

DAN 11145720-001

DUTY \$750.00

## **Eldium Income Fund**

**Bolt Capital Pty Ltd**

ACN 636 202 223

and

**The persons named at Schedule A**

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**This deed is dated** Apr 3, 2025

**Parties:**        **The person named at Item 1 of Schedule A**  
                       **The person named at Item 4 of Schedule A**

**Recitals:**

- A.     The Original Member intends to establish a trust for the benefit of the Members.
- B.     To give effect to this wish the Original Member has paid or will pay the Initial Sum to the Trustee.
- C.     The Trustee has consented to become trustee and hold the Trust Fund on trust subject to the terms set out in this deed.

**This deed witnesses:**

**Operative provisions**

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## **1. Definitions and Interpretation**

### **1.1 Definitions**

In this deed including the recitals, unless the context indicates otherwise:

**A Class Unit** means a unit in the trust fund of the Trust designated as an A Class Unit.

**A Class Unit Capital** means, as at the time for which it is relevant, the aggregate amount subscribed by all the holders of A Class Units for the A Class Units that are presently on issue in the Trust.

**A Class Unit Final Preference Amount** means the sum of:

- (a) any A Class Unit Capital that has not been returned to the holders of the A Class Units by way of a distribution of capital under clause 6 or upon redemption of an A Class Unit;
- (b) any Declared Rate Return for a Distribution Period that remains unpaid to the holders of the A Class Units; and
- (c) any Declared Rate Return Shortall that remains unpaid to the holders of the A Class Units.

**A Class Unit Interim Preference Amount** means:

- (a) any Declared Rate Return for a Distribution Period that remains unpaid to the holders of the A Class Units; and
- (b) any Declared Rate Return Shortall that remains unpaid to the holders of the A Class Units.

**Accounting Period** means:

- (a) the period which commences on the Commencement Date and ends on the following 30 June;
- (b) each whole year ending on 30 June during the period between the Commencement Date and the Vesting Date; and
- (c) the period which commences on 1 July immediately prior to the Vesting Date and ends on the Vesting Date.

**Affiliate** means, in respect of an entity or other person, an entity or other person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the entity, the other person, or a Relative of the other person.

**Assets** means all the property, rights and income of the Trust Fund and includes the unpaid issued price on Partly Paid Units, but not application money or property in respect of which Units have not yet been issued, proceeds of redemption which have not yet been paid or any amount in any distribution account. Where more than one Class is on issue and the Net Asset Value referable to a particular Class is being calculated, reference to "Assets" means that proportion of the Trust Assets that the Trustee considers are properly referable to each Class.

**Associates** has the meaning given in section 11 of the Corporations Act and includes:

- (a) a person who would be an associate of another person or the Relative of that other person if the other person was a body corporate and any person who directly or indirectly controls or is under the common control of any of the aforementioned persons; and
- (b) in relation to the Trustee, an entity or other person that directly, or indirectly through one or more intermediaries holds equity interests in the Trustee, or a person for whom such interests are, directly or indirectly, held on their behalf.

**Bank** means any bank, credit union, building society or other financial institution.

**Business Day** means any day that Banks are generally open for business in Sydney, New South Wales but not a Saturday, Sunday, public holiday or bank holiday.

**Capital Commitment** means the sum of the total amount required to be paid by a Member to the Trustee for the issue of a Unit and the total amount that the Member can be required to contribute under clause 3.

**Class** refers to a class of Units pursuant to clause 3.2.

**Commencement Date** means the date upon which the first Unit is issued.

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

**Declared Rate** means the percentage declared by the Trustee, in the absolute discretion of the Trustee, to be the Declared Rate for a Distribution Period.

**Declared Rate Return** means an amount calculated as an annual rate of interest on the A Class Unit Capital at the Declared Rate.

**Declared Rate Shortfall** means the amount by which the Net Income of the Trust Fund for a Distribution Period is less than the Declared Rate Return.

**Determination** means any determination pursuant to clause 5.1(e).

**Distribution Period** means:

- (a) the period which commences on the Commencement Date and ends on the last day of the calendar month in which the Commencement Date falls;
- (b) each whole calendar month during the period between the Commencement Date and the Vesting Date; and
- (c) the period which commences on first day of the calendar month immediately prior to the Vesting Date and ends on the Vesting Date.

**Encumbrance** means any interest or power reserved in or over any interest in any asset (including any retention of title or security for the performance of any obligation) having a material adverse effect on the interest encumbered.

**G Class Consent** means the written consent of all the holders of the G Class Units, which may not be unreasonably delayed, withheld or conditioned.

**G Class Holding Condition** is the condition that the total number of G Class Units issued in the Fund, in aggregate, have a Capital Commitment of at least \$5,000,000.

**G Class Unit** means a unit in the trust fund of the Trust designated as a G Class Unit.

**General Meeting** means a general meeting of Members.

**Initial Sum** means the amount specified in Item 3 of Schedule A.

**Initial Trustee** means the Trustee named in Item 1 of Schedule A to this deed.

**Liabilities** means all present liabilities of the Trust including any provision which the Trustee decides should be taken into account in determining the liabilities of the Trust, but does not include:

- (a) any amount representing Member's capital;
- (b) undistributed profits;
- (c) interest attributable to Members accruing on Members' capital;
- (d) capital reserves; or
- (e) any other amount representing the value of rights attaching to Units, whether or not redeemable,

regardless of whether characterized as equity or debt in the accounts of the Trust. Where more than one Class is on issue and the Net Asset Value referable to a particular Class is being calculated, reference to "liabilities" means that proportion of the liabilities that the Trustee considers are properly referable to each Class.

**Market Value** means:

- (a) where the Trust Fund has not been invested in separate underlying investments for Classes of Unit, the Net Asset Value of the Trust Fund, or
- (b) otherwise, the Net Asset Value of the Trust Fund attributable to the relevant Class of Unit.

**Member** means the person for the time being registered under the provisions of this deed as the holder of Units and includes a person jointly so registered.

**Member's Proportion** means with respect to the Units, a fraction:

- (a) where the numerator will be the number of Units held by that Member; and
- (b) where the denominator will be the total number of Units in the Trust.

**Net Asset Value** means the value of the Assets of the Trust Fund (or Class as appropriate) less the Liabilities of the Trust Fund (or Class as appropriate).

**Net Income** means the Trust Income of the Trust Fund for each Accounting Period.

**Office** means:

- (a) the registered office of the Trustee, if the Trustee is a company; and
- (b) the address of the Trustee, if the Trustee is a person.

**Original Member** means the Member named at Item 4 of Schedule A.

**Paid Up Proportion** means, expressed as a percentage, the proportion which the total of all amounts paid up on a Partly Paid Unit represent of the aggregate of the amounts which have been paid and which remain to be paid for that Partly Paid Unit to become a fully paid Unit.

**Partly Paid Units** means Units issued on the terms set out in clause 4.1 and that have not yet been fully paid up.

**Pay** means pay or apply or Set Aside, and may be effected by:

- (a) crediting such amount to the Member in the books of the Trust Fund;
- (b) drawing a cheque in respect of the amount payable to the Member; or
- (c) paying that amount in cash to the Member.

**Permitted Transfer** has the meaning given in clauses 9.1 and 9.3.

**Register** means the Register of Members kept pursuant to clause 8.

**Relative** in relation to a person means the spouse, former spouse, parents, siblings or child over the age of eighteen (18) of that person.

**Representative** means a person authorised by a Member to act as its representative under this deed.

**Schedule** means a schedule to this deed.

**Set Aside** in relation to a Member includes placing sums to the credit of such Member in the books of the Trust.

**Successor Trustee** means any Trustee after any Initial Trustee resigns, is replaced, substituted for or an additional Trustee is or Trustees are appointed.

**Taxable Income** means an amount equal to the net income of the Trust Fund calculated in accordance with subsection 95(1) of the Tax Act, excluding any amount which is included in respect of franking credits under Division 207 of the Tax Act.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth) as applicable.

**Trust** means the trust created by this deed, the name of which is specified in Item 2 of Schedule A.

**Trust Fund** means:

- (a) the Initial Sum;
- (b) any money and other property having the nature of either capital or income acquired or accepted by the Trustee as an addition to the Initial Sum; and
- (c) the investments and property for the time being representing those sums or any part of them.

**Trust Income** means, in respect of any Accounting Period, an amount equal to the Taxable Income of the Trust Fund for that Accounting Period. As an alternative, the Trustee may determine the Trust Income with respect to any Accounting Period to be the sum of the net income of the Trust Fund determined for that Accounting Period according to either:

- (a) the accounting policy adopted by the Trustee for the Trust under clause 15; or
- (b) any other basis for calculating the Trust Income.

**Trustee** means the Initial Trustee and any Successor Trustee.

**Unit** means a beneficial interest in the Trust created under clause 3 of this deed.

**Vesting Date** means the earliest of:

- (a) the day immediately prior to the eightieth anniversary of the Commencement Date; or
- (b) the day determined in writing unanimously by the Trustee to be the Vesting Date.

## 1.2 Interpretation

In this deed unless the context indicates otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all other genders;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;



- (e) a reference to a clause or annexure is to a clause of or annexure to this deed;
- (f) a reference to a request or notice means a request or notice in writing;
- (g) a reference to any party to this or any other document includes the party's successors and permitted assigns;
- (h) a reference to a document is to that document as amended, novated, supplemented, varied or replaced from time to time and includes any annexures, schedules and appendices to that document, except to the extent prohibited by that document;
- (i) a reference to any legislation or legislative provision includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;
- (j) a reference to conduct includes any act, omission, representation, statement or undertaking whether or not in writing;
- (k) mentioning anything after include, includes or including does not limit what else might be included;
- (l) a reference to a person that comprises two or more persons means those persons jointly and severally;
- (m) the headings are for convenience only and do not affect the interpretation of this deed;
- (n) a reference to a month means a calendar month;
- (o) a reference to dollars means Australian dollars;
- (p) a reference to time means Sydney, New South Wales time;
- (q) the Background is correct and forms part of this deed.

### **1.3 Recitals**

The parties agree that the recitals are true and correct in every material particular and form part of this deed.

### **1.4 Tax Act definitions**

In clause 16, capitalised terms have the meaning given to them in the Tax Act, unless defined otherwise.

### **1.5 Counting Partly Paid Units**

In calculating the 'number of Units held' by a Member and the 'total number of Units in the Trust' each Partly Paid Unit is to be counted as a Unit multiplied by the Paid Up Proportion applicable to the Partly Paid Unit.

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## **2. The Trust**

- (a) The Trust created by this deed will be known as the name specified in Item 2 of Schedule A.
- (b) The Trustee will hold the Trust Fund on the terms of this deed from the Commencement Date.

### **3. The Trust Fund**

#### **3.1 Units**

- (a) Subject to where separate Classes of Units are issued in accordance with clause 3.2:
  - (1) the Trustee will hold the Trust Fund on trust for the Members in proportion to each Member's Proportion;
  - (2) all Units will be of equal value; and
  - (3) each Unit will:
    - (A) entitle the Member, equally with the Members owning all other Units, to the Trust Fund as an entirety; and
    - (B) not entitle the Members to any particular security or investment comprised in the Trust Fund or any part of the Trust Fund.
- (b) Initially the Trust Fund will be divided into the total number of Units set out in Annexure A.
- (c) The Original Member will hold the number and class of Units which appears adjacent to its name in Annexure A.
- (d) For the avoidance of doubt, all Units must be issued at Market Value per unit.

#### **3.2 Classes of Units**

- (a) The Trustee may establish separate Classes of Units.
- (b) The Trustee may establish additional Classes of Units as required.
- (c) Units in a Class of Units will be of equal value.
- (d) The Trustee may allocate a part or parts of the Trust Fund to a particular Class, or particular Classes, of Units.
- (e) Subject to the provisions of this deed, every Unit will confer an equal interest in the underlying investments allocated to that Class of Units but will not confer any interest in any particular part of the Trust Fund or any investment.
- (f) A Class of Units may have interests, rights, conditions, restrictions and obligations differing from each other Class of Units.
- (g) The rights conferred on the holders of G Class Units to give G Class Consent is not to be taken as creating a fiduciary relationship between the holders of the G Class Units and Members of the Trust. The Members acknowledge and agree that the holders of the G Class Units are not and shall not be construed as fiduciaries of the Members and shall have no duties and liabilities to other Members by virtue of holding the G Class Units.

#### **3.3 Issues of Units**

- (a) The Trustee may issue additional Units from time to time in such manner as the Trustee thinks fit subject always to the Units being issued at Market Value per Unit.
- (b) For the avoidance of doubt, all Units must be issued at Market Value per Unit.
- (c) The Trustee may, in its absolute discretion, accept payment of the price for an issue of Units in the form of the transfer of property to the Trust Fund but only where the value of the property to be transferred is equal to the Market Value of the Units.
- (d) The Trustee may require any prospective new Member to sign an application for Units being substantially in the form set out in Annexure B and any other form that

the Trustee considers necessary, in its absolute discretion, for the proper administration of the Trust Fund.

- (e) The Trustee must notify in writing each applicant for membership of the Trust, of the Trustee's decision either to accept or not to accept that application. A decision to accept or not to accept an application for membership is at the absolute discretion of the Trustee.
- (f) Where the Trustee has notified an applicant that their application has been accepted, that applicant will become a Member on the date specified by the Trustee in the notice to the applicant under clause 3.3(e) (being a date not earlier than the date the Trustee received the application) or where no such date is specified, on the date the Trustee received the price for the Units in cleared funds.
- (g) Where the Trustee has notified an applicant that their application has been refused, the Trustee will refund any amount of the issue price for the Units paid by the applicant less a reasonable amount to cover the Trustee's costs of processing the application.

### **3.4 Redemption of Units**

The Trustee may in its absolute discretion redeem and cancel all or any Units, on such terms and conditions as the Trustee determines, provided that:

- (a) in all cases, the Units must be redeemed at Market Value per Unit; and
- (b) in the case of G Class Units, the G Class Holding Condition is met and the redemption will not have result that the G Class Holding Condition would cease to be met.

### **3.5 Liability of Members**

Notwithstanding any other provision of this deed:

- (a) the liability of a Member to contribute to the Trust Fund at any time is limited to the total amount of the Capital Commitment of each Member that remains unpaid from time to time;
- (b) no Member, in its capacity as a Member, has any liability to any other Member in excess of that contemplated under clause 3.5(a); and
- (c) recourse of the Trustee or Trust creditors is limited to the Trust Fund.

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## **4. Calls**

### **4.1 Issue of partly paid Units**

The Trustee may offer and issue Units on terms that the issue price of the Units is payable by one or more instalments of such amounts payable at such times as the Trustee determines.

### **4.2 Calls**

- (a) Subject to clause 4.2(h), the Trustee may in its absolute discretion:
  - (1) during the period described in Part 1 of Annexure C raise further capital not exceeding in aggregate the sum set out in Part 2 of Annexure C by a call (a **Call**) upon the Members; or
  - (2) in respect of Partly Paid Units, in its absolute discretion, make a call (**PPU Call**) upon the Members holding Partly Paid Units for payment of any or all of the unpaid issued price.

- (b) Each Call is subject to the following conditions:
  - (1) the Call must be made by notice in writing to each Member and must be paid by the Member within the time specified in the notice;
  - (2) each Member will be required to contribute to the Call an amount calculated by multiplying the amount of the Call by:
    - (A) in relation to a Call made under clause 4.2(a):
    - (B) where no part of the Net Income of the Trust Fund has been allocated to a Class or Classes of Units, in accordance with their respective Member's Proportion on the day the Call is made; or
    - (C) where the Call is being made in relation to a Class or Classes of Units, in proportion to the number of Units held by a Member in that Class or Classes on the day the Call is made divided by the number of Units of that Class or Classes on the Register on that date;
  - (3) the Trustee will be entitled to recover from each Member as a debt that part of the Call which:
    - (A) the Member is required to contribute under clause 4.2(b)(2); and
    - (B) is unpaid by the Member.
- (c) Each PPU Call is subject to the following conditions:
  - (1) the call must be made by notice in writing to each Member and must be paid by the Member within the time specified within the notice;
  - (2) each Member will be required to contribute to the PPU Call an amount equivalent to the lesser of:
    - (A) the total amount unpaid on the Party Paid Units of that Member; and
    - (B) an amount calculated by multiplying the amount of the PPU Call by the proportion of the Partly Paid Units that the Member holds in the Trust; and
  - (3) the Trustee will be entitled to recover from each Member as a debt that part of the PPU Call which:
    - (A) the Member is required to contribute under clause 4.2(b)(2); and
    - (B) is unpaid by the Member.
- (d) The funds contributed by Members in response to a Call or a PPU Call will form part of the capital of the Trust Fund and will be treated as capital subscribed and not as a debt owed by the Trustee to the Members.
- (e) The Trustee may set off against the liability of any Member to pay any part of an unpaid Call or an unpaid PPU Call, any amount which the Trustee becomes liable to pay to that Member on any account.
- (f) The Trustee may:
  - (1) require the Call or a PPU Call to be paid in instalments; and/or
  - (2) revoke or postpone a Call or a PPU Call before its due date for payment.
- (g) Failure to send a notice of a Call or a PPU Call to any Member or a non-receipt of a notice by any Member does not invalidate the Call or the PPU Call.
- (h) Joint Members are jointly and severally liable to pay all Calls and PPU Calls in respect of their Units.
- (i) If both Parts 1 and 2 of Annexure C bear the endorsement 'not applicable' then any Calls may be made.

- (j) Where the Trustee has previously made a Call under clause 4.2(a) and, following the Call, the Trustee Pays part of the capital of the Trust Fund to the Members under clause 6.1 (in this clause, a **Capital Return**), the amount of the Capital Return is taken to not have been subject to a Call in determining the aggregate sum that the Trustee is permitted to Call from the Members under clause 4.2(a).

#### **4.3 Interest on unpaid amounts**

If an amount on a Call is not paid on or before the due date, the Member will pay (subject to the Trustee's discretion):

- (a) interest on the unpaid amount of the Call from the due date to the time of actual payment at a rate determined by the Trustee. In setting the interest rate the Trustee may have regard to the following:
  - (1) cost of obtaining other finance, including interest and transactional costs, to cover the unpaid amount of the Call; and
  - (2) any loss of profits for the Trust as a result of the Trustee not having received the unpaid amount of the Call; and
- (b) all expenses incurred by the Trustee as a consequence of the non-payment.

#### **4.4 Lien**

- (a) The Trustee has a first and paramount lien on each Member's Units for all money due and unpaid and presently payable by that Member or a Member's estate to the Trustee.
- (b) The Trustee's lien extends to all distributions payable in respect of the Units held by a Member.
- (c) Unless the Trustee determines otherwise, the registration of a transfer of a Unit operates as a waiver of the Trustee's lien on the Unit.

#### **4.5 Lien sale**

If the Trustee has a lien on a Unit for money presently payable and the Trustee has given the Member who holds the Unit written notice demanding payment of the money, then ten (10) Business Days or more days after giving the notice, the Trustee may sell any Units held by the Member (provided the money has not been paid) in any manner determined by the Trustee.

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### **5. The Income of the Fund**

#### **5.1 Net income**

- (a) The Trustee will collect, receive and obtain all dividends, interest, rents and other income from the investments of the Trust Fund.
- (b) The Trustee will pay out of the gross income of the Trust Fund all costs and disbursements and commissions, fees, taxes, management charges and other proper outgoings in respect of the investments and administration of the Trust Fund.
- (c) The Net Income of the Trust Fund for a Distribution Period will be attributed to the A Class Units and G Class Units as follows:
  - (1) as to the A Class Units:
    - (A) a share of the Net Income up to the Declared Rate Return for that Distribution Period; and

- (B) where, in any prior Distribution Period there has been a Declared Rate Shortfall, a share of the Net Income up to the Declared Rate Shortfall not already recouped under this clause; and
- (2) as to the G Class Units, the balance of the Net Income for the Distribution Period, if any, subject always to clause 5.1(k).
- (d) For the avoidance of doubt, the holders of the G Class Units will not be entitled to share in any Net Income for a Distribution Period unless the Net Income for that Distribution Period exceeds the Declared Rate Return and any Declared Rate Shortfall in a prior Distribution Period has been fully recouped under clause 5.1(c).
- (e) Until the Vesting Date the Trustee may at any time before the expiration of each Distribution Period determine to Pay all or any part of the Net Income for that Distribution Period. The Net Income may be Paid by an interim or final distribution.
- (f) Until the Vesting Date, where at any time during a Distribution Period the Trustee issues or redeems any A Class Units or G Class Units (a **Unit Transaction**), the Trustee will hold so much of the Net Income for the Distribution Period up to the day of the Unit Transaction which has not previously been subject to a Determination under this deed in trust for the Members as follows:
  - (1) in relation to the Net Income of the Trust Fund allocated to the A Class Units under clause 5.1(c) for that Distribution Period, in proportion to the number of A Class Units held by a Member divided by the number of A Class Units on the Register on the day of the Unit Transaction immediately prior to the Unit Transaction taking place; and
  - (2) in relation to the Net Income of the Trust Fund allocated to the G Class Units under clause 5.1(c) for that Distribution Period, in proportion to the number of G Class Units held by a Member divided by the number of G Class Units on the Register on the day of the Unit Transaction immediately prior to the Unit Transaction taking place.

Where Net Income for a Distribution Period is held on trust for the Members in accordance with this clause 5.1(f), the Net Income is taken to have been subject to a Determination for clause 5.1(g) and this clause 5.1(f).

- (g) The Trustee will hold so much of the Net Income of each Distribution Period which is not the subject of a Determination under this deed in trust for the Members:
  - (1) in relation to the Net Income of the Trust Fund allocated to the A Class Units 5.1(c), in proportion to the number of A Class Units held by a Member divided by the number of A Class Units on the Register on the last day of such Distribution Period;
  - (2) in relation to the Net Income of the Trust Fund allocated to the G Class Units 5.1(c), in proportion to the number of G Class Units held by a Member divided by the number of G Class Units on the Register on the last day of such Distribution Period.
- (h) Any amount Set Aside for any Member pursuant to clause 5.1(g) and any amount held by the Trustee on trust for any Member pursuant to this clause 5 will not form part of the Trust Fund, however, upon being Set Aside or becoming subject to such trust (as the case may be) the amount held by the Trustee for the Member will, from that time, be held on trust by the Trustee as a separate trust fund for such person absolutely. The Trustee will, pending Payment of that amount to such person, have the power to invest, apply or deal with such fund or any resulting income from that amount or any part of that amount in the manner authorised by clause 19.1.

- (i) The Trustee may in its absolute discretion Pay an amount, or part of an amount, to which a Member is entitled under this clause 5 by:
  - (1) issuing further Units in the Trust to the Member with a value equal to the amount to be Paid to the Member; or
  - (2) transferring Trust property to the Member with a value equal to the amount to be Paid to the Member.
- (j) All Net Income Payable to Members under this clause 5 will be Payable to them separately and income received by the Trustee will not be received or construed as received by or on behalf of the Members jointly or otherwise.
- (k) Whilst the G Class Holding Condition is not met, the Trustee must Pay an amount, or part of an amount, to which the holders of the G Class Units are entitled under this clause 5 in a Distribution Period by issuing further G Class Units to the holders of the G Class Units with a value up to the lesser of:
  - (1) the amount required for the G Class Holding Condition to be met; and
  - (2) the amount payable to the holders of the G Class Units in that Distribution Period.

For the avoidance of doubt, the balance of any amount to which the holders of the G Class Units are entitled under this clause 5 which is not applied to acquire further G Class Units under this clause 5.1(k) will otherwise be attributed to the holders of the G Class Units in accordance with clause 5.1(c)(2).

## 5.2 Determination rules

The following rules will apply to any Determination:

- (a) any Determination will be conditional upon it being proved that the Net Income exists at the end of the Distribution Period;
- (b) The Trustee's discretion to make a Determination is absolute and the Trustee will not be bound to give any reason for its determination.

## 5.3 Present Entitlement

A Member who has an entitlement to Net Income as calculated under clause 5.1 or 5.2 as at the last day of the Distribution Period is presently entitled to that Net Income of the Trust for the Distribution Period as at the last day of the Distribution Period.

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# 6. Capital Distribution

## 6.1 Interim distribution

The Trustee may at any time prior to the Vesting Date determine to Pay any part of the capital of the Trust Fund to the Members provided that, subject to clause 18, any such interim distribution of capital must be made to the Members:

- (a) up to the A Class Unit Interim Preference Amount, to the holders of the A Class Units in proportion to the number of Units held by the holder of the A Class Unit on a date determined by the Trustee divided by the number of A Class Units on the Register on that date; and
- (b) after the A Class Unit Interim Preference Amount has been Paid to the holders of the A Class Units, to the holders of the G Class Units in proportion to the number of G Class Units held by the holder of the G Class on a date determined by the Trustee divided by the number of G Class Units on the Register on that date, except no amount of capital may be Paid to the holders of the G Class Units where:
  - (1) the G Class Holding Condition is not met; or

- (2) the amount Paid would have the result that the G Class Holding Condition would cease to be met.

## 6.2 Final distribution

As from the Vesting Date, the Trustees will stand possessed of the Trust Fund in trust for the Members:

- (a) up to the A Class Unit Final Preference Amount, to the holders of the A Class Units in proportion to the number of Units held by the holder of the A Class Unit on the Vesting Date divided by the number of A Class Units on the Register on the Vesting Date; and
- (b) after the A Class Unit Final Preference Amount has been Paid to the holders of the A Class Units, to the holders of the G Class Units in proportion to the number of G Class Units held by the holder of the G Class Units on the Vesting Date divided by the number of G Class Units on the Register on that Vesting Date.

## 6.3 In-specie distribution

The Trustee may in its absolute discretion Pay an amount, or part an amount, to which a Member is entitled under clause 6.1 or clause 6.2 by transferring Trust property to the Member with a value equal to the amount to be Paid to the Member.

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## 7. Loans from Members

- (a) A loan to the Trust or advance of money for the benefit of the Trust made by a Member (**Lending Member**), including where under the terms of the loan the loan may convert to, or be repaid by the issue of, Units, does not increase the Lending Member's rights under this deed as a Member.
- (b) The amount of the loan or advance by a Lending Member to the Trust is a debt owed by the Trust to the Lending Member on the terms and conditions, including as to interest on the loan or advance, agreed to by the Lending Member and the Trustee.

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## 8. Register of Members

- (a) The Trustee will keep the Register which will contain the following particulars:
  - (1) the name(s) and address of each Member;
  - (2) the number of Units that each Member holds and the distinctive numbers or letters of the certificates held by each Member;
  - (3) the Class of Units held by each Member;
  - (4) the date on which the name and number of Units held by that Member was entered in the Register; and
  - (5) any other details considered necessary by the Trustee.
- (b) The Trustee will issue to each Member a certificate for the Units held by that Member. The certificate will:
  - (1) be substantially in the form set out in Annexure D;
  - (2) state the name, address and number of Units held by the Member;
  - (3) bear a distinctive number or letter;
  - (4) be prima facie evidence that the person named in the certificate is entitled to the number of Units specified in that certificate; and



- (5) be signed by the Trustee or, if the Trustee is a company, by any director of that company.
- (c) Subject to clause 8(f), no notice of any trust (express, implied or constructive) will be entered in the Register.
- (d) Subject to clause 8(f), the person entered in the Register as the Member will be the only person recognised by the Trustee as entitled to:
  - (1) the Units registered in its name; or
  - (2) exercise the rights and privileges of the Member pursuant to this deed.
- (e) Except where this deed otherwise provides:
  - (1) no person will be recognised by the Trustee as holding any Unit upon trust; and
  - (2) the Trustee will not be bound by or be compelled to recognise (even when having notice of such interest):
    - (A) any equitable, contingent, future or partial interest in any Unit; or
    - (B) any other rights in respect of any Unit,
 except an absolute right in the Member to the Units that Member is entitled.
- (f) Units held by a trustee in respect of another trust may be marked in the Register in such a way as to identify them as being held in respect of that trust but:
  - (1) no liability will be created by any such marking; and
  - (2) the Trustee will not be affected by notice of any trust recorded in this manner.
- (g) If a transferee of Units so requests in writing, the Trustee may:
  - (1) issue a certificate of Units in the name of a fund which is held by a trustee or another trust;
  - (2) subject to the provisions of this deed relating to transfers:
    - (A) register any transfer signed by the trustee for the time being of that fund; and
    - (B) pay all distribution cheques to such trustee or to the fund by its name; and
  - (3) any payments pursuant to clause 8(g)(2) will be a good discharge to the Trustee who will not be bound to oversee the application of any monies paid to such a fund or to the trustees of such a fund.
- (h) Nothing contained in this deed will be construed in such a way as to affect the rights of any beneficiary or the beneficial ownership of any property held under any trust other than the Trust created by this deed.
- (i) Each person who becomes registered as a Member will be deemed to:
  - (1) have agreed to become a party to this deed; and
  - (2) will be entitled to the benefit of and will be bound by the terms and conditions of this deed.
- (j) The Trustee may delegate its obligation to keep and maintain a Register under this clause 8 to external unit registry service provider and, to the extent that the service provides a fee for such services, the Trustee is entitled to be indemnified out of the Trust Fund.

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## 9. Unit Transfer

## 9.1 Transfer

- (a) A Member must not transfer any of its Units except with the consent of the Trustee (a **Permitted Transfer**). Whether the Trustee is to consent to a transfer of Units is at the sole and absolute discretion of the Trustee.
- (b) Subject to clause 9.1(a), Units may be transferred by a written transfer instrument in a form approved by the Trustee and must be executed by or on behalf of the transferor and the transferee. The form for a written instrument of transfer at Annexure F will be taken to be approved by the Trustee unless the Trustee notifies the Members of a different form.
- (c) A transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units. A transfer of Units does not pass the right to any unpaid distributions on the Units until registration.

## 9.2 Transfer procedure

- (a) For a transfer of Units, the written transfer instrument must be left at the Office together with any fee the Trustee requires. The transfer must be accompanied by a certificate for the Units dealt with in the transfer, unless the Trustee waives production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate and of evidence required by the Trustee of the transferor's right to transfer the Units.
- (b) Subject to the powers vested in the Trustee by this deed, the Trustee must register all registrable transfer forms and issue certificates without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

## 9.3 Permitted Transfers

A Member may transfer any of its Units:

- (a) to a Relative, Associate or Affiliate;
- (b) where a Member holds Units in its capacity as trustee, custodian or nominee of a trust:
  - (1) to the beneficiary or beneficiaries that have a vested and indefeasible interest in the relevant Unit pursuant to the governing rules of the trust; or
  - (2) where the transfer is to a person acting in the capacity as trustee, custodian or nominee of the same trust for which the Units were held,

(each also a **Permitted Transfer**).

## 9.4 Right to refuse registration

- (a) The Trustee may, in its absolute discretion and without assigning any reason, decline to register any transfer of Units or other securities unless, subject to clause 9.4(b), it is:
  - (1) a Permitted Transfer; or
  - (2) in accordance with the procedure set out in clauses 9.2, 10 and 11.
- (b) The Trustee may, in its absolute discretion, refuse to register any transfer of Units or other securities on which stamp duty is payable but unpaid.

## 9.5 Title on death

- (a) The legal personal representative of a deceased Member who was the sole holder of Units is the only person whom the Trustee will recognise as having any title to the deceased Member's Units.

- (b) If a deceased Member was a joint holder of Units, the other joint holder is the only person whom the Trustee will recognise as having any title to the deceased Member's Units.
- (c) The estate of the deceased Member will not be released from any liability to the Trustee in respect of the Units.
- (d) The Trustee may register a transfer to a transferee who dies before the transfer is registered.

## 9.6 Transmission

- (a) Subject to the *Bankruptcy Act 1966* (Cth), any person who becomes entitled to a Unit in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Trustee evidence, which is satisfactory to the Trustee of its entitlement elect to be registered as the holder of the Unit must deliver or send to the Trustee a written signed notice of its election to be registered as the holder of the Unit.
- (b) Where two (2) or more persons are jointly entitled to any Unit in consequence of the death of the registered holder, they will be considered to be joint holders of the Unit.
- (c) Any person who is registered under this clause 9.6 must indemnify the Trustee against all liabilities, costs, losses and expenses incurred by the Trustee as a result of registering the person.
- (d) Nothing in this clause 9.6 releases the estate of a Member from any liability in respect of the Units of the Member, whether the Units were held by the Member solely or jointly with other persons.

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## 10. Drag Along Provisions

- (a) Subject to G Class Consent, if a Member or Members holding fifty per cent (50%) or more of the Units of the Trust (**Vendor**) wish to sell the whole of the parcel of Units owned by the Vendor, and as a condition of such sale the proposed purchaser (**Purchaser**) wishes to acquire the whole of the Units, then the Vendor may deliver to each other Member (**Other Members**) a notice (**Drag Along Notice**) requiring each Other Member to sell all of the Units of the Other Members to the Purchaser on the same terms and conditions intended to be accepted by the Vendor.
- (b) Following receipt of a Drag Along Notice, each Other Member must sell all of the Units of that Other Member to the Purchaser and deliver to the Purchaser on the completion date specified in the Drag Along Notice:
  - (1) duly executed transfers of all Units owned by that Other Member; and
  - (2) certificates relating to the Units to be transferred.
- (c) Other Members shall not be required to provide warranties (other than as to title) as part of the sale to the Purchaser pursuant to the Drag Along Notice.
- (d) A Drag Along Notice must specify the identity of the Proposed Purchaser and the terms and conditions intended to be accepted by the Vendor.

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## 11. Tag Along Provisions

Subject to G Class Consent, if a Member or Members holding fifty per cent (50%) or more of the ordinary Units of the Trust (**Vendor**) wish to sell all of the Units owned by the Vendor to a proposed purchaser (**Purchaser**) (**Third Party Sale**):

- (a) the Vendor must, before binding itself to a Third Party Sale, give written notice of the proposed Third Party Sale to each other Member (**Other Member**) detailing the price and other terms of the proposed Third Party Sale (**Third Party Sale Notice**);
- (b) any Other Member may within seven (7) days of receipt by that Other Member of a Third Party Sale Notice, issue a written notice to the Vendor (**Tag-Along Member**) requiring the Vendor to make it a condition of the Third Party Sale that the Purchaser buy the Units from such Tag-Along Member (**Tag-Along Notice**) provided that such Tag-Along Notice:
  - (1) specifies the number of Units to be purchased;
  - (2) specifies the same price for Units that is being offered to the Vendor under the proposed Third Party Sale; and
  - (3) is on the same terms and conditions as the Purchaser is proposing to acquire the Units of the Vendor (**Tag-Along Sale**);
- (c) if any of the Other Members gives a Tag-Along Notice to the Vendor, then the Vendor will only be permitted to complete or proceed with any Third Party Sale if the Purchaser also acquires the Units of the Tag-Along Member at the same price per Unit as set out in the Tag-Along Notice and otherwise on the same terms and conditions as the proposed Third Party Sale; and
- (d) an Other Member may sell its Units to the Purchaser in accordance with this clause without the need for the Other Member to itself be subject this clause 11.

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## 12. General Meetings

### 12.1 Convening general meeting

- (a) The Trustee may convene a General Meeting at any time.
- (b) The Trustee will convene a General Meeting upon a request from a Member with at least five percent (5%) of the votes that may be cast at the General Meeting.

### 12.2 Notice

- (a) Subject to clause 12.2(b), at least twenty-one (21) days written notice of any General Meeting (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members.
- (b) A Trustee may call a General Meeting on less than twenty-one (21) days' notice if Members with at least ninety-five percent (95%) of the votes that may be cast at the General Meeting agree beforehand.
- (c) A notice convening a General Meeting:
  - (1) must specify the place, date and time of the meeting;
  - (2) must if the meeting is to be held in two or more places, specify the technology that will be used;
  - (3) must state the general nature of the business to be transacted at the meeting; and
  - (4) may specify a place and electronic address for the purposes of proxy appointment.
- (d) The Trustee may postpone or cancel any General Meeting whenever it thinks fit (other than a meeting convened as the result of a request under clause 12.1(b)) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Trust.

- (e) The failure or accidental omission to send a notice of a General Meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.

### **12.3 Quorum**

- (a) No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) A quorum of Members is two Members (unless there is only one Member, in which case a quorum is that Member) who together have at least twenty percent (20%) of the issued Units.
- (c) If a quorum is not present within thirty (30) minutes after the time appointed for a General Meeting:
  - (1) if the meeting was convened on the requisition of Members, it is automatically dissolved; or
  - (2) in any other case:
    - (A) it will stand adjourned to the same time and place five (5) Business Days after the meeting, or to another day, time and place determined by the Trustee; and
    - (B) if at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting, it is automatically dissolved.

### **12.4 Chair**

- (a) The Trustee will nominate the chair for every General Meeting.
- (b) If there is no chair or the chair is not present within fifteen (15) minutes after the time appointed for holding the General Meeting or the chair is unwilling to act as chair of the General Meeting the Members present may elect a chair.
- (c) If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

### **12.5 Adjournment**

- (a) The chair may, with the consent of any General Meeting at which a quorum is present, and will, if directed by a meeting at which a quorum is present, adjourn the meeting.
- (b) An adjourned General Meeting may take place at a different venue to the initial meeting.
- (c) The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.
- (d) If a General Meeting has been adjourned for more than twenty-one (21) days, at least three (3) Business Days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

### **12.6 Resolutions**

- (a) Subject to clauses 12.6(b) and 13.2, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
  - (1) the chair;
  - (2) at least three Members entitled to vote on the resolution; or

- (3) Members with at least five percent (5%) of the votes that may be cast on the resolution on a poll.
- (c) If there is an equality of votes the chair has a second or casting vote in addition to the chair's votes as a Member, proxy, attorney or Representative.
- (d) Unless a poll is demanded a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (e) A poll may be demanded:
  - (1) before a vote is taken;
  - (2) before the voting results on a show of hands are declared; or
  - (3) immediately after the voting results on a show of hands are declared.

### **12.7 Taking a poll**

- (a) A poll will be taken in the manner that the chair directs.
- (b) The result of the poll will be the resolution of the meeting at which the poll was demanded.
- (c) The chair may determine any dispute about the admission or rejection of a vote.
- (d) The chair's determination will be final and conclusive if made in good faith.
- (e) A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.
- (f) After a poll has been demanded at a General Meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

### **12.8 Written resolutions**

- (a) If Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the requisite voting threshold is first satisfied by the necessary number of Members signing the document.
- (b) A written resolution cannot be used in respect of the removal of the Trustee unless it is signed by all of the Members, in which case it will be taken to have passed at a General Meeting held on the day on which the document was last signed by a Member.
- (c) For the purposes of clause 12.8(a) and 12.8(b), two (2) or more identical documents, each of which is signed by one or more Members, together constitute one document signed by those Members on the days on which they signed the separate documents.
- (d) Any document referred to in this clause 12.8 may be in the form of facsimile or email transmission.
- (e) If the Trust has one Member, a resolution may be passed by the Member recording it and signing the record.

### **12.9 Directing the Trustee**

For the avoidance of doubt, nothing in this clause 12 or in clause 13:

- (a) provides the Members with, or confers on the Members, a power or right to direct the Trustee, unless such right or power is otherwise expressly conferred under this deed; and

- (b) is to be taken as requiring the Trustee to consult with, or seek consent from, Members to decisions of the Trustee in the conduct of the affairs of the Trust or in exercising any powers under this deed, unless otherwise expressly required under this deed.

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## **13. Members' Voting Rights**

### **13.1 Votes of Members**

- (a) Subject to this deed:
  - (1) every Member may vote;
  - (2) subject to clause 13.1(b), on a show of hands every Member has one vote; and
  - (3) subject to clause 13.1(b), on a poll every Member has one vote for each Unit held by them.
- (b) A Member is not entitled to vote or to be counted in a quorum unless all calls and other sums payable by the Member in respect of Units have been paid.
- (c) If two or more joint Members purport to vote, the vote of the joint Member whose name appears first in the Register will be accepted, to the exclusion of the other joint Member or Members.
- (d) An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- (e) An objection must be referred to the chair of the General Meeting, whose decision is final.
- (f) A vote which the chair does not disallow pursuant to an objection is valid for all purposes.
- (g) A person who has satisfied the Trustee not less than twenty-four (24) hours before a General Meeting that it is entitled to a Unit by operation of law may exercise all rights attached to the Unit in relation to a General Meeting, as if the person was the registered holder of the Unit.
- (h) If a Member appoints one proxy, that proxy may vote on a show of hands but if a Member appoints two proxies, neither proxy may vote on a show of hands.
- (i) A proxy may demand or join in demanding a poll.

### **13.2 Reserved matters for the holders of the G Class Units**

- (a) A decision by the Trustee on the following matters requires G Class Consent to be passed:
  - (1) the approval of a Member or Members to transfer Units in the Trust exceeding twenty (20%) of the issued capital of the Trust;
  - (2) a decision to appoint and remove a Trustee;
  - (3) varying any provision of this deed; or
  - (4) declaring any new or other trusts.
- (b) The matters set out in clause 13.2(a) do not require consent from Members, other than from the holders of the G Class Units.
- (c) Despite anything else in this Trust Deed, the Trustee may take such action without G Class Consent in circumstances where a failure to act:
  - (1) would, or may, result in the Trustee to its actual knowledge breaching a law, statute, decree, order or judgment;

- (2) would be inconsistent with the Trustee's duties under this trust deed or the terms of its Australian financial services licence; or
- (3) would result in the Trustee sustaining or incurring loss or damage for which an effective or enforceable indemnity is not available under the trust deed or by law, or if the Trustee reasonably believes it would not be indemnified to its satisfaction.

### **13.3 Appointment of proxy**

- (a) A Member who is a natural person may appoint one or two proxies by a written appointment signed by the Member or the Member's attorney.
- (b) A Member that is a corporation may appoint one or two proxies by a written appointment under the Member's common seal or signed by a director, secretary or attorney of the Member.
- (c) A proxy need not be a Member.
- (d) If a Member appoints two proxies and the appointment does not specify the proportion of the Member's voting rights to be exercised by each proxy, then each proxy may exercise one-half of the votes.
- (e) An appointment of a proxy must be in a form approved by the Trustee and the form at Annexure E will be taken to be approved by the Trustee unless the Trustee notifies the Members of a different form:
- (f) An instrument appointing a proxy will be valid if it contains the following information:
  - (1) the Member's name and addresses;
  - (2) the Trust's name;
  - (3) the proxy's name or the office held by the proxy; and
  - (4) the meetings at which the proxy may be used.
- (g) An appointment of a proxy may be a standing appointment.
- (h) A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.
- (i) A proxy's appointment is valid at an adjourned meeting.
- (j) The instrument appointing a proxy or attorney (if any) must not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, be:
  - (1) deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or
  - (2) be transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting.
- (k) An undated proxy will be taken to be dated on the day that it is received by the Trustee.

### **13.4 Validity of proxy votes**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if, before the vote was cast, the appointor dies, becomes of unsound mind, revokes the proxy or power or transfers the Units in respect of which the vote was cast, unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Trustee before the relevant meeting or adjourned meeting.



### **13.5 Representatives of corporations**

- (a) Any Member which is a corporation (the **Corporate Member**) may authorise a natural person to act as its Representative at any General Meeting.
- (b) At the relevant General Meeting a Representative may exercise all the powers which the Corporate Member could exercise if it were a natural person. When its Representative is present at a meeting, the Corporate Member will be considered to be personally present at the meeting.
- (c) The chair of a General Meeting may:
  - (1) permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment; or
  - (2) allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chair his or her status as a Representative within a period prescribed by the chair of the General Meeting.

## **14. Administration of Trust Fund**

### **14.1 Minutes**

The Trustee must keep minutes of all resolutions and proceedings.

### **14.2 Books and records**

The Trustee must keep books of account and records of the Trust Fund.

### **14.3 Corporate Trustee**

If any Trustee is a corporation, the powers, discretions and authorities vested in the Trustee by this deed may (subject to its constituent documents) be exercised for and on behalf of that Trustee by its board of directors.

### **14.4 Other trust funds**

The Trustee may use, deal with and administer any part of the Trust Fund together with any asset held by the Trustee in the Trustee's own right or as trustee of any other trust.

### **14.5 Valuations**

- (a) The Trustee may at any time obtain a valuation of any property of the Trust Fund from a person the Trustee considers appropriately qualified or experienced and may rely on that valuation in exercising any of its powers under this deed.
- (b) The Trustee will if directed by the Members in General Meeting to do so, appoint a competent valuer or expert to value the property and assets of the Trust Fund.

## **15. Accounting Policy**

### **15.1 Accounting**

The Trustee must, pursuant to this clause 15, record and account for all:

- (a) income from the investment of and other accretions to the Trust Fund; and
- (b) outgoings whether on capital or revenue account.

## 15.2 Method of accounting

The Trustee may:

- (a) decide whether the income, accretions, expenditure and outgoings of the Trust Fund are capital or income and whether they are to be accounted for on the basis of receipts or accruals; and
- (b) account for some part of the Trust Fund on one basis and the rest of the Trust Fund on another basis.

## 15.3 Variation of method of accounting

The Trustee may vary the basis of accounting for the whole or any part of the income, accretions, expenditure and outgoings of the Trust Fund from one Accounting Period to the next as the Trustee thinks appropriate.

## 15.4 Accounting standards

Subject to clauses 15.2 and 15.3, the Trustee must account according to generally accepted accounting standards.

## 15.5 Treatment of income and capital

- (a) Notwithstanding anything contained in clauses 15.2 to 15.4, the Trustee may for any Accounting Period elect to account for the whole or some part of the Trust Fund on the basis which is used to calculate its Taxable Income for that Accounting Period, in which case:
  - (1) the accruals, accretions, losses and outgoings which go to make up the Taxable Income of the Trust Fund will be treated on revenue account for all the purposes of this deed; and
  - (2) all other accruals, accretions, losses and outgoings will be treated on capital account.
- (b) The Trustee may determine whether any sum received or disbursed is on account of capital or revenue, or partly on account of capital and partly on account of revenue and in what proportions.

## 15.6 Preparation of accounts

The Trustee may from time to time and must at the end of each Accounting Period prepare accounts for the Trust Fund in accordance with this clause 15.

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# 16. Indemnity

## 16.1 Trustee's responsibility

- (a) The Trustee is:
  - (1) not personally responsible or liable in respect of the execution or purported or attempted execution of, or failure or neglect to exercise or carry out any of the Trustee's duties, authorities, powers or discretions;
  - (2) entitled to be indemnified out of the Trust Fund against all liabilities incurred by the Trustee as trustee of the Trust; and
  - (3) entitled to a lien on, and may use the Trust Fund for the indemnity and generally for the payment of all proper costs and expenses of performing the Trustee's duties under this deed.
- (b) Notwithstanding clause 16.1(a), the Trustee is not entitled to be indemnified out of the Trust Fund to the extent that a liability is incurred due to:
  - (1) the Trustee's fraud, dishonesty, gross negligence; or

- (2) a breach of trust or breach of duty knowingly or wilfully committed by the Trustee.
- (c) The indemnity in this clause 16 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.

## **16.2 Trustee's right of indemnity**

The Trustee's right of indemnity is limited to the right described in this clause 16. The Trustee has no right to be indemnified by any of the Members against any liability incurred by the Trustee as trustee of the Trust.

## **16.3 Indemnity where part of Trust Fund allocated to Class of Units**

Notwithstanding clause 16.1, where a liability of the Trustee arises from actions of the Trustee relating solely to a part of the Trust Fund allocated to a Class or Classes of Units, the Trustee will be entitled to be indemnified (whether by way of indemnity exoneration of recoupment) out of the part or parts of the Trust Fund allocated to that Class or Classes of Units but not out of any part of the Trust Fund allocated to another Class of Units.

# **17. Remuneration**

## **17.1 Outside interests**

Any Trustee, a director or officer of a corporate Trustee, an Affiliate of the Trustee, or an Associate of the Trustee may:

- (a) be a director or other officer of any company, the shares, stock, debentures or unsecured notes of which any of the money forming part of the Trust Fund is for the time being invested; and
- (b) receive and retain for its own use all remuneration and expenses from time to time fixed in conformity with the constitution of that company.

## **17.2 Remuneration**

The Trustee may charge and be paid out of the Trust Fund or its income such remuneration as the Trustee in its absolute discretion thinks fair and reasonable, having regard to the work done and responsibility assumed in connection with the Trust.

## **17.3 Solicitors, accountants and professionals**

Any Trustee or director or officer of a corporate Trustee being a solicitor, accountant or other professional person:

- (a) may be employed to transact any business or do any act required to be done in connection with the Trust; and
- (b) is entitled to be paid all proper costs, charges, fees and expenses for any professional business or act done by him or his firm in relation to the Trust as he would have been entitled to receive in respect of that business if he had not been a Trustee or a director of a Trustee.

# **18. Attribution Managed Investment Trust**

- (a) The Trustee may make an election that the Trust is an Attribution Managed Investment Trust.
- (b) Where there is more than one Class of units on issue, the Trustee may make an election to treat each class as a separate Attribution Managed Investment Trust.

- (c) Notwithstanding any other provision to the contrary in this deed, for any AMIT Income Year:
  - (1) the Trustee will determine Determined Trust Components, Member Components and Determined Member Components on a fair and reasonable basis. The Trustee may determine Member Components and Determined Member Components having regard to:
    - (A) the period of time during an Accounting Period that a Member or former Member of the Trust was a Member;
    - (B) the number of Units held by a Member;
    - (C) the rights attaching to the Class of Units held by a Member; and
    - (D) the gains realised as a result of the Trustee realising sufficient Assets to satisfy a redemption request made by a Member.
  - (2) the Trustee may apply an Under or Over in calculating the Determined Trust Components and Determined Member Components for the Trust for an AMIT Income Year.
- (d) Notwithstanding any other provision to the contrary in this deed, where the Trustee has made a valid election to be an Attribution Managed Investment Trust, no power may be performed, exercised or provided by the Trustee or the Members pursuant to this deed if it would cause the Trust to fail to qualify as an Attribution Management Investment Trust for the purpose of the Tax Act.

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## **19. General Powers**

### **19.1 All powers at law**

Except as expressly provided, the Trustee has in addition to all the specific powers provided in this deed:

- (a) all the powers authorities and discretions of a natural person;
- (b) all powers, authorities and discretions conferred by the common law, equity and by legislation on trustees; and
- (c) will not be restricted or obligated by provisions relating to trustees contained in any legislation of the Commonwealth of Australia or any of its States or Territories.

### **19.2 Trustee may act as if beneficial owner**

The Trustee may generally with respect to the Trust Fund perform all acts of alienation and hypothecation and other acts of ownership to the same extent and with the same effect as might have been done if the Trustee were the beneficial owner of the Trust Fund.

### **19.3 Partnership**

The Trustee may exercise all the powers and authorities vested in the Trustee by this deed solely or jointly, or in partnership, or otherwise in conjunction with any other person or persons, whether those persons act on their own behalf or as trustees of any other trust.

### **19.4 Power to delegate**

- (a) The Trustees will not be bound in any case to act personally but will be at full liberty to act through managers or to employ any contractor, manager solicitor, accountant, clerks, workmen, employees, or servants or any agents to transact all or any business of whatever nature which they are required or permitted to do including the receipt and payment of money and the Trustees will decide the remuneration to be allowed and paid and all charges and expenses so incurred.

- (b) The Trustees will have power from time to time to appoint one or more attorneys under power or powers of attorney to act jointly or severally and with a specific transaction or class of transactions or generally and in a particular place or in any place in relation to executing any document or doing any act or receiving notice moneys or other property in respect of the Trust Fund or any asset for the time being comprised therein or to be acquired by the Trustees or in respect of any business carried on or proposed to be carried on by the Trustees or in respect of the exercise of any powers conferred on the Trustees by this deed or by law whether or not the Trustees have disclosed to any such attorney or any person dealing with such attorney that in respect of the power to be so delegated they are acting as Trustees.
- (c) The Trustees will have power from time to time to cause or permit any person to have and remain in possession or control of the Trust Fund or any part thereof without the Trustees being liable for any loss occasioned thereby.
- (d) The Trustees will have power from time to time to give proxies or powers of attorney with or without power of substitution for voting or acting on behalf of the Trustees as the owners of any shares securities bonds notes or other evidence of interest in or obligations of any corporation or person.
- (e) Assets comprised in the Trust Fund (including land and/or securities payable to bearer) may be held by or in the name of the Trustees and/or acquired by and/or held by and/or in the name of and/or under the legal control of any other person (in this clause called the **Nominee**) whether or not being one of the Trustees as nominee and/or bare trustee for the Trustees in any part of the world with or without the right to receive the income (if any) and the Trustees will have power:
  - (1) to transfer, and/or procure the transfer by a third party of, such assets to the nominee to be so held;
  - (2) to permit such assets to remain so held;
  - (3) to give direction to the Nominee (in conformity with the other provisions of this deed) as to the dealing with or payment of income or assets so held; and/or
  - (4) to procure the Nominee to execute, deliver and permit to be registered a mortgage or other security over any asset comprised in the Trust Fund held from time to time by or in the name of the Nominee as security for the performance of any obligation by any person or corporation arising out of the exercise by the Trustees of any power contained in this deed and/or for the repayment of any moneys borrowed and/or raised by the Trustees and/or any other person (whether a Beneficiary or not) pursuant to any power or authority herein contained in this deed and/or the performance by the Trustees and/or any other person (whether a Beneficiary or not) or any obligation incurred by the Trustees and/or any other person (whether a Beneficiary or not) pursuant to and in accordance with the powers and authorities contained in this deed and the Nominee will not be obliged to disclose to the other party to such mortgage or security the basis upon which the Nominee holds the assets the subject of such mortgage or security;
  - (5) to permit and/or procure the Nominee to deal with the assets so held and/or the income therefrom in any manner which the Trustees are authorised to deal with assets from time to time comprised in the Trust Fund pursuant to the provisions contained in this deed; and/or
  - (6) to indemnify the Nominee in respect of any liability arising out of any act or omission done or omitted to be done pursuant to, or in consequence of the exercise by the Trustees of any of the powers contained in this deed.

- (f) If the Trustees exercise the power conferred by clause 19.4(e):
- (1) the Nominee will not (unless he is one of the Trustees) be concerned with the trusts of this deed or be responsible for any loss caused or breach of trust occasioned by any dealing with the same or any payment of income and/or capital made at the direction of the Trustees whether or not he has notice of such trusts, and
  - (2) the Trustees will not be responsible for any default of the Nominee or for any loss incurred in consequence of any exercise in good faith by them of such powers and will be entitled to be allowed and paid all remuneration and expenses payable to or incurred by the Nominee in connection with such holding or dealing or payment of income and/or capital.

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## **20. Investment Powers of Trustee**

### **20.1 General investment powers**

The Trustee may invest the Trust Fund or any part of it in any form of investment the Trustee thinks fit and desirable, including:

- (a) any one or more of the investments sanctioned by law in any State or Territory of the Commonwealth of Australia for the investment of trust funds;
- (b) payment of premiums on any policy of assurance on the life of any person, whether or not any such policy stands in the name of the Trustee;
- (c) the purchase of lands of any tenure anywhere in the world, including the purchase of any lands subject to any Encumbrance;
- (d) the acquisition by original subscription or by purchase or otherwise:
  - (1) the shares or options of any class or type, whether fully paid or not; or
  - (2) debentures, notes, bonds or other holdings or securities in any company;
- (e) the securities or an option over the securities of any company notwithstanding any restriction on the right of the transfer of such securities, the appointment of directors, or otherwise;
- (f) the purchase, hire or lease of any real or personal property;
- (g) hiring or leasing lease any real or personal property on such terms as the Trustee thinks fit;
- (h) the purchase or acquisition of units or sub-units of any fixed or flexible unit trust;
- (i) on deposit with any financial institution or company (any deposit may be made free of interest to any company in which the Members or any of them are shareholders or in which any part of the Trust Fund is invested in shares); and
- (j) in any business or businesses carried on by the Trustee.

### **20.2 Power to vary investment**

The Trustee may at any time vary or realise an investment of any part of the Trust Fund and reinvest money resulting from the realisation in any form of investment.

### **20.3 Set aside capital or income**

The Trustee may provide and set aside out of the capital or income of the Trust Fund to discharge or reduce any Encumbrance, debt or liability affecting the Trust Fund or any part of it.

## **21. Banking and Borrowing Powers of Trustee**

### **21.1 Bank accounts**

The Trustee may open accounts of every description with any Bank and in doing so:

- (a) conduct and operate those accounts in accordance with the customs, usages and practices of the relevant financial institution, including the power to operate any account in overdraft;
- (b) agree to the institution debiting any account with interest, costs, charges, expenses, liabilities and government imposts incurred by the institution at any time on behalf of the Trustee; and
- (c) borrow or raise money; and
- (d) secure the payment of any money or the performance of any debt, liability, contract, guarantee, indemnity or other engagement incurred or entered into by the Trustee in any way the Trustee thinks fit.

### **21.2 Negotiable instruments**

The Trustee may draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.

### **21.3 Borrowings**

- (a) The Trustee may borrow or raise moneys to be used in deriving income or other gain in augmentation of the Trust Fund, notwithstanding that the Trust Fund may already be wholly invested or applied or that the money to be borrowed or raised may exceed the value of the Trust Fund.
- (b) No lender need enquire whether the borrowing is necessary or as to its purpose or as to the application of the money borrowed.

### **21.4 Security**

The Trustee may borrow and raise money from, and grant an Encumbrance over, the property of the Trust Fund to secure the payment of money to any person, on such terms (with or without security or interest) as the Trustee thinks fit, and to join with any corporation or natural person in executing any mortgage or other document to secure the payment of money either jointly to the Trustee and that corporation or natural person or only to that corporation or natural person.

### **21.5 Validity of security**

- (a) No Encumbrance given or created by the Trustee to or in favour of any person or corporation over or in respect of the Trust Fund or any part of it will be invalid by reason of:
  - (1) any error or omission (whether of law or fact) on the part of the Trustee or its advisers; or
  - (2) of any breach of duty or trust whatsoever,
 unless it is proved to have been committed, made or omitted in personal conscious fraudulent bad faith by the Trustee.
- (b) All persons claiming any beneficial interest in the Trust Fund are deemed to have had notice of clause 21.5(a).

## **21.6 Grant of guarantee**

- (a) The Trustee may:
  - (1) give any guarantee or indemnity with or without security, solely or jointly with any other person, and with or without remuneration for the payment of money or the performance of any contract, obligation or undertaking by any person;
  - (2) grant any Encumbrance over the property (both present and future) of the Trust Fund to secure that guarantee and or indemnity; and
  - (3) give and execute a registrable security interest over all the property (both present and future) of the Trustee and the Trust Fund.
- (b) This power may be exercised even if there may be no contractual, legal, or fiduciary relationship between the Trustee and the person to whom or on behalf of whom the guarantee and or indemnity will be given.

## **21.7 Loan Trust Fund**

The Trustee may lend any part of the Trust Fund to any person (including any Member) with or without interest with or without security and upon such terms and conditions as the Trustee determines.

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## **22. Specific Powers of Trustee**

### **22.1 Conduct business**

The Trustee may conduct and terminate any trade, business or profit making undertaking or scheme anywhere in the world, either alone, in partnership or by joint venture, and under any name.

### **22.2 Employ**

The Trustee may employ and pay remuneration to any person (including a Member or Trustee) in connection with:

- (a) the transaction of any trade, business or profit-making undertaking or scheme carried on by the Trustee; or
- (b) anything required to be done pursuant to this deed.

### **22.3 Incorporate company**

- (a) The Trustee may incorporate any company (including a company to act as Trustee of the Trust Fund or any part of it) in any place under the law of that place at the expense of the Trust Fund with limited or unlimited liability for any purpose, including to acquire the Trust Fund or any part of it.
- (b) The consideration in the case of a sale of the Trust Fund or any part of it to a company incorporated pursuant to this clause 22.3 may consist wholly or partly of fully paid shares, stock, debentures or debenture stock or other securities of the company, and may be credited as fully paid and may be allotted to or otherwise vested in the Trustee and be capital in the Trustee's hands.

### **22.4 Exercise of voting rights**

- (a) The Trustee may exercise or concur in exercising the voting and other rights attaching to any securities for the time being forming part of the Trust Fund so as to become a director or other officer or employee of any company, and to vote for and to be paid and to retain for the Trustee's own use and benefit reasonable remuneration for the Trustee's services to that company.
- (b) The Trustee will have the sole and absolute discretion in the exercise of all rights appertaining to the share or other investments comprised in the Trust Fund and no



Member will have any right with respect to the Trust Fund to attend meetings of shareholders or to vote or take part in or consent to any corporate or shareholder's action or, save as expressly provided by this deed, to interfere with or question the exercise or non-exercise by the Trustee of the rights and powers of the Trustee as the owner of the investment of the Trust Fund.

## **22.5 Determination of questions**

The Trustee may determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition or winding up of the Trust Fund.

## **22.6 Legal proceedings**

The Trustee may institute and defend proceedings at law and pursue them to such final determination or compromise as the Trustee thinks advisable.

## **22.7 Engagement of professionals**

- (a) The Trustee may:
  - (1) employ and pay for such professional or other assistance (including assistance from a partner or a director of a Trustee) as the Trustee thinks necessary in the discharge of the duties of the Trustee; and
  - (2) act on the opinion or advice of or information obtained from a financial adviser, accountant, barrister, solicitor, valuer, surveyor, broker, auctioneer or other expert.
- (b) The Trustee is not responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with that opinion, advice or information.

## **22.8 Appointment of custodian**

- (a) The Trustee may appoint, from time to time, such one or more bodies corporate as the Trustee may think fit to act either as a custodian subject to such conditions as the Trustee may, from time to time, determine.
- (b) The Trustee may delegate to and confer upon each such custodian or such authorities, powers and discretions as the Trustee may think fit.
- (c) The Trustee will not be liable or responsible for any act, omission, error of judgment, negligence or breach of trust of any custodian and will not be bound to take proceedings against any custodian in respect thereof.
- (d) The Trustee may pay out of the Fund to any such custodian such remuneration for its services as the Trustee considers proper. The Trustee may also remove from time to time any such custodian.

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## **23. Appointment of Manager**

### **23.1 Appointment of Original Manager**

- (a) Subject to G Class Consent, the Trustee may appoint a manager (the **Manager**) to manage the investments of the Trust.
- (b) The Manager may be a corporation, or an Affiliate or Associate of the Trustee.

### **23.2 Removal of Manager**

- (a) Subject to G Class Consent, the Trustee may remove the Manager.
- (b) The Manager will be taken to have retired and will be automatically removed as Manager if it goes into liquidation or a receiver is appointed in respect of any of its property.

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## 24. Appointment of Trustee

### 24.1 Retirement or removal of Trustee

- (a) Any Trustee may retire upon giving one (1) month notice in writing to the holders of the G Class Units of that Trustee's desire to do so. The holders of the G Class Units may, by G Class Consent, waive the period of notice.
- (b) The holders of G Class Units may remove the Trustee as a trustee of the Trust by G Class Consent and by giving one (1) month notice in writing to the Trustee.
- (c) On the retirement or removal of a Trustee:
  - (1) with G Class Consent, the Trustee that is retiring or being removed may, prior to its retirement or removal, appoint a substitute Trustee; or
  - (2) in the event that a Trustee that is retiring or being removed does not make such an appointment prior to its retirement, the holders of the G Class Units may appoint a substitute Trustee by G Class Consent. If the Trustee that is retiring or being removed is the sole Trustee, the holders of the G Class Units will as soon as practicable appoint a substitute Trustee of the Trust Fund.
- (d) A new Trustee so appointed will execute a deed under in such form as it is submitted by the holders of the G Class Units, with G Class Consent, which the new Trustee will undertake to the Members jointly and severally to assume all of the obligations of the retiring Trustee and from the date of the deed the retiring Trustee will be released from all further obligations under this deed.
- (e) A Trustee will upon retirement or removal take such action as is necessary to vest or cause to be vested in any new Trustee or Trustees the Trust Fund and all books documents records and other property relating to the Trust Fund.
- (f) The costs charges and expenses of and in connection with the retirement and replacement of any Trustee or the appointment of any additional Trustee will be recouped from the Trust Fund.
- (g) Any deed replacing, removing or adding a trustee is not required to be registered as contemplated in sections 6, 7, 8 and 12 of the *Trustee Act 1925* (NSW).
- (h) The Trustee will be taken to have retired and will be automatically removed as trustee of the Trust if:
  - (1) being a company it goes into liquidation or a receiver is appointed in respect of any of its property; or
  - (2) it fails or neglects after reasonable notice from the Members to carry out or satisfy any duty imposed upon a Trustee by this deed.

### 24.2 Appointment of Trustee

Subject to G Class Consent, the Trustee may by deed appoint a person or corporation to be a trustee of the Trust.

### 24.3 Trustee's covenants

The Trustee covenants with the Members that it will act as trustee under this deed until the Trust is determined or the Trustee has retired or been removed from the Trust in accordance with this clause 24.

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## 25. Successor Trustee not a Beneficiary

- (a) Any entity who is or at any time has been a Successor Trustee is absolutely prohibited from being a Member under this deed.

- (b) This clause 25 and the definitions of Initial Trustee and Successor Trustee in clause 1 are not capable of being amended and are irrevocable.

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## **26. Conflict of Interest**

### **26.1 Exercise of powers**

The Trustee may exercise any of its powers notwithstanding that the Trustee or a director of the Trustee or any one or more of the Members may be directly or indirectly interested in any transaction.

### **26.2 Contracts**

The Trustee may enter into any contract with any of the directors of a Trustee or any of the Members or any trustee or trustees of any other trust of which any of the Members is a beneficiary, whether present, contingent or prospective.

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## **27. Third Party Dealings**

### **27.1 Third party dealings**

No person dealing with the Trustee needs to:

- (a) enquire as to the adequacy of the powers of the Trustee in relation to any dealing or as to the proper exercise by the Trustee of any of the powers, authorities and discretions vested in the Trustee by this deed;
- (b) enquire as to the propriety or regularity of any transaction affecting the Trust Fund or any part of it; or
- (c) see to the application of any money paid to the Trustee or to any person or corporation at the Trustee's direction.

### **27.2 Fraud**

In the absence of fraud on the part of a person dealing with the Trustee, the dealing is deemed to be within the powers of the Trustee and, therefore, to be valid and effective accordingly.

### **27.3 Discharge of liability**

The receipt of the Trustee or the receipt of any person paid at the direction of the Trustee discharges any person dealing with the Trustee from all liability in respect of the payment.

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## **28. Variation of Trust Deed**

### **28.1 Power to vary**

Subject to clauses 24, 28.2 and 28.3, and G Class Consent, the Trustee may at any time by deed:

- (a) vary any provision of this deed; or
- (b) declare any new or other trusts, powers or discretions concerning the Trust Fund or any part of it.

### **28.2 Law against perpetuities**

The Trustee may not exercise the powers in clause 28.1 to infringe the law against perpetuities (if applicable) nor the law relating to accumulations (if applicable).

### 28.3 Restrictions on power

The new or other trusts, powers, discretions, alterations or variations may not affect the beneficial entitlement to any amount already Set Aside for or vested in any Member unless that Members consents in writing.

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## 29. Power of Attorney

- (a) Upon applying for membership of the Trust, each Member severally and irrevocably appoints any two directors of the Trustee jointly as its agents and attorneys (the **Attorneys**) with power to complete and execute such documents for or on its behalf as those two directors think necessary or desirable in the administration of the Trust by the Trustee.
- (b) Without limiting the authority conferred on the Attorneys under this clause 29, the authority conferred on the Attorneys includes do anything which in the opinion of the Trustee is necessary or expedient for the Trustee:
  - (1) to accept the application of the Member as a Member of the Trust. For this purpose, the Trustee may execute any forms on behalf of the Member; and
  - (2) to transfer any property of the Trust to the Member in accordance with clause 5.1(i)(2) or clause 6.3. For this purpose, the Trustee may execute any instruments of transfer on behalf of the Member.
- (c) Each Member declares that all acts and things done by any two directors of the Trustee in exercising powers under this power of attorney will be as good and valid as if they had been done by the Member and agrees to ratify and confirm whatever is done in exercising powers under this power of attorney.

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## 30. Collection, use and disclosure of personal information

Each Member consents to:

- (a) the Trustee's collection, use, storage and disclosure of its personal and sensitive information in accordance with the Trustee's privacy policy;
- (b) the Trustee disclosing personal information of the Member to third parties as reasonably necessary for the Trustee to satisfy its obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth);
- (c) where the Trustee is making an investment on behalf to the Trust, the Trustee disclosing the personal information of the Member to third parties where such information has been requested by the third party to meet the third party's obligations under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) for an investment of the Trust.

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## 31. Notice

### 31.1 Service of notices

- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed (**Notice**):
  - (1) may be given by personal service, prepaid post, or email or such as agreed in writing between the parties;
  - (2) must be in writing, in the English language and legible;

- (3) if sent by post, or email, must be sent to the details of the relevant party as specified in Schedule A (or as otherwise notified by the recipient to each other party after the date of this deed); and
  - (4) must be signed by the party making it or, on that party's behalf, by the solicitor (external or in for, or any attorney, director, secretary or authorised agent of, that party.
- (b) Unless an email address is notified by the recipient to each other party after the date of this deed, a Notice can only be given by personal service or sent by pre-paid post.

### **31.2 Effective on receipt**

A Notice given in accordance with this clause takes effect when taken to be received (or at a later time specified in the Notice), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;
- (d) if sent by email, at the time the email is sent (provided the sender has not received a notification within eight Business Hours after the email is sent that the email was not received by the recipient),

but if the delivery, receipt or transmission is not on a Business Day, or is after Business Hours on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

### **31.3 Two or more persons**

Where two or more persons comprise a party, notice to one is effective notice to all.

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## **32. General**

### **32.1 Assignment**

The rights and obligations of each party under this deed are personal and cannot be assigned, charged or otherwise dealt with, without the prior written consent of all parties.

### **32.2 Counterparts**

This deed and any document required by this deed may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile.

### **32.3 Entire agreement**

This deed records the entire agreement between the parties as to its subject matter. Any prior negotiations, agreements, arrangements, representations and understandings as to the subject matter of this deed are superseded by this deed.

### **32.4 Further assurance**

Each party must promptly execute all documents and do all things that another party reasonably requests to effect, perfect or complete this deed and all transactions incidental to it.

**32.5 Governing law**

This deed is governed by the laws of New South Wales and the Commonwealth of Australia.

**32.6 Jurisdiction**

The parties submit to the jurisdiction of the Courts of New South Wales and the Commonwealth of Australia.

**32.7 No merger**

The rights and obligations of the parties will not merge on completion of any transaction under this deed or upon the execution of any other agreement or other document in connection with the subject matter of this deed.

**32.8 Preparation of document**

All parties participated in the preparation of this deed. No party will be deemed to be the author or drafter of this deed or any part of it.

**32.9 Preservation of rights**

All rights under this deed are in addition to and do not abrogate, limit or reduce any other rights that party may have.

**32.10 Relationship**

Unless otherwise specified nothing in this deed creates a relationship of principal and agent, employer and employee, partnership or joint venture between the parties.

**32.11 Severance**

Any provision of this deed that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this deed but only to the extent necessary to avoid that effect. All other provisions of this deed continue to be valid and enforceable.

**32.12 Time is of the essence**

Unless otherwise specified, time is of the essence in this deed.

**32.13 Waiver**

A right or obligation under this deed cannot be waived except by a document executed by the party waiving that right or obligation and specifying the waiver.

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**33. Costs****33.1 Legal costs**

The Trustee must pay from the Trust Fund the costs in relation to the negotiation, preparation and execution of this deed and any document required by this deed.

**33.2 Stamp duty**

The Trustee must pay from the Trust Fund all stamp duty, registration fees and any other fees charged by any government authority or body in respect of this deed.

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**34. Public Trading Trust**

- (a) If the Trust is to be taxed for an Accounting Period as if it were a company because it is or becomes a public trading trust for the purposes of Division 6C of Part III of the Tax Act and any provisions which amend or replace it, the following provisions of this clause 34 will apply instead of clause 5 for that Accounting Period.

- (b) If this clause 34 applies:
- (1) the Trustee will collect, receive and obtain all dividends, interest, rents and other income from the investments of the Trust Fund for the Accounting Period;
  - (2) the Trustee will pay out of the gross income of the Trust Fund all costs and disbursements and commissions, fees, taxes, management charges and other proper outgoings in respect of the investments and administration of the Trust Fund for the Accounting Period;
  - (3) as soon as practicable after the end of the Accounting Period the Trustee must determine the Taxable Income of the Trust and of each Class of Units (if relevant) in respect of the Accounting Period;
  - (4) the Trustee must provide for, and pay from the Trust Fund when appropriate, all Taxes to the Taxable Income of the Trust for each Accounting Period to which this clause 34 applies;
  - (5) to extent that the Members would have had a vested and indefeasible interest in the Net Income of the Trust Fund but for this clause 34 applying, the Members will continue to have a vested and indefeasible interest in the Net Income of the Trust Fund but will not have a right to demand payment of any part of the Net Income of the Trust Fund until such time as the Trustee makes a determination under clause 34(b)(6);
  - (6) the Trustee may, in its discretion from time to time, determine to Pay an amount, including any amount representing the Net Income or a part of the Net Income of the Trust Fund, as a distribution to Members holding Units in a Class in respect of the Accounting Period (each a **Distributable Amount**) to the Members on the register holding Units in that Class on the date of the determination (**Books Closing Date**);
  - (7) in respect of a Distributable Amount being paid to Members pursuant to this clause 34:
    - (1) the Trustee may take all necessary or desirable steps in relation to distributions, including the franking of the distributions; and
    - (2) the Trustee must take any steps or actions as may reasonably be required in order to comply with the requirements of the Tax Act in relation to trusts which are taxed as if they were companies; and
  - (8) Subject to the terms of any Units on issue, Members who hold Units in a Class are entitled to a portion of the Distributable Amount in accordance with their respective Class rights, and otherwise in accordance with their respective Members Proportion on the Books Closing Date.
- (c) For the avoidance of doubt, where the Trust is a public trading trust for the purposes of Division 6C of Part III of the Tax Act and any provisions which amend or replace it, the Trustee may at any time make a distribution of any amount of the capital of the Trust Fund in accordance with clause 6.1.
- (d) All amounts Payable to Members under this clause 34 will be Payable to them separately and income received by the Trustee will not be received or construed as received by or on behalf of the Members jointly or otherwise.
- (e) The Trustee may retain from any amounts to which a Member is entitled an amount in or towards satisfaction of any amount payable by the Member to the Trustee under this Deed or any amount that is required to be deducted by law.
- (f) The Trustee may Pay an amount, or part of an amount, to which a Member is entitled under clause 34 by:

- (1) issuing further Units in the Trust to the Member with a value equal to the amount to be Paid to the Member; or
- (2) transferring Trust property to the Member with a value equal to the amount to be Paid to the Member.




## Schedule A

<b>Item 1:</b>	<b>Trustee</b>	Name: Bolt Capital Pty Ltd ACN 636 202 223 Address: Westfield Tower 2, Suite 1704, 101 Grafton Street, Bondi Junction NSW 2022
<b>Item 2:</b>	<b>Trust Name</b>	Eldium Income Fund
<b>Item 3:</b>	<b>Initial Sum</b>	\$100
<b>Item 4:</b>	<b>Original Member</b>	Name: Eldium Funds Management Pty Ltd ACN 684 357 766 Address: Level 1, 147-49 Murray Street Pyrmont NSW 2009 Units: 100 G Class Units at \$1.00 for each Unit

**Executed** by the parties as a deed:


**Executed** in accordance with section 127 of the *Corporations Act 2001* (Cth) by **Bolt Capital Pty Ltd ACN 636 202 223**

  
Jonathan Raymond (Apr 3, 2025 16:19 GMT+11)

.....  
*Director/Secretary Signature*

Jonathan Raymond

.....  
*Print name*

  
James Watson (Apr 3, 2025 16:40 GMT+11)

.....  
*Director Signature*

James Watson

.....  
*Print name*

**Executed** in accordance with section 127 of the *Corporations Act 2001* (Cth) by **Eldium Funds Management Pty Ltd ACN 684 357 766**



.....  
*Director/Secretary Signature*

Larry Diamond

.....  
*Print name*



.....  
*Director Signature*

William Wong

.....  
*Print name*

## Annexure A

### Register of Members – Eldium Income Fund

Folio No. 1

Date of Transfer or Issue	Name and address of Unitholder	Transferred		No. of Units	Class of Units	Certificate No.	Distinctive Nos.		Balance Units Held	Amount agreed to pay per unit	Amount paid per unit	Fully Paid?
		To	From				From	To				
	Eldium Funds Management Pty Ltd ACN 684 357 766 of Level 1, 147-49 Murray Street Pyrmont NSW 2009			100	G Class	1	1	100	100	\$1.00	\$1.00	Yes

**Annexure B**  
**Application for Units**  
**Eldium Income Fund**

The Trustee(s)  
Eldium Income Fund

I/We, [*Name of prospective member*] hereby apply for the Units set out in the following table:

No of Units	Class	Amount agreed to pay per Unit

I/We enclose the sum of \$[*consideration*] in full payment for the units.

I/We hereby agree to accept the units allotted and to be bound by the terms of the Eldium Income Fund trust deed and of any amendments to that Deed.

I/We hereby authorise my/our name to be placed on the register of members in respect of the units.

Dated:

.....  
[*Insert name of prospective Member*]

## **Annexure C**

**Part 1:** Period within which calls may be made under clause 4.2(a)

Not applicable

**Part 2:** Maximum aggregate of calls made under clause 4.2(a)

Not applicable

**Annexure D**  
**Unit Certificate**  
**Eldium Income Fund**

(Constituted by the Trust Deed dated the                      day of                      )

**Certificate No.**    [insert certificate number]

*This is to certify that [insert name of member] of [insert address of member] is the registered holder of [insert number of units held] units in the Trust.*

No of Units	Distinctive Numbers		Class	Amount agreed to pay per Unit	Amount paid per Unit	Fully paid?
	From	To				

**Dated** this                      day of

\_\_\_\_\_  
Trustee/Director of Corporate  
Trustee

\_\_\_\_\_  
Full Name of Signatory (Printed)

This Certificate must be delivered to the Trustee on application to transfer any of the Units comprised in that application.

**Annexure E**  
**Proxy Form**  
**Eldium Income Fund**

I/We ..... of  
..... being a Member/ Members of  
the abovenamed Trust, hereby appoint .....  
..... of ..... as my/our  
proxy to vote for me/us on my/our behalf at the general meeting of the Trust, to be held on  
the ..... day of ....., and at any adjournment general meeting.

Signed this                      day of

.....  
Authorised Signature

.....  
Print Name

This form is to be used \*in favour of / \*against the resolution.

\* Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

**Annexure F**  
**Transfer Units**  
**Eldium Income Fund (the Trust)**

**Transferor:** [insert name, ACN and address] (the **Transferor**)

**Transferee:** [insert name, ACN and address] (the **Transferee**)

**Units:** [insert number of units] of [insert class] Units (the **Units**)

**Transfer Sum:** [insert amount] (the **Transfer Sum**)

The Transferor for the Transfer Sum does hereby transfer to the Transferee the Units to the Transferee and the Transferee does hereby agree to take the Units subject to the conditions aforesaid and agrees to be bound by the terms and conditions of the deed establishing the Trust (as amended from time to time).

**Dated:**

**Executed by Transferor**

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth) by **Pty Limited ACN**

.....  
*Director/Secretary Signature*

.....  
*Director Signature*

.....  
*Print name*

.....  
*Print name*

**Executed by the Transferee**

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth) by **Pty Limited ACN**

.....  
*Director/Secretary Signature*

.....  
*Director Signature*

.....  
*Print name*

.....  
*Print name*













# Trust Deed for the Eldium Credit Income Fund - EXECUTION COPY(7544426.1)

Final Audit Report

2025-04-03

Created:	2025-04-03
By:	Charisse Navarro (cxn@bwslawyers.com.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIzVYPMv7A9CfNFhH4TTIX0iPxb2SpJiN

## "Trust Deed for the Eldium Credit Income Fund - EXECUTION COPY(7544426.1)" History

-  Document created by Charisse Navarro (cxn@bwslawyers.com.au)  
2025-04-03 - 3:56:45 AM GMT
-  Document emailed to Jonathan Raymond (jonathan.raymond@fundingpro.com.au) for signature  
2025-04-03 - 4:02:58 AM GMT
-  Document emailed to James Watson (james.watson@fundingpro.com.au) for signature  
2025-04-03 - 4:02:58 AM GMT
-  Document emailed to larry@eldium.com for signature  
2025-04-03 - 4:02:58 AM GMT
-  Document emailed to will@eldium.com for signature  
2025-04-03 - 4:02:59 AM GMT
-  Email viewed by Jonathan Raymond (jonathan.raymond@fundingpro.com.au)  
2025-04-03 - 4:03:08 AM GMT
-  Email viewed by will@eldium.com  
2025-04-03 - 4:09:04 AM GMT
-  Email viewed by James Watson (james.watson@fundingpro.com.au)  
2025-04-03 - 4:11:31 AM GMT
-  Signer will@eldium.com entered name at signing as William Wong  
2025-04-03 - 5:10:10 AM GMT
-  Document e-signed by William Wong (will@eldium.com)  
Signature Date: 2025-04-03 - 5:10:12 AM GMT - Time Source: server

 Document e-signed by Jonathan Raymond (jonathan.raymond@fundingpro.com.au)

Signature Date: 2025-04-03 - 5:19:50 AM GMT - Time Source: server

 Email viewed by larry@eldium.com

2025-04-03 - 5:36:23 AM GMT

 Signer larry@eldium.com entered name at signing as Larry Diamond

2025-04-03 - 5:37:16 AM GMT

 Document e-signed by Larry Diamond (larry@eldium.com)

Signature Date: 2025-04-03 - 5:37:18 AM GMT - Time Source: server

 Document e-signed by James Watson (james.watson@fundingpro.com.au)

Signature Date: 2025-04-03 - 5:40:47 AM GMT - Time Source: server

 Agreement completed.

2025-04-03 - 5:40:47 AM GMT