be reinvested in acquiring Units.
- (b) Where the Trust has more than one Investment Portfolio, the distribution entitlement of a Unitholder attributable to each Investment Portfolio shall be reinvested in Units in the same Investment Portfolio.
- (c) The Trustee will be treated as having received and accepted an application to reinvest the distribution on the first Business Day after calculation of the Net Asset Value of the Trust in the next Distribution Period.
- (d) The new Units will be issued at the Issue Price at that time.
- (e) The Trustee must notify each Unitholder of the number of Units issued to that Unitholder by way of reinvestment within 30 days of the issue.

## **9 Register**

### **9.1 Register of Unitholders**

The Trustee must keep a register of Unitholders (**Register**) for the Trust.

### **9.2 Inspection of Register – auditor and Unitholders**

- (a) The auditor is entitled to inspect the Register during normal business hours on any Business Day.
- (b) A Unitholder is entitled to inspect the details recorded on the Register for that Unitholder.

### **9.3 Inspection of Register - other persons**

A person other than a Unitholder or the Trust's auditor is not entitled to inspect the Register.

## **10 The Trustee**

### **10.1 Eligibility to act as Trustee**

- (a) The Trust must have a sole Trustee which is a Constitutional Corporation.
- (b) The Trustee must hold a RSE Licence and otherwise comply with any requirements of the Relevant Law for the trustee of a Pooled Superannuation Trust.

### **10.2 Change of Trustee**

- (a) The Trustee ceases to hold office as trustee if:
  - (i) the Unitholders remove the Trustee in a manner permitted by the Relevant Law;
  - (ii) the Trustee resigns from office by deed;
  - (iii) the Trustee becomes a Disqualified Person; or
  - (iv) any approval or licence which is required for the Trustee to act as trustee is revoked or withheld.
- (b) The retiring Trustee may appoint a new Trustee, if the retiring Trustee may do so under the Relevant Law, but if not, the Unitholders may do so in a manner permitted by the Relevant Law.
- (c) The appointment of a new Trustee must be in writing and comply with the Relevant Law.

### **10.3 Handover from retiring Trustee**

If the Trustee changes, the retiring Trustee must as soon as practicable:

- (a) give the new or continuing Trustee all documents and other property relating to the Trust under its control;

- (b) do all things necessary to vest the Trust in, or as directed by, the new or continuing Trustee; and
- (c) give reasonable assistance to the new or continuing Trustee to facilitate the change of Trustee.

#### **10.4 Delay in appointment not fatal**

A delay in the appointment of a Trustee does not invalidate that appointment.

#### **10.5 Validity of acts and determinations**

Any act or determination of a Trustee is valid notwithstanding any defect in the Trustee's appointment.

### **11 Management, powers and responsibility**

#### **11.1 Trustee to manage the Trust**

The Trustee must manage the Trust for the benefit of the Unitholders with full and complete powers of management.

#### **11.2 Trustee to have powers of absolute owner**

The Trustee has all the powers over and in respect of the property and Assets of the Trust which it could exercise if it were a natural person and the absolute beneficial owner.

#### **11.3 Pooled Superannuation Trust**

The Trustee must take all steps it reasonably considers necessary to ensure that the Trust is maintained as a Pooled Superannuation Trust.

#### **11.4 Trustee's powers of management**

The Trustee may do anything which it considers necessary to administer the Trust and to comply with the Relevant Law including:

- (a) leasing and accepting surrenders of leases with power to compromise with lessees and others;
- (b) conducting and settling legal proceedings;
- (c) settling, compromising or submitting to arbitration any claims relating to the Trust or the Trustee;
- (d) developing, improving, subdividing, repairing, managing, and otherwise dealing with any investment;
- (e) purchasing plant, equipment and fittings;
- (f) borrowing, and giving security for that borrowing over any of the assets of the Trust in accordance with the Relevant Law;
- (g) insuring any risks;
- (h) electing to be bound by legislation;

- (i) making regulations and adopting procedures in relation to the calculation and rounding off of amounts paid to or payable out of the Trust, the valuing of Assets or any other matters as are necessary or convenient;
- (j) entering into all contracts, deeds and documents and do all acts and things which it considers necessary.

### **11.5 Delegation of Trustee powers**

- (a) The Trustee may delegate any of its powers and discretions to any person.
- (b) The Trustee may:
  - (i) revoke any delegation; or
  - (ii) exercise any delegated power or discretion itself despite the delegation.

### **11.6 Service providers**

The Trustee may appoint any of the following on terms which the Trustee considers appropriate:

- (a) an investment manager to manage investments of the Trust;
- (b) an administrator to administer the Trust;
- (c) a custodian to hold assets;
- (d) any other service provider.

### **11.7 Proofs and presumptions**

When determining questions of fact, the Trustee may act upon any proofs or presumptions it considers appropriate, whether or not they are strictly legal proofs or presumptions.

### **11.8 Voting rights on investments**

- (a) The Trustee may exercise all voting rights conferred by any Authorised Investment as the Trustee determines unless agreed between the Trustee and Unitholder.
- (b) Without limiting paragraph (a) the Trustee is not liable or responsible in respect of any vote or action taken or consent given by the Trustee in person or by proxy or representative.

## **12 Trustee's indemnities**

### **12.1 Indemnity to Trustee**

The Trustee, and each of its directors, officers and employees:

- (a) is not liable for its acts or omissions in that capacity; and
- (b) is entitled to be indemnified from the Assets of the Trust in respect of any liability incurred while acting in that capacity,

except as prescribed by the Relevant Law.

The Trustee may realise any assets of the Trust (including any insurance policy or any units or interests under the insurance policy) in whole or in part for the purposes of such indemnity, and without limitation, the indemnity shall extend to all legal and other costs, charges and expenses of administering or winding up the Trust and otherwise of performing any trusts, powers, authorities and discretions under this deed. The indemnity provided to the Trustee and the directors of the Trustee under this clause 12.1 shall be in addition to any other indemnity allowed by law or given under this deed.

## **12.2 Interested dealings by Trustee**

The Trustee, or a director, officer or employee or associate of the Trustee, may:

- (a) act in any capacity as a representative or agent of a Unitholder;
- (b) have an interest in, or enter into a contract or transaction with, the Trustee in its personal capacity or in another capacity, or a Unitholder, or any other entity in which Assets of the Trust are invested.

## **12.3 Trustee may rely on advice**

The Trustee may take and act upon:

- (a) the opinion or advice of lawyers instructed by the Trustee in relation to the interpretation of this deed or any other document or generally as to the administration of the Trust or any other matter in connection with the Trust;
- (b) advice, statements or information from any bankers, accountants, auditors, valuers and other service providers in each case believed by the Trustee in good faith to be expert in relation to the matters upon which they are consulted and who are independent of the Trustee,

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

# **13 Charges and expenses**

## **13.1 Charges**

- (a) The Trustee may at its discretion from time to time levy charges for entry into the Trust, exit from the Trust, the administration of the Trust, the switching of investment strategies or for any other purpose determined by the Trustee.
- (b) Any charges levied may be applied, as determined by the Trustee:
  - (i) as remuneration of the Trustee;
  - (ii) to cover any expense of the Trust (partly or wholly).

## **13.2 Expenses**

All expenses incurred by the Trustee in the proper performance of its duties in connection with the Trust are payable or reimbursable out of the Assets of the Trust. This includes (without limitation) expenses connected with:

- (a) this deed and the formation of the Trust;
- (b) preparation, review, distribution and promotion of any Disclosure Document;
- (c) the sale, purchase, insurance, custody and any other dealing with Assets;
- (d) any proposed investment;
- (e) the administration, management or promotion of the Trust or its Assets and liabilities;
- (f) convening and holding meetings of Unitholders, the implementation of any resolutions and communications with Unitholders;
- (g) Tax (provided it is not on the personal account of the Trustee) and bank fees;
- (h) the engagement of agents, valuers, advisers and contractors;
- (i) preparation and audit of the taxation returns and accounts of the Trust;
- (j) termination of the Trust;
- (k) the retirement or removal of the Trustee and the appointment of a new trustee;
- (l) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee (except to the extent that the Trustee is found by a court to be in breach of trust, in default or to have been negligent in which case any expenses reimbursed under this **clause 13.2(l)** must be repaid); and
- (m) complying with any law, and any request or requirement of a Regulator.

## **13.3 Deferral or waiver of expenses**

The Trustee may defer reimbursement of any or all expenses under **clause 13.2** for an agreed period, or waive all or part of those expenses.

# **14 Records, accounts and audit**

## **14.1 Records and accounts**

The Trustee must maintain in accordance with the Relevant Law:

- (a) a complete record of all Unitholders containing all the information necessary to administer the Trust;
- (b) accounting records which correctly record and explain the transactions and financial position of the Trust; and

- (c) prepare any accounts, statements and returns for the Trust.

## **14.2 Appointment and removal of Auditor**

The Trustee:

- (a) must appoint an Auditor to audit the accounts and statements of the Trust;
- (b) must instruct the Auditor to report to the Trustee on the audit of the accounts and statements of the Trust;
- (c) may remove an appointed Auditor and appoint a replacement.

## **15 Meetings of Unitholders**

### **15.1 Trustee may convene meetings**

The Trustee may convene a meeting of the Unitholders at any time or on the requisition in writing of Unitholders who hold not less than one-fifth of the number of issued Units.

### **15.2 Requisition by Unitholders**

- (a) The requisition must:
  - (i) state the objects of the meeting;
  - (ii) the terms of any resolution proposed to be submitted at the meeting;
  - (iii) be signed by the requisitionists and deposited at the office of the Trustee;
- (b) If the Trustee does not convene a meeting within 21 days from date of receipt of the requisition, the requisitionists or a majority of them in value, may convene the meeting in the same manner as meetings are to be convened by the Trustee.

### **15.3 Notice of meeting**

- (a) At least ten Business Days' notice of a meeting specifying the place day and hour of the meeting must be given to Unitholders.
- (b) The Trustee must ensure that any notice of meeting contains adequate notice of:
  - (i) any matters to be considered at the meeting of which it is aware;
  - (ii) any resolutions to be put to the meeting of which it is aware; and
  - (iii) a summary of information relating to those matters and resolutions that is relevant to the decision of a Unitholder on how to vote at the meeting.
- (c) The accidental omission to give such notice to or the non-receipt of such notice by any Unitholder shall not invalidate the meeting.

#### **15.4 Right of audience**

The auditor and representatives of the Trustee are entitled to attend any meeting of Unitholders, with or without their respective lawyers, and all such persons have a right of audience.

#### **15.5 Chairman**

At a meeting convened by the Trustee some person nominated by the Trustee (whether a Unitholder or not) shall preside as chairman. If no such person is present or is present but unwilling to act within fifteen minutes after the time appointed for holding the meeting the Unitholders present may choose one of their number to preside as chairman.

#### **15.6 Quorum**

- (a) No business shall be transacted at a meeting of Unitholders unless a quorum is present when the meeting proceeds to business. The quorum is:
  - (i) where the Trust has one Unitholder, that Unitholder; and
  - (ii) where the Trust has two or more Unitholders, persons or by proxy or representative holding at least 10% of the total number of issued Units.
- (b) If within fifteen minutes from the time appointed for any meeting a quorum is not present, the meeting is:
  - (i) if convened on the requisition of Unitholders, dissolved;
  - (ii) otherwise, adjourned to such place and time as the Trustee decides.
- (c) At an adjourned meeting, the Unitholders present in person or by proxy or representative constitute a quorum.

#### **15.7 Method of voting**

Every question submitted to a meeting of Unitholders shall be decided in the first instance by a show of hands, except that a poll must be taken in any case where it is required by this deed or by the Relevant Law that the question be decided by a percentage of the issued Units or where a poll is properly demanded as provided in **clause 15.10**.

#### **15.8 Calculation of voting entitlement**

On a show of hands every Unitholder present in person or by proxy or representative has one vote and on a poll every Unitholder has one vote for each Unit of which that Unitholder is the registered holder.

#### **15.9 Joint holders**

In the case of joint Unitholders of a Unit the vote of the senior who tenders a vote whether in person or by proxy or representative must be accepted to the exclusion of the votes of the other joint Unitholders and for this purpose

seniority shall be determined by the order in which the names stand in the Register.

#### **15.10 Poll**

- (a) A poll may be demanded by the chairman or one or more Unitholders holding at least ten percent (10%) of the number of issued Units.
- (b) A poll may be demanded either before or immediately after any question is put to a show of hands.
- (c) Unless a poll is demanded or required, a declaration by the chairman that a resolution has been carried or carried by any particular majority or lost or not carried by any particular majority is conclusive evidence of the fact.

#### **15.11 Conduct of poll**

If at any meeting a poll is demanded as provided in **clause 15.10** it shall be taken in such manner and either at once or after an adjournment as the chairman directs and the results of such poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn.

#### **15.12 Passing resolutions**

- (a) A resolution may be passed:
  - (i) by a meeting of the Unitholders:
    - (A) on a show of hands, by the required majority of Unitholders present in person or by proxy or representative; or
    - (B) if a poll is duly demanded, by the required majority of the number of Units held by Unitholders present and voting on the poll, in person or by proxy or representative; or
  - (ii) where the Relevant Law allows, by a resolution in writing proposed by notice in accordance with **clause 15.19**, signed by Unitholders holding the required majority of the number of Units in the Trust.
- (b) The "required majority" is a simple majority, except where this deed or the Relevant Law requires otherwise.
- (c) A resolution passed in accordance with this **clause 15.12** is binding upon all the Unitholders whether present or not present at a meeting at which the resolution was passed.

#### **15.13 Proxies**

Votes may be given by proxy in accordance with the following:

- (a) on a show of hands and on a poll votes may be given either personally or by proxy, and a proxy has the same right of audience as a Unitholder.
- (b) the instrument appointing a proxy must be in writing by the appointor or the appointor's attorney.

- (c) any person may act as a proxy whether or not the person is a Unitholder.
- (d) the instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or a certified copy of that power or authority, or a legible facsimile transmission copy of those documents, must be deposited at the registered office of the Trustee, or at the place specified for that purpose in the notice of meeting, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote. The instrument is not valid if not lodged in that form within that time.
- (e) an instrument appointing a proxy may be in any form the Trustee approves.

#### **15.14 Representatives**

A body corporate may be represented at a meeting by a person appointed as a representative in the manner provided in section 253B of the Corporations Act. The representative may exercise on the body corporate's behalf the same powers as the body corporate could exercise if it were a natural person.

#### **15.15 Adjournment of meeting**

The chairman may with the consent of any meeting of Unitholders adjourn the same from time to time and from place to place.

#### **15.16 Minutes**

- (a) Minutes of all resolutions passed and proceedings at every meeting of Unitholders shall be made and entered in a book kept for that purpose by the Trustee.
- (b) Any minutes if purporting to be signed by the chairman of the meeting at which the resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting (if any) of Unitholders, are conclusive evidence of the matters stated in the minutes.
- (c) Until the contrary is proved, every meeting for which minutes have been made is deemed to have been duly held and convened, and all resolutions passed and all proceedings are deemed to have been duly passed and had.

#### **15.17 Short notice**

Unless a specified period of notice of meeting is required by the Relevant Law, and despite that it is convened by a notice shorter than is required by **clause 15.3**, a meeting will have been duly convened if it is so agreed:

- (a) in the case of a meeting convened in accordance with a requisition of Unitholders – by all the Unitholders entitled to attend and vote at the meeting; or
- (b) in the case of any other meeting – by a majority in number of the Unitholders having a right to attend and vote at the meeting being a majority that is together entitled to not less than 75% of issued Units.

### **15.18 Telephone and electronic links**

- (a) For the purposes of this **clause 15** a Unitholder will be regarded as being present at a meeting of Unitholders if the meeting is conducted by telephone or other electronic means of confirming that the Unitholder is able to hear the proceedings of the entire meeting and to be heard by all others attending the meeting.
- (b) A meeting conducted in accordance with **clause 15.18** is treated as having been held at the place specified by the Trustee, provided at least one of the Unitholders present at the meeting was at that place for the duration of that meeting.

### **15.19 Resolution in writing**

- (a) Except if the Relevant Law requires otherwise, in lieu of holding a meeting of Unitholders the Trustee may send to the Unitholders entitled to receive notice of a meeting or to vote, a notice which contains:
  - (i) the resolutions to be considered and voted on by the Unitholders;
  - (ii) a summary of information relating to the resolutions which the Trustee considers relevant to the decision as to how to vote on the resolutions;
  - (iii) provision for the Unitholder to indicate the way in which they cast their votes on the resolutions;
  - (iv) an address to return the notice to;
  - (v) a date by which the notice is to be returned if the Unitholder's vote on the resolutions is to be counted.
- (b) While the Fund is the sole Unitholder, a decision which may be made by a meeting of Unitholders may be made by written resolution signed by a representative of the Fund.

### **15.20 Meeting's power to sanction amendments**

Without limiting this **clause 15** or **clause 16**, subject to the Relevant Law a meeting of Unitholders has the power by three quarters majority on a poll to sanction or assent to any amendment of this deed proposed by the Trustee.

## **16 Amendment**

### **16.1 Form of amendment**

The Trustee may at any time by deed or by written or oral resolution amend, add to, delete or replace all or any of the provisions, terms, trusts and powers contained in this deed, including the provisions of this clause, subject to the Relevant Law. Without limiting the generality of this clause, the Trustee may amend this deed:

- (a) to confer a benefit upon the Trustee;
- (b) to comply with the requirements of the Relevant Law.

## **16.2 Date of effect**

An amendment may take effect from a date before or after it is made.

## **17 Termination of the Trust**

### **17.1 Termination by Trustee**

The Trustee may terminate the Trust with effect from a date the Trustee determines.

### **17.2 Notice of termination**

If the Trust is to be terminated the Trustee must give notice in writing to that effect to the Unitholders.

### **17.3 Distribution**

- (a) In winding up the Trust, the Trustee must sell and realise the Assets of the Trust and distribute the net proceeds of sale and realisation to the Unitholders.
- (b) The Trustee is entitled to retain and pay all outstanding Liabilities of the Trust incurred or likely to be incurred by the Trustee in connection with the winding up of the Trust.
- (c) The Trustee may transfer an Asset of the Trust to a Unitholder in specie in satisfaction or part satisfaction of that Unitholder's entitlement to a distribution on the winding up of the Trust. For this purpose, the Trustee must determine the fair value of the Asset, and costs incurred in transferring the Asset to the Unitholder are payable by the Unitholder or may be deducted from the Unitholder's entitlement.

### **17.4 Continuing effect of deed**

Subject to the Relevant Law, despite the termination of the Trust the provisions of this deed continue in effect to the extent that they are required to regulate any remaining rights or duties of the parties.

## **18 Disputes**

### **18.1 Trustee's decision is binding**

Subject to **clause 18.2** if any doubt or dispute arises as to the interpretation of any provision of this deed or as to the rights or obligations of a Unitholder or any other person under this deed the decision of the Trustee is final and binding (except to the extent the Relevant Law provides otherwise).

### **18.2 Resolution of disputes**

The Trustee may make arrangements for:

- (a) resolution of disputes; or
- (b) dealing with enquiries and complaints by Unitholders.

## **19 Miscellaneous**

### **19.1 Payments**

- (a) Any money payable by the Trustee to a Unitholder may be paid:
  - (i) by "not negotiable" cheque or order made payable to the Unitholder and sent through the post to the registered address of the Unitholder; or
  - (ii) by payment (whether by electronic or other means) to an account of the Unitholder with a financial institution nominated by the Unitholder; or
  - (iii) in any other manner specified by the Unitholder and agreed to by the Trustee, in which case payments are deemed to be made when the Trustee has done everything necessary to be done on its part to effect payment in that manner.
- (b) Only whole cents are to be paid to a Unitholder. Any fraction of a cent is retained as an Asset of the Trust.
- (c) The Trustee may deduct from any amount to be paid to a Unitholder, or received from a Unitholder, any amount of Tax (or an estimate of Tax) which the Trustee is required or authorised by Relevant Law or this deed to deduct or withhold from that payment or receipt, including any amount of Tax which may be payable in respect of the issue or redemption of Units.

### **19.2 Retention of documents**

The Trustee must keep, and retain so long as they are relevant and in any event for at least 10 years, copies of:

- (a) all reports that were given in the same form (apart from differences relating to the names and addresses of the persons to whom the notices were given) to all Unitholders;
- (b) all Applications; and
- (c) such other material as is required by the Relevant Law.

### **19.3 Inspection of deed**

A copy of this deed must at all times during usual business hours be made available by the Trustee at its registered office for inspection by Unitholders.

### **19.4 Proper law**

- (a) This deed is governed by the laws in the State of Queensland.
- (b) The parties unconditionally submit to the non-exclusive jurisdiction of the courts of the State of Queensland and any courts which have jurisdiction to hear appeals from any of those courts.
- (c) The parties waive any right to object to any proceedings being brought in those courts.

## **19.5 Notice**

- (a) Any notice required to be given to Unitholders under this deed is deemed to have been duly given if it is in writing and:
  - (i) delivered or sent by ordinary post, courier or airmail in a properly pre-paid or franked envelope addressed to the Unitholder at the address appearing in the Register of Unitholders; or
  - (ii) sent by facsimile transmission to the facsimile number of the Unitholder notified to the Trustee by the Unitholder.
- (b) Any notice sent by post is deemed to have been served on the third day following the day when it was posted and in proving such service it is sufficient to prove that the letter containing the notice was properly addressed and posted by pre-paid or franked ordinary post or airmail, and a statement signed by the Trustee that it was so posted and when shall be conclusive of those facts.
- (c) A document sent by way of facsimile transmission is deemed to be received on production of a transmission report by the machine from which the facsimile was sent, which indicates that the facsimile was sent in its entirety to the facsimile number of the Unitholder notified to the Trustee, and if produced before 5.00 pm on the day of receipt is deemed to have been received on that day but otherwise on the next day. A statement signed by the Trustee that a notice was sent by facsimile transmission and a transmission report was produced by the machine by which it was sent which indicated that the facsimile was sent in its entirety shall be conclusive evidence of those facts.
- (d) Where the Relevant Law requires that a report, statement or notice be sent to a Unitholder and:
  - (i) a copy of a report, statement or notice previously sent to the Unitholder was posted with correct pre-paid or franked postage to the Unitholder at the Unitholder's last known address and was returned undelivered to the Trustee; and
  - (ii) the Trustee has not been informed of another address of the place of residence or business of the Unitholder,

the Trustee is deemed to have complied with the requirements to send a copy of the report, statement or notice to the Unitholder.

## **19.6 Unitholder's representatives**

- (a) A Unitholder may appoint an agent by submitting a notice of appointment to the Trustee in such form as prescribed by the Trustee.
- (b) A Unitholder may revoke an agent by submitting a notice of revocation of appointment to the Trustee in such form as prescribed by the Trustee.
- (c) The Trustee may refuse to acknowledge, accept or give effect to the appointment of the Unitholder's agent and is not required to give and reason for such refusal.

- (d) A Unitholder's agent is not entitled to represent the Unitholder at any meetings where appointment of a proxy or representative is not permitted by the Relevant Law or under this deed.

**19.7 Limitation of Unitholder's liability**

- (a) The liability of a Unitholder in its capacity as a unitholder is limited to the Unitholder's investment in the Trust, represented by the Application Money tendered by the Unitholder.
- (b) A Unitholder has no liability personally to indemnify the Trustee, or any creditor of the Trustee, in respect of any of the liabilities (actual, contingent or otherwise and whether due to any deficiency or not) of the Trustee in relation to, arising from or in connection with the Trust. The rights to an indemnity of the Trustee and its creditors are limited to having recourse to Assets of the Trust.
- (c) Nothing in this deed makes the Trustee the agent of a Unitholder, or creates any relationship other than a trust relationship.