

BABCOCK & BROWN POWER

Babcock & Brown Power Limited · ABN 67 116 665 608
Babcock & Brown Power Services Limited · ABN 37 118 165 156
as responsible entity for Babcock & Brown Power Trust · ARSN 122 375 562
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ASX Release

17 August 2007

AMENDMENT TO BBPT CONSTITUTION

Attached is an Amending Deed to the Babcock & Brown Power Trust constitution giving effect to amendments required to be made in relation to the issue of securities as consideration under the Alinta Limited Scheme of Arrangement. A consolidated constitution is also attached.

A copy of the Amending Deed has been lodged with ASIC today.

ENDS

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About Babcock & Brown Power

Babcock & Brown Power (ASX:BBP) is a power generation business, with assets diversified by geographic location, fuel source, customers, contract types and operating mode. Its aim is to grow returns to its securityholders through optimisation of its existing power generation business and the addition of further power assets via a combination of new construction and strategic acquisitions.

The portfolio has interests in seven operating power stations and one power station under construction and due for completion in late 2008. The portfolio has a total electricity generation capacity of approximately 2,900 MW.¹ Babcock & Brown has been developing, operating and acquiring the generation portfolio over a period of 10 years. Four of the power stations have been co-developed by Babcock & Brown from green field development opportunities and four have been acquired from other operators.

¹ Some assets have minority shareholders.

Portfolio Summary

Power station	Location	Equity interest ⁽¹⁾	Fuel	Operations Start Date	Capacity	Operating Mode	Offtake
Operating power stations							
Braemar	Queensland	85%	Gas	September 2006	455MW	Intermediate	Origin/Market
Oakey	Queensland	50%	Gas	January 2000	286MW	Peak	Enertrade
Redbank	NSW	100%	Coal	April 2001	148MW	Base load	EnergyAustralia
Ecogen (Jeeralang)	Victoria	73%	Gas	1980	449MW	Peak	TRUenergy
Ecogen (Newport)	Victoria	73%	Gas	1980	510MW	Peak	
Flinders (Playford)	South Australia	100%	Coal	1960-1964	240MW	Intermediate	Various/Market
Flinders (Northern)	South Australia	100%	Coal	1985	527MW	Base load	Various/Market
Under construction							
NewGen Kwinana	Western Australia	70%	Gas	Late 2008 (projected)	320MW	Base load	Synergy
Uranquinty	NSW	70%	Gas	late 2008 (projected)	640MW	Peak	Various/Market
Total of operating and under construction					3,575MW		
Contracted power offtake							
Osborne contracts	South Australia	100%	Gas / cogeneration		180MW	Base load	Various/Market

⁽¹⁾ Direct and Indirect equity interest

For further information please visit our website: www.bbpower.com

Amending Deed

Amending Deed Babcock & Brown Power Trust

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The agreement

Amending Deed

Date ▶ 17 August 2007

Babcock & Brown Power Services Limited
ACN 118 165 156
of Level 23, The Chifley Tower, 2 Chifley Square, Sydney,
NSW 2000
(Trustee)

- | | | |
|------------|----|--|
| Background | A. | The Trustee executed a trust deed constituting the Babcock & Brown Power Trust on 18 May 2006 which became the constitution of the Trust on its registration as a managed investment scheme with ASIC (Constitution). |
| | B. | Clause 14 of the Constitution provides that the Trustee, subject to any approval required by law, may by deed replace or amend the Constitution. |
| | C. | The Constitution was amended by deeds dated 6 November 2006 and 8 December 2006. |
| | D. | The Trustee wishes to amend the Constitution in the manner set out in this deed. |
-

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed, it is agreed:

1 Definitions and interpretation

A word or phrase (except as otherwise provided) defined in the Constitution has the same meaning when used in this deed.

2 Amendment of the Constitution

2.1 Amendment

A new clause as follows is inserted as clause 4.7A:

"4.7A Issue of Units to Alinta Limited's shareholders

(a) The Trustee may issue Units as part of BBP Securities (as defined in the Scheme) to Alinta Limited's shareholders under the Scheme (or to the Nominee as defined in the Scheme) at an Issue Price per Unit equal to 65.47% of the Value (as defined in Schedule 1 to the Scheme) of a BBP Security.

(b) The Issue Price of the Units issued under this clause 4.7A may be provided in the form of either cash or promissory notes (or a combination of the two) and by any one or more parties.

(c) In this clause 4.7A:

Scheme means the scheme of arrangement between Alinta Limited (ABN 11 119985 590) and its shareholders expected to be approved by the Federal Court in or about August 2007;

Scheme Booklet means the scheme booklet describing the Scheme issued by Alinta Limited and dated 2 July 2007."

2.2 Amendments not to affect validity, rights, obligations

(a) An amendment to the Constitution does not affect the validity or enforceability of the Constitution.

(b) Nothing in this deed:

(1) prejudices or adversely affects any right, power, authority, discretion or remedy arising under the Constitution before the date of this deed; or

(2) discharges, releases or otherwise affects any liability or obligation arising under the Constitution before the date of this deed.

3 Trust not confirmed

(a) Nothing expressly or impliedly contained in this deed (including the recitals) is effective to confirm, declare or otherwise acknowledge the Trust declared under the Constitution, or to impress any new or additional trusts upon property held on trust as at the date of this deed.

Freehills

- (b) Nothing in this deed should be interpreted as creating any new or further trust and at all times, the Trust remains a single trust.

4 Governing law

This deed will be construed in accordance with the laws of Victoria.

5 Trustee and Unitholders bound

The Trustee and the Unitholders are bound by the terms of the Constitution as amended by this deed.

6 Severance

Any provision of, or the application of any provision of, this deed which is:

- (a) prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition; or
- (b) void, illegal or unenforceable in any jurisdiction does not effect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

Executed as a deed


Signed by
Babcock & Brown Power Services Limited
by

sign here ▶


Secretary

print name JOHN REMEDIOS

sign here ▶


Director

print name WARREN MURPHY

Constitution Babcock & Brown Power Trust

Babcock & Brown Power Services Limited

ACN 118 165 156

Consolidated to include amendments made by amending deeds dated 6 November 2006, 8 December 2006 and 17 August 2007

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Reference JHG:PJO:25F

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This trust deed

is made on May 2006 by:

Babcock & Brown Power Services Limited

ACN 118 165 156

of Level 39, The Chifley Tower, Chifley Square, Sydney NSW 2000

(Trustee)

Recitals

- A. The Trustee intends that this trust deed will be the constitution for a unit trust known as the Babcock & Brown Power Trust.
- B. The Trustee intends that this trust will be registered as a managed investment scheme under section 601EB(1) of the Corporations Act and listed on the Official List.

This deed witnesses that:

1 The Trust

1.1 Trustee

Babcock & Brown Power Services Limited is appointed and agrees to act as trustee of the Trust.

1.2 Name of Trust

The name of the Trust is the Babcock & Brown Power Trust. The Trustee may change the name of the Trust.

1.3 Vesting of assets in Trustee

Each asset of the Fund is vested in, and is held by, the Trustee on behalf of the Unitholders.

2 Interest of Unitholder

2.1 Division into Units

- (a) The beneficial interest in the Fund is divided into Units. No Unit confers an interest in a particular part of the Trust or the Fund.
- (b) A Holder may not:
 - (1) interfere or seek to interfere with or question the rights, powers, authority or discretion of the Trustee;
 - (2) claim or exercise any right in respect of any asset of the Fund or lodge any caveat or other notice affecting any asset of the Fund; or
 - (3) require that any asset of the Fund be transferred to a Holder.

- (c) Holders may not give any directions to the Trustee (whether at a meeting convened under sections 252B, 252C and 252D of the Corporations Act or otherwise) if it would require the Trustee to do or omit doing anything which may result in:
 - (1) the Trust ceasing to comply with the Listing Rules or the Trustee acting inconsistently with clause 3.7; or
 - (2) the exercise of any discretion expressly conferred on the Trustee by this deed or the determination of any matter which under this deed requires the agreement of the Trustee.

2.2 Fractions and splitting

- (a) Units may be issued in fractions at the discretion of the Trustee, and the value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those of a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate such fractions.
- (c) The Trustee may consolidate or split the Units. The Trustee must in respect of any such consolidation or split:
 - (1) immediately amend the Register to record the consolidation or split;
 - (2) notify the Unitholder within 30 days of the consolidation or split; and
 - (3) ensure that each Unit is consolidated or split on the same basis as each other Unit.

2.3 Issue of Partly Paid Units

- (a) The Trustee may offer any Units which are offered for subscription as Partly Paid Units, the Issue Price of which is payable on issue and by Instalments.
- (b) The Trustee must set out the Terms of Issue of the Partly Paid Units in the document offering those Units for subscription, which must include the amount and time for payment of the Instalments.
- (c) The Terms of Issue of any Partly Paid Units may provide that the whole of the unpaid Issue Price of each Partly Paid Unit is payable immediately upon termination of the Trust.
- (d) A Holder of a Partly Paid Unit must pay the Instalments of the Issue Price in accordance with the Terms of Issue of the Partly Paid Unit and in accordance with this deed.

2.4 Joint Holders

Where two or more persons are registered as the Holders of a Unit or an Option (**joint holders**) they are, for the purposes of the administration of the Trust and not otherwise, taken to hold the Unit or Option as joint tenants, on the following conditions:

- (a) except where otherwise required under the ASTC Settlement Rules, the Trustee is not bound to register more than three persons as the joint holders of the Unit or Option;
- (b) the joint holders are jointly and severally liable in respect of all payments, including payment of Tax, which ought to be made in respect of the Unit or Option;
- (c) on the death of a joint holder, the survivor or survivors are the only person or persons whom the Trustee will recognise as having any title to the Unit or Option, but the Trustee may require any evidence of death which it thinks fit;
- (d) any one of the joint holders may give an effective receipt which will discharge the Trustee in respect of any payment or distribution; and
- (e) only the person whose name appears first in the Register as one of the joint holders is entitled to delivery of any notices, cheques or other communications from the Trustee, and any notice, cheque or other communication given to that person is deemed to be given to all the joint holders.

2.5 Classes of Units

- (a) The Trustee may at any time issue Units in two or more classes with rights, obligations and restrictions as it determines.
- (b) The Trustee may convert any Units from one class to another class or reclassify Units from one class to another.
- (c) The Trustee must enter on the Register the class or Terms of Issue of Units held by a Unitholder.

2.6 Benefits and obligations of Unitholders and Optionholders

- (a) Except where expressly provided in this deed to the contrary, all benefits and obligations in this deed apply for the benefit of and bind each Unitholder to the extent provided in this deed.
- (b) Except where expressly provided in this deed to the contrary, all obligations in this deed bind each Optionholder to the extent provided in this deed. The benefits in this deed only apply for the benefit of Optionholders where expressly provided in this deed.
- (c) Subject to the Corporations Act, where the interests of Optionholders and Unitholders conflict, the Trustee must prefer the interests of Unitholders.

2.7 No further liability

- (a) This clause 2.7 is subject to any separate agreement between a Unitholder and the Trustee and to any Instalments on Partly Paid Units payable under clauses 2.3 and 2.8 to 2.16.
- (b) The liability of each Holder in its capacity as such is limited to its investment in the Trust.
- (c) A Holder is not required to indemnify the Trustee or a creditor of the Trustee against any liability of the Trustee in respect of the Trust.

- (d) The recourse of the Trustee and any creditor of the Trustee is limited to the assets of the Fund.
- (e) Except as provided in clauses 2.10(a) and 2.14(h), nothing in or under this deed makes either the Trustee the agent of a Unitholder nor does it create any relationship other than that of beneficiary and Trustee.

2.8 Failure to pay instalment on Partly Paid Unit

- (a) The Trustee must serve each Holder of a Partly Paid Unit with a notice not later than 30 Business Days before the due date for payment of an Instalment unless the Terms of Issue for the Partly Paid Unit otherwise provide. The omission to give such notice by the Trustee or the non-receipt of such notice by the Holder of a Partly Paid Unit does not in any way whatsoever affect the obligation of the Holder to pay the Instalment.
- (b) If a Unitholder does not pay an Instalment on the due date, the Unitholder must pay:
 - (1) so much of the Instalment as is unpaid;
 - (2) interest, which accrues daily and may be capitalised monthly or at such other intervals as the Trustee determines on so much of the Instalment as is unpaid from time to time, from the date when the Instalment falls due to the date of actual payment:
 - (A) if the Trustee has fixed a rate, at the rate so fixed; or
 - (B) in any other case, at the rate prescribed in respect of unpaid judgments in the Supreme Court of Victoria; and
 - (3) any costs, expenses or damages incurred by the Trust in relation to the non-payment or late payment of the Instalment.

2.9 Forfeiture of Units

- (a) If a Unitholder fails to pay the whole of an Instalment when it falls due, the Trustee may serve a notice on that Unitholder:
 - (1) requiring payment of the amount payable under clause 2.8(b);
 - (2) naming a further day (at least 14 days after the date of service of the notice) by which, and a place at which, the amount payable under clause 2.8(b) is to be paid; and
 - (3) stating that in the event of non-payment of the whole of the amount payable under clause 2.8(b) by the time and at the place named, the Unit in respect of which the Instalment was due will be liable to be forfeited.
- (b) A Partly Paid Unit is forfeited and the Trustee may offer that Forfeited Unit for sale if payment in full is not received by the due date specified in the notice issued under clause 2.9(a).
- (c) A forfeiture under clause 2.9(b) will include all distributions, interest and other money payable in respect of a Forfeited Unit and not actually paid before the forfeiture.
- (d) Where a Unit has been forfeited:

- (1) notice of the forfeiture must be given to the Unitholder who owned the Forfeited Unit immediately before the forfeiture; and
 - (2) an entry of the forfeiture, with the date, must be made in the Register.
- (e) Failure to give the notice or make the entry required under clause 2.9(d) does not invalidate the forfeiture.
- (f) If a Unit forms part of a Stapled Security and:
- (1) the Unitholder of such Unit fails to pay the whole of an instalment on an Attached Security forming part of such Stapled Security when it falls due;
 - (2) forfeiture procedures substantially similar to those set out in these clauses 2.9 to 2.15 are invoked in respect of such Attached Security; and
 - (3) the payment default giving rise to such forfeiture procedures being invoked has not been remedied by the relevant Unitholder,

the Trustee may apply the provisions of these clauses 2.9 to 2.15 in respect of such Unit in order to ensure that each component Security of such Stapled Security is simultaneously subject to forfeiture pursuant to substantially identical procedures.

2.10 Sale of Forfeited Unit

- (a) The Trustee may offer a Forfeited Unit for sale as agent for the Holder of the Forfeited Unit.
- (b) Subject to clause 2.9(f), if the Trustee sells the Forfeited Unit, it must sell it by public auction in a manner determined by the Trustee.
- (c) The Trustee must ensure that the sale of the Forfeited Unit is in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (10) and (13)) as if the Forfeited Unit was a share, the Trust was the company and the Trustee was the directors of the company.
- (d) The Trustee is not liable to the Unitholder for any loss suffered by the Unitholder as a result of the sale.
- (e) A person whose Units have been forfeited ceases to be the Holder of those Units, but remains liable to pay, and must immediately pay, to the Trustee all Instalments, interests, costs, expenses and damages owing in respect of the Units at the time of the forfeiture.
- (f) Where permitted by the Listing Rules (while the Trust is Listed), the Trustee may:
 - (1) exempt a Unit from all or any part of this clause 2.10(f);
 - (2) waive or compromise all or any part of any payment due to the Trustee (as trustee of the Trust); and
 - (3) before a Forfeited Unit has been sold, reissued or otherwise disposed of, annul the forfeiture upon such conditions as it thinks fit.

2.11 Income and Capital of a Forfeited Unit

Distribution of income and capital under clause 8:

- (a) to which the Holder of a Forfeited Unit is entitled; and
- (b) which have not been paid to the Holder before forfeiture,

must be applied in accordance with clause 2.15 as if they formed part of the proceeds of sale of a Forfeited Unit.

2.12 Notice of sale of Forfeited Unit

At least 14 days but no more than 21 days before the date appointed for sale under clause 2.9(b), the Trustee must give notice of the sale of a Forfeited Unit by placing an advertisement in a daily newspaper circulating generally throughout Australia.

2.13 Cancellation of Forfeiture

The Trustee must cancel the forfeiture of a Partly Paid Unit before a sale if the Holder of the Forfeited Unit pays the Trustee the full amount of the Instalment due together with interest on that Instalment calculated under clause 2.8(b) and any other amount payable in respect of the forfeiture.

2.14 Consequences of sale and continuing liability

- (a) On completion of the sale of the Forfeited Unit, the Unitholder ceases to be the Unitholder of that Unit but remains liable to the Trustee for the total amount payable under clause 2.8(b).
- (b) The Unitholder's liability under this clause ceases as soon as the Trustee receives:
 - (1) payment in full of the amount payable pursuant to clause 2.8(b) (excluding any amount paid by an underwriter under an underwriting agreement entered into under clause 4.2);
 - (2) the Costs associated with the forfeiture; and
 - (3) the Costs of all proceedings instituted against the Unitholder to recover the amount due.
- (c) A statement signed by a director or secretary of the Trustee setting out:
 - (1) that a Partly Paid Unit has been forfeited; and
 - (2) the date of forfeiture,is conclusive evidence against any person claiming entitlement to the Forfeited Unit.
- (d) On completion of the sale the Trustee must apply the consideration paid for a Forfeited Unit in accordance with clause 2.15.
- (e) If the Trustee executes a transfer of a Forfeited Unit, the Trustee must register the transferee as the Holder of the Forfeited Unit.
- (f) The transferee of the Forfeited Unit is not required to verify the application of the purchase money.

- (g) The title to a Forfeited Unit is not affected by an irregularity or invalidity in the proceedings relating to the sale or disposal of a Forfeited Unit.
- (h) The Trustee is authorised to and must execute a transfer of a Forfeited Unit to the purchaser thereof.

2.15 Proceeds of sale of Forfeited Unit

- (a) If a Forfeited Unit is sold under clause 2.9(b), the Trustee must apply the proceeds of the sale in the following order and manner:
 - (1) by paying any Costs incurred by the Trustee in relation to the sale or disposal of the Forfeited Unit including, but not limited to, commission, stamp duty, transaction duty, transfer fees and advertising and postal charges;
 - (2) by paying any Costs incurred by the Trustee in relation to the forfeiture or any proceedings brought against the Holder of the Forfeited Unit;
 - (3) by holding as an asset of the Fund, the interest accrued in respect of the outstanding Instalments calculated under clause 2.8(b);
 - (4) by holding as an asset of the Fund, the balance of all Instalments due and payable in respect of the Forfeited Units; and
 - (5) by paying any balance (subject to any lien that exists under clause 2.16 in respect of money not presently payable) to the former Unitholder whose Units are forfeited.
- (b) If there is a sale of more than one Forfeited Unit, the Trustee must pay the Costs listed in clause 2.15(a)(1) and (2) pro rata to the number of Forfeited Units being sold.
- (c) Joint holders of Partly Paid Units are jointly and severally liable for all amounts due and payable on their Partly Paid Units.

2.16 Lien for Amounts Owing

The Trustee has a first and paramount lien over Units for any amounts owing to the Trustee in respect of Units registered in the name of a Unitholder, including any fees or unpaid calls which are payable to the Trustee in respect of those Units and also for such amounts as the Trustee may be called upon by law to pay and has paid in respect of the Units of such Unitholders. The lien extends to distributions from time to time payable in respect of such Units but if the Trustee registers any transfer of any Unit upon which it has a lien, those Units are freed and discharged from the lien.

3 Issue of Options and Units

3.1 Number of Units issued

- (a) If the Trustee accepts an Application for Units in whole or in part, the number of Units issued is the number (rounded down to the nearest whole

number) determined by the Trustee by dividing the relevant Application Moneys by the Issue Price.

- (b) If the Trustee accepts an Application for Partly Paid Units in whole or in part, the number of Units issued is the number determined by the Trustee dividing the relevant Application Moneys by the amount of the Issue Price for a Unit which is to be paid on Application.
- (c) The number of Units issued on the exercise of an Option is to be determined in accordance with the Terms of Issue and Terms of Offer.

3.2 Application for Units or Options

A person who wishes to subscribe for Units or Options must:

- (a) complete or make an Application in the form or manner determined by the Trustee;
- (b) lodge or make the Application at the place or address and in the manner determined by the Trustee; and
- (c) include with the Application the Application Moneys in the form or manner specified by the Trustee or by the transfer of property to be vested in the Trustee.

3.3 Payments to the Trustee

- (a) If an applicant is to transfer property to the Trustee, the Trustee must not accept the Application unless it has received from the applicant:
 - (1) an effective transfer of the title to the property in favour of the Trustee; and
 - (2) a valuation acceptable to the Trustee stating the current market value of the property or other statement of its current market value.
- (b) Unless the applicant has paid all amounts payable in respect of the issue of Units or the transfer of property (if any) to the Trustee before the Trustee accepts the Application, the Trustee must deduct those amounts before determining the number of Units to be issued under clause 3.1.
- (c) If Units or Options are issued and:
 - (1) the Trustee has not received the Application Moneys in accordance with the Terms of Issue; or
 - (2) any payment for Units or Options is not cleared or property is not effectively transferred to the Trustee,

the Units or Options are void as from their date of issue or such other date as the Trustee determines if the Trustee has not otherwise received payment of an amount equal to the Application Moneys for the Units or Options.
- (d) All income in respect of the payment or property received on an Application for Units or Options (which has been accepted by the Trustee) before the issue of those Units or Options forms part of the Fund.

3.4 Allotment

A Unit or Option created is regarded as issued or granted to the person entitled to it if and when the person's name is recorded in the Register. No rights whatsoever attach to a Unit until it is issued or an Option until it is granted.

3.5 Trustee's discretion on Application

The Trustee may in its absolute discretion accept or refuse to accept in whole or in part any Application or subscription for Units or Options (other than on the exercise of an Option). Subject to the Listing Rules, the Trustee is not required to assign any reason or ground for such refusal.

3.6 Certificates

If it is not contrary to the Listing Rules, the Trustee may determine:

- (a) not to issue a certificate for a Unit; and
- (b) to cancel a certificate for a Unit and not to issue a replacement certificate.

3.7 Foreign Unitholders

- (a) The Trustee may determine that Foreign Unitholders are not to be offered Units or Options which are otherwise offered to Unitholders in that capacity where it reasonably considers that it would:
 - (1) be in the best interests of the Holders; and
 - (2) not be unfair to the Foreign Unitholders.
- (b) If the Trustee makes a determination under clause 3.7(a) and it is practicable to do so, the Trustee must sell the Foreign Interests and pay to each Foreign Unitholder the amount calculated as follows:

$$AF = NP \times \frac{NF}{N}$$

where:

AF is the amount to be paid to that Foreign Unitholder;

NP is the net proceeds of sale of the Foreign Interests being the amount (if any) remaining after deducting from the proceeds of sale of the Foreign Interests the aggregate of:

- (1) the Costs of the sale;
- (2) the amounts (if any) payable to the Trustee by any nominee appointed under clause 3.7(c) in respect of the Foreign Interest; and
- (3) any amounts the Trustee would be required by law or otherwise entitled to deduct or withhold under this deed;

N is the aggregate number of Foreign Interests; and

NF is the number of Foreign Interests to which that Foreign Unitholder would otherwise have been entitled.

- (c) The Trustee may (and in the case of a renounceable pro rata issue, must) appoint a nominee to arrange for the sale of the Foreign Interests under, and pay to each Foreign Unitholder the amount calculated in accordance with the formula in, clause 3.7(b).
- (d) The Trustee must take reasonable steps to maximise the amount payable to each Foreign Unitholder under clause 3.7(b).

4 Power to issue Units and Options

4.1 Powers Cumulative

- (a) The Trustee may issue Units only in accordance with this clause 4 and subject to this deed.
- (b) No clause of this clause 4 (other than this clause 4.1) limits any other such clause.

4.2 Underwriting of Issue

- (a) The Trustee may arrange for:
 - (1) an offer for sale, subscription or issue of Units or Options;
 - (2) the payment of Instalments in respect of Partly Paid Units; or
 - (3) the exercise of Options,to be underwritten by an underwriter on terms determined by the Trustee.
- (b) The underwriter may:
 - (1) be the Trustee or a related body corporate of the Trustee;
 - (2) take up any Units or Options not subscribed for; and
 - (3) purchase Forfeited Units sold under clause 2.9(b).
- (c) The Trustee may issue Units and Options under to this clause 4.2 at an Issue Price equal to the Issue Price at which the Units or Options in relation to the underwritten issue or offer were or would have been issued to persons other than the underwriter or underwriters.

4.3 Issues of Options

The Trustee may offer Options for subscription in accordance with the Terms of Offer and Terms of Issue.

4.4 Issue of Units pursuant to Options

The Trustee may issue a Unit or Units in accordance with the Terms of Offer and Terms of Issue of an Option.

4.5 Issue at fixed price

In addition to any other power the Trustee has to issue Units under this deed, the Trustee may issue Units or Options at any time to any person at an Issue Price as follows:

- (a) for the initial issue of Units, Units at an Issue Price of \$1.00 per Unit;
- (b) after the initial issue of Units pursuant to clause 4.5(a) but prior to the Trust being Listed, Units at an Issue Price of \$1.75 per Unit as set out in a PDS or other offer document issued by the Trustee;
- (c) where the Trust is Listed and Stapled Securities, Units or Options (as the case may be) are Officially Quoted and have not been suspended from Official Quotation (other than temporarily):
 - (1) where Units will not form part of Stapled Securities:
 - (A) Units or Options at the Market Price on the Business Day prior to the day on which the offer or issue is made; or
 - (B) Options at the consideration for the issue of the Option specified in the Terms of Offer and Terms of Issue, where the Units to be issued pursuant to the exercise of those Options are to be issued at the Market Price of a Unit immediately before the date upon which the Option is issued; and
 - (2) where Units will form part of Stapled Securities:
 - (A) Units at a price determined by the Trustee provided that the aggregate of the Issue Price of that Unit and the issue price of the Attached Security or Attached Securities to which that Unit will be Stapled is equal to the Market Price for Stapled Securities on the Business Day prior to the day on which the offer or issue is made; and
 - (B) Options at a price determined pursuant to clause 4.5(c)(1).
- (d) where Stapled Securities or Units have been suspended from Official Quotation (other than temporarily) or have otherwise ceased to be Officially Quoted or the Trust is no longer Listed and subject to clauses 3.1 and 4.2(c), Units at the Current Unit Value on the Business Day before the day the offer to issue the Units is made.
- (e) prior to the Trust being registered as a managed investment scheme under section 601EB(1) of the Corporations Act, Units or Options at an Issue Price per Unit or Option as determined by the Trustee.

4.6 Placements of Units at Market Price

- (a) While the Trust is Listed and Units do not form part of Stapled Securities, are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the Trustee may issue Units at an issue price equal to the Market Price determined in accordance with clause 21.3(b)(1)(B), if the issue is:
 - (1) a placement to professional investors (as that term is defined in section 9 of the Corporations Act):
 - (A) for the purposes of which the Market Price was initially calculated; or

- (B) announced at the same time as, or within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 21.3(b)(1)(B); or
- (2) made pursuant to a PDS lodged with ASIC pursuant to section 1015B of the Corporations Act within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 21.3(b)(1)(B); and
- (b) while the Trust is Listed, Units form part of Stapled Securities and Stapled Securities are Officially Quoted and have not been suspended from Official Quotation (other than temporarily), the Trustee may issue Units as part of Stapled Securities at an issue price determined by it provided that the issue price of the Stapled Securities of which the Units form a part is equal to the Market Price determined in accordance with clause 21.3(b)(1)(B), if the issue is:
 - (1) a placement to professional investors (as that term is defined in section 9 of the Corporations Act):
 - (A) for the purposes of which the Market Price was initially calculated; or
 - (B) announced at the same time as, or within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 21.3(b)(1)(B); or
 - (2) made pursuant to a PDS lodged with ASIC pursuant to section 1015B of the Corporations Act within 15 Business Days of the date as at which the Market Price is calculated in accordance with clause 21.3(b)(1)(B).

4.7 Other issues of Units and Options

The Trustee may issue Units or Options at an Issue Price determined by the Trustee, being a price other than the Issue Price calculated in accordance with clauses 4.2, 4.5 and 4.6, in any circumstance where the Corporations Act (as modified by any applicable ASIC Class Order) permits the Trustee to set such Issue Price in such a manner.

4.7A Issue of Units to Alinta Limited's shareholders

- (a) The Trustee may issue Units as part of BBP Securities (as defined in the Scheme) to Alinta Limited's shareholders under the Scheme (or to the Nominee as defined in the Scheme) at an Issue Price per Unit equal to 65.47% of the Value (as defined in Schedule 1 to the Scheme) of a BBP Security.
- (b) The Issue Price of the Units issued under this clause 4.7A may be provided in the form of either cash or promissory notes (or a combination of the two) and by any one or more parties.
- (c) In this clause 4.7A:

Scheme means the scheme of arrangement between Alinta Limited (ABN 11 119985 590) and its shareholders expected to be approved by the Federal Court in or about August 2007;

Scheme Booklet means the scheme booklet describing the Scheme issued by Alinta Limited and dated 2 July 2007.

4.8 Placement Threshold

(a) This clause 4.8 applies solely for the purposes of determining the number of Units or Options which must be included in the Placement Threshold for a Relevant Placement.

(b) In this clause 4.8:

Placement Resolution means a special resolution to approve or ratify the issue of Units or Options pursuant to a placement in respect of which:

- (1) no votes are cast by Holders who acquired or will acquire Units or Options pursuant to such placement;
- (2) no votes are cast in respect of Units or Options which are held by their Holder for the benefit of a person who acquired or will acquire Units or Options pursuant to such placement;
- (3) the value of Units and Options in respect of which votes are cast is equal to at least 25% of the total value of all Units and Options on Issue; and
- (4) the notice of meeting convening the meeting at which Holders voted on such special resolution set out particulars of the use made or to be made of the money raised by such placement;

Placement Threshold means a percentage of Units or Options on issue immediately before a placement of Units or Options (as the case may be) which percentage is specified in paragraph (2)(c)(i)(A) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it); and

Relevant Placement means a placement of Units or Options in the circumstances described in paragraph (2) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it) and in respect of which the Issue Price is determined pursuant to clause 4.7.

(c) Units or Options:

- (1) the issue of which has been approved or ratified by a Placement Resolution of Holders of the Class of Units or Options being issued and, unless the Trustee reasonably considers that the issue will not adversely affect the interests of Holders of another Class of Units Options, a separate Placement Resolution of Holders of that Class of Units or Options, in respect of which; or
- (2) which are issued pursuant to clause 4.2, 4.3, 4.4, 4.5, 4.6 or 4.7 (other than pursuant to a placement of Units or Options in the circumstances described in paragraph (2) of ASIC Class Order 05/26 (or the corresponding provisions of any Class Order which replaces it)),

are not Units or Options which must be counted towards any applicable Placement Threshold for a Relevant Placement.

5 Trustee's Powers

5.1 General powers of Trustee

- (a) Subject to this deed, the Trustee has all the powers that it is possible to confer on a trustee, and has all the powers that are incidental to ownership of the Fund as though it were the absolute and beneficial owner of the Fund.
- (b) In the exercise of its powers the Trustee may, without limitation, acquire or dispose of any real or personal property, borrow or raise money, encumber any asset of the Fund, incur any liability, guarantee any obligations of any person, enter into joint venture arrangements or fetter any power.

5.2 Delegation by Trustee

- (a) The Trustee may appoint a person, including an Associate of the Trustee, as its delegate, attorney or agent to exercise its powers and perform its obligations.
- (b) The Trustee may appoint an agent, custodian or other person, including an Associate of the Trustee (each of whom may, with the approval of the Trustee, sub-delegate to any person any of its functions as it thinks fit), to acquire, hold title to, dispose of or otherwise deal with any asset of the Fund on behalf of the Trustee and perform any action incidental or ancillary thereto or otherwise approved by the Trustee.

6 Trustee's responsibilities and indemnities

6.1 No limitation of other undertakings

This clause 6 does not limit or affect any other indemnities given to the Trustee in this deed or at law.

6.2 Limitation of liability

Except where the Corporations Act expressly provides otherwise:

- (a) the Trustee and each director and officer of the Trustee are not personally liable to a Holder or any other person in connection with the office of the Trustee or director or officer of the Trustee;
- (b) the Trustee will not be liable to any Holder to any greater extent than the extent to which it is entitled to be and is in fact indemnified out of the assets of the Fund actually vested in the Trustee in respect of the Trust.

6.3 Indemnities

- (a) The Trustee is not responsible for:
 - (1) any Costs incurred by any fraud, negligence, breach of duty or breach of trust or otherwise, by any agent, delegate, attorney or custodian and any of their agents or delegates;

- (2) any Costs incurred by relying on any notice, resolution, information, documents, forms or lists unless it reasonably believes such item not to be genuine or not to have been passed, executed or signed by the proper parties; or
 - (3) Costs if a person fails to carry out an agreement with the Trustee or an agent or delegate of the Trustee,
except where the Corporations Act provides otherwise.
- (b) The Trustee will not be liable to anyone in respect of any failure to perform or do any act or thing which by reason of:
- (1) any provision of any present or future law or statute of Australia or any State or Territory;
 - (2) of any decree, order or judgement of any competent court; or
 - (3) any document or agreement binding on the Trustee,
the Trustee is prevented, forbidden or hindered from doing or performing.

6.4 Trustee may rely on advice

The Trustee may take and act upon:

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

and the Trustee will not be liable for anything done, suffered or omitted by it in good faith in reliance upon such opinion, advice, statements or information.

6.5 Interested dealings by Trustee

The Trustee or an officer or employee or Associate of the Trustee may:

- (a) be a Holder;
- (b) act in any fiduciary, vicarious or professional capacity, including without limitation as a banker, accountant, auditor, valuer, solicitor, independent contractor or other consultant or adviser to or representative, delegate, attorney or agent of the Trustee or any Holder or as an executor, administrator, receiver or trustee;
- (c) have an interest in or enter into a contract or transaction with:
 - (1) the Trustee or an Associate of the Trustee;
 - (2) any Holder; or
 - (3) any other person, including one whose shares or other securities form an asset of the Fund; or

- (d) hold or deal in or have any other interest in an asset of the Fund, and may retain and is not required to account for any benefit derived by doing so.

7 Valuation of the Fund

7.1 Valuation of assets of the Fund

- (a) The Trustee may at any time cause the valuation of any asset of the Fund.
- (b) In determining whether a valuation accurately reflects the current value of an asset of the Fund, the Trustee is not to be regarded as having the knowledge of a valuer or any other expertise in respect of the valuation of the assets of the Fund.
- (c) Each asset of the Fund must be valued at its market value unless the Trustee determines:
- (1) there is no market in respect of the asset of the Fund; or
 - (2) the market value does not represent the fair value of the asset of the Fund.
- (d) Where the Trustee makes a determination under clause 7.1(c), the Trustee must at the same time determine the method of valuation of the asset of the Fund.
- (e) Where any asset of the Fund is to be valued or the Net Asset Value of the Trust and the number of Units on Issue is to be determined, the valuation or determination is to be as at a time determined by the Trustee.
- (f) Where the calculation of the Issue Price is to be made as at a particular date, the Trustee need not cause a valuation of the Fund to be performed at that date but may rely on the most recent valuations for the purposes of that calculation.

7.2 Currency Conversion

Where it is necessary for any purposes to convert one currency to another, the conversion must be made at a time and at such rates quoted by a bank or other financial institution nominated by the Trustee.

7.3 Trustee to determine Current Unit Value

The Trustee may determine the Current Unit Value at any time.

8 Income and Distributions

8.1 Determination of income and reserves

The Trustee is to determine whether any item is income or capital and the extent to which reserves or provisions need to be made. The Trustee may determine that the income of the trust is an amount equal to the net income of the trust for an

income year as defined in section 95 of the Income Tax Assessment Act 1936 (but in any event an amount not less than nil).

8.2 Distribution of income

- (a) The Trustee may at any time distribute pro rata to Unitholders income or capital out of the Fund.
- (b) For each Distribution Period the Trustee must calculate and distribute each Unitholder's Distribution Entitlement.

8.3 Distribution Entitlement

- (a) **Distributable Amount** for a period is to be determined in accordance with the following formula:

$$DA = I + C - R$$

Where:

DA is the amount of Distributable Amount.

I is the Operating Income of the Fund.

C is any additional amount (including capital) that the Trustee has determined is to be distributable to Unitholders.

R is:

- (a) that part (if any) of the Operating Income of the Fund for the relevant period which has been distributed during the period; and
- (b) any amount of income and gains which has been included in the Redemption Price of Units redeemed during the relevant period.

- (b) Subject to the Terms of Issue for any Unit, each Unitholder's **Distribution Entitlement** is to be determined in accordance with the following formula:

$$DE = DA \times \frac{UH}{UI}$$

where:

DE is the Distribution Entitlement.

DA is the Distributable Amount.

UH is the aggregate of the Paid-up Proportion of each relevant Unit Holding of the Unitholder at the close of business on the Distribution Calculation Date.

UI is the aggregate Paid-up Proportion of all Units on issue in the Trust at the close of business on the Distribution Calculation Date.

8.4 Distribution of Entitlement

- (a) The Trustee must pay to each Unitholder its Distribution Entitlement on or before the Distribution Date.

- (b) For the purpose of determining the entitlement to the Distribution Entitlement for a Distribution, the persons who are Unitholders on the Distribution Calculation Date for that Distribution Period have an absolute, vested and indefeasible interest in the Distributable Amount for the Distribution Period.
- (c) The Trustee may retain from each Unitholder's Distribution Entitlement all amounts which are necessary to avoid distributing a fraction of a cent or which the Trustee determines it is not practical to distribute on a Distribution Date. Any sum so retained will for all purposes be treated as income for the next following Distribution Period.
- (d) The Trustee may retain from the amounts to be distributed to a Unitholder an amount in or towards satisfaction of any amount payable by the Unitholder to the Trustee under this deed or required to be deducted by law.
- (e) The Trustee may at any time determine to satisfy its obligation to pay a Unitholder's Distribution Entitlement by way of an issue of Units to that Unitholder.

8.5 Distribution Reinvestment Arrangements

The Trustee may advise Unitholders from time to time in writing that Unitholders may on terms specified in the notice participate in an arrangement under which Unitholders may request that all or a proportion of specified distributions due to them be satisfied by the issue of further Units.

8.6 Discharge of Trustee's obligation

The Distributable Amount shall be distributed to persons who are Unitholders on the record date for that Distribution Period. It is acknowledged by Unitholders that such payments of Distributable Amounts shall be good and complete discharge to the Trustee in respect of any liability to any person in respect of an entitlement to such Distributable Amount.

8.7 Trust taxed as a company

Notwithstanding clauses 8.3 and 8.4, if in any Financial Year the Trustee in its capacity as trustee 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:
 - (1) the Distributable Amount for that Financial Year; or
 - (2) in years subsequent to that Financial Year, amounts which have not previously been distributed from prior Financial Years,is to be distributed to Unitholders on the Distribution Date.
- (b) Each Unitholder's Distribution Entitlement to the Distributable Amount (calculated in accordance with clause 8.7(a)) is to be determined in accordance with clause 8.3(b).
- (c) The Trustee must pay on or before the Distribution Date the Distribution Entitlement (determined in accordance with clause 8.7(b)) to the persons

who are Unitholders on the Distribution Calculation Date for that Distribution Period.

9 Remuneration of Trustee

9.1 Trustee's remuneration

- (a) The Trustee is entitled to receive out of the Fund a management fee calculated at the rate of 2% per annum of the sum of Gross Asset Value and the aggregate gross value of the assets of all Stapled Entities.
- (b) The Trustee's fee is calculated and accrued on a daily basis and is payable in arrears on a quarterly basis.

9.2 Waiver or deferral of remuneration

The Trustee may waive or defer the whole or any part of the remuneration to which it would otherwise be entitled. Where payment is deferred, the deferred amount accrues daily until paid.

9.3 Priority of Trustee's remuneration

The remuneration of the Trustee has priority over the payment of all other amounts payable from the Fund

9.4 Indemnity

In addition to the Trustee's right of remuneration under Clause 9.1 and any other right of indemnity which it may have under this deed, the Trustee is indemnified and entitled to be reimbursed out of or have paid from the Fund for all Costs incurred at law or under this deed in the performance of its duties, the exercise of its powers, the course of its office or in relation to the administration or management of the Trust. Without limitation, this includes the Costs set out in Schedule 2.

9.5 Proper performance of duties

The rights of the Trustee to be paid fees out of the Fund, or to be indemnified out of the Fund for liabilities or expenses incurred in relation to the performance of its duties, are available only in relation to the proper performance of those duties.

9.6 Act or omission of a delegate

The indemnity under clause 9.4 includes any liability incurred as a result of any act or omission of a delegate or agent appointed by the Trustee.

9.7 Indemnity unaffected by an unrelated breach

The Trustee may exercise any of its rights of indemnification or reimbursement out of the Fund to satisfy a liability to any creditor of the Trustee (as trustee of the Fund) notwithstanding that the Fund may have suffered a loss or may have diminished in value as a consequence of any unrelated act, omission or breach of trust by the Trustee or by any delegate or agent appointed by the Trustee.

9.8 Reimbursement of GST

- (a) Any reference in this clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 should be taken as a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this deed which is relevant in determining the amount of any payment to be made to or by the Trustee is exclusive of any GST unless indicated otherwise.
- (c) If the Trustee is or becomes liable to pay GST in respect of any supply under or in connection with this constitution (including, without limitation, 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 Manager is entitled to be paid out of the Fund 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 out of the Fund.
- (d) If the Trust is not entitled to an input tax credit in respect of the amount of any GST charged or recovered from the Trustee by any person, or payable by the Trustee by way of reimbursement of GST referable directly or indirectly to any supply made under or in connection with this constitution, the Trustee is entitled to recover from the Trust by way of reimbursement an additional amount equivalent to the amount of such input tax, and the recovery of such additional amount shall comprise part of the consideration for a supply by the Trustee to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Fund for other purposes of this deed and the Corporations Act.
- (e) Where an expense covered by Schedule 2 is paid from the Fund to the Trustee, the payment shall comprise part of the consideration for a supply by the Trustee to the Trust treated as separate entities in accordance with Division 184 of the GST Act and for the purposes of the GST Act. This does not affect the character of the payment as an exercise of the Trustee's right of indemnity from the Fund for other purposes of this constitution and the Corporations Act.

10 Indemnity and insurance

10.1 Persons to whom clauses 10.2 and 10.4 apply

Clauses 10.2 and 10.4 apply to each person who is or has been a member of the Trust's Compliance Committee (if any).

10.2 Indemnity

The Trustee must, from the Fund indemnify, on a full indemnity basis and to the full extent permitted by law, each person to whom this clause 10.2 applies for

Costs (other than Taxes) incurred by the person as a member of the Trust's Compliance Committee (if any) including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Act.

10.3 Extent of indemnity

The indemnity in clause 10.2:

- (a) is a continuing obligation and is enforceable by a person to whom clause 10.2 applies even though that person may have ceased to be a member of the Trust's Compliance Committee; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

10.4 Insurance

The Trustee may, from the Fund and to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this clause 10.4 applies against any liability incurred by the person as a member of the Trust's Compliance Committee including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

10.5 Savings

Nothing in clauses 10.2 or 10.4:

- (a) affects any other right or remedy that a person to whom those clauses apply may have in respect of any loss or liability referred to in those clauses; or
- (b) limits the capacity of the Trustee to indemnify or provide insurance for any person to whom those clauses do not apply.

11 Transfers and other transactions

11.1 Transfer

- (a) All transfers of Units and Options must be effected by a proper instrument of transfer and in a manner approved by the Trustee. The Trustee may decline to register a transfer of Units or Options under this clause 11.1(a) unless the instrument of transfer:
 - (1) is duly stamped (if applicable);
 - (2) is accompanied by such evidence as the Trustee requires to prove the title of the transferor; and

- (3) complies with any requirements prescribed by the Trustee from time to time.
- (b) While the Trust is Listed all transfers of Units or Options must be effected in accordance with the Listing Rules.
- (c) A transferor of Units or Options remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Units or Options or the transfer is effected in accordance with the ASTC Settlement Rules.

11.2 Transaction advice after transfer

If the Trustee accepts a transfer under this part, the Trustee may issue a transaction advice for:

- (a) the Units or Options which have been transferred; and
- (b) the balance of any Units which were not transferred.

11.3 No General Restriction on Transfer

- (a) Whilst the Trust is Listed, there is no restriction on the transfer of Units and, subject to clauses 11.3(c)(3) and 11.5, the Trustee may not do anything which may prevent, delay or in any way interfere with, the registration of a transfer of Units effected under clause 11.1(b).
- (b) Except as otherwise set out in this clause 11, there is no restriction on any other transfer of Units or Options.
- (c) In relation to Units which are CHESSE Approved Securities:
 - (1) subject to clauses 11.3(c)(2) and 11.3(c)(3), the Trustee must not prevent, delay or in any way interfere with the registration of a proper ASTC transfer;
 - (2) the Trustee may apply a holding lock to specified CHESSE Approved Securities where permitted to do so by the Listing Rules; and
 - (3) the Trustee may refuse to register a transfer where permitted to do so by the Listing Rules and must refuse to register a transfer if required to do so by the Listing Rules.

11.4 Power to suspend the registration of transfers

Subject to the Listing Rules and the ASTC Settlement Rules, whilst the Trust is Listed, the Trustee may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as it thinks fit.

11.5 Restricted Securities

Notwithstanding any other provisions of this deed and whilst the Trust is Listed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during any applicable escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;

- (b) subject to the ASTC Settlement Rules in respect of CHESSE Approved Securities, the Trustee must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during any applicable escrow period except as permitted by the Listing Rules or ASX; and
- (c) during a breach of the Listing Rules relating to restricted securities or a breach of any restriction agreement, the holder of restricted securities is not entitled to any distributions and to any voting rights in respect of the restricted securities.

11.6 Transmission of Units and Options

- (a) In the case of a Transmission Event in respect of a Holder, the only persons who will be recognised as having any title to the Units or Options registered in the Holder's name or any benefits accruing in respect of those Units or Options are:
 - (1) where the Holder is a joint holder, the survivor or survivors of the Holder;
 - (2) where the Holder is an individual, the legal personal representative of the Holder or the person entitled to the Units or Options as a result of bankruptcy; or
 - (3) where the Holder is a body corporate, the person entitled to the Units or Options as a result of the dissolution or succession.
- (b) Nothing in clause 11.6(a) releases the Holder or the estate of a deceased Holder from any liability in respect of the Units or Options held whether that Unit or Option was held by the deceased solely or jointly with other persons.
- (c) A person who becomes entitled to a Unit as a result of a Transmission Event may, upon producing such evidence as the Trustee may require to prove that person's entitlement to the Unit or Option, elect:
 - (1) to be registered as the Holder of the Unit or Option by signing and serving on the Trustee a notice in writing stating that election; or
 - (2) to have some other person nominated by that person registered as the transferee of the Unit or Option by executing a transfer to that other person in accordance with clause 11.1.
- (d) The Trustee need not register any transfer or transmission pursuant to this clause unless the transferee provides an indemnity in favour of the Trustee in a form determined by the Trustee in respect of any consequence arising from the transfer or transmission.
- (e) The provisions of this deed relating to the right to transfer, and the registration of transfers of, Units and Options apply, so far as they can and with such changes as are necessary, to any transfer under clause 11.6(c) as if the relevant Transmission Event had not occurred and the transfer was signed by the Holder of the Unit or Option.
- (f) For the purposes of this deed, where 2 or more persons are jointly entitled to any Unit or Option in consequence of a Transmission Event they will, upon being registered as the Holders or the Unit or Option, be taken to hold the Unit or Option as joint tenants and clause 2.4 will apply to them.

- (g) Despite clause 11.6(a), the Trustee may register a transfer of Units signed by a Holder before a Transmission Event even though the Trustee has notice of the Transmission Event.

11.7 Recognition of Holder

- (a) Except as otherwise provided by law or provided in this deed, the Trustee:
 - (1) must treat the person entered on the Register as a Holder as the absolute owner of all rights and interests of the Holder; and
 - (2) need not recognise any other equitable, contingent, future or partial claim or interest in any Unit or Option by any other person, even if the Trustee has notice of that claim or interest.
- (b) Each transferor will be deemed to remain the Holder until the transfer is registered and the name of the transferee is entered in the Register.
- (c) With the consent of the Trustee, Units or Options held by a trustee may be marked in the Register in such a way as to identify them as being held subject to the relevant trust.
- (d) Nothing in clause 11.7(c) limits the operation of clause 11.7(a).

11.8 Participation in Transfer Systems

The Trustee may determine that Units or Options which are Officially Quoted will participate in the “Clearing House Electronic Sub-register System” or any other computerised or electronic system of transfer or registration. The Trustee may with the approval of the ASX, create rules to facilitate such participation which may be additional to or may override this clause 11.

12 Options

12.1 Terms and Subscription

- (a) This clause 12 applies to all Options.
- (b) The Terms of Offer and the Terms of Issue of any Options which may be issued must be notified to each person being offered Options at the time of the offer.
- (c) A person may subscribe for an Option in accordance with the Terms of Offer. Upon creation an Option binds the Trustee.

12.2 Nominees

- (a) An Option may be subscribed for by a nominee of the person entitled to subscribe for the Option unless the Terms of Offer provide otherwise.
- (b) An Option may be exercised by a nominee of the Optionholder unless the Terms of Issue provide otherwise.

12.3 Exercise

- (a) An Optionholder may only exercise an Option in accordance with the Terms of Issue.
- (b) On the termination or winding up of the Trust, all Options lapse and, subject to any amounts specifically expressed to be payable to the Optionholder on the termination or winding up of the Trust, the liabilities of the Trustee cease in respect of each Option.

12.4 Optionholder's Rights and Interest

- (a) An Option does not confer on the Optionholder any interest in the Fund. Optionholders have only those rights conferred on them by this deed, their Terms of Offer and Terms of Issue and the Listing Rules (if applicable).
- (b) Optionholders are not entitled to any distribution of income or capital gains or any distribution on winding up or termination of the Trust.
- (c) Optionholders are entitled:
 - (1) to inspect any document which may be inspected by; and
 - (2) to be sent any document which is sent to, Unitholders.
- (d) If Options have been issued which have not expired or been exercised or cancelled, then if a new Trustee is appointed under this deed, it must execute any documents and do all things reasonably required by the outgoing Trustee to ensure that it assumes the covenants and obligations of the outgoing Trustee under those Options.

12.5 Redemption or Repurchase

- (a) The Trustee may cancel or redeem or buy an Option or any of the rights of exercise of an Option in accordance with the Terms of Issue (provided the Terms of Issue have been approved by the ASX) whereupon the Trustee must make any payment to an Optionholder required under the Terms of Issue. Options and rights may only be cancelled, redeemed or purchased under this clause 12.5(a) in proportion to the number of the relevant Options held by each Holder on a date determined by the Trustee and the Trustee may round the result to the nearest multiple of 10 (5 being rounded up) or of 1 (0.5 being rounded up).
- (b) Options and rights redeemed or purchased under clause 12.5(a) form part of the Fund and the Trustee is recognised as the Holder and may exercise, reissue, resell and otherwise deal with them as it determines. The Trustee retains title in law to each and every Option and right so purchased in its name until the Option or right is resold or lapses and such title in law will not merge in such choses as are constituted by the grant of such Options and rights.

13 Retirement or Removal of Trustee

13.1 Retirement and removal of Trustee

- (a) Whilst the Trust is not a registered scheme:
 - (1) the Trustee may retire on not less than one month's notice to the Unitholders. On retirement, the Trustee may appoint another person in writing to be the Trustee; and
 - (2) the Trustee must retire if directed to do so by a special resolution of Unitholders.
- (b) Whilst the Trust is a registered scheme:
 - (1) despite any other law, the Trustee may only retire as responsible entity of the Trust in accordance with section 601FL of the Corporations Act; and
 - (2) the Trustee may only be removed as responsible entity of the Trust in accordance with section 601 FM of the Corporations Act.
- (c) On retirement or removal the Trustee must give the new responsible entity all books, documents and records relating to the Trust.
- (d) If the Trust is not a registered scheme at the time the Trustee is to retire, any proposed replacement trustee must execute a deed by which it covenants to be bound by this Trust Deed as if it had originally been a party to it.
- (e) The Trustee is entitled to agree with an incoming trustee to be remunerated by, or receive a benefit from, the incoming trustee in relation to:
 - (1) entering into an agreement to submit a proposal for its retirement to a meeting of Unitholders and nominating the incoming trustee as its replacement; or
 - (2) its retirement as Trustee.

and is not required to account to Unitholders for such remuneration or benefit.

13.2 Name of Trust to be changed

- (a) If Babcock & Brown Power Services Limited has retired or is removed as the Trustee, the new Trustee must promptly take whatever action may be necessary to remove any words or any other letters, words or expressions which might express or imply an association with Babcock & Brown Power Services Limited or any of its Associates from the title of the Trust and this deed and such letters, words or expressions must not be used in any connection with the Trusts and this deed.
- (b) Clause 13.2(a) does not apply if the new Trustee obtains the consent of Babcock & Brown Power Services Limited not to take the action set out in that clause.

14 Alterations to Trust

Subject to any approval required by law, the Trustee may by deed replace or amend this deed (including this clause).

15 Term of Trust and termination of Trust

15.1 Term of Trust

The term of the Trust ends on the earlier of:

- (a) the date determined by the Trustee as the date on which the Trust is to be terminated; and
- (b) the date on which the Trust is terminated under this deed or by law.

15.2 Procedure on winding up of Trust

- (a) In winding up the Trust the Trustee must:
 - (1) realise the Fund;
 - (2) pay any amount due to it under clause 15.2(c);
 - (3) pay all Costs of the Trustee in its capacity as Trustee of the Trust including, but not limited to, liabilities owed to any Unitholder who is a creditor of the Trust otherwise than in their capacity as a Unitholder; and
 - (4) subject to any special rights or restrictions attached to any Unit or the direction in writing of all Unitholders, distribute the net proceeds of realisation among the Unitholders pro rata in accordance with the Paid-Up Proportion of Units held by Unitholders.
- (b) The Trustee may distribute an asset of the Fund to a Unitholder in specie. The Trustee must determine the value of the asset of the Fund to be distributed in specie. Any costs payable on an in specie distribution must be paid by the Unitholder before the distribution is made.
- (c) The Trustee is entitled to:
 - (1) be paid from the proceeds of realisation of the Trust before any payment is made to the Unitholders all Costs incurred or which it establishes will be incurred:
 - (A) by it before the winding up of the Trust which it has not recouped;
 - (B) by it in connection with the winding up of the Trust and the realisation of the Fund;
 - (C) by or on behalf of any creditor of the Trustee in relation to the Trust; and
 - (D) by or on behalf of any agent, solicitor, banker, accountant or other person employed by the Trustee in connection with the winding up of the Trust;

- (2) an indemnity against the amounts referred to in clause 15.2(c)(1) which may be satisfied out of those proceeds before any distribution under clause 15.2(a)(4) is made; and
 - (3) following the termination of the Trust and until the winding up is completed, its remuneration provided for in clause 9.
- (d) The Trustee may postpone the realisation of the Fund for as long as it thinks fit and is not liable for any loss or damage attributable to the postponement.
 - (e) The Trustee may retain for as long as it thinks fit any part of the Fund which in its opinion, may be required to meet any actual or contingent liability of the Trustee or any amounts payable actually or contingently to the Trustee under this deed, including but not limited to under clause 15.2(c).
 - (f) The Trustee must distribute among the Unitholders in accordance with clause 15.2(a)(4) anything retained under clause 15.2(e) which is subsequently not required.

15.3 Audit of accounts of Trust

The Trustee must ensure that the final accounts of the Trust following the winding-up are audited by a registered company auditor, or a firm at least one of whose members is a registered company auditor, who is independent of the Trustee.

16 Meetings

16.1 Meetings

The Trustee may convene a Meeting at any time. The provisions of Schedule 1 and the Corporations Act (if applicable) apply to a Meeting.

16.2 Resolution by Postal Ballot

- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution which has been sent by the Trustee within a period specified by the Trustee.
- (b) In respect of such a resolution each Holder has the number of votes determined in accordance with section 253C(2) of the Corporations Act. The value of a Holder's total holding must be determined at such time as the Trustee specifies.

16.3 Passing of resolution

A resolution passed at a meeting of Holders held in accordance with this deed or by postal ballot under clause 16.2 is binding on all Holders.

17 Complaints

17.1 General

The provisions of this clause 17 only apply whilst the Trust is a registered scheme.

17.2 Complaints handling

The Trustee must establish and maintain a procedure for dealing with complaints by Holders in relation to a Trust which is consistent with AS4269 Australian Standard on Complaints Handling or such other standard which satisfies the requirements (if any) of the Corporations Act or any Governmental Agency from time to time.

17.3 Holder Complaints

- (a) A Holder may by notice in writing to the Trustee (or by such other method as the Trustee may approve) lodge a complaint in relation to the Trust.
- (b) The Trustee must:
 - (1) record the complaint and the date it was received in a register maintained for that purpose; and
 - (2) send the Holder an acknowledgment of receipt of the complaint.

17.4 Handling of Complaints

- (a) The Trustee must use reasonable endeavours to deal with a complaint by a Holder under clause 17.3 in accordance with this clause 17, any rules and regulations made for that purpose and any complaints handling procedures in the Compliance Plan.
- (b) The Trustee must use reasonable endeavours to deal with and resolve the complaint within a reasonable time from the date of receipt of the complaint.
- (c) The Trustee must inform the Holder by notice in writing of:
 - (1) its decision in relation to the complaint;
 - (2) the remedies available to the Holder in relation to the complaint; and
 - (3) any avenues of appeal that may be available to the Holder if the Holder is dissatisfied with the decision.

17.5 Assistance and Information

- (a) The Trustee must provide a Holder with all reasonable assistance and information that the Holder may reasonably require for the purpose of

making a complaint and understanding the complaints handling procedures adopted by the Trustee.

- (b) A Holder lodging a complaint in relation to a Trust must provide the Trustee with all information the Trustee may require in order to properly deal with and resolve the complaint.

18 Proposal approved by Holders

18.1 Power to implement a Proposal and limitation of liability

- (a) Having regard to the functions of the Trustee and without limiting anything else in this clause 18 the Trustee has power to do all things which it considers are necessary, desirable or reasonably incidental to effect a Proposal and those powers apply notwithstanding, and are not limited by, any provision of this deed other than clauses 21.4, 21.5 and 21.6.
- (b) Subject to the Corporations Act, the Trustee will not have any liability of any nature whatsoever beyond the assets of the Fund to Holders arising, directly or indirectly, from the Trustee doing or refraining from doing any act (including the execution of a document), pursuant to or in connection with the implementation of a Proposal.

18.2 Appointment of Trustee as agent and attorney

The Trustee is irrevocably appointed the agent and attorney of each Unitholder to execute all documents and do all things which it reasonably considers are necessary or desirable to be executed or done on behalf of the Unitholder to effect a Proposal, including but without limiting the generality of the foregoing:

- (a) applying for Securities in the name of the Unitholder;
- (b) accepting transfers of Securities for the Unitholder; and
- (c) Stapling each Unit held by the Unitholder on the Stapling Date to a corresponding number of Attached Securities.

The Trustee is authorised to execute these documents and do these things without needing further authority or approval from the Unitholders.

18.3 Paramountcy

Subject only to clauses 21.4, 21.5 and 21.6, this clause 18 has effect notwithstanding any other provision of this deed and any provision of this deed which is inconsistent with this clause 18 does not operate to the extent of any inconsistency.

19 Stapling

19.1 Power to staple Securities

In addition to any power the Trustee has under clause 18, the Trustee may, subject to the Corporations Act and, if the Units are Officially Quoted, the Listing Rules,

cause the Stapling of any Security to the Units and may cause the Stapling of further Securities to the Units whether those Securities are a different class of Securities of a Stapled Entity from those Stapled at the time or Securities of an entity that is not a Stapled Entity but so that in every case, the Corresponding Number of Attached Securities of every kind is Stapled to each Unit.

19.2 Applications, transfers and distributions in specie

- (a) For the purposes of Stapling, the Trustee may:
 - (1) apply for Securities in the name of a Unitholder;
 - (2) make a transfer of Securities to all Unitholders; or
 - (3) make a transfer of Securities by way of an in specie distribution of Securities to all Unitholders.
- (b) If the Trustee applies for Securities in accordance with clause 19.2(a)(1), it must apply for Securities for all Unitholders in the same way and the Securities applied for must be of the same type, have the same rights and be fully paid upon issue.
- (c) If the Trustee effects a transfer made in accordance with clause 19.2(a)(2) it must effect the transfer to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (d) Notwithstanding clause 8.4(a), if the Trustee makes an in specie distribution under clause 19.2(a)(3) the Trustee:
 - (1) must transfer the Securities by way of distribution between 7pm on the Distribution Calculation Date for the distribution in specie and 10am the following day; and
 - (2) must effect the distribution to all Unitholders in the same way and the Securities transferred to each Unitholder must be of the same type, have the same rights and be fully paid.
- (e) Where Securities are to be applied for or transferred by the Trustee in accordance with clause 19.2(a), each Unitholder authorises the Trustee to act as the Unitholder's agent to:
 - (1) apply for Securities in the name of that Unitholder;
 - (2) accept a transfer of Securities for that Unitholder; and
 - (3) agree to become a member of the relevant Stapled Entity.

19.3 Operation of Stapling provisions

Clauses 19.4 to 19.10 apply only, and for so long as, a Unit is a component of a Stapled Security.

19.4 Units to be Stapled

- (a) Details of all Stapled Securities sufficient to identify the Securities which comprise the Stapled Security must be registered in the Stapled Security Register.

- (b) On and from the Stapling Date and prior to the Unstapling Date, the Trustee must not issue Units unless satisfied that each of those Units will be Stapled to the Corresponding Number of each Attached Security to form a Stapled Security.
- (c) On and from the Stapling Date and prior to the Unstapling Date, the Trustee and the Unitholders must neither do any act, matter or thing nor refrain from doing any act, matter or thing if to do so or refrain from doing so (as the case may be) would result directly or indirectly in any Unit no longer being a component of a Stapled Security. In particular:
 - (1) the Trustee must not offer a Unit for subscription or sale unless an offer is made at the same time and to the same person for the Corresponding Number of each Attached Security for issue or sale;
 - (2) any offer of a Unit for subscription or sale must require the offeree to subscribe for or buy the Corresponding Number of each Attached Security;
 - (3) the Trustee must not issue or sell a unit to any person unless the Corresponding Number of each Attached Security is also issued or sold to the same person at the same time;
 - (4) the Trustee must not consolidate, sub-divide, cancel or otherwise reorganise any Units unless at the same time there is a corresponding consolidation, subdivision, cancellation or other reorganisation of all Attached Securities; and
 - (5) the Trustee must not register the transmission or transfer of Units pursuant to clause 11 unless it also causes the transmission or transfer (as the case may be) of a Corresponding Number of each Attached Security.

19.5 Unstapling Date

- (a) Subject to approval by a special resolution of the Unitholders and the members of each Stapled Entity respectively, the Trustee may determine that the Stapling provisions of this deed will cease to apply and that a particular date is to be the Unstapling Date.
- (b) On and from the Unstapling Date, each Unit ceases to be Stapled to the Attached Securities and the Trustee must do all things reasonably necessary to procure that each Unit is Unstapled.
- (c) If the Trustee determines to Unstaple the Stapled Securities pursuant to this clause 19.5, this does not prevent the Trustee from:
 - (1) subsequently determining that the Stapling provisions should recommence; and
 - (2) stapling an Unstapled Unit to Attached Securities which are not Stapled.

19.6 Transfer of Stapled Securities

- (a) Until the Unstapling Date:

- (1) a transfer of a Unit forming part of a Stapled Security will only be accepted as a proper transfer in registrable form if, in addition to the requirements of clause 11, the transfer relates to or is accompanied by a transfer of the Corresponding Number of each Attached Security from the same transferor in favour of the same transferee;
 - (2) a transfer of a Unit which is not accompanied by a transfer of the Corresponding Number of each Attached Security will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Corresponding Number of each Attached Security from the same transferor to the same transferee; and
 - (3) a transfer of any Attached Security to which a Unit is Stapled (other than a transfer of the Attached Security to the Trustee as trustee of the Trust) which is not accompanied by a transfer of the Unit will be taken to authorise the Trustee as agent for the transferor to effect a transfer of the Unit and any other Attached Securities to which the Share is Stapled to the same transferee.
- (b) Each Unitholder irrevocably appoints the Trustee as its agent and attorney for the purposes of taking all necessary action (including executing necessary documentation) to effect on a date to be determined by the Trustee the transfer to the Trustee (as trustee of the Trust) or to a person nominated by the Trustee of any Attached Security which was Stapled to a Forfeited Unit which has been cancelled or sold.

19.7 Stapled Security Register

The Trustee must cause to be set up and maintained a Stapled Security Register which:

- (a) may incorporate or form part of the Register;
- (b) records the names of the Unitholders, the number of Units held, the number of Attached Securities held by the Unitholders to which each Unitholder's Units are Stapled and any additional information required by the Corporations Act or the Listing Rules (if applicable) or determined from time to time by the Trustee.

19.8 Unitholder meetings

- (a) Representatives of a Stapled Entity may attend and speak at any meeting or invite any other person to attend and speak.
- (b) Meetings of Unitholders may be held in conjunction with meetings of the holders of Attached Securities and, subject to the Corporations Act, the Trustee may make such rules for the conduct of such meetings as the Trustee determines.

19.9 Variation of Stapling provisions

Prior to the Unstapling Date, the consent of each other Stapled Entity must be obtained to any amendment to this deed which:

- (a) directly affects the terms on which Units are Stapled; or

- (b) removes any restriction on the transfer of a Stapled Unit unless that restriction also exists for all other Attached Securities and is simultaneously removed for all Attached Securities.

19.10 Restricted issue of Units of different class

Whilst there is a similar restriction on the issue of Attached Securities of any new class pursuant to the terms of the constitutions of the Stapled Entities without the consent of the holders of Attached Securities, notwithstanding any other provision of this deed, the Trustee must not issue any Units which are of a different class from any Units already issued without an ordinary resolution being passed at a meeting of Unitholders to that effect.

20 General

20.1 Service of notices

- (a) Any application, notice or other communication to or by the Trustee or a Holder:
 - (1) must be in legible writing and in English addressed:
 - (A) if to the Trustee, to its registered office;
 - (B) if to a Holder, to the Holder's address specified in the register of Unitholders or Optionholders,

or to the e-mail or other electronic messaging system address of a party from time to time or as specified to the sender by any party by notice and in the case of a Holder, with the Trustee's prior consent;
 - (2) must be signed personally or, in the case of a corporation, by a duly authorised officer or under the common seal of the sender or, if the notice or communication is sent by electronic messaging system, be otherwise able to be verified in such manner as the Trustee may prescribe from time to time;
 - (3) is regarded as being given by the sender and received by the addressee:
 - (A) if by delivery in person, when delivered to the addressee; or
 - (B) if by prepaid post, 3 Business Days from and including the date of postage to the addressee; or
 - (C) if by facsimile transmission, when transmitted to the addressee but where the sender's machine indicates a malfunction in transmission or the addressee notifies the sender of an incomplete transmission within 3 hours after transmission is received, the facsimile transmission is regarded as not given or received;
 - (D) if sent by electronic messaging system, when the electronic message is received by the addressee,

but if the delivery, receipt or transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day; and

- (4) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (b) A notice or other communication to joint Holders is validly given if it is given only to the joint holder whose name appears first on the Register.

20.2 Method of payment, repayment or redemption

- (a) Any money payable by the Trustee to a Holder under this deed may be paid by a crossed "not negotiable" cheque made payable to the Holder and posted to the Holder's registered address.
- (b) A Holder, with the consent of the Trustee, may nominate in writing (or in such other manner approved by the Trustee) that money owing to it under this deed be paid by cheque or otherwise into a designated account with a financial institution or to a nominated person.
- (c) A cheque issued to a Holder which is presented and paid, or where the payment is to a financial institution or nominated person, payment to the institution or person, discharges the Trustee in respect of the payment.
- (d) The Trustee may determine that any cheque not presented within 9 months is cancelled. If the Trustee so determines the amount of the cheque is to be reinvested in Units or, if the Units are Stapled, in Stapled Securities. The reinvestment is taken to be made on the day the cheque is cancelled.

20.3 Binding conditions

The terms and conditions of this deed and any amending deed are binding on the Trustee, each relevant Holder and any other person claiming through any of them as if each was a party to this deed and each supplemental deed.

20.4 Governing law

The rights, liabilities and obligations of the Trustee and the Holders are governed by the law of Victoria.

20.5 Severability

If any provision of this deed is held or found to be void, invalid or otherwise unenforceable so much hereof as is necessary to render it valid and enforceable is deemed to be severed but the remainder of this deed will remain in full force and effect.

21 Definitions and Interpretation

21.1 Definitions

(a) In this deed, unless the context otherwise requires:

Application means any of the following, as the case requires:

- (1) an application for Units;
- (2) a notification of the exercise of or application to exercise Options;
or
- (3) an application for Options;

Application Moneys means the amount required to be paid to or the value of any cash or other property to be transferred to the Trustee by an applicant on the making of an Application;

Approved Valuer means a valuer appointed by the Trustee;

ASIC means the Australian Securities and Investments Commission or any body that replaces it;

ASTC means ASX Settlement and Transfer Corporation Pty Limited ACN 008 504 532;

ASTC Settlement Rules means the ASTC Settlement Rules and any other rules of ASTC which apply while the Units are CHESSE Approved Securities, each as amended from time to time;

ASX means the Australian Stock Exchange Limited;

Attached Security means a Security which is from time to time Stapled or to be Stapled to a Unit;

Auditor means the auditor from time to time appointed by the Trustee to audit the Trust;

Business Day has the meaning given to that term in the Listing Rules;

CHESSE Approved Securities means securities in respect of which approval has been given by the securities clearing house (being the body corporate approved or licensed under the Corporations Act, namely, ASTC) in accordance with the ASTC Settlement Rules;

Commonwealth means the Commonwealth of Australia and its external territories;

Compliance Committee means the compliance committee for the Trust as required by section 601JA of the Corporations Act;

Compliance Plan means the compliance plan for the Trust as required by section 601HA of the Corporations Act;

Corresponding Number in relation to an Attached Security means at any time the number of those Attached Securities that are stapled to an issued Unit at that time;

Corporations Act means Corporations Act 2001;

Costs includes costs, charges, fees, expenses, commissions, Liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments;

Current Unit Value means the amount calculated as follows;

$$CUV = \frac{NAV}{NU}$$

where:

CUV is Current Unit Value

NAV is Net Asset Value

NU is the number of Units on Issue;

Distributable Amount means the amount (if any) determined in accordance with clause 8.3(a);

Distribution Calculation Date means 30 June and 31 December in each year or such other dates as the Trustee may determine;

Distribution Date means either:

- (1) a day not more than three calendar months after the Distribution Calculation Date for the relevant Distribution Period; or
- (2) if the Trustee determines that it is in the interests of Unitholders to delay the Distribution Date for a particular Distribution Period, the date determined by the Trustee as being the appropriate Distribution Date for the Distribution Period;

Distribution Entitlement means the entitlement to any Distributable Amount determined in accordance with clause 8.3(b);

Distribution Period means:

- (1) for the first Distribution Period, the period from the date of establishment of the Trust to the next Distribution Calculation Date;
- (2) for the last Distribution Period, the period beginning on the day after the preceding Distribution Calculation Date to the date of termination of the Trust; and
- (3) in all other circumstances, the period beginning on the day after the preceding Distribution Calculation Date to the next occurring Distribution Calculation Date;

Distribution Reinvestment Arrangement means an arrangement of the kind described in clause 8.5;

Exercise Price in relation to a Unit issued on exercise of an Option, means the dollar value of the total consideration payable in respect of the issue of that Unit determined in accordance with clause 4;

Financial Year means:

- (1) for the first Financial Year, the period from the date of establishment of the Trust to the next 30 June;

- (2) for the last Financial Year, the period beginning on 1 July before the date the Trust terminates to the date the Trust terminates; and
- (3) in all other circumstances, the 12 month period ending on 30 June in each year;

Foreign Interests means the Units or Options to which a Foreign Unitholder would have been entitled to but for clause 3.7(a);

Foreign Unitholder means a Unitholder whose address appearing in the Register is in a country outside Australia;

Forfeited Unit means a Partly Paid Unit which is forfeited under clause 2.9(b) by non-payment of an Instalment;

Fully Paid Unit means a Unit on which the whole of the Issue Price has been paid;

Fund means all the cash, investments, rights and other property of the Trust (including, but not limited to, each Instalment in respect of each Partly Paid Unit);

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, bureau, tribunal, agency or entity in any part of the world;

Gross Asset Value means the value of the Fund not including assets of the Fund that relate to derivative instruments used for hedging;

Holder means a Unitholder or Optionholder (as the context may require);

Instalment means, in relation to a Partly Paid Unit, each instalment of the Issue Price of that Unit which is not paid on Application for the Unit and must be paid at the time specified in the Terms of Issue;

Issue Price in relation to a Unit or an Option means the dollar value of the total consideration payable at any time in respect of the issue of that Unit or Option determined in accordance with the clause in clause 4 pursuant to which the Unit or Option was issued and in respect of a Unit issued on the exercise of an Option, means the Exercise Price;

Liabilities means the liabilities in respect of the Trust and includes:

- (1) unpaid administrative costs and expenses including fees of the Trustee;
- (2) accrued charges in respect of or owing in relation to any asset of the Fund;
- (3) amounts of all borrowings; and
- (4) any provision for Tax which in the opinion of the Trustee should be taken into account;

Listed means admitted to the Official List;

Listing Rules means the Listing Rules of ASX and any other rules of ASX which are applicable while the Trust is listed, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

Market Price has the meaning given in clause 21.3;

Meeting means a meeting of Holders convened in accordance with this deed;

month means calendar month;

Net Asset Value means the Gross Asset Value less the following:

- (1) all amounts required to repay borrowings and to meet all Costs (including the amount of any provisions the Trustee determines, in consultation with the Auditor (if any), should be made) but excluding Liabilities (if any):
 - (A) to Unitholders in respect of Units, other than the liability to pay Unitholders the Redemption Price of Units in respect of which a redemption request has been made by a Unitholder and accepted by the Trustee; and
 - (B) relating to derivative instruments used for hedging;
- (2) following any Distribution Calculation Date, the amount of any Distributable Amount payable but not paid to Unitholders on the day on which the Net Asset Value is determined; and
- (3) any amount paid in advance of a call on a Partly Paid Unit;

Official List means the official list of ASX;

Official Quotation or **Officially Quoted** means official quotation by ASX of the Units or Options, as the case requires;

Operating Income is the amount determined under clause 8.1 or, if no determination has been made, the gross income (including realised gains but excluding any unrealised gains) of the Trust from its operations including rent, interest, dividends, distributions and otherwise less expenses arising in deriving that income including, but not limited to:

- (1) property outgoings;
- (2) repairs and maintenance;
- (3) interest and other borrowing costs;
- (4) fees paid to the Trustee;
- (5) any other amount the Trustee considers prudent or appropriate to allow for contingencies or future expenses that will or may arise in respect of the Trust; and
- (6) realised (but not unrealised) losses on disposal of property or investments.

Option means an option granted by the Trustee in respect of unissued Units;

Optionholder means the person for the time being registered as a holder of an Option, including any persons jointly registered;

Paid-up Proportion in relation to a Unit means the fraction determined by dividing the amount to which the Unit has been paid (excluding any

amount paid in advance of a call or any other amount credited in respect of the Unit) by the Issue Price of the Unit;

Partly Paid Unit means a Unit in respect of which any portion of its Issue Price remains unpaid;

PDS means a Product Disclosure Statement lodged under Part 7.9 of the Corporations Act in respect of an issue of Units or Options;

Proposal means a proposal approved by Holders at a Meeting;

Quarter means each 3 month period ending on the last day of March, June, September and December in each year;

Register means the register of Unitholders or Optionholders maintained by the Trustee pursuant to clause 21.7 or Chapter 2C of the Corporations Act, as the context requires;

Rights Issue means an issue of Units in a class which has been offered to all holders of Units in that class (or all holders of Units in that class other than Foreign Unitholders) on a pro rata basis;

Security has the meaning given to that term in section 92(1) of the Corporations Act;

Stapled means in relation to a Unit and an Attached Security or Attached Securities, being linked together so that one may not be dealt with without the other or others;

Stapled Entity means any trust, corporation, managed investment scheme or other entity the Securities in which are Stapled to Units;

Stapled Security means a Unit and each Attached Security which are Stapled together;

Stapled Security Register means the register of Stapled Securities to be established and maintained by or on behalf of the Trustee in accordance with clause 19.7;

Stapling Date means the date determined by the Trustee to be the first day on which all Units on issue in the Trust are Stapled to an Attached Security or Attached Securities;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of any of the above;

Tax Act means the Income Tax Assessment Act (Cth) 1936 and the Income Tax Assessment Act (Cth) 1997;

Terms of Issue in relation to a Stapled Security, Unit or Option means the terms and conditions upon which that Stapled Security, Unit or Option is issued (other than those in this deed);

Terms of Offer in relation to an offer to acquire an Option means the terms and conditions upon which the Option may be subscribed for and the conditions (if any) governing the transfer of the right to acquire the Option;

Transmission Event means:

- (1) in respect of a Holder who is an individual:
 - (A) the death of the Holder;
 - (B) the bankruptcy of the Holder; or
 - (C) the Holder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (2) in respect of a Holder who is body corporate, the dissolution of the Holder or the succession by another body corporate to the assets and liabilities of the Holder;

Trust means the trusts constituted under this deed;

Trustee includes the trustee of the Trust for the time being or any other company named in ASIC's record of registration for the Trust as the responsible entity or temporary responsible entity of the Trust;

Unit means an undivided interest in the Trust as provided for in this deed;

Unitholder means a person registered as the holder of a Unit, including any persons jointly registered;

Unit Holding means the total number of Units held by a Unitholder;

Units on Issue means the number of Units created under this deed and not cancelled; and

Unstapling Date means the date determined by the Trustee to be the Unstapling Date pursuant to clause 19.5.

- (b) Unless otherwise specified in this deed, terms defined for the purposes of the Corporations Act are used in this deed with the same meaning.

21.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any government or semi-government agency;
- (e) a reference to a part, clause or schedule is a reference to a part and clause of, and a schedule to, this deed and a reference to this deed includes any schedule;
- (f) a reference to any statute or regulation includes all statutes and regulations amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;

- (g) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;
- (h) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next succeeding Business Day;
- (i) a reference to cash includes cheques and bank cheques;
- (j) references to sums of money are to amounts in Australian dollars; and
- (k) a reference to the proper performance of a duty is a reference to the proper performance of the duty after all available appeals from each judgment in respect of the matter have been exhausted.

21.3 Market Price

- (a) In this clause 21.3, **Interest** means:
 - (1) where a Unit does not form part of a Stapled Security, a Unit; and
 - (2) where a Unit forms part of a Stapled Security, a Stapled Security.
- (b) Subject to clause 21.3(d), the **Market Price** for an Interest on any Business Day is:
 - (1) for all purposes other than the purposes of Rights Issues or issues under Distribution Reinvestment Arrangements, either:
 - (A) the average traded price for an Interest for all sales on ASX (excluding transactions referred to in clause 21.3(c)) for the period of 10 Business Days immediately preceding the relevant Business Day (whether or not a sale was recorded on any particular day); or
 - (B) the price obtained pursuant to a bookbuild arranged by a reputable merchant bank with experience in arranging bookbuilds in the Australian equity market, provided that the Auditor has provided written certification that the bookbuild was conducted in accordance with normal market practice for bookbuilds;
 - (2) for the purposes of Rights Issues, an amount calculated in a manner which complies with the Corporations Act, is set out in the Terms of Issue and which in the opinion of an Approved Valuer will approximate the market price of an Interest at or around the relevant date; and
 - (3) for the purposes of Distribution Reinvestment Arrangements, the average of the daily weighted average market price in cents per Interest (rounded to the nearest full cent) of all Interests sold on the ASX (excluding transactions referred to in clause 21.3(c)) over the 10 trading days ending on the trading day which is 3 trading days before the date that the Interests are to be allotted under the Distribution Reinvestment Arrangements in relation to the relevant distribution.

If in respect of clause 21.3(b)(1)(A) or 21.3(b)(3), the Trustee considers the period of 10 Business Days to be inappropriate in the circumstances, it can extend or reduce the period or change the timing of the period.

- (c) For the purposes of clauses 21.3(b)(1)(A) and 21.3(b)(3):
- (1) the following transactions are excluded when calculating Market Price:
 - (A) any transaction defined in the ASX Market Rules as a “Special Crossing”;
 - (B) any transaction defined in the ASX Market Rules as a “Crossing” that occurs prior to the commencement of normal trading or during the closing phase or after-hours adjust phase;
 - (C) any transaction pursuant to the exercise of Options over Units; or
 - (D) any transaction which the Trustee considers is not reflective of natural supply and demand; and
 - (2) “relevant record date” means the date for determination of entitlements to the distribution which will be applied in paying up Units to be issued pursuant to clause 8.5 at an issue price to be calculated by reference to the Market Price.
- (d) If the Trustee believes that the calculations in clause 21.3(b) do not provide an appropriate reflection of the market price of an Interest, the Market Price on any Business Day is an amount determined by an Approved Valuer who:
- (1) is independent of the Trustee; and
 - (2) has relevant market experience in determining market price in circumstances similar to those in which the determination of the market price of an Interest is being made,
- to be the fair market price of the Interest, having regard to:
- (3) the nature of the proposed offer of Interests for which purpose the market price of an Interest is being calculated; and
 - (4) the circumstances in which the proposed offer of Interests will be made.
- (e) The Market Price of an Option on any Business Day must be determined in the same manner as the Market Price for an Interest is determined.

21.4 General compliance provision

On and from the date the Trust becomes a registered scheme:

- (a) a provision of this deed which is inconsistent with a provision of the Corporations Act does not operate to the extent of the inconsistency.
- (b) clause 21.4(a) is subject to any declarations made by or exemptions granted by ASIC which are current in respect of or applicable to this deed.
- (c) this clause 21.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.

21.5 Inconsistency with the Listing Rules

- (a) Despite anything to the contrary in this clause 21.5, this clause 21.5 has effect subject to clause 21.4.
- (b) If the Trust is admitted to the Official List, the following clauses apply:
 - (1) despite anything in this deed, if the Listing Rules prohibit an act being done, the act must not be done;
 - (2) nothing in this deed prevents an act being done that the Listing Rules require to be done;
 - (3) if the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be);
 - (4) if the Listing Rules require this deed to contain a provision and it does not contain such a provision, this deed is taken to contain that provision;
 - (5) if the Listing Rules require this deed not to contain a provision and it contains such a provision, this deed is taken not to contain that provision; and
 - (6) if any provision of this deed is or becomes inconsistent with the Listing Rules, this deed is taken not to contain that provision to the extent of the inconsistency.

21.6 Additional Listing Rule requirements

If the Trust is admitted to the Official List:

- (a) the Trustee must not remove or change the rights of a Holder to vote or receive distributions in respect of a Unit or Option except in any of the following cases:
 - (1) an Instalment which is due and payable on that Unit under clause 2.8 has not been paid;
 - (2) in the case of the voting right, an instrument appointing a proxy in respect of that Unit or Option has not been deposited in accordance with schedule 1;
 - (3) in the case of the voting right, the Holder became the holder of that Unit or Option after the time determined under Regulation 7.11.38 of the Corporations Regulations as the “specified time” for deciding who held the Unit or Option for the purpose of the meeting;
 - (4) the right is removed or changed under Australian legislation or under a provision in this deed that must be included to comply with Australian legislation;
 - (5) the right is removed or changed under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable; or
 - (6) the right is removed or changed under a court order;

- (b) a holder of a Unit or Option must not be divested of that Unit or Option except in any of the following cases:
 - (1) the divestment is under Australian legislation and the mechanism the Trustee adopts for divesting the Unit or Option is set out in the legislation or is approved by ASX as appropriate and equitable;
 - (2) the divestment is under a provision in this deed that must be included to comply with Australian legislation;
 - (3) the divestment is under a provision in this deed that is permitted by the Listing Rules or that ASX has approved as appropriate and equitable;
 - (4) the divestment is under a court order; or
 - (5) the divestment is under clause 2.9(f);
- (c) the Trustee must not divest a Unitholder of Units or forfeit Units while those Units are in a “CHESS Holding” as that term is defined in the ASTC Settlement Rules. Without limitation to clause 21.5, at all times that the Trust is admitted to the Official List the Trustee must comply with ASTC Settlement Rule 5.12.

21.7 Corporations Act prior to registration

Whilst and so long as the Trust is not a registered scheme, the Trustee must comply with the following provisions of the Corporations Act as far as the circumstances admit as if the Trust was a registered scheme and the Trustee was the responsible entity of that scheme, namely:

- (a) Chapter 2C (Registers);
- (b) Part 2G.4 (Meetings of Members of Registered Managed Investment Schemes); and
- (c) Chapter 2M (Financial Reports and Audit).

Schedule 1 - Meetings

(Clause 16)

1 Notice of meeting

If the Trustee omits to give a Holder notice of a Meeting or if a Holder does not receive notice, the Meeting is still valid.

2 Who may attend and address Meetings

The Trustee, the directors of the Trustee, the Auditor, the auditor of a Trust's Compliance Plan, the members of the Trust's Compliance Committee and any person invited by any of them is entitled to attend and address a Meeting or adjourned Meeting.

3 Quorum

- (a) No business may be transacted at any Meeting unless a quorum of Holders is present at the time when the Meeting proceeds to business.
- (b) The quorum for any Meeting is 2 Holders.
- (c) A Holder is counted towards a quorum even though the Holder may not be entitled to vote on the resolution at the Meeting.
- (d) If a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting must be adjourned as the chairman directs.
- (e) Other than for a Meeting to consider an extraordinary resolution, at an adjourned Meeting the Holders with voting rights who are present either in person or by proxy constitute a quorum and are entitled to pass the resolutions.

4 Adjournments

The chairman may adjourn a Meeting for any reason to such time and place as the chairman thinks fit.

5 Proxies

- (a) Any person including a Holder may act as a proxy.
- (b) If the appointer of a proxy is an individual, the instrument of 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:
 - (1) under its common seal (if any);
 - (2) under the hand of an officer or attorney who has been authorised by the corporation;
 - (3) under the hand of any 2 directors or a director and a secretary; or
 - (4) 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 notarially certified copy of the power of attorney or authority under which it is signed must be deposited with the Trustee at least 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 paragraph 5(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 even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (h) Paragraph 5(g) does not apply if the Trustee has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

6 Voting

- (a) A poll is to be conducted as directed by the Chairman at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll does not discontinue the meeting except to decide the question for which the poll is demanded.
- (c) The result of the poll is regarded as the resolution of the Meeting.
- (d) A poll may not be demanded on any resolution concerning:
 - (1) the election of the chairman of a Meeting; or
 - (2) the adjournment of a Meeting.
- (e) If a Holder 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, the Holder's committee or trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting as if the committee, trustee or other person were the Holder.

7 Joint Unitholders

Joint Holders are counted as a single Holder for the purposes of calculating the number of Holders who have:

- (a) requested a Meeting under section 252B(1) of the Corporations Act;
- (b) given the Trustee notice of a special or extraordinary resolution they propose to move at a meeting under section 252L(1) of the Corporations Act;
- (c) requested that a statement be distributed to members under section 252N of the Corporations Act; or
- (d) demanded a poll under section 253L of the Corporations Act.

8 Class Meetings

The provisions of Part 2G.4 of the Corporations Act, clause 16, and this schedule 1 relating to meetings apply so far as they can and with such changes as are necessary, to each separate Meeting of Holders of Units or Options in a class of Units or Options.

Schedule 2 - Costs

For the purposes of clause 9.4, Costs includes without limitation all expenses connected with:

- (a) this constitution and the formation of the Trust and registration of the Trust as a registered scheme;
- (b) the preparation, review, distribution and promotion of any prospectus or offering memorandum in respect of Units or Stapled Securities and other promotion of the Trust or the Stapled Entities;
- (c) the acquisition, disposal, insurance, custody and any other dealing with assets of the Fund;
- (d) any proposed acquisition, disposal or other dealing with an investment;
- (e) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), development, registration, custody, holding, management, supervision, repair, maintenance, insurance, valuation, sale of or other dealing with property in which the Trust has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other assets of the Fund;
- (f) the services of asset managers, property managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any property in which the Trust has a direct or indirect interest, which may include an associate of the Trustee;
- (g) the administration or management of the Trust or the assets of the Fund and Costs including expenses in connection with the Register or the Stapled Security Register or the valuation of any asset of the Fund or the Trust as a whole;
- (h) borrowing arrangements on behalf of the Trust or guarantees in connection with the Trust, including hedging costs;
- (i) underwriting of any subscription or purchase of Units or Stapled Securities including underwriting fees, handling fees, costs and expenses (including marketing and roadshow costs, travel and accommodation expenses and legal fees), amounts payable under indemnity or reimbursement provisions in the underwriting agreement and any amounts becoming payable in respect of any breach (other than for negligence, fraud or breach of duty) by the Trustee of its obligations, representations or warranties under any such underwriting agreement;
- (j) convening and holding meetings of Holders, the implementation of any resolutions and communications with Holders and attending any meeting of the Stapled Entities;
- (k) Tax, including any amount charged by a supplier of goods or services, or both, to the Trustee by way of or as a reimbursement for GST;
- (l) financial institution fees;
- (m) the engagement of agents (including real estate agents and managing agents), valuers, contractors and advisers (including legal advisers)

- whether or not the agents, valuers, contractors or advisers are associates of the Trustee;
- (n) any management agreement entered into by the Trustee in respect of the Trust, including remuneration and expenses payable under that agreement by the Trustee in its capacity as responsible entity of the Trust;
 - (o) accounting and preparation and audit of the taxation returns, accounting records and accounts of the Trust;
 - (p) termination of the Trust and the retirement or removal of the Trustee and the appointment of a replacement;
 - (q) any court proceedings, arbitration or other dispute concerning the Trust including proceedings against the Trustee, except to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph (q) must be repaid;
 - (r) all damages, expenses, payments, legal and other costs and disbursements incurred by the Trustee in relation to or in connection with any claim, dispute or litigation (**Claim**) arising as a result of or in connection with any untrue representation or warranty contained in any document relating to any investment by the Trust including any project document in connection with the investment and any offering document or borrowing document in connection with the Trust except where the Claim arises out of the fraud or wilful default of the Trustee;
 - (s) the Compliance Committee (if any), including any fees paid to, or insurance premiums in respect of, compliance committee members;
 - (t) while there is no Compliance Committee, any costs and expenses associated with the board of directors of the Trustee carrying out the functions which would otherwise be carried out by a compliance committee, including any fees paid to or insurance premiums in respect of external directors appointed to satisfy the requirements of Chapter 5C of the Corporations Act;
 - (u) the preparation, implementation, amendment and audit of the Compliance Plan;
 - (v) the appointment of any compliance officer to undertake compliance work for the Trust;
 - (w) the preparation of reports including compliance reports;
 - (x) fees payable to any audit committee for the Trust appointed in accordance with any corporate governance guidelines adopted from time to time;
 - (y) the promotion of the Trust generally;
 - (z) recording, responding to and dealing with any complaints from Holders in connection with the Trust, and membership of an external dispute resolution facility;
 - (aa) complying with any law, and any request or requirement of the ASIC; and

- (bb) the admission of the Trust to any stock exchange, the Official Quotation of Units or Stapled Securities and compliance with the rules of such an exchange.

Executed as a deed:

Signed by
Babcock & Brown Power Services Limited
by:

Director

Director/Secretary

Name (please print)

Name (please print)