

Trust Deed

Zagga Investments Lending Trust

Zagga Investments Pty Ltd ACN 615 154 786 (Trustee)

THIS TRUST DEED REGULATES THE RELATIONSHIP BETWEEN ZAGGA INVESTMENTS PTY LTD, INVESTORS AND BORROWERS IN RESPECT OF THEIR LOANS ORIGINATED VIA ZAGGA MARKET PTY LTD INTO THE ZAGGA INVESTMENTS LENDING TRUST.

FOR A SUMMARY OF THIS DOCUMENT, PLEASE READ THE SALIENT FEATURES OF THE TRUST DOCUMENT WHICH CAN BE DOWNLOADED FROM OUR [WEBSITE](#).

READING THE SUMMARY DOCUMENT IS NOT A SUBSTITUTE FOR READING THIS TRUST DEED IN FULL, HOWEVER IT MAY ASSIST WITH YOUR UNDERSTANDING OF THIS TRUST DEED.

Contents

Agreed terms	5	7. Elections	8
1. Trust	5	7.1 Making an Election	8
1.1 Name of the Trust	5	7.2 Deemed Elections	8
1.2 Benefit of the Trust	5	7.3 Trustee may value	8
1.3 Trustee	5	7.4 Trustee may revalue	8
1.4 Deed binding	5	7.5 Value	8
1.5 Commencement	5	7.6 Determining value	8
1.6 Duration	5	7.7 Trustee's reliance	8
1.7 Vesting	5	8. Redemption Price of Interests	8
1.8 Separate fund	5	8.1 Redemption Price	8
1.9 No agency or partnership created	5	8.2 Rounding	8
2. Interests	5	8.3 Trustee may deduct amounts upon redemption	9
2.1 Nature of Interests	5	9. Redemptions	9
2.2 Proportionate Share	6	9.1 Redemptions generally	9
2.3 No fractions of Interests	6	9.2 Redemption of Loan Interests arising from full repayment of capital	9
2.4 Members not to interfere	6	9.3 Redemption of Loan Interests arising from part repayment of capital	9
2.5 Dealing with Interests	6	9.4 Redemption of income	9
3. Applications for Interests	6	9.5 Redemption of Unallocated Interests	9
3.1 Applications	6	9.6 Effect of redemptions leave zero values	9
3.2 Payment in kind	6	9.7 Compulsory redemption or sale	10
3.3 Trustee may deduct	6	9.8 Allowable deductions	10
3.4 Separate bank account	6	9.9 Trustee not obliged to pay Redemption Price out of own funds	10
3.5 Trustee may set investment minimums	6	10. Transfer of Interests	11
3.6 Amount or value of consideration for an Interest	6	10.1 Requesting a transfer	11
3.7 Trustee may reject Applications	6	10.2 Trustee may refuse	11
3.8 Timing	6	10.3 Trustee may request information	11
3.9 When Interests issued	6	10.4 Form of transfer	11
4. Issue of Interests and additions to an Interest	7	10.5 Costs of transfer	11
4.1 Issue of Interests	7	10.6 Consideration	11
4.2 Additions to an Interest	7	10.7 Registration	11
4.3 Account	7	10.8 Account update	11
4.4 No certificates	7	11. Income and distributions to Members	11
5. Allocations of Application Moneys	7	11.1 Determination of income and reserves	11
5.1 Allocation of Application Money	7	11.2 Distribution of income	11
5.2 Allocation of Unallocated Funds to Underlying Loans	7	11.3 Distribution Entitlement	11
5.3 Entitlement of Interests	7	11.4 Distribution of Distribution Entitlement	12
6. Application Price for Interests	8	11.5 Categories and sources of income	12
6.1 Application Prices	8	11.6 Change in Tax Act	12
6.2 Rounding	8		

12. Powers of the Trustee	12	20. Members' meetings	17
12.1 General powers	12	20.1 Convening of meetings	17
12.2 Contracting powers	12	20.2 Trustee may determine	17
12.3 Investment and lending powers and restrictions	12	20.3 Notice	17
12.4 Power of delegation	13	20.4 Non-receipt	18
12.5 Powers under law	13	20.5 Quorum	18
12.6 Currency conversion	13	20.6 No quorum	18
12.7 Suspension of Zagga Platform	13	20.7 Chairperson	18
12.8 Exercise of discretions	13	20.8 Postponement or cancellation	18
12.9 Consultation with Members	13	20.9 Notice of cancellation or postponement of meeting	18
13. Management of the Trust	13	20.10 Contents of notice of postponement of meeting	18
13.1 Trustee to manage Trust	13	20.11 Number of clear days for postponement of meeting	18
13.2 Management powers	13	20.12 Business at postponed meeting	18
14. Rights of the Trustee	13	20.13 Proxy, attorney or representative at postponed meeting	18
14.1 Trustee may engage advisers	13	20.14 Adjournment	18
14.2 Reliance by Trustee	13	20.15 Notice of adjourned meeting	19
14.3 Other rights	14	20.16 Voting	19
14.4 Other services	14	20.17 Proxies	19
14.5 Trustee may receive fees paid by Borrowers	14	20.18 Demand for a poll	19
15. Indemnity of the Trustee	14	20.19 Declaration of poll	19
16. Liability of the Trustee	15	20.20 Questions decided by simple majority	19
16.1 Trustee not liable	15	20.21 Poll	19
16.2 Trustee may limit liability	15	20.22 No casting vote for chairperson	19
16.3 Other obligations and duties excluded	15	20.23 Vote of Member of unsound mind	20
17. Remuneration and expenses of the Trustee	15	20.24 Objection to voting qualification	20
17.1 Entitlement to Fees	15	20.25 Resolutions binding	20
17.2 Trustee may receive less fees	15	20.26 Minutes	20
17.3 Expenses	16	20.27 Meetings by technology	20
17.4 GST	16	20.28 Written resolutions	20
17.5 Redemption of Unallocated Interests	16	21. Death and insolvency	20
18. Retirement or removal of the Trustee	16	22. Register	20
18.1 Retirement or removal	16	22.1 Keeping a Register	20
18.2 What the Trustee must do on its retirement or removal	17	22.2 Information in the Register	20
18.3 Release for retiring or removed Trustee	17	22.3 No notice of trust	20
18.4 Indemnity for retiring or removed Trustee	17	22.4 Registered Member is owner	20
18.5 Execution of deed by new Trustee	17	22.5 Changes to details in Register	20
18.6 Retirement benefit	17	23. Personal Property Securities Act	20
18.7 If replacement Trustee not appointed	17	23.1 PPSA further steps	20
18.8 Trustee may not become a Member	17	23.2 Exclusion of PPSA provisions	21
18.9 Change of name	17	24. Records, audit and reports	21
19. Liability of and restrictions on Members	17	24.1 Keep records	21
19.1 Liability at Member's request	17	24.2 Appointment of auditors	21
19.2 Joint tenancy	17	24.3 Reports	21
19.3 Joint Members	17		
19.4 Prohibition on grant of Security Interests	17		

25. Payments	21	31. Amendments to this deed	23
25.1 Manner of payment to Members	21	32. Governing law and jurisdiction	23
25.2 Unpresented cheques	21	33. Prohibition or enforceability	23
25.3 Unsuccessful transfers	21	34. Defined terms & interpretation	23
25.4 Fractions of cents	21	34.1 Defined terms	23
25.5 Joint Members	21	34.2 Interpretation	26
25.6 Tax and amounts owing	21	34.3 Headings	27
26. GST	21	34.4 Conflicts with Disclosure Document	27
26.1 Interpretation	21	34.5 Conflicts with Schedule	27
26.2 GST gross up	21		
26.3 GST inclusive supply	21		
26.4 Input tax credits	21		
27. Notices to Members	22	Signing page	27
27.1 How notices are given	22		
27.2 Cheques	22	Schedule 1 - Sub-trusts for Loans	27
27.3 Joint Members	22		
27.4 When receipt is taken to have occurred	22	1. Nature of Loans	27
28. Notices to the Trustee	22	1.1 Separate trusts	27
28.1 Notice must be in writing	22	1.2 Trustee's powers	27
28.2 Notice effective at time of receipt	22	1.3 Redemption by a Member	27
28.3 Signature	22	1.4 Entitlements to distributions	27
29. Termination	22	1.5 Liability etc of the Trustee	27
29.1 Trustee may terminate	22	2. Establishment of Loans	27
29.2 Members may terminate	22	2.1 Naming of Loans	27
29.3 Issue and redemption stops	22	2.2 Loan documentation and advances	27
30. Procedure on termination	22		
30.1 Realisation of Trust Property	22		
30.2 Audit of winding up	22		
30.3 Distribution following termination	22		
30.4 Postponement of realisation	23		
30.5 Retention of Trust Property	23		
30.6 Continuation of provisions	23		

Details

Date:	24 February 2017
Parties:	
Name:	Zagga Investments Pty Ltd (ACN 615 154 786)
Short form name:	Trustee
Notice details:	L11, 1 York St Sydney NSW 2000
	GPO Box 4505 Sydney NSW 2001

Background

- A The Trustee operates an electronic exchange platform under which Borrowers may seek Loans and Members may wish to gain economic exposure to Loans.
- B The Trustee wishes to constitute a trust according to the terms of this deed, which will be established for the benefit of Members.

Agreed terms

1. Trust

1.1 Name of the Trust

The Trust is to be called the 'Zagga Investments Lending Trust' or such other name as determined by the Trustee from time to time.

1.2 Benefit of the Trust

Subject to clause 1.8, the Trust is constituted for the benefit of Members for their respective Interests.

1.3 Trustee

The Trustee is the trustee of the Trust.

1.4 Deed binding

This deed binds the Members and the Trustee as well as any person who claims through any of them.

1.5 Commencement

The Trust commences when the first Interest is issued.

1.6 Duration

- (a) The Trust terminates on the earliest of:
- (i) the day before 80 years after the Trust is established;
 - (ii) the date on which the Trust terminates in accordance with another provision of this deed; and
 - (iii) the date on which the Trust terminates in accordance with an order of a court or by operation of law.
- (b) Despite any other provision of this deed, no Interests may be issued, transferred or redeemed after the 80th anniversary of the day before the day the Trust commenced, unless that issue, transfer or redemption would not offend the rule against perpetuities, or any other rule of law or equity relating to the duration of trusts.
- (c) For the avoidance of doubt, each trust established under this deed is terminated at the same time as the Trust terminates under this deed.

1.7 Vesting

The Trust Property vests in the Trustee on trust for the Members (in accordance with the terms of this deed), as well as any person who claims through any of them.

1.8 Separate fund

- (a) The Trustee must hold the Trust Property as a separate fund which is not available to meet liabilities of any other trust.
- (b) Subject to clause 1.8(c), the Trustee may mingle Trust Property with other property to the extent legally permitted.
- (c) Notwithstanding that the Trustee may make and enter into more than one Loan from time to time:
- (i) the Trust Property held by the Trustee in respect of one Loan shall not merge or be pooled with and shall not be deemed to have merged or be

pooled with the Trust Property held by the Trustee in respect of any other Loan. For the purposes of this clause, principal, interest or other income attributable to a Loan that has been redeemed by or otherwise distributed to a Member shall not be taken to be Trust Property held by the Trustee in respect of that Loan; and

- (ii) the Trustee shall hold and administer all Trust Property comprising or arising from any particular Loan (including any associated Loan Rights) separately for the benefit of those Members who are Exposed to that Loan and the provisions in the Schedule will apply in relation to any such Trust Property.

1.9 No agency or partnership created

None of the following:

- (a) this deed;
- (b) a trust created under this deed;
- (c) a trust associated with this deed; and
- (d) except so far as the agreement expressly provides otherwise, an agreement entered into in connection with the Trust,

creates a relationship of principal and agent, or of partnership, between the Members and the Trustee, or between the Members themselves.

2. Interests

2.1 Nature of Interests

- (a) The beneficial interest in the Trust Property is divided into Interests categorised as:
- (i) Unallocated Interests; and
 - (ii) Loan Interests.
- (b) Subject to any rights, obligations and restrictions attaching to an Interest:
- (i) each Interest confers on a Member:
 - (A) where a Member has Unallocated Funds, a sole and separate undivided beneficial interest in the Unallocated Funds;
 - (B) where a Member has a Loan Interest, an undivided beneficial interest in the Underlying Loan and associated Loan Rights to which that Loan Interest is Exposed (subject to the Loan Expenses relating to that Underlying Loan) in the Proportionate Share as determined by the Trustee; and
 - (C) such other rights as are conferred on a Member under this deed;
 - (ii) an Interest does not confer an interest in the Trust Property as a whole; and
 - (iii) an Interest does not confer any interest in any particular Trust Property (other than a Loan to which that Member is Exposed and any Loan Rights relating to the Loan).
- (c) A Member may have only one Interest at any one time, unless the Trustee determines otherwise.

2.2 Proportionate Share

- (a) Where only one Member is Exposed to a Loan, that Member's Proportionate Share shall be one hundred per cent. (100%).
- (b) The Trustee may determine a minimum Proportionate Share for a Member in respect of an Underlying Loan.

2.3 No fractions of Interests

Fractions of an Interest may not be issued or redeemed by the Trustee, however, the Member may redeem part or all of their Unallocated Funds strictly only as provided in clause 9.

2.4 Members not to interfere

Except as otherwise provided by this deed, a Member has no right or power, merely because it is a Member:

- (a) to interfere with, or question the exercise or non-exercise of, any power, duty or right of the Trustee;
- (b) to exercise a right in respect of a part of or particular Trust Property;
- (c) to lodge, in respect of Trust Property, a caveat or other document that prohibits (whether conditionally or not) an action, or the registration of a dealing, in respect of the Trust Property;
- (d) to claim any interest in a part of or particular Trust Property; or
- (e) to require Trust Property to be transferred to the Member (or any other person),

and a Member must not make a claim against another Member or a claim on funds owed by a Borrower to the Trustee in respect of another Member.

2.5 Dealing with Interests

A Member must not dispose of or otherwise deal with its Interests other than in accordance with this deed. Any disposal or other dealing in a Member's Interests other than in accordance with this deed has no effect unless the Trustee determines otherwise in writing.

3. Applications for Interests

3.1 Applications

Except as otherwise provided in this deed, an Applicant must:

- (a) be an Eligible Person;
- (b) give the Trustee an Application; and
- (c) pay or transfer to the Trustee or its custodian (where there is one) the Application Money.

The Trustee may determine that an Application or Application Money (as the case may be) shall be taken to be received on the issue of Unallocated Interests in the circumstances described in clauses 9.2, 9.3, 9.4 or 30.3.

3.2 Payment in kind

An Applicant may only transfer property (other than money) as part or all of the Application Money if:

- (a) the Trustee permits;
- (b) the property is in a form permitted by the Trustee; and

- (c) the property is accompanied by a valuation that is acceptable to the Trustee, unless otherwise advised by the Trustee.

3.3 Trustee may deduct

The Trustee or its custodian (where there is one) may deduct Costs incurred in receiving, and in calculating the value of, consideration for an Interest or an addition to an Interest.

3.4 Separate bank account

The Trustee or custodian (where there is one) may hold Application Money in a single deposit account with an authorised deposit-taking institution containing application money in respect of one or more trusts.

3.5 Trustee may set investment minimums

The Trustee from time to time may determine and may vary the Initial Minimum Investment and Minimum Balance. The Trustee may from time to time determine to exempt any person from the requirements in relation to Initial Minimum Investments or the Minimum Balance.

3.6 Amount or value of consideration for an Interest

The amount or value of the consideration for an Interest on an Application must equal or exceed the Initial Minimum Investment except if the Trustee elects to accept lower consideration.

3.7 Trustee may reject Applications

- (a) The Trustee may reject an Application, or an addition to an Interest, in whole or in part, without giving a reason.
- (b) Where the Trustee rejects an Application, or an addition to an Interest, the Trustee must:
 - (i) give the Applicant or Member (as the case may be) a notice of the rejection; and
 - (ii) cause the amount of the Application Money (less any Costs incurred by the Trustee or the Trust) to be paid to the Applicant or Member (as the case may be).

3.8 Timing

Consideration for an Interest, or an addition to an Interest, may be provided at or within such time as the Trustee may determine or accept from time to time.

3.9 When Interests issued

- (a) An Interest is taken to be created and issued when:
 - (i) the Trustee enters the Applicant on the Register; and
 - (ii) the Application Money in a form acceptable to the Trustee becomes Trust Property. An Interest issued against Application Money paid other than in cleared funds are void if the funds are not subsequently cleared or the consideration is not provided or transferred at or within the time specified by the Trustee.
- (b) An Interest is taken to have increased in value as soon as the Application Money is received and accepted by the Trustee or its custodian (where there is one).

4. Issue of Interests and additions to an Interest

4.1 Issue of Interests

Immediately on the acceptance of Application Money, the Trustee must apply the Application Money to issue an Interest, or increase the value of an Interest (as the case may be), by:

- (a) applying the Application Money to a Loan or to an Unallocated Interest in the manner described in clauses 5.1 or 30.3;
- (b) updating the Account to record the transactions described in clause 4.1(a); and
- (c) updating the Register.

4.2 Additions to an Interest

- (a) Once a Member has established an Interest, the Member may contribute Application Money from time to time by making payments of Application Money to the Trustee in the manner contemplated by this deed.
- (b) On receipt by the Trustee of principal, interest, income or other funds in relation to a Loan in respect of a Member, the Trustee shall apply that income or other property as Unallocated Funds in respect of the Member in the circumstances described in clauses 9.1, 9.3 or 9.4 or as otherwise contemplated under or clause 30.3.
- (c) A Member may Elect to apply the Unallocated Funds credited in the Member's Account as Application Money for an Exposure to a Loan on terms set out in clause 5.2.

4.3 Account

- (a) The Trustee shall maintain an Account for a Member on such terms and in such manner as the Trustee determines.
- (b) An Account is not conclusive evidence of a Member's Interest, Loan Interest or Unallocated Interest.
- (c) An Account may have a zero balance. A Member holding an Account with a zero balance does not cease to be a Member provided that they are Registered as the holder of an Interest.

4.4 No certificates

No certificates will be issued for Interests, unless the Trustee determines otherwise.

5. Allocations of Application Moneys

5.1 Allocation of Application Money

When the Trustee receives Application Money:

- (a) if and to the extent that the Member has Elected through the Zagga Platform before the Trustee receives the Application Money that such money is to be used to be Exposed to a particular Loan or class of Loans, and the Trustee has determined to make that Loan or a Loan within that class of Loans, the Trustee must apply such Application Money (or the relevant part of it) to provide the Proportionate Share of that particular Loan or a Loan of that particular class (as the case may be) in accordance with the Member's Election and the Member will be issued with a corresponding Loan Interest at the Application Price;
- (b) if and to the extent that the Member has not Elected through the Zagga Platform before the Trustee receives the Application Money that such money is to be used to be Exposed to a particular Loan, the Trustee must apply such Application Money as Unallocated Funds and the Member will be issued with corresponding Unallocated Interests at the Application Price.

5.2 Allocation of Unallocated Funds to Underlying Loans

- (a) From time to time a Member may Elect to apply the Unallocated Funds credited in the Member's Account as Application Money to fund the Member's Exposure to a Loan or Loans.
- (b) If the Trustee confirms that the Member has Unallocated Interests sufficient to satisfy the Election described in clause 5.2(a), it must, in accordance with the terms of this deed:
 - (i) apply those Unallocated Funds to the making of the relevant Underlying Loan or Underlying Loans in accordance with the Member's Election; and
 - (ii) redeem and cancel all or the relevant proportion of the Member's Unallocated Interests and issue to the Member a Loan Interest in relation to the Underlying Loan or each of the Underlying Loans in accordance with clause 5.3(a) and other relevant provisions of this deed.

5.3 Entitlement of Interests

The Trustee will issue:

- (a) each Loan Interest on terms that entitle the Member holding that Loan Interest to receive that Member's Proportionate Share of:
 - (i) the repayment of the Underlying Loan to which that Member is Exposed; and
 - (ii) the payment of all Loan Rights arising in connection with the Underlying Loan to which that Member is Exposed; and
- (b) each Unallocated Interest on terms that entitle the Member holding that Unallocated Interest to any interest, entitlements, rights, accruals, benefits or other payments or repayments in respect of the Unallocated Funds to which that Unallocated Interest relates, as recorded in the Register.

6. Application Price for Interests

6.1 Application Prices

For all Interests, the Application Price will be:

- (a) if the Member subscribes for an Interest before electing to be Exposed to a Loan, one dollar (\$1.00) per Unallocated Interest;
- (b) if the Member Elects to be Exposed to a Loan at the time of paying the Application Money, one dollar (\$1.00) for each one dollar (\$1.00) of face value of the Loan to which the Member elects to be Exposed; and
- (c) if a Member Elects to be issued further Unallocated Interests in circumstances described in clauses 9.1, 9.3 or 9.4, one dollar (\$1.00) per Unallocated Interest,

and, in each case, may be rounded as the Trustee determines, provided that the amount of the rounding must not be more than one per cent. (1%) of the amount calculated.

6.2 Rounding

In respect of clauses 6.1(a) and 6.1(c), any excess Application Money which results from rounding becomes Trust Property, whereas in respect of clause 6.1(b) any excess Application Money which results from rounding remains an Unallocated Interest.

7. Elections

7.1 Making an Election

An Election:

- (a) may not be made or given where it is inconsistent with the terms of this deed;
- (b) may only be given in relation to such matters governed by this deed as the Trustee determines from time to time;
- (c) must be in the form and manner determined by the Trustee from time to time, which may include electronic formats set out in, and other requirements of, the Zagga Platform;
- (d) may be a standing one, where and to the extent that the Trustee permits standing Elections;
- (e) may not be withdrawn, unless the Trustee agrees; and
- (f) need only be accepted by the Trustee if, in the opinion of the Trustee, it complies with this clause 7.

7.2 Deemed Elections

The Trustee may from time to time deem a Member to have made an Election, including in circumstances set out in the Disclosure Document.

7.3 Trustee may value

The Trustee may cause some or all Trust Property (or an Interest or any component thereof) to be valued at any time as it sees fit, including more than once on each day.

7.4 Trustee may revalue

The Trustee may, having regard to the nature of the property, cause some or all Trust Property (or an Interest or any component thereof) to be revalued whenever it sees fit.

7.5 Value

Subject to this deed, the value of any Trust Property is the market value or other value appropriate to the nature of the property and the nature of the Trust from time to time.

7.6 Determining value

The value of any Trust Property must be determined by:

- (a) a valuer who is independent of the Trustee;
- (b) a person using a method determined by a person who is independent of the Trustee; or
- (c) the Trustee using, subject to this deed, any other appropriate method the Trustee decides to adopt (including estimates of value based on objective criteria where actual figures are not available) which is capable of being verified independently by a valuer independent of the Trustee.

7.7 Trustee's reliance

The Trustee may value any Trust Property, or make any calculation or determination of value under this deed, in reliance on any valuer or other person appointed by the Trustee to assist the Trustee to discharge its obligations under this deed.

8. Redemption Price of Interests

8.1 Redemption Price

Subject to the adjustments in clause 8.3 and the redemption requirements and calculations in clause 9, and any rights, obligations and restrictions attaching to an Interest, an Interest may be redeemed at the following value or amount (each a **Redemption Price**):

- (a) for a Loan Interest, at a Redemption Price calculated as its Loan Value less any Loan Expenses; or
- (b) for an Unallocated Interest, at a Redemption Price of \$1.00 per Unallocated Interest,

and, in each case, may be rounded as the Trustee determines, provided that the amount of the rounding must not be more than one per cent. (1%) of the amount calculated.

8.2 Rounding

In respect of clause 8.1(a), any excess Redemption Price which results from rounding becomes Trust Property, whereas in respect of clause 8.1(b) any excess Redemption Price which results from rounding remains an Unallocated Interest except that it shall become Trust Property where the Member seeks to withdraw their entire Interest.

8.3 Trustee may deduct amounts upon redemption

The Trustee may deduct from the Redemption Price otherwise payable to a Member:

- (a) any amounts due and unpaid by the Member in respect of the Interest, or Partial Interest, being redeemed plus any Costs associated with the redemption or any proceedings brought against the Member to recover outstanding amounts;
- (b) where the Interest is being redeemed by the Trustee in order to distribute the proceeds of repayment of principal and the payment of interest under a Loan, the Member's Proportionate Share of the Cost (if any) of procuring that repayment or payment;
- (c) where the Interest is being redeemed by the Trustee in order to distribute the proceeds of realisation of an item of Trust Property other than a Loan, the Member's Respective Proportion of the Cost (if any) of effecting the realisation of that Trust Property;
- (d) where the Interest is an Impaired Loan Interest, any Costs incurred by the Trustee in enforcing or recovering the repayment of principal and payment of interest under the relevant Underlying Loan; and
- (e) where clause 9.6 applies, the Costs set out in clause 9.8.

9. Redemptions

9.1 Redemptions generally

A Member has no right to redeem their Interest unless otherwise provided in this deed.

9.2 Redemption of Loan Interests arising from full repayment of capital

- (a) Upon and to the extent of the receipt by the Trustee of all of the proceeds (including in relation to a final scheduled repayment) representing the principal outstanding of an Underlying Loan (including of any Impaired Loan), the Trustee must:
 - (i) redeem and cancel each Loan Interest Exposed to that Loan; and
 - (ii) pay an amount, or issue a number of Unallocated Interests at the Application Price, to each Member that was Exposed to that Loan equal to the Redemption Price payable in respect of those Loan Interests on a Proportionate Share basis, in accordance with any Election provided by the relevant Member, and
 - (iii) update the Register and an Account accordingly, to reflect the transactions described in this clause 9.2.
- (b) The Trustee shall, when issuing Unallocated Interests under clause 9.2(a), in respect of an Impaired Loan Interest, notify each relevant Member that it has in accordance with its Impairment Policy written off the remaining portion of the principal of the Underlying Loan and that accordingly each such Member should write off the remaining portion of its or their Impaired Loan Interest in respect of that Underlying Loan.

9.3 Redemption of Loan Interests arising from part repayment of capital

When only part of the principal outstanding of an Underlying Loan is received by the Trustee (whether by way of partial prepayment or scheduled repayment) (Part Principal Repayment), the Trustee must:

- (a) pay an amount, or issue a number of Unallocated Interests at the Application Price, to each Member that is Exposed to that Loan equal to that Member's Proportionate Share of the dollar value of the Part Principal Repayment of that Underlying Loan, in accordance with any Election provided by the relevant Member; and
- (b) revalue a Loan Interest, and update the Register and an Account accordingly, to reflect the transactions described in this clause.

9.4 Redemption of income

Upon the receipt by the Trustee of:

- (a) income in respect of Unallocated Funds; or
- (b) interest or other income in respect of Underlying Loans,

the Trustee must immediately:

- (c) in respect of receipts described in paragraph (a), apply those proceeds on behalf of the Member holding the Unallocated Interests in those Unallocated Funds; and
- (d) in respect of receipts described in paragraph (b), apply those proceeds on behalf of the Member Exposed to the Underlying Loan (on a Proportionate Share basis),

by subscribing for and issuing to that Member further Unallocated Interests at the Application Price unless the Member Elects to receive those proceeds by way of cash payment to the Member.

9.5 Redemption of Unallocated Interests

A Member may Elect to redeem some or all its Unallocated Interests in Unallocated Funds at any time and the Trustee must, within two (2) Business Days of the date it has:

- (a) confirmed the dollar value of the relevant Unallocated Funds of that Member; and
- (b) determined that such amount is sufficient to satisfy the Election,

redeem the amount of Unallocated Interests at the Redemption Price payable for those Unallocated Interests and pay to the Member the dollar value of the product of the number of Unallocated Interests being redeemed and that Redemption Price.

9.6 Effect of redemptions leave zero values

- (a) The redemption all Loan Interests of a Member does not result in the cancellation of all of the Member's Interest of which that Loan Interest forms part and does not require the Trustee to cancel the Interest, unless the Member Elects at the time of the redemption that the Interest be cancelled. The Member will cease to be a Member when the Interest is cancelled.

- (b) The redemption of all Unallocated Interests of a Member does not result in the cancellation of all of all of the Member's Interest of which those Unallocated Interests form part and does not require the Trustee to cancel the Interest, unless the Member Elects at the time of the redemption that the Interest be cancelled. The Member will cease to be a Member when the Interest is cancelled.
- (c) An Interest may be valued at zero. A Member holding an Interest with a zero value does not cease to be a Member provided that they are Registered as the holder of an Interest.
- (d) The Trustee is entitled, but not obliged, to cancel an Interest if the value of the Interest has been zero for at least six months, in which case the Interest will be cancelled and the Member will have no further rights in relation to that Interest. The Member will cease to be a Member when the Interest is cancelled.
- (e) In addition, while ever a Member holds an Interest with a zero value, the Member may request a cancellation of the Member's Interest and the Trustee will satisfy that request. The Member will cease to be a Member when the Interest is cancelled.
- (viii) the Member owes any amount of money to the Trustee, provided that the Trustee has first given notice to the Member requiring payment of such amounts by a date specified by the Trustee (acting reasonably) and the Member has failed to comply with that notice;
- (ix) the Trustee believes that the Interest is held in breach of prohibitions set out in this deed; or
- (x) the Trustee considers a redemption is required in order to satisfy Taxes payable by the Trustee in respect of that Member's Interest;
- (xi) the Member holds an Interest with an aggregate Redemption Price less than the then current Minimum Balance;
- (xii) the Trustee considers it to be in the best interests of Members as a whole to do so; or
- (xiii) the terms of issue of an Interest contemplate the redemption.

9.7 Compulsory redemption or sale

- (a) Subject to clause 9.7(b), the Trustee may at any time, in its absolute discretion, and upon notice to a Member, compulsorily redeem the Interest (or, where applicable, all Interests) of a Member at (subject to clause 9.8) the Redemption Price where:
 - (i) the Trustee considers that there are, or are reasonably likely to be, material adverse Tax consequences arising from the Member remaining a Member, for the Members, the Trust or the Trust Property;
 - (ii) the Trustee considers that the Member continuing to hold such Interests would, or would be reasonably likely to, result in the Trustee, The Trust or any other Member, incurring any material Tax liability or suffering any other material pecuniary, regulatory, legal or administrative disadvantage;
 - (iii) the Trustee considers that the continued participation of a Member might cause the Trustee or any Member to violate any law or if any litigation is commenced or threatened against the Trustee or any Member arising out of the participation of the Member in the Trust;
 - (iv) the Trustee reasonably believes this to be the most efficient means for returning capital of the Trust to Members having regard to Tax, duty, legal and regulatory considerations;
 - (v) the Member contravenes, or attempts to contravene a provision in this deed related to the issue, allotment, transfer or redemption of Interests or any other provision in this deed which the Trustee determines is a material provision;
 - (vi) the Trustee has reasonable grounds to suspect that the Member is not an Eligible Person;
 - (vii) the Trustee reasonably believes a Member made a misrepresentation in acquiring its Interest, or an addition to an Interest;
- (b) As an alternative to the Trustee's rights, powers and discretions in clause 9.7(a), subject to clause 9.7(c), the Trustee may, in the circumstances contemplated by clause 9.7(a), sell and transfer the beneficial interest in a Member's Loan Interest holding in whole or in part in accordance with the procedures outlined in clause 10 using reasonable endeavours to obtain the best price available for the Member by offering such Loan Interests to other Members. The Trustee must return to the relevant Member the proceeds of such sale and transfer less any deductions by the Trustee as contemplated by clause 9.8.
- (c) In considering whether any of the circumstances contemplated in clause 9.7(a) have arisen, the Trustee may (but is not obliged to) request additional information from a Member to be provided to the Trustee in a timely manner. Where requested information is not provided in a timely manner, the Trustee shall be entitled to exercise its discretions having regard to information available to it.

9.8 Allowable deductions

In respect of a compulsory redemption or sale under clause 9.6, the Trustee may deduct and set off from the Redemption Price to be paid to the Member or retain from the sale proceeds (as the case may be):

- (a) any Costs incurred by the Trustee in relation to the compulsory redemption or sale (as the case may be) under clause 9.7, including professional fees and expenses, commission, Tax, transfer fees and advertising and postal charges; and
- (b) a fee payable to the Trustee, determined by the Trustee acting reasonably, in compensation for the Trustee's effort to administer and effect the compulsory sale or redemption.

9.9 Trustee not obliged to pay Redemption Price out of own funds

In no circumstances is the Trustee obliged to pay any part of the Redemption Price out of its own funds.

10. Transfer of Interests

10.1 Requesting a transfer

Unless prohibited by law, and subject to this deed, a Member may request the Trustee to transfer to another Member a Member's Interest, Loan Interest or Unallocated Interest.

10.2 Trustee may refuse

The Trustee may reject a transfer request, in whole or in part, without giving a reason. Without limiting the Trustee's discretion to refuse a transfer, the Trustee may refuse to record any transfer in the Register if, in the opinion of the Trustee:

- (a) the transfer does not comply with any requirement in this document including clause 10.4;
- (b) the transferee is not an Eligible Person;
- (c) as a consequence of the proposed transfer, the Member requesting the transfer will hold less than the Minimum Balance;
- (d) the Trustee reasonably considers that the Trustee may not be able to recoup the Costs of the transfer from the transfer proceeds as contemplated in clause 10.5; or
- (e) there are material legal, tax or regulatory reasons as to why the transfer, if Registered, would be prejudicial to the interests of the other Members or the Trustee.

10.3 Trustee may request information

The Trustee may request the proposed transferor for any evidence reasonably required by the Trustee to substantiate the right of the transferor to make the transfer and (if the Trustee requires) be presented for Registration.

10.4 Form of transfer

Transfer requests must be in such form and made in such manner and executed by such persons as the Trustee determines, and, if and to the extent required by law, be duly stamped.

10.5 Costs of transfer

The Costs associated with a transfer must be borne by the Member who has requested the transfer, and the Member indemnifies the Trustee and the transferee Member for any such Costs. The Trustee may deduct its Costs in connection with the transfer from any proceeds payable to the Member who has requested the transfer.

10.6 Consideration

The Trustee need not concern itself with the consideration for a transfer.

10.7 Registration

A transfer is not effective until Registered.

10.8 Account update

Where a transfer is Registered, the Trustee must update the Accounts of the Member who has requested the transfer and the transferee Member.

11. Income and distributions to Members

11.1 Determination of income and reserves

- (a) The Trustee may determine before the relevant Distribution Calculation Date whether an item is income or capital and whether an item is an expense incurred in deriving income and the extent to which reserves or provisions need to be made.
- (b) The Trustee may determine the amount of aggregate Operating Income for the Trust for a Financial Year consequent upon its determinations in clause 11.1(a).
- (c) In making a determination under clauses 11.1(a) or 11.1(b), the Trustee:
 - (i) does not have to take into consideration the Accounting Standards or generally accepted accounting principles and practices that apply to trusts;
 - (ii) has the discretion to determine whether any receipt, outgoing, gain or loss is to be regarded as being on account of capital or income or partly on account of one and partly on account of the other; and
 - (iii) may, so far as is reasonably possible, exercise the powers conferred on it so as to minimise the liability to income and capital gains tax of the Members.
- (d) The preparation of the accounts of the Trust in accordance with any particular Accounting Standards or generally accepted accounting principles or practices is not to be regarded as a determination of the method for calculating the income of the Trust under clause 11.1(a).
- (e) If the Trustee does not make a determination under clause 11.1(b) in respect of a particular Distribution Period, the income of the Trust for that Distribution Period shall be deemed to be equal to the aggregate Operating Income in respect of that Distribution Period.

11.2 Distribution of income

For each Distribution Period the Trustee must calculate and distribute each Member's Distribution Entitlement.

11.3 Distribution Entitlement

- (a) Subject to any rights, obligations and restrictions attaching to an Interest, a person who was Registered as the Member during the relevant Distribution Period is presently entitled (Distribution Entitlement) at the Distribution Calculation Date:
 - (i) in respect of any Unallocated Interest held during the Distribution Period, a proportion of any Operating Income (less any Fees) generated on the Unallocated Funds referable to that Unallocated Interest while it was on issue during the Distribution Period equal to the proportion that the number of days that the Unallocated Interest was held by the Member during the Distribution Period bears to the total number of days that all Unallocated Interests were held by all Members during the Distribution Period; and

- (ii) in respect of a Loan Interest, to a proportion of the Distributable Amount referable to the Underlying Loan, to be calculated in accordance with the following formula:

$$DE = \frac{[DA \times PS \times N]}{Q}$$

where:

- DE is the Distribution Entitlement;
- DA is the Distributable Amount referable to the Underlying Loan;
- PS is the Proportionate Share of the Member in the Underlying Loan;
- N is the number of days the Loan Interest was held by the Member during the Distribution Period; and
- Q is the number of days in the Distribution Period during which the Underlying Loan is outstanding and accruing Loan Rights.

- (b) Subject to clause 11.1, the **Distributable Amount** referable to the Underlying Loan for a Distribution Period is the sum of O + C where:
- O = is Operating Income derived from the Underlying Loan in respect of that Distribution Period; and
- C = is any additional amount (including capital) that the Trustee has determined is distributable in respect of that Distribution Period, in relation to that Underlying Loan less such amounts as the Trustee considers are reasonable to pay, or make provision for present and future enforcement costs of that Underlying Loan and any Supporting Securities.

11.4 Distribution of Distribution Entitlement

- (a) The Trustee must on or before the Distribution Calculation Date pay to each person who was a Member during a Distribution Period its Distribution Entitlement on all its Interests held during the Distribution Period, whether or not the person holds those Interests as at the Distribution Calculation Date. A person registered as a Member during a Distribution Period is to receive the Distributable Amount payable on its Interests for the Distribution Period notwithstanding a redemption, transfer or transmission of Interests before the Distribution Calculation Date.
- (b) The persons who are Members during the relevant Distribution Period have, at the Distribution Calculation Date, an absolute, vested and indefeasible interest in the Distributable Amount of that Distribution Period payable on their Interests. For the avoidance of doubt, the Distribution Entitlement for a Distribution Period does not include any amounts previously included in the Distribution Amount for or in connection with a prior Distribution Period.
- (c) The Trustee must retain from each Member's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines is not practical to distribute on a Distribution Calculation Date. Any sum so retained will for all purposes be treated as income for the following Distribution Period.

- (d) The Trustee may retain from the amounts to be distributed to a Member an amount in or towards satisfaction of any amount payable by the Member to the Trustee under this deed or that are required to be deducted by law.

11.5 Categories and sources of income

For any category or source of income the Trustee may keep separate accounts and allocate the income from any category or source to any Member.

11.6 Change in Tax Act

Notwithstanding clauses 11.3 and 11.4, if in any Financial Year the Trustee in its capacity as trustee of the Trust becomes taxable as if it were a company under the Tax Act:

- (a) the Trustee has complete discretion as to how much, if any, of:
- (i) the Distributable Amount for that Financial Year; or
- (ii) in years subsequent to that Financial Year, amounts which have not previously been distributed from or in connection with prior Financial Years,
- is to be distributed to Members on the Distribution Calculation Date.
- (b) Each Member's Distribution Entitlement, if any, to the Distributable Amount (calculated in accordance with clause 11.3) is to be determined after any adjustments under clause 11.6(a).

12. Powers of the Trustee

12.1 General powers

Subject to this deed, the Trustee has within and outside Australia all the powers in relation to the Trust and its Trust Property that it is legally possible for a natural person, corporation or trustee to have as if it were the absolute and beneficial owner of all Trust Property.

12.2 Contracting powers

Without limiting clause 12.1 but subject to clause 12.3(b), the Trustee in its capacity as trustee of the Trust has power to incur all types of obligations and liabilities including providing any guarantee, indemnity and undertaking in connection with the obligations and liabilities of any person.

12.3 Investment and lending powers and restrictions

- (a) Without limiting clause 12.1, the Trustee in its capacity as trustee of the Trust may:
- (i) invest in, dispose of, or otherwise deal with property and rights in its absolute discretion; and
- (ii) make and enter into Loans (and on terms that it sees fit), exercise rights in respect of Loans and Supporting Securities including rights to enforce, comprise or waive the repayment of Loans or obligations under Supporting Securities.

(b) Despite any other provision of this deed, the Trustee must:

- (i) not without the approval of a Special Members' Resolution, borrow, raise money, or otherwise obtain financial accommodation, create Security Interests over the Trust Property in favour of any person (other than Security Interests which arise by operation of law in the ordinary course of business) or guarantee or provide an indemnity in relation to the borrowings or financial accommodation of any other person; and
- (ii) hold any Unallocated Funds for the benefit of the Members in one or more deposit accounts with an authorised deposit-taking institution. Where Unallocated Funds are held in any interest-bearing deposit account, the Trustee must allocate any interest earned on the deposit account to Members in proportion that their Unallocated Interests bears to the aggregate Unallocated Interests of all Members.

12.4 Power of delegation

- (a) The Trustee may authorise any person to act as its attorney, agent or delegate (in the case of a joint appointment, jointly and severally) to hold any Trust Property or title to any Trust Property, perform any act or exercise any discretion within the Trustee's power, including the power to appoint in turn its own agent or delegate.
- (b) The general power of delegation granted under clause 12.4(a) includes:
 - (i) the Trustee's power to appoint an agent or delegate to perform investment management, collection management, credit assessment and treasury duties; and
 - (ii) the power to appoint in turn its own agent or delegate.
- (c) The Trustee may include in the authorisation, provisions to protect and assist those dealing with the agent or delegate as the Trustee thinks fit.
- (d) The agent or delegate may be an Associate of the Trustee.

12.5 Powers under law

The powers conferred on the Trustee by this deed are in addition to any powers conferred on it by law, provided that such powers are not inconsistent with this deed.

12.6 Currency conversion

Where the Trustee is required to convert any currency into or from Australian dollars, or from a currency other than Australian dollars into another currency, it may do so in a manner it considers fair and appropriate.

12.7 Suspension of Zagga Platform

The Trustee may suspend the Zagga Platform for such period as it considers necessary or desirable and, where practicable, must give reasonable notice to Members of such suspension.

12.8 Exercise of discretions

The Trustee may in its absolute discretion determine whether to exercise, and the manner, mode and time of exercise of, its powers, discretions and rights under this deed or at law.

12.9 Consultation with Members

Without limiting its other powers under this deed, the Trustee may (but is not obliged to) consult with Members Exposed to a Loan (including an Impaired Loan) about how the Trustee should exercise rights attached to that Loan, including rights to enforce, compromise or waive the repayment of the Loan.

13. Management of the Trust

13.1 Trustee to manage Trust

The Trustee must manage the Trust and its Trust Property and Liabilities while any remain.

13.2 Management powers

Without limiting clauses 12.4 or 13.1, the Trustee shall:

- (a) manage and make all decisions in relation to Loans;
- (b) determine the terms of all Loans and Loan Rights, including Contracts in relation to such matters;
- (c) without limiting the above, exercise all discretions and perform all such obligations or allow, as may reasonably be required, for the lawful, efficient, honest and fair operation of business of providing credit to consumers including by adopting and implementing policies and procedures to manage or negotiate disputes with Borrowers or accommodate circumstances of hardship being experienced by a Borrower (and where appropriate, extending the term and reducing repayment provisions under a Loan in a manner that the Trustee considers will allow the Borrower to deal with those circumstances).
- (d) appoint suitable persons (which may be Associates of the Trustee) to discharge its obligations in relation to the origination and administration of Loans and the exercise of rights in relation to Loans and Supporting Securities.

14. Rights of the Trustee

14.1 Trustee may engage advisers

The Trustee may, as it sees fit, in connection with performance of its duties, engage (whether or not related to or associated with the Trustee) investment managers, property managers, valuers, administrators, custodians and any advisers, agents, brokers, contractors, underwriters or other persons.

14.2 Reliance by Trustee

The Trustee may, in relation to the Trust, rely and act on any:

- (a) advice, opinion or other information provided to the Trustee by:
 - (i) a person of a category listed in clause 14.1; or
 - (ii) any investment manager, trustee, custodian, calculation agent, administrator, or similar, in respect of any investment of the Trust; and

- (b) document which it is reasonable for the Trustee to rely upon,

if the Trustee has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise (as the case may be).

14.3 Other rights

The Trustee and the Trustee's Associates, may, subject always to acting in good faith to Members:

- (a) hold an Interest;
- (b) represent or act for, or contract with, individual Members;
- (c) deal in any capacity with the Trustee (in whatever capacity) or with any of its Associates or with any trust;
- (d) invest in and deal in any capacity, with the same investments as that of the Trust, on similar or different terms;
- (e) recommend that investments be purchased or sold, on behalf of the Trust, regardless of whether at the same time it may buy, sell or recommend, in the same or in a contrary manner, the purchase or sale of identical investments in relation to itself or other clients;
- (f) deal in any investment regardless of whether that dealing is inconsistent with the dealing of the Trust;
- (g) act in any capacity in relation to any other trusts, including subscribing for units in other trusts on behalf of Members or the Trust;
- (h) act in various capacities in relation to, or be otherwise involved in (such as by way of investment), other business activities that may be in competition with the interests of Members;
- (i) acquire or dispose of Trust Property to associates of the Trustee at the price in the manner contemplated by a Disclosure Document or in this deed;
- (j) receive and retain profits or benefits of any nature, in connection with the Trust or otherwise, including buying or selling Trust Property from or to itself in another capacity; or
- (k) provide introduction, Loan referral, marketing, distribution, placement or advisory services to a third party in relation to assets of the same or a similar kind to those which are acquired in relation to the Trust,

without being liable to account to the Trust, to the Trustee, or to a Member.

14.4 Other services

The Trustee may provide trustee, investment advisory and management and any other services to other persons (which may include associates of the trustee or persons in which the Trustee or its associates have invested) (**Other Clients**) without:

- (a) being liable to account to the Trust, to the Trustee, or to a Member; and
- (b) giving the Trust or Members equal or more favourable treatment than it provides to the Other Clients.

14.5 Trustee may receive fees paid by Borrowers

- (a) The Trustee or the Trustee's Associates may:
 - (i) charge and receive fees, charges and other amounts from Borrowers in relation to Loans (**Borrower Fees**);
 - (ii) retain amounts from the proceeds of that Loan (or from any interest paid on that Loan) to pay for Borrower Fees; and
 - (iii) retain for its own account Borrower Fees, without being liable to account to the Trust, to the Trustee, or to a Member. Borrower Fees in relation to a Loan may include the following:
 - (iv) a platform fee, calculated as a percentage of the Loan (or on the basis of such other calculation);
 - (v) a legal fee, to recover legal fees of the Trustee for the preparation of an agreement in relation to the Loan and associated securities (or on the basis of such other calculation);
 - (vi) origination fees;
 - (vii) loan servicing fees;
 - (viii) enforcements costs and similar amounts for which the Trustee is entitled to be reimbursed or indemnified under a Loan; and
 - (ix) such other fees as the Trustee may levy on a Borrower or from any other party to a document forming part of the Loan from time to time.
- (b) Without limiting the above, where the Trustee appoints a third party to provide services related to a Loan, the Trustee may pay from the proceeds of that Loan (or from any interest paid on that Loan) any fees agreed with that third party service provider.
- (c) The Borrower Fees and other fees described in this clause 14.5 shall not be payable out of Trust Property.

15. Indemnity of the Trustee

- (a) Where the Trustee acts without fraud, gross negligence or breach of trust, the Trustee is indemnified for any Cost incurred by it, in its own capacity or through an agent, manager, advisor or delegate, out of the Trust Property (and if it is necessary to determine any proportion as between Members, then between Members who are Exposed to an Underlying Loan or who hold Unallocated Interests to which the Cost is solely attributable). This right of indemnity is not lost by reason of a separate incident that was itself a breach of trust.
- (b) This clause 15(a) does not limit the Trustee's rights, powers and discretions under clauses 17.3, 17.4, 19.1 or any other indemnity provided to the Trustee under this deed.
- (c) The Trustee is not required to do anything for which it does not have a full right of indemnity out of Trust Property available for that purpose.
- (d) Any indemnity to which the Trustee is entitled under this deed:
 - (i) is in addition to any indemnity allowed by law; and

- (ii) continues to apply after the Trustee retires or is removed from the office it holds in relation to the Trust.
- (e) When calculating the amount of any Cost incurred or to be incurred by the Trustee for which it is entitled to be reimbursed or indemnified under this deed, the Trustee must deduct an amount equal to any input tax credit (as defined in the GST Act) to which the Trustee in its personal capacity is entitled in connection with the liability.

16. Liability of the Trustee

16.1 Trustee not liable

To the extent legally permitted, where the Trustee acts without fraud, gross negligence or breach of trust, the Trustee is not liable in contract, tort or otherwise to any future trustee, any Member or any other person:

- (a) for loss caused by:
 - (i) the Trustee's acts or omissions in reliance on:
 - (A) the Register;
 - (B) the authenticity of any document;
 - (C) the opinion, advice or information of any barrister, lawyer, accountant, valuer or other expert instructed by the Trustee or other person referred to in clause 14.1; or
 - (D) the opinion, advice or information from any banker or the auditor of the Trust,
 if the Trustee has no reason to believe the relevant material not to be authentic, the instructions not to be authorised, or the expert not to have the relevant expertise;
 - (ii) any act, omission, neglect or default of another person;
 - (iii) any act or omission required by law, by a court of competent jurisdiction, by a Government Agency or government official;
 - (iv) any particular price or reserve not having been realised;
 - (v) the financial performance or financial returns of an investment of the Trust;
 - (vi) any unnecessary payment having been made to a fiscal authority;
 - (vii) any act or omission of an operator of a securities title, transfer or holding system; or
 - (viii) another reason; or
- (b) in any event, to a greater extent than the investments, cash and other property to which the Trustee is entitled and does recover through its right of indemnity from Trust Property actually vested in the Trustee in accordance with this deed.

This clause 16.1 does not limit clause 15.

16.2 Trustee may limit liability

The Trustee is not required to do anything (for example, enter into a contract) that may involve it incurring a liability unless its liability is limited in a way that the Trustee (acting reasonably) thinks appropriate and the Trustee may limit its liability in this way.

16.3 Other obligations and duties excluded

To the extent legally permitted, all obligations and duties of the Trustee which might otherwise be implied or imposed at law or in equity are expressly excluded.

17. Remuneration and expenses of the Trustee

17.1 Entitlement to Fees

- (a) The Trustee is entitled to any fees set out in this deed and such other fees as it determines from time to time, including as set out in a Disclosure Document (the **Fees**).
- (b) The entitlement to Fees commences on the date the Trust is established and ends on the date of final distribution on winding up of the Trust.
- (c) All Fees are payable in accordance with clause 17.3, unless otherwise provided in the terms of issue of an Interest or in the Disclosure Document. Despite any other provision of this deed, the Trustee may determine that Fees are payable by a Member from its Unallocated Funds credited in that Member's Account, and where there are insufficient Unallocated Funds to satisfy in full or in part that Member's obligation to pay such Fees the Trustee may request the Member to pay and the Member must pay the amount of such Fees that are outstanding.
- (d) All Fees are to be pro rated for partial periods.
- (e) All Fees accrue daily.
- (f) All Fees are exclusive of GST, unless otherwise stated.

17.2 Trustee may receive less fees

The Trustee in its discretion may from time to time:

- (a) elect to receive less of any Fee (or part of any Fee) that it is entitled to receive under this deed; or
- (b) defer the receipt of any Fee (or part of any Fee). Where payment is deferred:
 - (i) the Fee (or part thereof, as applicable) accrues daily until paid;
 - (ii) the Trustee is entitled to charge interest on unpaid Fees at an interest rate equal to the average interest rate accruing on Unallocated Funds during the period of the deferral; and
 - (iii) the Fee (or part thereof, as applicable) will automatically become due and payable if the Trust is terminated or the Trustee retires, is removed or resigns.

17.3 Expenses

- (a) All Loan Expenses incurred by the Trustee in respect of a Loan are payable or reimbursable out of the interest on or proceeds of the Loan to the extent that such reimbursement is not prohibited by this law. This includes expenses connected with:
- (i) any Fees determined by the Trustee as being Loan Expenses;
 - (ii) the insurance, custody and any other dealing with the Loan;
 - (iii) the making of the Loan including the costs of any credit assessment of any Borrower and documenting the Loan;
 - (iv) origination, servicing, collection or enforcing repayment of the Loan;
 - (v) the engagement of agents, valuers, custodians, contractors, advisers (including legal and financial advisers) and service providers in relation to the Loan whether or not the agents, valuers, contractors, service providers or advisers are Associates of the Trustee.
- (b) All Trust Unallocated Expenses incurred by the Trustee in respect of the Trust in connection with the following matters are, subject to clause 17.5, payable or reimbursable out of the interest on or proceeds of the Unallocated Funds to the extent that such reimbursement is not prohibited by law:
- (i) any Fees determined by the Trustee as being Trust Unallocated Expenses;
 - (ii) convening and holding meetings or the circulation of written resolutions of Members, the implementation of any resolutions of the Members;
 - (iii) communications with Members;
 - (iv) Tax (including any amount charged by a supplier of goods or services or both to the Trustee by way or as a reimbursement for GST but excluding corporate tax on the Trustee's revenue);
 - (v) financial institution fees;
 - (vi) the engagement of agents, valuers, custodians, contractors, advisers (including legal and financial advisers) and service providers whether or not the agents, valuers, contractors, service providers or advisers are Associates of the Trustee;
 - (vii) preparation and audit of the taxation returns, accounts of the Trust and financial statements;
 - (viii) termination of the Trust, or the retirement or removal of the Trustee and the appointment of a replacement including the costs of vesting assets in the replacement trustee;
 - (ix) any court proceedings, arbitration or other dispute including proceedings against the Trustee as trustee of the Trust, except to the extent that the Trustee is found by a court to be in breach of trust or to have been in breach of this deed or grossly negligent, in which case any expenses paid or reimbursed under this clause 17.3(b)(ix) must be repaid;

- (x) the appointment of any compliance officer to undertake compliance work for the Trust;
 - (xi) the preparation of reports including compliance reports;
 - (xii) the administration of the Trust generally;
 - (xiii) recording, responding to and dealing with any complaints from Members; and
 - (xiv) complying with any law, and any request or requirement of the ASIC.
- (c) In this clause 17.3, the term **expense** includes amounts paid by the Trustee to Associates for services provided to the Trustee in connection with the Trust where the expenses referable to such service would have been reimbursable under clause 17.3(a) or 17.3(b) had they been incurred by the Trustee.

17.4 GST

Unless expressly stated otherwise, the User Pays Fees and the Fees under this deed do not include any amount referable to GST. If the Trustee is or becomes liable to pay GST in respect of any supply under or in connection with this deed (including, the supply of any goods, services, rights, benefits or things), then, in addition to any Fee or other amount or consideration payable to the Trustee in respect of the supply, the Trustee is entitled to be paid an additional amount on account of GST, such amount to be calculated by multiplying the Fee, amount or consideration for the part of the supply which is a taxable supply for GST purposes by the prevailing rate of GST, and the Trustee shall be entitled to be reimbursed or indemnified for such amount of GST in the manner described in clauses 17.3(a) or 17.3(b) (as the case may be).

17.5 Redemption of Unallocated Interests

To the extent that the Trustee has the power to pay or recover Fees or expenses from Unallocated Funds, it shall, to the extent it is able, satisfy such payment or recovery from any income earned on all Unallocated Funds, without redeeming and cancelling Unallocated Interests.

18. Retirement or removal of the Trustee

18.1 Retirement or removal

- (a) The Trustee may retire as trustee of the Trust, effective on the appointment of a replacement Trustee, by giving notice to the Members (**Retirement Notice**). A Retirement Notice given by the Trustee:
- (i) may be on any such terms as the Trustee sees fit, including that retirement is to take effect only on the occurrence or non-occurrence of an event; and
 - (ii) may be revoked or withdrawn by the Trustee by notice to the Members, provided that such notice of revocation or withdrawal is sent to Members before the expiration of the time set out in the Retirement Notice at which the Trustee was to have retired.
- (b) The Trustee must retire as trustee of the Trust when required by law or directed to retire by a Special Members' Resolution, provided that the Trustee must not retire until a replacement Trustee is appointed.

18.2 What the Trustee must do on its retirement or removal

On its retirement or removal, the Trustee must:

- (a) give to the new Trustee all books, documents, records and other property relating to the Trust in the Trustee's possession or control; and
- (b) give any other reasonable assistance to the new Trustee to facilitate the change of trustee.

18.3 Release for retiring or removed Trustee

On the Trustee's retirement or removal, the Trustee is released from all obligations, duties and liabilities in respect of the Trust that arise after its retirement or removal to the extent permitted by law.

18.4 Indemnity for retiring or removed Trustee

On the Trustee's retirement or removal, the Trustee is indemnified out of Trust Property against any claims arising out of its conduct as Trustee of the Trust except claims in respect of fraud, gross negligence or breach of trust by the retiring Trustee.

18.5 Execution of deed by new Trustee

Any replacement Trustee must execute a deed under which it covenants to be bound by this deed as if it had originally been a party to it.

18.6 Retirement benefit

The Trustee may receive, whether from a replacement trustee or a third party, remuneration or a benefit in consideration of its retirement and is not required to account to Members for any such remuneration or benefit.

18.7 If replacement Trustee not appointed

If the office of Trustee becomes vacant and a replacement Trustee is not appointed within six months of the vacancy, the Members may resolve by Special Members' Resolution, effective immediately, to terminate the Trust. If the Members do not resolve to terminate the Trust, a temporary trustee must be appointed by the Members from among themselves, unless otherwise agreed by all Members. The temporary trustee in this case shall be the Member with the largest Interest holding by value (provided that Member consents to the appointment), or as otherwise agreed by the Members.

18.8 Trustee may not become a Member

- (a) When the Trustee changes as a consequence of the retirement of the Trustee or the appointment of a replacement Trustee pursuant to this clause 18, the replacement Trustee (or continuing Trustee if there is more than one) must not be at the time of its appointment and cannot subsequently become a Member or a beneficiary under the Trust.
- (b) Clause 18.8(a) must not be amended or revoked.

18.9 Change of name

- (a) If the Trustee retires or is removed and the name of the Trust implies an association with the retiring Trustee or its business, the new Trustee must, unless otherwise approved by the retiring Trustee, change the Trust's name to a name that does not imply the association.

- (b) If the new Trustee is required to change the Trust's name under clause 18.9(a), it must do so within seven (7) days after the Trustee retires or is removed (or any longer period approved by the retiring Trustee).

19. Liability of and restrictions on Members**19.1 Liability at Member's request**

The Trustee is entitled to be indemnified by a Member or former Member to the extent that the Trustee incurs any liability:

- (a) for Tax, other Costs or User Pays Fees as a result of:
 - (i) the Member's or former Member's action or inaction;
 - (ii) any act or omission requested by the Member or former Member; or
 - (iii) any other matter arising in connection with Interests held by the Member or former Member, excluding Tax which arises in the ordinary course of the Trustee's business; and/or
- (b) as a result of a breach by that Member or former Member of this deed.

19.2 Joint tenancy

Persons Registered jointly as the holder of an Interest hold as joint tenants and not as tenants in common, unless the Trustee otherwise agrees.

19.3 Joint Members

Joint Members and former joint Members are jointly and severally liable in respect of all payments including payments of Tax, other Costs or User Pays Fees to which clause 19.1 applies.

19.4 Prohibition on grant of Security Interests

A Member may only create a Security Interest over an Interest with the Trustee's prior written consent and on such terms and the Trustee determines from time to time.

20. Members' meetings**20.1 Convening of meetings**

The Trustee may at any time convene a meeting of Members, and must do so if required by the terms this deed.

20.2 Trustee may determine

Subject to this clause 20, and in particular the provisions of clause 20.7, the Trustee may determine the time and place at which a meeting of Members will be convened and the manner in which the meeting will be conducted.

20.3 Notice

- (a) A meeting of Members must be convened by notice in writing sent to every Member entitled to attend and vote.
- (b) The notice of meeting must set out the terms of any resolution and any other business to be considered and voted upon at such meeting.
- (c) At least ten (10) days' notice of a meeting must be given to Members or such shorter notice as they agree by an Ordinary Member's Resolution.

20.4 Non-receipt

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

20.5 Quorum

The quorum for a meeting of Members is at least two (2) Members who are not Associates of another Member counted for the quorum, present in person or by representative or proxy holding or representing the holders of at least ten per cent. (10%) of the Interests on issue unless the Trust has only one Member who may vote on a resolution, in which case that one Member constitutes a quorum.

20.6 No quorum

- (a) If a quorum is not present within fifteen (15) minutes after the scheduled time for the meeting, the meeting is:
- (i) if convened on the requisition of Members, dissolved; or
 - (ii) otherwise adjourned to such place and time as the Trustee decides.
- (b) At any adjourned meeting, those Members present in person or by proxy constitute a quorum. If a quorum is not present within fifteen (15) minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

20.7 Chairperson

- (a) Subject to the Corporations Act, the Trustee may appoint a person to chair a meeting of Members.
- (b) The chairperson of a meeting of Members:
- (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (ii) may require the adoption of any procedure which is in the chairperson's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the meeting; and
 - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairperson considers it necessary or desirable for the proper conduct of the meeting,

and a decision of the chairperson on any matter relating to the conduct of the meeting is final.

20.8 Postponement or cancellation

The chairperson has power to cancel a meeting or postpone a meeting for any reason to such place and time as the chairperson thinks fit.

20.9 Notice of cancellation or postponement of meeting

Notice of cancellation or postponement of a meeting of Members must state the reason for cancellation or postponement and be given to:

- (a) each Member individually; and
- (b) each other person entitled to be given notice of a meeting of Members under the Corporations Act.

20.10 Contents of notice of postponement of meeting

A notice of postponement of a meeting of Members must specify:

- (a) the postponed date and time for the holding of the meeting;
- (b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

20.11 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a meeting of Members to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days required under this deed for the giving of a notice of the general meeting, subject to any minimum notice period prescribed under the Corporations Act.

20.12 Business at postponed meeting

The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the notice convening the meeting.

20.13 Proxy, attorney or representative at postponed meeting

Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a representative, a proxy or an attorney or a representative is authorised to attend and vote at a meeting of Members to be held on a specified date or at a meeting of Members to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of a representative unless the Member appointing the proxy, attorney or representative gives to the Trustee notice in writing to the contrary not less than forty-eight (48) hours before the time to which the holding of the meeting has been postponed.

20.14 Adjournment

- (a) The chairperson of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
- (b) In exercising this discretion, the chairperson may, but need not, seek the approval of the Members present. Unless required by the chairperson, no vote may be taken or demanded by the Members present in respect of any adjournment. Only unfinished business is to be transacted at a meeting resumed after an adjournment.

20.15 Notice of adjourned meeting

Notice of the adjournment of a meeting of Members must be given including the same details as in the case of the original meeting.

20.16 Voting

- (a) Voting at a meeting of Members is by a show of hands, unless a poll is duly demanded or the proposed resolution is required by law or by this deed to be decided by a percentage of Interests (determined by value), or a percentage of votes, able to be cast.
- (b) Each Member present in person and each other person present as a proxy, attorney or representative of a Member is entitled to:
 - (i) on a show of hands, one vote; and
 - (ii) on a poll, one vote for each one dollar (\$1.00) of Interest they hold and in the case of an Impaired Loan Interest, that number of votes calculated on the basis of the Loan Value of the applicable Impaired Loan determined in accordance with the Trustee's Impairment Policy) and subject to section 253C(2) of the Corporations Act.
- (c) In the case of joint Members, only one of those Members named in the Register may vote.
- (d) If an Interest is held jointly and more than one Member votes in respect of that Interest, only the vote of the Member whose first named in the Register counts.

20.17 Proxies

- (a) Any person including a Member may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of the appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (c) If the appointer of a proxy is a corporation, the instrument of appointment must be:
 - (i) under its common seal (if any);
 - (ii) under the hand of an officer or attorney who has been authorised by the corporation;
 - (iii) under the hand of any two (2) directors or a director and a secretary; or
 - (iv) in the case of a corporation where the sole director and sole secretary are the same person, under the hand of that person.
- (d) The instrument appointing a proxy and the original or certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least forty-eight (48) hours, or any shorter period determined by the Trustee from time to time, before the time appointed for the Meeting at which the proxy proposes to vote.
- (e) If clause 20.17(d) is not complied with, the proxy is invalid.
- (f) The Trustee is not obliged to enquire whether a proxy has been validly given.

- (g) A vote given under an instrument of proxy is valid notwithstanding the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (h) Clause 20.17(g) does not apply if the Trustee has notice in writing of the death, unsoundness of mind or revocation before the Meeting at which the proxy is to be used.
- (i) Where a Member appoints a proxy, they may direct their proxy to vote their Interests for and/or against a proposed resolution in the proportions set out in the relevant instrument of appointment.

20.18 Demand for a poll

A poll may be demanded by:

- (a) at least one Member present in person or by proxy who holds at least 10% of Interests; or
- (b) the chairperson.

20.19 Declaration of poll

- (a) Unless a poll is properly demanded and the demand is not withdrawn, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the trust, is conclusive evidence of the fact.
- (b) Neither the chairperson nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

20.20 Questions decided by simple majority

Except:

- (a) where this deed provides that a matter must be voted upon by a Special Members' Resolution or Extraordinary Members' Resolution; or
- (b) where a different majority is required by the Corporations Act,

a matter proposed at a meeting of the Members will be approved by way of an Ordinary Members' Resolution.

20.21 Poll

- (a) If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairperson or the requisite number of Members or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.

20.22 No casting vote for chairperson

If there is an equality of votes, either on a show of hands or on a poll, the chairperson of the meeting is not entitled to a casting vote in addition to any votes to which the chairperson is entitled as a Member or proxy or attorney or representative.

20.23 Vote of Member of unsound mind

If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, then the Member's attorney or trustee or any other person who properly has the management of the Member's estate may exercise any rights of the Member in relation to a meeting of Members as if the committee, trustee or other person were the Member.

20.24 Objection to voting qualification

- (a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:
 - (i) may not be raised except at that meeting or adjourned meeting; and
 - (ii) must be referred to the chairperson of the meeting, whose decision is final.
- (b) A vote not disallowed under an objection is valid for all purposes.

20.25 Resolutions binding

- (a) A resolution passed in accordance with this deed by Members binds all Members, whether or not they voted or were present at the meeting, either in person or by proxy.
- (b) No objection may be made to any vote cast unless the objection is made at the meeting.

20.26 Minutes

The minutes of a meeting of Members signed by the chair of the meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

20.27 Meetings by technology

A meeting of Members may be held by means of such telephone, electronic or other communication facilities as permit all persons in the meeting to communicate with each other simultaneously and instantaneously and participation in such a meeting shall constitute presence in person at such meeting.

20.28 Written resolutions

A resolution of Members may be passed in writing if all Members entitled to vote on the resolution sign a document, which may be in counterpart, agreeing to the resolution.

21. Death and insolvency

The Trustee need only recognise the following persons as having an interest in a Member's Interest in the following circumstances:

- (a) if a Member dies, the Member's legal personal representative;
- (b) if a Member becomes subject to a legal disability, a person properly appointed under an enduring power of attorney or otherwise legally authorised to deal with the Member's Interests;
- (c) if a joint Member dies, the surviving joint Member or Members; and

- (d) if a Member becomes bankrupt or enters into liquidation, the person legally entitled to the Member's Interests consequent on bankruptcy or liquidation.

The estate of the deceased joint Member is not released from any liability in respect of an Interest.

22. Register**22.1 Keeping a Register**

The Trustee must establish and maintain the Register. Unless otherwise required by law, the Trustee may maintain the Register electronically.

22.2 Information in the Register

The Trustee must enter in the Register:

- (a) the name and address of each Member; and
- (b) particulars of a Member's Interest, including Loan Interests, Unallocated Interests and additions to an Interest.

The Register may include any other information the Trustee determines.

22.3 No notice of trust

The Trustee need not enter notice of any trust on the Register.

22.4 Registered Member is owner

The Trustee:

- (a) may treat a Registered Member as the holder and absolute owner of an Interest Registered in the Member's name; and
- (b) is not bound to take notice of any trust or equity affecting an Interest,

unless otherwise ordered by a court of competent jurisdiction or required by statute.

Entry on the Register is conclusive evidence of a Member's title to the matters stated therein.

22.5 Changes to details in Register

Unless otherwise determined by the Trustee:

- (a) a Member must promptly notify the Trustee of any change to its name or address or other relevant personal details; and
- (b) the Trustee must update the Register to reflect the change described in clause 22.5(a).

23. Personal Property Securities Act**23.1 PPSA further steps**

If the Trustee determines that this document is or contains a Security Interest in favour of the Trustee for the purposes of the PPSA, a Member must do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Trustee asks and considers necessary for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;

- (b) enabling the Trustee to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Trustee; or
- (c) enabling the Trustee to exercise rights in connection with the Security Interest.

23.2 Exclusion of PPSA provisions

If this document is or contains a Security Interest in favour of the Trustee for the purposes of the PPSA, then to the extent the law permits them to be excluded:

- (a) sections 142 and 143 of the PPSA are excluded and the relevant secured party need not comply with the following provisions of the PPSA: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and any other provision of the PPSA notified to the grantor by the relevant secured party after the date of this document; and
- (b) the Trustee need not give any notice required under any provision of the PPSA (except section 135).

24. Records, audit and reports

24.1 Keep records

The Trustee must keep complete and accurate records of all its activities relating to the Trust and the Trust Property, in such form and in such manner as it determines or as required by law.

24.2 Appointment of auditors

The Trustee may appoint and may at any time replace as auditor of the Trust either a registered company auditor or a firm of chartered accountants of which at least one partner is a registered company auditor.

24.3 Reports

The Trustee must give Members the financial reports (if any) specified in any applicable Disclosure Document from time to time of the Trust at the times indicated in the Disclosure Document.

25. Payments

25.1 Manner of payment to Members

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

25.2 Unpresented cheques

Cheques issued by the Trustee that are not presented within six (6) months may be cancelled. Where a cheque which is cancelled was drawn in favour of a Member, the money represented by that cancelled cheque will be held by the Trustee for the Member or paid by the Trustee in accordance with the legislation relating to unclaimed money.

25.3 Unsuccessful transfers

Where the Trustee attempts to make a payment to a Member by electronic transfer of funds or any other means and is unsuccessful, the money will be held for the Member as a non-interest bearing deposit until it is claimed or required to be dealt with in accordance with applicable laws relating to unclaimed moneys.

25.4 Fractions of cents

Only whole cents are to be paid to a Member, and any remaining fraction of a cent becomes:

- (a) where that Member continues to hold an Interest, part of the Unallocated Funds of that Member; and
- (b) where that Members' Interest is cancelled, Trust Property.

25.5 Joint Members

A payment to any one of joint Members discharges the Trustee in respect of the payment to all of those joint Members.

25.6 Tax and amounts owing

The Trustee may deduct from any amount to be paid to a person who is or has been a Member, or received from a person who is or has been a Member:

- (a) any amount of Tax (or an estimate of it); or
- (b) any other Cost owed by the Member to the Trustee, which the Trustee is required or authorised to deduct in respect of that payment or receipt by law or by this deed.

26. GST

26.1 Interpretation

In this clause 26, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning given to it in that Act.

26.2 GST gross up

If the Trustee is liable for GST on any supply made under or in connection with this deed (including the supply of any goods, services, rights, benefits or things), the Trustee is entitled to receive, unless the consideration for the supply is specifically described in this deed as being inclusive of GST, in addition to any consideration for that supply, or any other fee, amount or consideration, an additional amount on account of GST, equal to the GST payable by the Trustee, and the Trustee is entitled to be reimbursed or indemnified for the amount out of the Trust Property. The Trustee must issue a tax invoice in respect of the supply before it is entitled to be reimbursed or indemnified.

26.3 GST inclusive supply

Where the consideration for a supply made under or in connection with this deed is specifically described as being inclusive of GST and:

- (a) the Supply is not subject to GST, and the GST rate is the same as at the date of this deed, the consideration to be provided for that Supply is reduced by one-eleventh; or
- (b) there is a change to the prevailing rate of GST, the consideration is increased or decreased in proportion to the change in the rate of GST.

26.4 Input tax credits

When calculating the amount of any costs, charges, expenses or outgoings incurred by the Trustee for which it is entitled to be reimbursed out of the Trust Property, the Trustee must deduct an amount equal to any input tax credit to which the Trustee is entitled in connection with the costs, charges, expenses or outgoings sought to be reimbursed.

27. Notices to Members

27.1 How notices are given

Subject to the Corporations Act, a notice or other communication required under this deed to be given to a Member must be:

- (a) given in writing (which includes a facsimile, electronic mail or SMS) or in such other manner as the Trustee determines; and
- (b) delivered or sent to the Member at the Member's physical address last advised to the Trustee or, if the Trustee determines, to the electronic address, SMS address or facsimile number last advised to the Trustee.

27.2 Cheques

A cheque payable to a Member or a person authorised in writing by the Member may be:

- (a) posted to the Member's physical address; or
- (b) handed to the Member or a person authorised in writing (including by facsimile, electronic mail or SMS) by the Member; or
- (c) delivered to the Member in such other manner as agreed by the Trustee.

27.3 Joint Members

In the case of joint Members, the physical address, electronic address or facsimile number of the Member means the physical address, electronic address or facsimile number of the Member first named in the Register.

27.4 When receipt is taken to have occurred

Subject to the Corporations Act, a notice, cheque or other communication sent by post is taken to be received on the Business Day after it is posted and a facsimile, electronic mail or SMS is taken to be received immediately upon receipt by the transmitter of confirmation of transmission from the receiving facsimile machine, or confirmation of transmission from the transmitter's device or confirmation that it has been lodged through the Trustee's official website. Proof of actual receipt is not required. The Trustee may determine the time at which other forms of communication will be taken to be received.

28. Notices to the Trustee

28.1 Notice must be in writing

A notice required under this deed to be given to the Trustee must be given in writing (which includes a facsimile or an email or notification posted using the Trustee's official website), or in such other manner as the Trustee determines. A written notice given to the Trustee must be legible.

28.2 Notice effective at time of receipt

The notice is effective only at the time of receipt unless the Trustee determines another time at which a form of communication is taken to be received.

28.3 Signature

The notice must bear the actual, facsimile or electronic signature of the Member or a duly authorised officer, attorney or representative of the Member unless the Trustee dispenses with this requirement.

29. Termination

29.1 Trustee may terminate

The Trustee at any time may terminate the Trust by written notice to the Members with effect from the Termination Date specified in the notice.

29.2 Members may terminate

The Members may at any time terminate the Trust by Special Members' Resolution.

29.3 Issue and redemption stops

Subject to clause 30.3, from the date on which:

- (a) notice is given in accordance with clause 29.1; or
- (b) the Members determine to terminate the Trust in accordance with clause 29.2,

the issue and redemption of Interests cease.

30. Procedure on termination

30.1 Realisation of Trust Property

Following termination of the Trust, the Trustee must realise the Trust Property in the manner the Trustee considers appropriate and wind up the Trust in accordance with this clause 30.

The Trustee will not have the obligation to assign to a Member any Loan or Loan Rights to which the Member is Exposed, even where the Member's Proportionate Share of the Loan is 100%.

30.2 Audit of winding up

The Trustee may arrange for independent review or audit of the final accounts of the Trust by a registered company auditor.

30.3 Distribution following termination

- (a) To wind up the Trust, the Trustee must apply the proceeds of realisation of Trust Property as follows:
 - (i) first, pay all Costs and other Loan Expenses that relate to a particular Loan and then issue a number of Unallocated Interests at the Application Price to each Member that is Exposed to that Loan equal to that Member's Proportionate Share of the dollar value of the net realisation proceeds of that Loan; and
 - (ii) then, pay all Costs relating to the winding up of the Trust (including any outstanding Liabilities) from Unallocated Funds held by Members at that time in the proportion that each Member's Unallocated Interests bears to the aggregate Unallocated Interests of all Members;
 - (iii) then, redeem the balance of all Unallocated Interests at the Redemption Price payable for those Unallocated Interests and pay to the Member the dollar value of the product of the number of Unallocated Interests being redeemed and that Redemption Price;
 - (iv) then, pay any balance of Trust Property is to each Member in their Respective Proportion.

- (b) If the calculation of the entitlement to a distribution in respect of a particular Member in accordance with clause 30.3(a)(ii) results in a negative dollar amount (**Shortfall**), then the Trustee may request from that Member and that Member must pay to the Trustee within thirty (30) days of the date of the request, the Shortfall, and the Shortfall to be paid will become Trust Property available for distribution on the winding up of the Trust in accordance with clause 30.3(a)(iv). In exercising its discretion under this clause 30.3(b), the Trustee may take into account any potential set-off by the defaulting Member's contribution of the Shortfall and a possible distribution to the Member under clause 30.3(a)(iv), as well as the making of such claim of the Shortfall against the Member is in the best interests of all Members.
- (c) The Trustee may distribute proceeds of realisation in instalments as soon and as regularly as reasonably possible but in accordance with this clause 30.3.

30.4 Postponement of realisation

The Trustee may postpone the realisation of any Trust Property for as long as it thinks it is desirable to do so:

- (a) where the realisation relates to Trust Property as a whole, is in the interests of Members as a whole; or
- (b) where the realisation relates to an Underlying Loan, and is in the interests of those Members who are Exposed to that Loan.

The Trustee will not be responsible for any loss attributable to the postponement.

30.5 Retention of Trust Property

The Trustee may retain for as long as it thinks fit sufficient Trust Property as, in its opinion, may be required to meet any outgoings or Liabilities (actual or contingent) in respect of the Trust. If any Trust Property retained is ultimately found not to be required, then it must be distributed to the Members in accordance with this clause 30.

30.6 Continuation of provisions

Subject to clause 29.3, the provisions of this deed continue to apply from the date of termination until the date of final distribution under clause 30.3.

31. Amendments to this deed

The Trustee may by supplemental deed unilaterally modify, add to, delete from or replace, this deed (including this clause 31), provided that if such modification, addition, deletion or replacement has a material adverse effect on Members, it must be approved by a Special Members' Resolution.

32. Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts in respect of any proceedings in connection with this deed.

- (c) Each party waives any right it has to object to an action being brought in the courts of New South Wales including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

33. Prohibition or enforceability

- (a) Any provision of, or the application of any provision of this deed, which is prohibited, void, illegal or unenforceable in any jurisdiction:
- (i) is, in that jurisdiction, ineffective only to the extent to which it is void, illegal, unenforceable or prohibited;
- (ii) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this deed in that or any other jurisdiction; and
- (iii) is severable from this deed and will not affect the remaining provisions of this deed.
- (b) The application of this clause 33 is not limited by any other provision of this deed in relation to severability, prohibition or enforceability.

34. Defined terms & interpretation

34.1 Defined terms

In this document:

Account means, in respect of each Member, an online account established for that Member by the Trustee on the Zagga Platform, that records (among other things) the particulars of Loan Interests or Unallocated Interests of that Member.

Applicant means a person who makes an Application.

Application means an application for an Interest, or an addition to an Interest (as the case may be), made by an Applicant in a form and manner acceptable to the Trustee (which may include an application made and submitted electronically on the Zagga Platform).

Application Money means, in relation to an Application, the amount of cash or other property given to and accepted by the Trustee as consideration to acquire an Interest or an addition to an Interest (the case may be).

Application Price means the price of an Interest calculated in accordance with clause 6.

ASIC means the Australian Securities and Investments Commission or any body replacing it or, where relevant, which takes over its functions in relation to managed investment schemes.

Associate has the meaning given to that term in section 12(2) of the Corporations Act.

Accounting Standards means the accounting standards (as defined in section 9 of the Corporations Act) as they apply for a reporting entity and any other generally accepted accounting principles and practices in Australia (to the extent they are not inconsistent with the accounting standards), unless otherwise determined by the Trustee.

Borrower means any person who is indebted to the Trustee under the terms of a Loan.

Business Day means:

- (a) a day that is not a Saturday, Sunday, bank holiday or public holiday in Sydney, Australia; and
- (b) any other day specified by the Trustee to be or not to be a business day for the purposes of this definition.

Corporations Act means Corporations Act 2001 (Cth).

Contract means any document recording any Loan and associated Loan Rights including:

- (a) a loan agreement in respect of a Loan; and
- (b) as appropriate, any certification document (for example, a solicitor's certificate or a certificate of trustees or directors) that is associated with that Loan or associated Loan Rights.

Costs includes costs, charges, fees (including Fees, where applicable), expenses, outgoings, commissions, liabilities (including Liabilities, where applicable), losses, damages and Taxes and all amounts payable in respect of any of them or like payments.

Disclosure Document means a means a term sheet, Product Disclosure Statement, prospectus, information memorandum, subscription agreement or similar document under which Interests are offered for issue by the Trustee.

Distributable Amount has the meaning given in clause 11.3(b).

Distribution Calculation Date means the last day of each Month or such other days as the Trustee designates.

Distribution Date means the date that is 10 Business Days after the end of a Distribution Period.

Distribution Entitlement means has the meaning given in clause 11.3(a).

Distribution Period means

- (a) for the first distribution period, the period from and including the date of the establishment of the Trust to and including the next Distribution Calculation Date;
- (b) for the last distribution period, the period from and including the day immediately after the last preceding Distribution Calculation Date to and including the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the period from and including the day immediately after the last preceding Distribution Calculation Date to and including the next occurring Distribution Calculation Date.

Elect means, in respect of a Member, an election, request, direction or instruction (as the case may be), given by the Member to the Trustee in respect of the Member's Interest on the Zagga Platform in accordance with the terms of this deed, and **Election** and **Elected** have corresponding meanings.

Eligible Person means a person having the criteria for being a Member, as determined by the Trustee from time to time, which may include:

- (a) being a Wholesale Client (within the meaning of the term in the Corporations Law); and

- (b) being a person, who in the opinion of the Trustee, has the financial ability and willingness to accept the risks and lack of liquidity inherent in an investment in the Trust.

Exposed means, in relation to a Loan, a Member having an economic and undivided beneficial interest in that Loan (in the amount of its Proportionate Share) and associated Loan Rights as set out in the Zagga Platform and as defined by its Loan Interest, and **Exposure** has a corresponding meaning.

Extraordinary Members' Resolution means a resolution approved by Members (who are not disqualified from voting, and who are present in person or as a proxy, attorney or representative and voting, on that resolution) holding at least two thirds of the total number of votes that may be exercised on that resolution.

Fee has the meaning given to it in clause 17.1(a).

Financial Year means:

- (a) for the first financial year, the period from and including the date the Trust commences to and including the next Financial Year Termination Date;
- (b) for the last financial year, the period from and including the day immediately after the last preceding Financial Year Termination Date to and including the date of distribution on winding up of the Trust; and
- (c) in all other circumstances, the day immediately after and including the last preceding Financial Year Termination Date to and including the next occurring Financial Year Termination Date.

Financial Year Termination Date means:

- (a) 30 June, or if the Trustee in its capacity as trustee of the Trust is a unitholder of a "consolidated group" (as defined in the Tax Act), the date of the financial year end of that consolidated group;
- (b) the day on which the trustee in its capacity as trustee of the Trust becomes a "subsidiary unit holder" of a "consolidated group" or "consolidatable group" (as defined in the Tax Act); or
- (c) the day on which the Trustee in its capacity as trustee of the Trust ceases to be a "subsidiary unit holder" or a "consolidated group" or "consolidatable group" (as defined in the Tax Act).

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means goods and services under the GST Law.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as in force from time to time.

GST Law has the same meaning as in the GST Act.

Impaired Loan means an Underlying Loan that the Trustee has determined is impaired in accordance with the Impairment Policy.

Impaired Loan Interest means a Loan Interest which relates to an Impaired Loan.

Impairment Policy means the policy adopted by the Trustee from time to time to determine whether or not a Loan is impaired.

Initial Minimum Investment means the amount determined by the Trustee from time to time as the minimum value of an Interest for which application may be made by a new Applicant.

Interest means, in respect of a Member, the Member's beneficial interest in the Trust Property, as characterised in accordance with clause 2.1.

Liabilities means all liabilities of the Trust including:

- (a) any provision which the Trustee decides should be taken into account in accordance with Accounting Standards in determining the liabilities of the Trust; and
- (b) without double counting, any Distributable Amount which would be payable to Members on the day on which the Liabilities are to be determined if that date were a Distribution Calculation Date, but excluding any amount representing Members' capital, undistributed profits, interest attributable to Members accruing on Members' capital, capital reserves, or any other amount representing the value of rights attaching to Interests, whether or not redeemable, regardless of whether characterised as equity or debt in the accounts of the Trust.

Loan means a loan advanced by the Trustee to a Borrower through the Zagga Platform.

Loan Expenses means:

- (a) expenses incurred by the Trustee in respect of a Loan or any Supporting Security, and includes expenses incurred by the Trustee in originating the Loan (including any costs of undertaking credit assessments and complying with legal requirements in relation to the Loan), making the Loan administering or recovering the Loan or enforcing a Supporting Security; and
- (b) any Fees determined by the Trustee as comprising Loan Expenses.

Loan Interest means a Proportionate Share in the beneficial interest in a Loan and associated Loan Rights to which a Member is Exposed as provided for in this deed and as recorded in the Zagga Platform.

Loan Rights means all:

- (a) benefits under a Supporting Security;
- (b) interest, fees, payments, distributions or analogous payments in connection with any Loan and a Supporting Security; and
- (c) any other rights or entitlements (including all distributions, benefits of any agreement or trust deed) arising in respect of any Loan or Supporting Security.

Loan Value means the face dollar value of the principal amount outstanding on a Loan, less the dollar value of any discount or reduction of the face value of that principal amount, as determined by the Trustee in accordance with the Impairment Policy.

Member means any person who is Registered as the holder of an Interest.

Minimum Balance means the amount determined by the Trustee from time to time as the minimum value of an Interest to be held by a Member.

Month means a calendar month or that part of such a period occurring at the commencement or termination of the Trust.

Operating Income means:

- (a) in relation to a Loan, the gross income realised by the Trust from that Loan including interest, fees and otherwise, less expenses incurred in deriving that income including:
 - (i) Loan Expenses incurred in relation to that Loan;
 - (ii) fees paid to the Trustee or any other person in respect of that Loan; and
 - (iii) any other amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of that Loan; and
- (b) in relation to Unallocated Funds, the gross income realised by the Trust from those Unallocated Funds, less expenses incurred in deriving that income including any Trust Unallocated Expenses and any amount that the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise by way of Trust Unallocated Expenses.

Ordinary Members' Resolution means a resolution approved by Members (who are not disqualified from voting, and who are present in person or as a proxy, attorney or representative and voting, on that resolution) holding more than fifty per cent. (50%) of the total number of votes that may be exercised on that resolution.

Other Clients has the meaning in clause 14.4

Partial Interest means, in relation to an Interest, the redemption of part of the value of the Interest to the extent permitted by, and in accordance with, this deed.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Proportionate Share means, in respect of a Member, the proportion of the principal amount of an Underlying Loan to which that Member is Exposed.

Redemption Price means the price of an Interest (or component thereof) calculated in accordance with clause 8.

Register means the register of Members required to be maintained under this deed.

Registered means recorded in the Register.

Registration means recording in the Register.

Respective Proportion means, in respect of a Member, the proportion which the total dollar face value of all Interests held by that Member bears to the total dollar face value of Interests held by all Members.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, "security interest" as that term is defined under the PPSA, interest, power or arrangement of any nature having the effect of providing security.

Special Members' Resolution means a resolution approved by Members (who are not disqualified from voting, and who are present in person or as a proxy, attorney or representative and voting, on that resolution) holding at least seventy five per cent. (75%) of the total number of votes that may be exercised when Members vote upon that resolution.

Supporting Security means any real property mortgage, Security Interest, encumbrance or other security, guarantee, indemnity, priority deed, Intercreditor deed or similar arrangement that secures or supports the payment of an amount by a Borrower under a Loan or any related document or the performance of other obligations by a Borrower or any other person in relation to a Loan.

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

Taxes means all taxes, including income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Trust means the trust constituted by and under this deed.

Trust Unallocated Expenses means:

- (a) expenses incurred by the Trustee in respect of the Trust being expenses connected with the matters set out in clauses 17.3(b)(i) to (xiv); and
- (b) any Fees determined by the Trustee as comprising Trust Unallocated Expenses.

In this definition, the term "**expense**" has the meaning given in clause 17.3(c).

Trust Property means all property, rights and income of the Trust, including:

- (a) Unallocated Funds;
- (b) Loans and Loan Rights; and
- (c) the benefit of Loans and amounts paid by Borrowers in respect of Loans.

Trustee means the trustee of the Trust from time to time.

Unallocated Funds means, in respect of a Member:

- (a) any funds contributed by that Member or otherwise allocated to, credited to, deposited in or arising from or in connection with that Member's Account which, at a particular point in time, have not been allocated to a Loan; and
- (b) any interest, income or other funds received by the Trustee for and on behalf of that Member in connection with:

- (i) any funds referred to in paragraph (a); and
- (ii) any Loans to which that Member is Exposed or is otherwise interested.

Unallocated Interest means an interest of a Member in Unallocated Funds.

Underlying Loan means a Loan to which a Loan Interest is Exposed.

User Pays Fees means any cost incurred by the Trustee in relation to:

- (a) an entitlement to a payment or a payment to or from the Trust in respect of a Member; or
- (b) any act or omission requested by a Member,

which the Trustee considers, acting reasonably, should be borne by that Member.

Zagga Platform means all services provided by Zagga as permitted under its ASIC licence including the electronic platform operated by the Trustee through which a proposed Borrower may request a Loan and a Member or Members may express its or their wish, or be deemed to have expressed its or their wish, to be Exposed to that Loan.

34.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a **clause, paragraph, schedule** or **annexure** is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a **document** or **instrument** includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Sydney, Australia time;
- (g) a reference to a **party** is to a party to this deed, and a reference to a **party to a document** includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a **person** includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;
- (j) a reference to a **month, quarter, half-year** or **year** is a reference to the respective calendar periods unless otherwise stated;
- (k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

- (l) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (m) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (q) in fee calculations, applicable accounting standards are to guide classification of items as assets, controlled entities and the basis of consolidation of controlled entities.

34.3 Headings

Headings are for ease of reference only and do not affect interpretation.

34.4 Conflicts with Disclosure Document

If the provisions of the Disclosure Document and this deed conflict on the same matter, the provisions of this deed prevail.

34.5 Conflicts with Schedule

If the provisions of clauses 1 to 34.4 of this deed and the Schedule conflict on the same matter, the provisions of the Schedule prevail.

Signing page

EXECUTED as a deed poll

Executed by Zagga Investments Pty Ltd ACN 615 154 786
in accordance with Section 127 of the *Corporations Act 2001*

Schedule 1 - Sub-trusts for Loans

1. Nature of Loans

1.1 Separate trusts

As set out or otherwise contemplated in clauses 1.8(c) and 2.4, each Loan and associated Loan Rights will be held by the Trustee on trust for the benefit of only those Members Exposed to that Loan in accordance with the terms of this deed.

1.2 Trustee's powers

In respect of a Loan, the Trustee shall have the powers, rights and discretions to enter into Loans, Contracts and Supporting Securities in accordance with the provisions of this deed, particularly clauses 12, 13 and 14.

1.3 Redemption by a Member

In respect of a Loan, a Member Exposed to that Loan shall have a right of redemption of a Loan Interest in respect of that Loan in accordance with the provisions of this deed, particularly clause 9.

1.4 Entitlements to distributions

In respect of a Loan, a Member Exposed to that Loan shall have a right to receive distributions of income and capital in respect of that Loan in accordance with the provisions of this deed, particularly clause 11.

1.5 Liability etc of the Trustee

In respect of a Loan, the Trustee shall be entitled to such remuneration and other benefits and reimbursement of expenses, and shall have its liability limited, in accordance with the provisions of this deed, particularly clauses 14, 15, 16 and 17.

2. Establishment of Loans

2.1 Naming of Loans

The Trustee may allocate to each Loan a unique identifier or name.

2.2 Loan documentation and advances

In respect of each Loan, the Trustee shall:

- (a) prepare and deliver to the Borrower the unexecuted Contract; and
- (b) subject to valid execution of all Contract by the Borrower and other parties thereto, fulfil any applicable conditions and any other administrative requirements of the Trustee:
 - (i) execute the Contract (as appropriate) as Trustee; and
 - (ii) advance the loan principal of the Loan (less any then applicable Loan Expenses) to the Borrower.