

# Think Tank Master Trust Deed

Dated *22 March* 2013

BNY Trust Company of Australia Limited (ABN 49 050 294 052)  
("Trustee")

Think Tank Group Pty Limited (ABN 75 117 819 084) ("Trust Manager")

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# Think Tank Master Trust Deed

## Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>2</b>
<b>1 Definitions and interpretation</b>	<b>2</b>
1.1 Terms defined in the Security Trust Deed	2
1.2 Definitions	2
1.3 Interpretation	5
<b>2 Declaration of Trust</b>	<b>5</b>
2.1 Declaration of Trust	5
2.2 Name of Trust	5
2.3 Duration of Trust	5
2.4 Separate and distinct Trusts	5
<b>3 Beneficial interest divided into Units</b>	<b>6</b>
<b>4 Issue of Units</b>	<b>6</b>
4.1 Units	6
4.2 No additional Units	6
4.3 Subscription price	6
4.4 Payment of subscription price	6
4.5 No issue to retail clients	6
<b>5 Form, title and status of Units</b>	<b>6</b>
5.1 Registered form	6
5.2 Issue, transfer and redemption of Units by entry in Unit Register	7
5.3 Unit Register conclusive as to ownership	7
<b>6 Interest of Unitholders</b>	<b>7</b>
6.1 Beneficial interest in Trust Assets as a whole	7
6.2 No interest in particular Trust Assets	7
6.3 Interest of Participation Unitholder	7
6.4 Interest of Residual Unitholders	7
6.5 Payment limited to Trust Assets	8
<b>7 Restrictions on Unitholders</b>	<b>8</b>
7.1 Limit on rights	8
7.2 Unitholders bound	8
7.3 Ranking of interests	8
<b>8 Liability of Unitholders limited</b>	<b>8</b>
<b>9 Transfer of Units</b>	<b>8</b>
9.1 Transfer	8
9.2 Restrictions on transfer	9
9.3 Transfer of Units in a Rated Trust	9
9.4 No partial transfers	9

9.5	Transfer in writing	9
9.6	Registration of transfer	9
9.7	No transfer to retail clients	9
<hr/>		
<b>10</b>	<b>Redemption of Units</b>	<b>9</b>
10.1	Units are redeemable	9
10.2	Restrictions on redemption	9
10.3	No partial redemptions	9
10.4	Redemption price	9
10.5	Registration of redemption	10
<hr/>		
<b>11</b>	<b>Unit Register</b>	<b>10</b>
11.1	Establishment and maintenance of Unit Register	10
11.2	Location of Unit Register	10
11.3	Information required in Unit Register	10
11.4	Unit Register is paramount	10
11.5	Update and correction of Unit Register	11
<hr/>		
<b>12</b>	<b>General powers, rights and responsibilities</b>	<b>11</b>
12.1	Appointment	11
12.2	Extent of obligations	11
12.3	Binding nature of relationship	11
12.4	Trustee to act in interests of Unitholders and Secured Creditors of a Trust	11
12.5	Excluded roles and duties	12
12.6	Exercise of rights and compliance with obligations	12
12.7	Instructions from the Trust Manager	12
<hr/>		
<b>13</b>	<b>Trust Business</b>	<b>12</b>
13.1	Trust Manager may direct Trustee	12
13.2	Trustee must follow Trust Manager's directions	12
13.3	Restrictions on Trust Manager's directions	12
13.4	General requirements in relation to Trust Manager's directions	13
13.5	Trust Manager confirmation on direction to issue Notes	13
13.6	Trust Manager must provide information requested	13
13.7	Trustee need not make enquiries or assessments	13
<hr/>		
<b>14</b>	<b>Note Register</b>	<b>13</b>
14.1	Notes	13
14.2	Establishment and maintenance of Note Register	14
14.3	Location of Note Register	14
14.4	Information required in Note Register	14
14.5	Note Register is paramount	14
14.6	Update and correction of Note Register	14
14.7	Closure	15
<hr/>		
<b>15</b>	<b>Reallocation of assets</b>	<b>15</b>
15.1	Reallocation	15
15.2	Restrictions on Reallocation	15
15.3	Trust Manager confirmation on direction to Reallocate	15
15.4	Reallocation Notice	15
15.5	Payment of Purchase Price	16
15.6	Reallocation effected	16
15.7	Consequences of Reallocation	16

15.8	Adjustments	16
15.9	Acknowledgment of Unitholder	16
<b>16</b>	<b>The Trustee</b>	<b>17</b>
16.1	Dealing in different capacities	17
16.2	Separate entities	17
16.3	Knowledge of the Trustee	17
<b>17</b>	<b>Delegation and reliance on advice</b>	<b>17</b>
17.1	Power to delegate	17
17.2	Trustee may rely on communications and opinions	18
17.3	Dispute or ambiguity	18
<b>18</b>	<b>Indemnity and limitation of liability</b>	<b>18</b>
18.1	Indemnity	18
18.2	Legal Costs	19
18.3	Limitation of Trustee's liability	19
18.4	Liability must be limited and must be indemnified	21
18.5	Exoneration	21
18.6	No supervision	22
18.7	Payment obligations not affected by limitation of liability	22
18.8	Cleared funds	23
18.9	Survival of indemnities	23
<b>19</b>	<b>Change of Trustee</b>	<b>23</b>
19.1	Mandatory retirement	23
19.2	Voluntary retirement	23
19.3	When retirement takes effect	23
19.4	Appointment of successor trustee	24
19.5	Notification of Designated Rating Agency	24
19.6	Costs of retirement	24
19.7	Trustee to deliver documents	24
19.8	Further steps	24
19.9	Discharge of further obligations	24
<b>20</b>	<b>Income and distributions for each Trust</b>	<b>25</b>
20.1	Net Trust Income	25
20.2	Determination of Net Trust Income	25
20.3	Net Taxable Income	25
20.4	Tax liabilities	26
20.5	Trust Manager must notify Trustee	26
20.6	Entitlement of Participation Unitholder	26
20.7	Distribution to Participation Unitholder	26
20.8	Investment by Participation Unitholder	26
<b>21</b>	<b>Collection Accounts and Trust segregation</b>	<b>26</b>
21.1	Collection Account for each Trust	26
21.2	Operation	26
21.3	Transfer of Collection Account	27
21.4	Allocation to Trust	27

<b>22</b>	<b>Fees</b>	<b>27</b>
<b>23</b>	<b>Variation of documents</b>	<b>27</b>
23.1	Variation of Master Trust Deed by Issue Supplement	27
23.2	Acknowledgement	27
23.3	Variation of Transaction Documents to achieve Objectives	27
23.4	Amending Deed	28
23.5	Proposal	28
23.6	Variation in accordance with Security Trust Deed	28
<b>24</b>	<b>Right of indemnity – Penalty Payments</b>	<b>28</b>
<b>25</b>	<b>Other Interests and Dealings of Trustee and Trust Manager</b>	<b>29</b>
<b>26</b>	<b>GST</b>	<b>30</b>
26.1	Construction	30
26.2	Consideration GST exclusive	30
26.3	Payment of GST	30
26.4	Timing of GST payment	30
26.5	Tax Invoice	30
26.6	Adjustment event	30
26.7	Reimbursements	30
<b>27</b>	<b>General</b>	<b>31</b>
27.1	Counterparts	31
27.2	Governing law and jurisdiction	31
27.3	Serving documents	31
	<b>Schedule 1 - Notice of Creation of Trust</b>	<b>32</b>
	<b>Schedule 2 - Form of Reallocation Notice</b>	<b>33</b>
	<b>Signing page</b>	<b>34</b>

# Think Tank Master Trust Deed

## Details

**Interpretation** – definitions are set out in clause 1 (“Definitions and interpretation”)

<b>Parties</b>	<b>Trustee and Trust Manager</b>	
<b>Trustee</b>	Name	<b>BNY Trust Company of Australia Limited</b>
	ABN	49 050 294 052
	Address	Level 2 35 Clarence Street Sydney NSW 2000
	Fax	+61 2 9551 5009
	Attention	Global Client Services
<b>Trust Manager</b>	Name	<b>Think Tank Group Pty Limited</b>
	ABN	75 117 819 084
	Address	Suite 2, Level 10 65 Berry Street North Sydney NSW 2060
	Facsimile	+61 2 8669 5599
	Attention	Director
<b>Date of deed</b>	See Signing page	

# Think Tank Master Trust Deed

## General terms

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### 1 Definitions and interpretation

#### 1.1 Terms defined in the Security Trust Deed

A term which has a defined meaning in the Security Trust Deed has the same meaning when used in this deed unless it is expressly defined in this deed, in which case the meaning in this deed prevails.

#### 1.2 Definitions

These meanings apply unless the contrary intention appears:

**Acquiring Trust** means a Trust to which Trust Assets of a Disposing Trust are or are to be (as applicable) Reallocated.

**Acquiring Trustee** means the Trustee as trustee of the relevant Acquiring Trust.

**Approved External Dispute Resolution Scheme** means an external dispute resolution scheme approved under and in accordance with section 11 of the NCCP and regulation 10(3) of the NCCP Regulations.

**Amending Deed** means, in respect of a Trust, a deed prepared by the Trust Manager in accordance with clause 23.3 ("Variation of Transaction Documents to achieve Objectives") that varies the Transaction Documents of the Trust.

**Bank** means an authorised deposit-taking institution (as defined in the Banking Act 1959 (Cwlth)).

**Details** means the section of this deed headed "Details".

**Disposing Trust** means a Trust some or all of the Trust Assets of which are or are to be (as applicable) Reallocated.

**Eligible Bank** in respect of a Trust, has the meaning it has in the Issue Supplement for that Trust.

**Financial Year** means, in respect of a Trust:

- (a) a period of a year ending on 30 June; or
- (b) if the Trust has adopted a substituted accounting period under section 18 of the Tax Act, a period of a year ending on the last day of that accounting period.

A reference to a Financial Year of a Trust includes a part Financial Year in which the Trust is established or ends.

**National Credit Code** means:

- (a) the NCCP;
- (b) the National Consumer Credit Protection (Fees) Act 2009 (Cwlth);

- (c) the National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009 (Cwlth) ("**Transitional Act**");
- (d) regulations made under any of them;
- (e) Division 2 of Part 2 of the Australian Securities and Investment Commission Act 2001 (Cwlth), so far as it relates to obligations in respect of an Australian Credit Licence issued under the NCCP or registration as a registered person under the Transitional Act; and
- (f) any other Commonwealth, state or territory legislation that covers conduct relating to credit activities (whether or not it also covers other conduct) but only in so far as it covers conduct relating to credit activities.

**NCCP** means the National Consumer Credit Protection Act 2009 (Cwlth).

**NCCP Regulations** means the National Consumer Credit Protection Regulations 2010.

**Net Taxable Income** means, in respect of a Financial Year of a Trust, the "net income" (as defined in section 95(1) of the Tax Act) of the Trust for that Financial Year.

**Net Trust Income** means, in respect of a Financial Year of a Trust, the income of the Trust for that Financial Year as determined by the Trust Manager under clause 20.2 ("Determination of Net Trust Income").

**Note Register** means, in respect of a Trust, the register (including any branch register) of Notes of that Trust established and maintained by the Trustee in accordance with clause 14 ("Note Register").

**Notice of Creation of Trust** means a completed notice substantially in the form set out in schedule 1 ("Notice of Creation of Trust").

**Objectives** means, in respect of a Trust, the objectives that:

- (a) the Trustee can pay any Tax in respect of that Trust out of the Trust Assets of the Trust without affecting its ability to comply with its payment obligations to the Secured Creditors of the Trust; and
- (b) if the Trust is a Rated Trust, the rating of the Notes of that Trust be maintained.

**Participation Unit** means, in respect of a Trust, the Unit in that Trust which is designated as a "Participation Unit" in the Unit Register for that Trust.

**Participation Unitholder** means, in respect of a Trust, a person registered as the holder of the Participation Unit in that Trust.

**Penalty Payment** means:

- (a) any amount (including, without limitation, any civil or criminal penalty) for which the Trustee is liable under the National Credit Code or a Verification Provisions and any reasonable legal costs and other expenses payable or incurred by the Trustee in relation to such liability;
- (b) any amount which the Trustee agrees to pay, after consultation with the Trust Manager, to any person in settlement of any liability or alleged liability or application for an order under the National Credit Code or any Verification Provision;



- (c) any legal costs or other costs and expenses payable or incurred by the Trustee in relation to that application or settlement; and
- (d) any other losses incurred by the Trustee as a result of any breach of the National Credit Code,

(in the case of the National Credit Code, to the extent to which a person can be indemnified for that liability, money or amount under the National Credit Code) and includes all amounts ordered by a court or other judicial body (including an Approved External Dispute Resolution Scheme) to be paid by the Trustee in connection with paragraphs (a) through (d).

**Proportion** means, for a Residual Unitholder in a Trust, the proportion which the number of its Residual Units in the Trust bears to the total number of Residual Units in the Trust.

**Purchase Price** means, in respect of Reallocated Assets, the purchase price specified for those Reallocated Assets in the Reallocation Notice relating to those Reallocated Assets.

**Reallocated Asset** means each asset described as such in a Reallocation Notice.

**Reallocation** means reallocation of Trust Assets from one Trust to a different Trust with the same trustee in accordance with clause 15 ("Reallocation of assets") and **Reallocated** has a corresponding meaning.

**Reallocation Cut-Off Date** means, in respect of a Reallocation, the date specified as such in the relevant Reallocation Notice.

**Reallocation Date** means, in respect of a Reallocation, the date specified as such in the relevant Reallocation Notice.

**Reallocation Notice** means a completed notice substantially in the form set out in schedule 2 ("Form of Reallocation Notice").

**Relevant Party** means, in respect of a Trust, each party to a Transaction Document of that Trust other than the Trustee and the Security Trustee.

**Residual Unit** means, in respect of a Trust, a Unit in that Trust which is designated as a "Residual Unit" in the Unit Register for the Trust.

**Residual Unitholder** means, in respect of a Trust, a person registered as the holder of a Residual Unit in that Trust.

**Security Trust Deed** means the document entitled "Think Tank Master Security Trust Deed" dated on or about the date of this deed between the Trustee, the Trust Manager and the Security Trustee.

**Tax Act** means the Income Tax Assessment Act 1936 (Cwlth), or the Income Tax Assessment Act 1997 (Cwlth), as the case may be.

**Tax Consolidated Group** means either a consolidated group or an MEC group each as defined in the Tax Act.

**Trust** means each trust constituted on signing of a Notice of Creation of Trust in accordance with this deed.

**Trust Manager** means each person so described in the Details.

**Trustee** means the person so described in the Details.

**Trustee Fee Letter** means, in respect of a Trust, the letter between the Trustee and the Trust Manager which is agreed by them to be the "Trustee Fee Letter" for the purposes of that Trust.

**Unit** means, in respect of a Trust, the Participation Unit and each Residual Unit in that Trust.

**Unitholder** means each holder of a Unit.

**Unit Register** means, in respect of a Trust, the register of Unitholders in that Trust to be established and maintained under clause 11 ("Unit Register").

**Verification Provision** means:

- (a) section 11A of the Land Title Act 1994 (QLD);
- (b) sections 56C and 119(4) of the Real Property Act 1900 (NSW); and
- (c) the "Western Australian Registrar and Commissioner of Titles Joint Practice: Verification of Identity" issued jointly by the Western Australian Registrar of Titles and Commissioner of Titles.

### 1.3 Interpretation

Clauses 1.2 ("References to certain general terms") to 1.5 ("Schedules") (inclusive) and clause 6.1 ("Awareness of certain events") of the Security Trust Deed apply to this deed.

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## 2 Declaration of Trust

### 2.1 Declaration of Trust

The Trustee declares that, on signing of a Notice of Creation of Trust for a Trust, it holds the sum of \$10, and will hold the Trust Assets of that Trust on trust at any time for the persons who are Unitholders of that Trust.

### 2.2 Name of Trust

Each Trust established under this deed is to be known by the name stated in the Notice of Creation of Trust for that Trust.

### 2.3 Duration of Trust

Each Trust begins on the date on which the Notice of Creation of Trust for that Trust is signed and ends on the earlier of:

- (a) the day before the eightieth anniversary of the date it begins; and
- (b) the date on which the Trust Manager notifies the Trustee that it is satisfied that the Secured Money of that Trust has been unconditionally and irrevocably repaid in full.

### 2.4 Separate and distinct Trusts

Each Trust shall be a separate and distinct trust fund held by the Trustee on separate and distinct terms and conditions.

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### **3 Beneficial interest divided into Units**

The beneficial interest in a Trust is divided into Units. Each Unit in a Trust is subject to the terms of this deed, the Issue Supplement for that Trust and the other Transaction Documents of that Trust.

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### **4 Issue of Units**

#### **4.1 Units**

On establishment of a Trust, the Trustee must (at the direction of the Trust Manager) issue the following Units in the Trust:

- (a) one Participation Unit; and
- (b) ten Residual Units.

The Participation Unitholder and the Residual Unitholders in a Trust must be specified in the Notice of Creation of Trust for that Trust.

#### **4.2 No additional Units**

The Trustee must not issue additional Units in a Trust without the consent of the Unitholders.

#### **4.3 Subscription price**

The subscription price of:

- (a) the Participation Unit in each Trust is the sum of an initial subscription amount of \$10 and any other amount reinvested in that Trust under clause 20.8 ("Investment by Participation Unitholder") of this deed; and
- (b) each Residual Unit in each Trust is \$10.

#### **4.4 Payment of subscription price**

On the date the Trustee establishes a Trust, the Participation Unitholder in that Trust must pay to the Trustee the initial subscription amount for the Participation Unit in that Trust and each Residual Unitholder in that Trust must pay to the Trustee the subscription price for each Residual Unit in that Trust issued to it.

#### **4.5 No issue to retail clients**

The Trustee must not, and the Trust Manager must not direct the Trustee to, issue a Unit to a person who is a retail client for the purposes of Chapter 7 ("Financial Services and Markets") of the Corporations Act.

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### **5 Form, title and status of Units**

#### **5.1 Registered form**

Each Unit in a Trust is issued in registered form and is reflected by an entry in the Unit Register for that Trust.

No certificate will be issued in respect of a Unit unless the Trustee determines that a certificate should be issued or is required by law.

## **5.2 Issue, transfer and redemption of Units by entry in Unit Register**

A Unit in a Trust is issued, transferred or redeemed when the Trustee enters details of the issue, transfer or redemption in the Unit Register for that Trust.

## **5.3 Unit Register conclusive as to ownership**

The entries in a Unit Register in respect of a Unit are conclusive evidence of the things to which they relate (including that the person entered as the Unitholder of a Unit is the absolute owner of that Unit) subject to correction for fraud, error or omission.

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# **6 Interest of Unitholders**

## **6.1 Beneficial interest in Trust Assets as a whole**

The beneficial interest in the Trust Assets of each Trust is vested in the Unitholders of that Trust in accordance with the terms of this deed and the Issue Supplement for the Trust.

Except as expressly provided in this deed or the Issue Supplement for the Trust, each Unit in that Trust entitles the Unitholder, together with all other Unitholders in that Trust, to the beneficial interest in the Trust Assets of that Trust as a whole.

## **6.2 No interest in particular Trust Assets**

Except as expressly provided in this deed or the Issue Supplement for the Trust, a Unit in that Trust does not entitle the Unitholder to the beneficial interest in any particular Trust Asset of that Trust or any particular part of the Trust Assets of that Trust as a whole.

## **6.3 Interest of Participation Unitholder**

The Participation Unitholder in a Trust has no right to receive distributions in respect of that Trust except:

- (a) any amounts payable to the Participation Unitholder in that Trust under clause 20.7 ("Distribution to Participation Unitholder"), the Security Trust Deed or the Issue Supplement for that Trust; and
- (b) when that Trust ends, repayment of any part of the subscription price of the Participation Unit in that Trust which has not already been repaid to the Participation Unitholder of that Trust.

## **6.4 Interest of Residual Unitholders**

A Residual Unitholder in a Trust has no right to receive distributions in respect of that Trust except:

- (a) any amounts payable to a Residual Unitholder in that Trust under the Issue Supplement for that Trust; and
- (b) when that Trust ends:
  - (i) an amount equal to the subscription price of the Residual Units in that Trust that it holds; and
  - (ii) its Proportion of any Trust Assets of that Trust remaining after payment of any amount due to the Participation Unitholder in the Trust under clause 6.3(b) ("Interest of Participation Unitholder").

## **6.5 Payment limited to Trust Assets**

The Trustee is only required to make a distribution under clause 6.3 ("Interest of Participation Unitholder") or clause 6.4 ("Interest of Residual Unitholder") if and to the extent that there are Trust Assets of that Trust available for distribution.

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# **7 Restrictions on Unitholders**

## **7.1 Limit on rights**

A Unitholder in a Trust is not entitled to:

- (a) exercise a right or power in respect of, lodge a caveat or other notice affecting, or otherwise claim any interest in, a Trust Asset of that Trust; or
- (b) require the Trustee or any other person to transfer a Trust Asset of that Trust to the Unitholder; or
- (c) interfere with any powers of the Trust Manager or the Trustee under this deed or any other Transaction Document of that Trust; or
- (d) take any step to remove the Trust Manager or the Trustee; or
- (e) take any step to end that Trust; or
- (f) interfere in any way with any other Trust.

## **7.2 Unitholders bound**

Each Unitholder in a Trust is bound by the provisions of this deed, the Issue Supplement for that Trust and the other Transaction Documents of that Trust.

## **7.3 Ranking of interests**

The rights of the Secured Creditors of a Trust under the Transaction Documents of that Trust rank in priority to the interests of the Unitholders in that Trust.

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# **8 Liability of Unitholders limited**

Except as expressly provided in this deed, no Unitholder in a Trust is liable to:

- (a) indemnify the Trustee, the Trust Manager or any Secured Creditor of the Trustee in respect of any liability in connection with that Trust;
- (b) contribute to the Trust Assets of that Trust or any payment to the Trustee, the Trust Manager or any other person in relation to that Trust; or
- (c) discharge any liability in connection with that Trust.

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# **9 Transfer of Units**

## **9.1 Transfer**

A Unitholder may only transfer a Unit if the Trustee agrees.

## **9.2 Restrictions on transfer**

The Trustee must not agree to a transfer of a Unit except at the direction of the Trust Manager.

## **9.3 Transfer of Units in a Rated Trust**

If the Trust Manager directs the Trustee to agree to a transfer of a Unit in a Rated Trust, the Trust Manager must notify each Designated Rating Agency of that Trust.

## **9.4 No partial transfers**

A Unitholder may only transfer a Unit in whole.

## **9.5 Transfer in writing**

All transfers of Units must be in writing in a form approved by the Trust Manager and must be signed by or on behalf of the transferor and the transferee. The transferee must give the Trustee and the Trust Manager a copy of any completed transfer.

## **9.6 Registration of transfer**

When the Trustee receives a completed transfer of a Unit in a Trust which complies with clause 9.5 ("Transfer in writing"), it must enter details of the transfer in the Unit Register for that Trust. The transferor of a Unit is taken to remain the Unitholder until the transfer is registered.

## **9.7 No transfer to retail clients**

The Trust Manager must not direct the Trustee to agree to a transfer of a Unit to a person who is a retail client for the purposes of Chapter 7 ("Financial Services and Markets") of the Corporations Act.

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# **10 Redemption of Units**

## **10.1 Units are redeemable**

The Trustee may redeem Units in a Trust before that Trust ends.

## **10.2 Restrictions on redemption**

The Trustee must not redeem Units in a Trust except at the direction of the Trust Manager. There must be at least one Residual Unit and only one Participation Unit in a Trust at all times.

## **10.3 No partial redemptions**

The Trustee may redeem a Unit in whole only.

## **10.4 Redemption price**

If the Trustee redeems a Unit, it must pay the redemption price to the relevant Unitholder. The redemption price of a Unit is an amount equal to its subscription price.

## **10.5 Registration of redemption**

When the Trustee redeems a Unit in a Trust, it must enter details of the redemption in the Unit Register for that Trust.

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## **11 Unit Register**

### **11.1 Establishment and maintenance of Unit Register**

The Trustee agrees to establish and maintain a Unit Register for each Trust.

### **11.2 Location of Unit Register**

Each Unit Register must be located in Sydney (or any other place the Trustee and the Trust Manager agree from time to time).

### **11.3 Information required in Unit Register**

The Trustee must enter the following information in the Unit Register for a Trust:

- (a) the name of that Trust; and
- (b) details of all issues of Units in that Trust (including the type of Unit, the issue date, the subscription price and the name, address and account details of the Unitholders); and
- (c) the total number of issued Units in that Trust and the number of Units held by each Unitholder; and
- (d) the aggregate of the subscription prices paid for all issued Units in that Trust; and
- (e) details of all transfers of Units in that Trust (including the transfer date, the name of the transferor and the name, address and account details of the transferee); and
- (f) details of all redemptions of Units in that Trust (including the redemption date and the redemption price); and
- (g) any other information that the Trustee or the Trust Manager considers necessary or desirable.

### **11.4 Unit Register is paramount**

Except as ordered by a court of competent jurisdiction or required by law, the Trustee must treat the person whose name is entered in the Unit Register of a Trust as the Unitholder of a Unit in that Trust as the owner of that Unit.

No notice of any trust or other interest in, or claim to, any Unit in a Trust will be entered in the Unit Register for that Trust. The Trust Manager and the Trustee need not take notice of any trust or other interest in, or claim to, any Unit, except as ordered by a court of competent jurisdiction or required by law.

## **11.5 Update and correction of Unit Register**

The Trustee must:

- (a) update the Unit Register for a Trust if it is notified of any change in any of the details recorded in that Unit Register in respect of a Unitholder in that Trust; and
- (b) correct a Unit Register if it becomes aware that any details in the Unit Register are incorrect or incomplete.

The Trustee must update or correct a Unit Register as soon as practicable (and, in any event, by no later than 5 Business Days) after being notified or becoming aware of the relevant event or circumstance.

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## **12 General powers, rights and responsibilities**

### **12.1 Appointment**

The Trustee is appointed and agrees to act as trustee of each Trust in connection with the Transaction Documents of that Trust and to exercise its rights and comply with its obligations under the Transaction Documents of that Trust.

### **12.2 Extent of obligations**

The Trustee has no obligations except those expressly set out in the Transaction Documents to which it is a party.

### **12.3 Binding nature of relationship**

Each Unitholder is bound by anything properly done or not done by the Trustee in accordance with the Transaction Documents whether or not the Unitholder approved of the thing done or not done.

### **12.4 Trustee to act in interests of Unitholders and Secured Creditors of a Trust**

- (a) The Trustee shall, in respect of each Trust, act in the interests of the Unitholders and the Secured Creditors in relation to that Trust on, and subject to, the terms and conditions of this deed. In the event of any conflict between the interests of the Unitholders and the interests of the Secured Creditors of a Trust, the interests of the Secured Creditors will prevail.
- (b) For the avoidance of doubt:
  - (i) the obligation of the Trustee as trustee of a Trust to act in the interests of the Noteholders or other Secured Creditors of that Trust is a contractual, not a fiduciary, obligation and arises out of the contractual relationship existing between the Trustee and the Noteholders under the Notes or the other Secured Creditors under their respective Transaction Documents; and
  - (ii) the Noteholders and other Secured Creditors in respect of a Trust are not Unitholders of that Trust.



## **12.5 Excluded roles and duties**

The appointment as trustee of a Trust does not mean that the Trustee:

- (a) is a trustee for the benefit of; or
- (b) is a partner of; or
- (c) has a fiduciary duty to, or other fiduciary relationship with,

any Unitholder, Secured Creditor or any other person, except as expressly provided in any Transaction Document of that Trust to which it is a party.

## **12.6 Exercise of rights and compliance with obligations**

The Trustee has all the powers of a natural person and corporation in connection with the exercise of its rights and compliance with its obligations in connection with the Trust Business of a Trust.

Subject to clause 13 ("Trust Business"), the Trustee may exercise its rights and comply with its obligations in connection with the Trust Business of a Trust in any manner it thinks fit.

## **12.7 Instructions from the Trust Manager**

The Trust Manager in respect of a Trust must not instruct the Trustee to do anything which is contrary to the terms of the Transaction Documents of that Trust.

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# **13 Trust Business**

## **13.1 Trust Manager may direct Trustee**

Subject to clause 13.3 ("Restrictions on Trust Manager's directions"), the Trust Manager of a Trust must in accordance with the Transaction Documents of that Trust direct the Trustee how to carry on the Trust Business of that Trust.

## **13.2 Trustee must follow Trust Manager's directions**

The Trustee must carry on the Trust Business of a Trust in accordance with the Trust Manager's directions. However, the Trustee need not comply with any direction the Trust Manager gives it in connection with the Trust Business of a Trust to the extent that the Trustee considers that the Trust Manager is not entitled to give the direction under clause 13.3 ("Restrictions on Trust Manager's directions").

## **13.3 Restrictions on Trust Manager's directions**

The Trust Manager of a Trust must not direct the Trustee to do anything, or refrain from doing anything, in connection with a Trust if doing, or not doing, that thing may:

- (a) have a Material Adverse Effect; or
- (b) lead to the Trustee incurring any actual or potential Tax liability (unless the Trustee can pay the Tax without affecting its ability to comply with its payment obligations to the Secured Creditors of that Trust); or

- (c) be illegal or contrary to the terms of the Transaction Documents of that Trust; or
- (d) result in the Trustee breaching a fiduciary duty in respect of that Trust; or
- (e) result in the Trustee incurring a personal liability in circumstances where the Trustee is not reasonably satisfied that it is adequately indemnified against that liability.

#### **13.4 General requirements in relation to Trust Manager's directions**

Any direction the Trust Manager of a Trust gives the Trustee must:

- (a) be given by an Authorised Officer of the Trust Manager;
- (b) specify any action the Trustee must take to comply with the direction; and
- (c) if the direction is to issue Notes, be accompanied by an Issue Supplement, unless one has already been issued in respect of that Trust.

#### **13.5 Trust Manager confirmation on direction to issue Notes**

If the Trust Manager directs the Trustee to issue Notes, by giving the direction the Trust Manager confirms to the Trustee that it is satisfied that the offer to which the issue of Notes relates:

- (a) does not require disclosure to investors in accordance with Part 6D.2 ("Disclosure to investors about securities") of the Corporations Act; and
- (b) is not an offer to a retail client for the purposes of Chapter 7 ("Financial Services and Markets") of the Corporations Act.

#### **13.6 Trust Manager must provide information requested**

The Trust Manager agrees to provide the Trustee with any information the Trustee reasonably requires to comply with any direction the Trust Manager gives the Trustee.

#### **13.7 Trustee need not make enquiries or assessments**

The Trustee need not enquire, or make any assessment, about the merits of any direction the Trust Manager gives it, and may conclusively rely on any direction provided by the Trust Manager without further inquiry.

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## **14 Note Register**

### **14.1 Notes**

The Trustee must, at the direction of the Trust Manager of a Trust, issue Notes in respect of that Trust:

- (a) in registered form (in which case the remainder of this clause 14 ("Note Register") will apply); or
- (b) in such other form as is set out in the Issue Supplement for that Trust, in which case the Notes in respect of that Trust will be constituted in the form described in such Issue Supplement (in which case the remainder of this clause 14 ("Note Register") will not apply).

#### **14.2 Establishment and maintenance of Note Register**

If the Trustee is directed by the Trust Manager of a Trust to issue Notes in respect of that Trust, the Trustee agrees to establish and maintain a Note Register for that Trust.

#### **14.3 Location of Note Register**

Each Note Register must be located in Sydney (or any other place agreed by the Trust Manager and the Trustee from time to time).

#### **14.4 Information required in Note Register**

The Trustee must enter the following information in the Note Register for a Trust:

- (a) the name of the Trust; and
- (b) details of all issues of Notes of the Trust (including the class of Note, the issue date, the issue price, the outstanding principal amount of the Notes and the name, address and account details of the Noteholders); and
- (c) the total number of issued Notes of the Trust and the number of Notes held by each Noteholder; and
- (d) if interest is payable on any Notes of the Trust, details of the interest payable (including the applicable interest rate and when interest is payable); and
- (e) if principal is repaid in respect of any Notes of the Trust, details of the repayment (including the amount and date of the repayment) and the outstanding principal amount of the Notes following the repayment; and
- (f) the maturity date for the Notes of the Trust; and
- (g) details of all transfers of Notes of the Trust (including the transfer date, the name of the transferor and the name, address and account details of the transferee); and
- (h) if any Notes of the Trust are redeemable, details of all redemptions of Notes of the Trust (including the redemption date and the redemption price); and
- (i) any other information that the Trustee or the Trust Manager considers necessary or desirable.

#### **14.5 Note Register is paramount**

Except as ordered by a court of competent jurisdiction or required by law, the Trustee must treat the person whose name is entered in the Note Register of a Trust as the Noteholder of a Note of that Trust as the owner of that Note.

No notice of any trust or other interest in, or claim to, any Note of a Trust will be entered in the Note Register for that Trust. The Trust Manager and the Trustee need not take notice of any trust or other interest in, or claim to, any Note, except as ordered by a court of competent jurisdiction or required by law.

#### **14.6 Update and correction of Note Register**

The Trustee must:

- (a) update the Note Register for a Trust if it is notified of any change in any of the details recorded in that Note Register in respect of a Noteholder; and
- (b) correct a Note Register if it becomes aware that any details in the Note Register are incorrect or incomplete.

The Trustee must update or correct a Note Register as soon as practicable (and, in any event, by no later than 5 Business Days) after being notified or becoming aware of the relevant event or circumstance.

## **14.7 Closure**

The Trustee may close the Note Register for a Trust:

- (a) from close of business on each Record Date for any Note of that Trust. The Trustee must reopen the Note Register at the opening of business on the Business Day immediately following the relevant Payment Date; and
- (b) at any other time in its discretion.

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## **15 Reallocation of assets**

### **15.1 Reallocation**

The Trust Manager may direct the Trustee to Reallocate any Trust Assets of a Trust.

### **15.2 Restrictions on Reallocation**

The Trust Manager must not direct the Trustee to Reallocate any Trust Assets of a Trust unless:

- (a) the Reallocation is in accordance with the relevant Transaction Documents and will not cause an Event of Default; and
- (b) the Participation Unitholders in the Trust to which the Disposing Trust relates:
  - (i) consent to the Reallocation; or
  - (ii) are the same as the Participation Unitholders in the Trust to which the Acquiring Trust relates.

### **15.3 Trust Manager confirmation on direction to Reallocate**

If the Trust Manager directs the Trustee to Reallocate any Trust Assets, by giving the direction, the Trust Manager is taken to confirm to the Trustee that the Trust Manager is satisfied that any conditions precedent to the Reallocation under the Issue Supplement for the Disposing Trust or the Acquiring Trust or any other Transaction Document of the Disposing Trust or the Acquiring Trust (including, without limitation, clause 15.2 ("Restrictions of Reallocation")) have been satisfied.

### **15.4 Reallocation Notice**

If the Trust Manager directs the Trustee to Reallocate any Trust Assets, the direction must be accompanied by a Reallocation Notice signed by the Trust Manager.

Subject to clause 13.3 ("Restrictions on Trust Manager's directions"), the Trustee must sign the Reallocation Notice when it receives it.

#### **15.5 Payment of Purchase Price**

The Trustee, as trustee of the Acquiring Trust, must pay the Purchase Price for any Reallocated Assets on the Reallocation Date.

#### **15.6 Reallocation effected**

If the Trustee pays the Purchase Price for any Reallocated Assets in accordance with clause 15.5 ("Payment of Purchase Price"), the Reallocation takes effect on and from the Reallocation Date in accordance with clause 15.7 ("Consequences of Reallocation").

#### **15.7 Consequences of Reallocation**

With effect on and from the Reallocation Date the Reallocated Assets and any rights relating to the Reallocated Assets (including the benefit of any representation, warranty, undertaking or indemnity in relation to the Reallocated Assets given to the Trustee as trustee of the Disposing Trust) cease to be Trust Assets of the Disposing Trust and become Trust Assets of the Acquiring Trust.

Reallocation does not affect the Trustee's accrued rights in relation to the Reallocated Assets (whether arising under this deed or at law and including any right of indemnity) in connection with performance of its obligations as trustee of the Disposing Trust.

#### **15.8 Adjustments**

Except as expressly provided in a Reallocation Notice:

- (a) any income (including any interest and amounts in the nature of interest) which accrues on any Reallocated Assets:
  - (i) up to but excluding the Reallocation Date is for the account of the Disposing Trust; and
  - (ii) from and including the Reallocation Date is for the account of the Acquiring Trust; and
- (b) any principal (including any amounts in the nature of principal) which the Trustee receives in respect of the Reallocated Assets:
  - (i) up to but excluding the Reallocation Date are for the account of the Disposing Trust; and
  - (ii) from and including the Reallocation Date are for the account of the Acquiring Trust.

#### **15.9 Acknowledgment of Unitholder**

Each Unitholder is bound by any Reallocation.

No Unitholder has any right to claim that any such Reallocation is in breach of trust or constitutes fraud, negligence or wilful misconduct of the Trustee.

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## **16 The Trustee**

### **16.1 Dealing in different capacities**

The Trustee and any of its Related Entities may:

- (a) engage in any kind of banking, trust or other business with the Secured Creditors, the Unitholders or any of their Related Entities; and
- (b) accept fees and other consideration from the Secured Creditors, the Unitholders or any of their Related Entities for services in connection with the Transaction Documents or any other arrangement,

as if the Trustee were not the Trustee and without having to account to the Unitholders for any income they derive in doing so.

The Trustee and its Related Entities are released from any obligation they might otherwise have to the Unitholders in relation to these matters.

### **16.2 Separate entities**

In acting as trustee of a Trust and in each other capacity in which it may act under the Transaction Documents, the relevant division or department of the Trustee is to be regarded as a separate entity from any other of its divisions or departments.

If information is received by another division or department of the Trustee, it may be treated as confidential to that division or department and the Trustee is not taken to have notice of it.

### **16.3 Knowledge of the Trustee**

The Trustee will only be considered to have knowledge, notice or awareness of any matter or thing if the Trustee has knowledge, notice or awareness of that matter or thing by virtue of the actual knowledge, notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trustee's obligations under this deed or any other Transaction Document of the relevant Trust.

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## **17 Delegation and reliance on advice**

### **17.1 Power to delegate**

- (a) Subject to paragraphs (b) and (c), the Trustee may employ agents and attorneys and may delegate any of its rights or obligations as trustee without notifying any other person of the delegation.
- (b) The Trustee has no responsibility to monitor, oversee or supervise any delegate or agent appointed by the Trustee and is not liable to any Unitholder or Secured Creditor for any act or omission of any such delegate or agent, in each case if:
  - (i) the Trustee appoints the delegate or agent using due care, and the delegate or agent is not:
    - (A) a Related Entity of the Trustee; or
    - (B) an officer or employee of either the Trustee or a Related Entity of the Trustee;

- (ii) the delegate or agent is a clearing system; or
  - (iii) the Trustee is obliged to appoint the delegate or agent pursuant to an express provision of a Transaction Document or pursuant to an instruction given to the Trustee in accordance with a Transaction Document; or
  - (iv) the Trust Manager consents to the delegation in accordance with paragraph (c).
- (c) The Trustee agrees that it will not delegate a material right or obligation or a material part of its rights or obligations under this deed unless it has received the prior written consent of the Trust Manager.

## **17.2 Trustee may rely on communications and opinions**

In relation to any Transaction Document of a Trust, the Trustee may rely:

- (a) on any communication or document it believes to be genuine and correct and to have been signed or sent by the appropriate person; and
- (b) as to legal, accounting, taxation or other professional matters, on opinions and statements of any legal, accounting, taxation or other professional advisers used by it or any other party to a Transaction Document; and
- (c) on the contents of any statements, representation or warranties made or given by any party other than itself pursuant to this deed, or direction from the Trust Manager of that Trust provided in accordance with the Transaction Documents or from any other person permitted to give such instructions or directions under the Transaction Documents of the Trust; and
- (d) on any calculations made by the Trust Manager of that Trust under any Transaction Document of that Trust (including without limitation any calculation in connection with the collections in respect of that Trust).

## **17.3 Dispute or ambiguity**

If there is any dispute or ambiguity in relation to any matter connected with the Transaction Documents, the Trustee may (but need not) do one or both of the following:

- (a) obtain and rely on advice from its legal, accounting, taxation or other professional advisers or any person referred to in clause 17.2(b) ("Trustee may rely on communications and opinions"); or
- (b) apply to a court for any direction or order the Trustee considers appropriate.

As long as the Trustee is using reasonable endeavours to resolve any ambiguity, the Trustee may (but need not) refuse to do anything in relation to matters affected by the ambiguity.

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# **18 Indemnity and limitation of liability**

## **18.1 Indemnity**

The Trustee is indemnified out of the Trust Assets of a Trust against any liability or loss arising from, and any Costs properly incurred in connection with,

complying with its obligations or exercising its rights under the Transaction Documents of the Trust.

To the extent permitted by law, this indemnity applies despite any reduction in value of, or other loss in connection with, the Trust Assets of the Trust as a result of any unrelated act or omission by the Trustee or any person acting on its behalf.

This indemnity does not extend to any liabilities, losses or Costs to the extent that they are due to the Trustee's fraud, negligence or wilful misconduct.

## **18.2 Legal Costs**

The Costs referred to in clause 18.1 ("Indemnity") include all legal Costs in accordance with any written agreement as to legal costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis.

These legal Costs include any legal costs which the Trustee incurs in connection with proceedings brought against it alleging fraud, negligence or wilful misconduct on its part in relation to the relevant Trust. However, the Trustee must repay any amount paid to it in respect of those legal Costs under clause 18.1 ("Indemnity") if and to the extent that a court determines that the Trustee was fraudulent, negligent or in wilful misconduct in relation to the Trust or the Trustee admits it.

## **18.3 Limitation of Trustee's liability**

- (a) The limitation of the Trustee's liability under this clause 18.3 applies despite any other provisions of this deed or any other Transaction Document in relation to a Trust and extends to all Obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed and to the extent of any inconsistency between the operation of this clause and any other provision of this deed or any other Transaction Document in relation to a Trust, the terms of this clause 18.3 will prevail.
- (b) The Trustee enters into this deed and the Transaction Documents of a Trust as trustee of that Trust and in no other capacity.
- (c) The Secured Creditors (other than the Trustee) of a Trust acknowledge that the Trustee incurs the Obligations of that Trust solely in its capacity as trustee of the relevant Trust and that the Trustee will cease to have any Obligation in respect of that Trust under this deed and the other Transaction Documents of that Trust if the Trustee ceases for any reason to be trustee of that Trust (other than in respect of any liability which arose before the Trustee ceased to be the trustee of that Trust).
- (d) Except in the case of and to the extent of fraud, negligence or wilful misconduct on the part of the Trustee, the Trustee will not be liable to pay or satisfy any Obligations of a Trust except out of the Trust Assets of that Trust against which it is actually indemnified in respect of any liability incurred by it as trustee of that Trust.
- (e) Except in the case of and to the extent of fraud, negligence or wilful misconduct on the part of the Trustee, the Secured Creditors (other than the Trustee) may enforce their rights against the Trustee arising from non-performance of the Obligations of a Trust only to the extent of the Trustee's right of indemnity out of the Trust Assets of that Trust.
- (f) Except in the case of and to the extent of fraud, negligence or wilful misconduct on the part of the Trustee, if any Secured Creditor (other than the Trustee) of a Trust does not recover all money owing to it arising



from non-performance of the Obligations of that Trust it may not seek to recover the shortfall by:

- (i) bringing proceedings against the Trustee in its personal capacity; or
  - (ii) applying to have the Trustee in its personal capacity put into administration or wound up or applying to have a receiver or similar person appointed to the Trustee in its personal capacity or proving in the administration or winding up of the Trustee in its personal capacity.
- (g) Except in the case of and to the extent of fraud, negligence or wilful misconduct on the part of the Trustee, the Secured Creditors (other than the Trustee) of a Trust waive their rights and release the Trustee from any personal liability whatsoever, in respect of any loss or damage:
- (i) which they may suffer as a result of any:
    - (A) breach by the Trustee of any of its Obligations of that Trust; or
    - (B) non-performance by the Trustee of the Obligations of that Trust; and
  - (ii) which cannot be paid or satisfied out of the Trust Assets of that Trust of which the Trustee is entitled to be indemnified in respect of any liability incurred by the Trustee as trustee of the Trust.
- (h) The Secured Creditors (other than the Trustee) of a Trust acknowledge that the whole of this deed is subject to this clause 18.3 and the Trustee shall in no circumstances be required to satisfy any liability of the Trustee arising under, or for non-performance or breach of any Obligations of that Trust under or in respect of, this deed or under or in respect of any other Transaction Document of that Trust to which it is expressed to be a party out of any funds, property or assets other than the Trust Assets under the Trustee's control or in its possession as and when they are available to the Trustee to be applied in exoneration for such liability PROVIDED THAT if the liability of the Trustee is not fully satisfied out of the Trust Assets of that Trust as referred to in this clause 18.3, the Trustee will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability but only to the extent of the total amount, if any, by which the Trust Assets of that Trust have been reduced by reasons of fraud, negligence or wilful misconduct by the Trustee in the performance of the Trustee's duties as trustee of the Trust.
- (i) The Secured Creditors agree that no act or omission of the Trustee (including any related failure to satisfy any Obligations of a Trust) will constitute fraud, negligence or wilful misconduct of the Trustee for the purposes of this clause 18.3 to the extent to which the act or omission was caused or contributed to by any failure of the Trust Manager or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trust Manager or any other person.
  - (j) No attorney, agent or other person appointed in accordance with this deed has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability (except in accordance with the provisions of clause 17 ("Delegation and reliance on advice")), and no act or omission of such a person will be considered fraud, negligence or wilful misconduct of the Trustee for the purposes of this clause 18.3.

- (k) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond the Trustee's control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, labour dispute, any laws, ordinances, regulations or the like which restrict or prohibit the providing of the services contemplated by this document, inability to obtain or the failure of equipment, or interruption of communications or computer facilities, and other causes beyond the Trustee's control whether or not of the same class or kind as specifically named above.
- (l) Notwithstanding any provision of this deed to the contrary, including, without limitation, any indemnity made by the Trustee in the Transaction Documents, the Trustee will not in any event be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), whether or not foreseeable, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of whether the claim for loss or damage is made in negligence, for breach of contract or otherwise.
- (m) In this clause "**Obligations**" in respect of a Trust means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this deed or any other Transaction Document of the Trust.

#### **18.4 Liability must be limited and must be indemnified**

The Trustee is not obliged to do or not do anything in connection with the Transaction Documents (including enter into any transaction or incur any liability) unless:

- (a) the Trustee's liability is limited in a manner which is consistent with clause 18.3 ("Limitation of Trustee's liability"); and
- (b) it is indemnified against any liability or loss arising from, and any Costs properly incurred in connection with, doing or not doing that thing in a manner which is consistent with clause 18.1 ("Indemnity").

For the avoidance of doubt, the Trustee is not obliged to use its own funds in performing its obligations under and in accordance with the Transaction Documents.

#### **18.5 Exoneration**

Neither the Trustee nor any of its directors, officers, employees, agents or attorneys will be taken to be fraudulent, negligent or in wilful misconduct for the purposes of clause 18.1 ("Indemnity") because:

- (a) any person other than the Trustee does not comply with its obligations under the Transaction Documents; or
- (b) of the financial condition of any person other than the Trustee; or
- (c) any statement, representation or warranty of any person other than the Trustee in a Transaction Document is incorrect or misleading; or
- (d) of any omission from or statement or information contained in any information memorandum or any advertisement, circular or other document issued in connection with any Notes; or

- (e) of the lack of effectiveness, genuineness, validity, enforceability, admissibility in evidence or sufficiency of the Transaction Documents or any document signed or delivered in connection with the Transaction Documents; or
- (f) of acting, or not acting, in each case in accordance with instructions of:
  - (i) the Trust Manager;
  - (ii) any other person permitted to give instructions or directions to the Trustee under the Transaction Documents (or instructions or directions that the Trustee believes to be genuine and to have been given by an appropriate officer of any such person); or
  - (iii) any person to whom the Trust Manager has delegated any of its rights or obligations in its capacity as trust manager, as notified by the Trust Manager to the Trustee.

For the avoidance of doubt:

- (A) for the purpose of paragraph (i), the Trustee will be able to rely on a direction from the Trust Manager even if it has received notice of delegation by the Trust Manager of any of its rights or obligations;
  - (B) for the purpose of paragraph (iii), the Trustee is not required to investigate the scope of any such delegation or whether the delegate giving the instructions is entitled to give such instruction to the Trustee under the terms of its delegation;
- (g) of acting, or not acting, in reliance on anything referred to in clause 17.2 ("Trustee may rely on communications and opinions"); or
  - (h) it is prevented or hindered from doing something by law or order; or
  - (i) of any payment made by it to a fiscal authority in connection with Taxes (including Taxes assessed on the income of a Trust) or other charges in respect of a Trust even if the payment need not have been made; or
  - (j) of a failure by the Trustee to check any calculation, information, document, form or list supplied or purported to be supplied to it by the Trust Manager under this deed, under any Transaction Document, or any other person.

## **18.6 No supervision**

The Trustee has no obligation to supervise, monitor or investigate the performance of the Trust Manager of that Trust or any other person and is entitled to assume compliance by the other parties with all provisions of the Transaction Documents.

## **18.7 Payment obligations not affected by limitation of liability**

The limitation of the Trustee's liability under clause 18.3 ("Limitation of Trustee's Liability") is to be disregarded for the purposes of determining whether an Event of Default has occurred because of a failure by the Trustee to pay an amount payable by it under any Transaction Document or in interpreting the definition of Secured Money.

## **18.8 Cleared funds**

The Trustee is only taken to be in receipt of funds in relation to a Trust to the extent that those funds are cleared funds. Without limiting any other provision of any Transaction Document, the Trustee will not be taken to be fraudulent, negligent or in wilful misconduct for the purpose of clause 18.1 ("Indemnity") as a result of a failure to make any payments in accordance with a Transaction Document due to it not being in receipt of cleared funds at the time of payment. For the avoidance of doubt, such amounts will continue to be due and payable in accordance with the Transaction Documents.

## **18.9 Survival of indemnities**

The parties agree that any indemnities provided to the Trustee under and in accordance with any Transaction Document survive the resignation or removal of the Trustee.

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# **19 Change of Trustee**

## **19.1 Mandatory retirement**

The Trustee must retire as trustee of each Trust if:

- (a) the Trustee becomes Insolvent; or
- (b) required by law; or
- (c) the Trustee ceases to carry on business as a professional trustee; or
- (d) the Trustee merges or consolidates with another entity, unless:
  - (i) that entity assumes the obligations of the Trustee under the Transaction Documents of that Trust; and
  - (ii) for any Trust which is a Rated Trust, each Designated Rating Agency in respect of that Rated Trust has been notified of the merger or consolidation.

In addition, the Trust Manager may request the Trustee to and the Trustee must (if so requested) retire as trustee of a Trust if the Trustee does not comply with a material obligation under the Transaction Documents of that Trust and, if the non-compliance can be remedied, the Trustee does not remedy the non-compliance within 30 days of being requested to do so by the Trust Manager.

## **19.2 Voluntary retirement**

The Trustee may retire as trustee of one or more Trusts by giving the Trust Manager at least 90 days' (or such shorter period as the Trust Manager and the Trustee may agree) notice of its intention to do so.

## **19.3 When retirement takes effect**

Subject to clause 19.4 ("Appointment of successor trustee"), the retirement of the Trustee as trustee of a Trust takes effect when:

- (a) a successor trustee is appointed for that Trust; and
- (b) the successor trustee obtains title to, or obtains the benefit of, this deed and each other Transaction Document of that Trust to which the Trustee is a party as trustee of that Trust; and

- (c) the successor trustee and each other party to the Transaction Documents of that Trust to which the Trustee is a party as trustee of that Trust have the same rights and obligations among themselves as they would have had if the successor trustee had been party to them at the dates of those documents.

#### **19.4 Appointment of successor trustee**

If the Trustee retires as trustee of a Trust, the Trust Manager agrees to use its best endeavours to ensure that a successor trustee is appointed for that Trust as soon as possible. If no successor trustee is appointed within 90 days after notice of retirement or removal is given, the Trustee may appoint a successor trustee (provided that, in the case of a Rated Trust, the appointment of such successor would not cause an Adverse Rating Effect) or apply to the court for a successor trustee to be appointed.

#### **19.5 Notification of Designated Rating Agency**

For any Trust which is a Rated Trust, the Trust Manager agrees to notify each Designated Rating Agency of that Trust if:

- (a) the Trustee retires as trustee of that Trust; or
- (b) a successor trustee is appointed for that Trust.

#### **19.6 Costs of retirement**

If the Trustee retires (other than in the case of clause 19.1(b) ("Mandatory retirement")), everything it is required to do under this clause 19 is at the Trustee's own expense. If the Trustee retires because it is required to do so by law, everything it is required to do under this clause 19 ("Change of Trustee") is an expense of the Trust. For the avoidance of doubt, in respect of any retirement by the Trustee, the Trustee shall only be responsible for its own costs (including legal expenses) and not the costs of any other party.

#### **19.7 Trustee to deliver documents**

If the Trustee retires as trustee of a Trust, it agrees to deliver to the successor trustee or as the Trust Manager otherwise directs:

- (a) all original documents in its possession relating to that Trust and the Trust Assets of that Trust; and
- (b) any transfers, requests, notices of assignment or other documents to record the transfer of the Trust Assets of that Trust to the successor trustee which the successor trustee reasonably requests.

#### **19.8 Further steps**

Without limiting clause 19.7 ("Trustee to deliver documents"), if the Trustee retires as Trustee of a Trust, it agrees to do anything the successor trustee reasonably asks (such as obtaining consents, and signing, producing and delivering documents including a retirement and appointment document) to give effect to the retirement and the appointment of the successor trustee.

#### **19.9 Discharge of further obligations**

When a successor trustee is appointed as trustee of a Trust, the retiring Trustee is discharged from any further obligation under the Transaction Documents of

that Trust. However, this discharge does not affect any accrued rights or obligations.

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## **20 Income and distributions for each Trust**

### **20.1 Net Trust Income**

- (a) The Trust Manager must determine the Net Trust Income of a Trust for each Financial Year of that Trust.
- (b) Prior to the end of a Financial Year of a Trust, the Trust Manager may make a determination under clause 20.2 ("Determination of Net Trust Income") as to the method of calculating the Net Trust Income for the Trust for that Financial Year.
- (c) If the Trust Manager does not make a determination for a Trust under clause 20.1(b) above prior to the end of a Financial Year, the Net Trust Income will be equal to the income of the Trust for the purposes of Division 6 of Part III of the Tax Act, for that Financial Year.
- (d) To the extent it is possible to do so, the Trust Manager must determine that the Net Trust Income of each Trust for each Financial Year is at least \$1.

### **20.2 Determination of Net Trust Income**

Subject to clause 20.4 ("Tax liabilities"), the Trust Manager may determine the Net Trust Income of each Trust for each Financial Year of the Trust using any method it considers appropriate. In particular, the Trust Manager may determine whether:

- (a) any deemed or actual:
  - (i) receipt, payment or outgoing;
  - (ii) profit, gain or loss;
  - (iii) provision or reserve; or
  - (iv) investment,in a Financial Year in connection with the Trust is to be treated as being on income or capital account of the Trust (including treating the transfer of amounts from the corpus of the Trust as income of the Trust for any purpose);
- (b) any provisions or reserves need to be made in a Financial Year in connection with the Trust and the amount of those provisions or reserves; and
- (c) an item that is taken into account in determining the Net Taxable Income of the Trust for a Financial Year is to be taken into account in determining the Net Trust Income of the Trust for that Financial Year.

### **20.3 Net Taxable Income**

As soon as reasonably practicable after the end of a Financial Year of a Trust, the Trust Manager must determine the Net Taxable Income of that Trust for that Financial Year.

## **20.4 Tax liabilities**

To the extent it is possible to do so (including by making appropriate determinations under clause 20.2 ("Determination of Net Trust Income")), the Trust Manager must ensure that any Tax liability under Division 6 of Part III of the Tax Act in respect of the Net Taxable Income of a Trust for a Financial Year is borne by the Participation Unitholder of that Trust and not by the Trustee.

## **20.5 Trust Manager must notify Trustee**

Once the Trust Manager has determined the Net Trust Income and the Net Taxable Income of a Trust for a Financial Year, the Trust Manager must notify the Trustee of the amounts.

## **20.6 Entitlement of Participation Unitholder**

At the end of each Financial Year of a Trust, the Participation Unitholder in a Trust is presently entitled to the Net Trust Income of the Trust for that Financial Year.

## **20.7 Distribution to Participation Unitholder**

- (a) On the last day of each Financial Year of a Trust or at any other time the Trust Manager decides, the Participation Unitholder of that Trust is entitled to be paid the Net Trust Income of that Trust for that Financial Year, reduced by amounts previously paid by the Trust Manager to the Participation Unitholder throughout the Financial Year.
- (b) The Trust Manager may pay to the Participation Unitholder any other amounts in accordance with the Transaction Documents at any time during or at the end of the Financial Year.

## **20.8 Investment by Participation Unitholder**

- (a) The Trust Manager may in its absolute discretion, permit the Participation Unitholder to invest any amount that is any part of an amount to which the Participation Unitholder is entitled to be paid under clause 20.7 ("Distribution to Participation Unitholder") which is not paid to the Participation Unitholder by the Trustee.
- (b) The Participation Unitholder requests that any amount that is to be invested under clause 20.8(a) be reinvested in the relevant Trust as an additional payment for the Participation Unit in the Trust.

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# **21 Collection Accounts and Trust segregation**

## **21.1 Collection Account for each Trust**

As soon as practicable after the execution of the Notice of Creation of Security Trust for a Trust, the Trustee must (at the direction of the Trust Manager of that Trust) open the Collection Account for that Trust with an Eligible Bank.

## **21.2 Operation**

The Trustee must (at the direction of the Trust Manager of a Trust) operate the Collection Account for that Trust in accordance with the General Security Deed and other Transaction Documents for that Trust.

### **21.3 Transfer of Collection Account**

If the Bank at which the Collection Account is held ceases to be an Eligible Bank, the Trust Manager must, upon becoming aware of the occurrence of that event, direct the Trustee to establish and the Trustee on that direction must immediately establish a new Collection Account with an Eligible Bank and transfer the funds standing to the credit of the old Collection Account to the new Collection Account.

### **21.4 Allocation to Trust**

The Trustee must account for the Trust Assets and liabilities of a Trust separately from the Trust Assets and liabilities of any other Trust. The Trust Manager of a Trust must ensure that all of the Trust Assets and liabilities of that Trust are separately allocated in the records of that Trust from the Trust Assets and liabilities of any other Trust.

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## **22 Fees**

The Trustee is entitled to a fee for performing its obligations under this deed in respect of each Trust. The fee payable in respect of each Trust is payable at the times and in the amounts set out in the Trustee Fee Letter for that Trust.

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## **23 Variation of documents**

### **23.1 Variation of Master Trust Deed by Issue Supplement**

Despite any other provision of this deed, the terms of this deed may be varied for any Trust by the Issue Supplement for that Trust. Any such variation applies to that Trust only and not to any other Trust.

### **23.2 Acknowledgement**

The parties acknowledge that it is in the interest of all parties to the Transaction Documents of a Trust and the Participation Unitholder in the Trust to achieve the Objectives of the Trust.

### **23.3 Variation of Transaction Documents to achieve Objectives**

If any draft law is introduced into the Australian Federal parliament, or any Australian State or Territory parliament, and the result of that draft law, if it is passed, would be that any of the Objectives of a Trust may not be achieved, then:

- (a) if the Trust is a Rated Trust, the Trust Manager must determine whether the Transaction Documents of that Trust need to be varied to achieve the Objectives of that Trust; and
- (b) as soon as reasonably practicable after the draft law is introduced, the Trust Manager must provide to the Trustee, the Security Trustee and the Participation Unitholder in that Trust a draft Amending Deed that the Trust Manager reasonably believes will, if executed, make the variations to the Transaction Documents of that Trust that are necessary to achieve the Objectives of the Trust; and
- (c) when:
  - (i) the Trust Manager is reasonably satisfied that the draft Amending Deed will, if executed, make the variations to the Transaction Documents of the Trust that are necessary to achieve the Objectives of the Trust (and in this regard the Trust



Manager may rely on the advice of tax lawyers, tax accountants and other professional advisers); and

- (ii) the Security Trustee has agreed to execute the Amending Deed, the Trust Manager must, subject to any Transaction Document, execute the Amending Deed and direct the Trustee to execute the Amending Deed.

#### **23.4 Amending Deed**

So long as the Trust Manager receives written advice from an experienced and reputable tax lawyer or tax accountant confirming that if the Transaction Documents of the Trust are varied in accordance with the Amending Deed and the parties comply with the Transaction Documents as varied, the Objectives of that Trust will be achieved, and, if the Trust is a Rated Trust, the Trust Manager confirms that each Designated Rating Agency of the Trust has been notified of the amendments contemplated by the Amending Deed, the Amending Deed may:

- (a) permit the Trustee to accumulate a reserve out of moneys that would otherwise be payable to the Participation Unitholder in the Trust; or
- (b) provide for Tax in respect of the Trust to be paid out of moneys that would otherwise have been payable to the Participation Unitholder in the Trust.

#### **23.5 Proposal**

Without limiting clause 23.4 ("Amending Deed"), in formulating a proposal to meet the Objectives of a Trust, the Trust Manager must have regard to the impact of any variations to the Transaction Documents of the Trust on the Participation Unitholder in the Trust and must consider proposals made by the Participation Unitholder to ensure the Objectives are achieved.

#### **23.6 Variation in accordance with Security Trust Deed**

Except as expressly provided in this deed or a Transaction Document in respect of a Trust:

- (a) this deed and each Transaction Document in respect of that Trust may only be amended in accordance with clause 21 ("Variations, waivers and determinations") of the Security Trust Deed; and
- (b) the Trustee may (if directed by the Trust Manager and with the consent of the Participation Unitholder) agree to any such amendments made, or to be made, in accordance with clause 21 ("Variations, waivers and determinations") of the Security Trust Deed.

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### **24 Right of indemnity – Penalty Payments**

- (a) Without prejudice to the right of indemnity given by law to trustees, and without limiting any other provision of this deed, the Trustee will be indemnified out of the Trust Assets of a Trust, free of any set-off or counterclaim, against all Penalty Payments which the Trustee is required to pay personally or in its capacity as trustee of the relevant Trust and arising in connection with the performance of its duties or exercise of its powers under the Transaction Documents in relation to that Trust, including without limitation as a result of the Trustee being lender of record, mortgagee or equitable assignee in respect of any Trust Assets of a Trust.

- (b) The Trustee's right to be indemnified in accordance with paragraph (a) applies notwithstanding any allegation that the Trustee has incurred any such Penalty Payment as a result of its fraud, negligence or wilful misconduct or any other act or omission which may otherwise disentitle the Trustee to be so indemnified. However, the Trustee is not entitled to that right of indemnity or reimbursement to the extent that there is a determination by a relevant court of negligence, fraud or wilful misconduct by the Trustee (provided that, until such determination, the Trustee is entitled to that right of indemnity or reimbursement but must, upon such determination, repay to that Trust any amount paid to it under this clause 24).
- (c) This clause overrides any other provision of this deed.
- (d) The Trustee shall call upon any right of indemnity from any other third party it may have under a Transaction Document in respect of a Trust before it calls upon the indemnity in paragraph (a) in respect of that Trust. If any such claim is not satisfied within 3 Business Days of the claim being made, the Trustee may exercise its right of indemnity referred to in paragraph (a).

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## **25 Other Interests and Dealings of Trustee and Trust Manager**

- (a) The Trustee and the Trust Manager each may exercise all its respective powers even if it, any Related Entity of it or any director, shareholder or officer of any of them may have an interest in the mode or result of exercising the power or may benefit directly or indirectly as a result.
- (b) Provided it acts in good faith, and subject to the relevant Transaction Documents, a corporation may act as a Trustee or Trust Manager (as the case may be) even if its Related Entities, directors, officers or shareholders of any of them are the Trustee, the Trust Manager, the Security Trustee, a Unitholder, a Noteholder or a Secured Creditor or interested as directors, shareholders, officers, partners, or otherwise stand in a fiduciary or beneficial relationship to any person:
  - (i) with whom Trust Assets may be invested;
  - (ii) with whom the Trustee, the Trust Manager, the Security Trustee, any Unitholder, any Noteholder or any Secured Creditor may deal; or
  - (iii) who may be legally or beneficially interested in or entitled to any interest in a Trust.
- (c) Provided it acts in good faith, and subject to the relevant Transaction Documents, the Trustee and Trust Manager each may sell assets from, lend money to, borrow or raise money from, and otherwise deal with:
  - (i) itself whether on its own behalf or in any other capacity;
  - (ii) any Related Entity;
  - (iii) any director, officer or member of itself or any Related Entity; and
  - (iv) any person referred to in paragraph (b),

in all ways as if it was not the Trustee or Trust Manager (as the case may be) and shall not be liable to account for any profit or commission derived as a result.

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## **26 GST**

### **26.1 Construction**

In this clause 26:

- (a) words and expressions which are not defined in this deed but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

### **26.2 Consideration GST exclusive**

Unless expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST.

### **26.3 Payment of GST**

If GST is payable on any supply made under this deed, for which the consideration is not expressly stated to include GST, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### **26.4 Timing of GST payment**

The recipient will pay the amount referred to in clause 26.3 ("Payment of GST") in addition to and at the same time that the consideration for the supply is to be provided under this deed.

### **26.5 Tax Invoice**

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 26.3 ("Payment of GST"). The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

### **26.6 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a supplier under this deed, the amount payable by the recipient under clause 26.3 ("Payment of GST") will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

### **26.7 Reimbursements**

Where a party is required under this deed to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party, or to which the representative member for a GST group of which the other party is a member, is entitled; and

- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

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## **27 General**

### **27.1 Counterparts**

This deed may consist of a number of copies, each signed by one or more parties to the deed. If so, the signed copies are treated as making up the one document.

### **27.2 Governing law and jurisdiction**

This deed is governed by the law in force in New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of that place.

### **27.3 Serving documents**

Without preventing any other method of service, any document in a court action in connection with this deed may be served on a party by being delivered to or left at that party's address for service of notices in accordance with clause 23 of the Security Trust Deed ("Notices and other communications").

**EXECUTED** as a deed

# Think Tank Master Trust Deed

## Schedule 1 - Notice of Creation of Trust

### Notice of Creation of Trust - *[insert name of Trust]* Trust

Under clause 2.1 ("Declaration of Trust") of the Think Tank Master Trust Deed dated *[insert date]* between BNY Trust Company of Australia Ltd (ABN 49 050 294 052) ("**Trustee**") and *[●]* (ABN *[●]*) ("**Master Trust Deed**"), the Trustee declares that it holds the sum of \$10 and will hold the Trust Assets of the Trust created under this notice on trust at any time for the persons who are Unitholders of the *[insert name of Trust]* at that time.

The Trust created under this notice is to be known as the *[insert name of Trust]*.

The *[insert name of Trust]* is a Trust for the purposes of the Master Trust Deed.

The Participation Unitholder is *[insert name of Participation Unitholder]*.

The Residual Unitholders are *[insert names of Residual Unitholders]*.

The Trustee holds the sum of \$10 and the Trust Assets on and subject to the terms of the Master Trust Deed.

This notice is for the benefit of the Unitholders from time to time of the Trust.

The "Interpretation" clause of the Master Trust Deed applies to this notice as if it was fully set out in this notice.

**DATED:**

**EXECUTED** as a deed poll

**[Insert execution clause for Trustee]**

# Think Tank Master Trust Deed

## Schedule 2 - Form of Reallocation Notice

To: [ ] as trustee of the [ ] Trust ("**Acquiring Trustee**")  
From: [ ] as trustee of the [ ] Trust ("**Disposing Trustee**")  
and  
[ ] as Trust Manager  
Date: [ ]

### Reallocation Notice

The Disposing Trustee offers to reallocate the Trust Assets specified in Annexure "A" ("**Reallocated Assets**") to the Acquiring Trustee on the Reallocation Date together with any rights relating to the Reallocated Assets (including the benefit of any representation, warranty, undertaking or indemnity in relation to the Reallocated Assets given to it).

The Acquiring Trustee may accept the offer from the Disposing Trustee by paying to the Purchase Price for the Reallocated Assets, being \$[●], to the credit of the following account:

*[insert account details]*

The Reallocation Cut-Off Date is [●].<sup>1</sup>

The Reallocation Date is [●].

The Trust Manager confirms that the Reallocation is in accordance with the Transaction Documents of both the Disposing Trust and the Acquiring Trust.

The "Interpretation" clause of the Master Trust Deed applies to this notice as if it was fully set out in this notice.

.....  
[Name of person]  
being an Authorised Officer of  
[Name of Trustee]

.....  
[Name of person]  
being an Authorised Officer of  
[Name of Trust Manager]

### Instructions for completion

- 1 Carefully consider what to include as this date having regard to the calculation of the Purchase Price. Pursuant to clause 15.8(b), all principal collections from the Reallocation Date will be for the account of the Acquiring Trust.

### Annexure A - Reallocated Assets

#Insert details of Reallocated Assets#

# Think Tank Master Trust Deed

## Signing page

DATED: *22 March* 2013

**SIGNED, SEALED AND DELIVERED**  
by

and

as attorneys for **BNY TRUST  
COMPANY OF AUSTRALIA LIMITED**  
under power of attorney dated  
*1 September 2007*  
in the presence of:

*AH6*  
.....  
Signature of witness

Alexandra Hunter

.....  
Name of witness (block letters)

*[Signature]*  
Andrea Raver  
Vice President

.....  
By executing this deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

.....  
By executing this deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

**EXECUTED by THINK TANK GROUP  
PTY LIMITED** in accordance with  
section 127(1) of the Corporations Act  
2001 (Cwlth) by authority of its  
directors:

.....  
Signature of director

.....  
Name of director (block letters)

.....  
Signature of director/company  
secretary\*  
\*delete whichever is not applicable

.....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

# Think Tank Master Trust Deed

## Signing page

DATED: 2013

SIGNED, SEALED AND DELIVERED  
by

and

as attorneys for **BNY TRUST  
COMPANY OF AUSTRALIA LIMITED**  
under power of attorney dated

in the presence of:


.....  
Signature of witness

.....  
Name of witness (block letters)

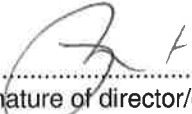
.....  
By executing this deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

.....  
By executing this deed the attorney  
states that the attorney has received no  
notice of revocation of the power of  
attorney

**EXECUTED** by **THINK TANK GROUP  
PTY LIMITED** in accordance with  
section 127(1) of the Corporations Act  
2001 (Cwlth) by authority of its  
directors:

  
.....  
Signature of director

*PETER KEARNS*  
.....  
Name of director (block letters)

  
.....  
Signature of director/company  
secretary\*

\*delete whichever is not applicable

*JONATHAN STREET*  
.....  
Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable