

Constitution

Challenger Wine Trust

ARSN 092 960 060

Challenger Listed Investments Limited

ABN 94 055 293 644

This is annexure A to the Tenth Supplemental Deed Poll made on 17 November 2005 by Challenger Listed Investments Limited ABN 94 055 293 644

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CONSTITUTION
CHALLENGER WINE TRUST
ARSN 092 960 060

RECITALS

This document is the constitution of the Scheme established by the constitution dated 19 February 1998 and incorporating all amendments made up to and including 2005.

OPERATIVE PROVISIONS

PRELIMINARY

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this constitution.

Acquisition and Development Fee means the acquisition and development fee payable to the Responsible Entity in accordance with clause 18.4.

Affiliate of a body corporate means each of the following:

- (a) a related body corporate of the body corporate;
- (b) a director of the body corporate;
- (c) a person who has a substantial holding in the body corporate.

Application Money means:

- (a) Cash given to the Responsible Entity in respect of an application for Units; or
- (b) if the Responsible Entity permits, the value of the asset (other than Cash) given in connection with such an application.

ASIC means:

- (a) the Australian Securities and Investments Commission; or
- (b) if another body takes over its functions in relation to managed investment schemes - that other body.

ASIC Instrument means each of the following:

- (a) an exemption or declaration under the Corporations Act Part 5C.11;

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- (b) an instrument issued by ASIC under a power of ASIC that applies or relates to the Responsible Entity or the Scheme.

ASTC means ASX Settlement and Transfer Corporation Pty Ltd (ABN 49 008 504 532).

ASTC Settlement Rules means the operating rules of ASTC and, to the extent that they are applicable, the operating rules of each of ASX and Australian Clearing House Pty Limited (ABN 48 001 314 503).

ASX means Australia Stock Exchange Limited or (as appropriate) the stock market it operates.

Base Fee means the base fee payable to the Responsible Entity in accordance with clause 18.2.

Business Day means the same as in the Listing Rules, but while the Scheme is not admitted to the Official List, means a day that is not a Saturday, a Sunday, or a public holiday in Adelaide.

Called Amount for a Partly Paid Unit, means the amount of a call on the Unit, and any interest on that amount accruing under clause 8.7, that is due and unpaid.

Cash includes cheques and direct deposit into, or debit from, a nominated account.

Challenger Listed Investments Limited means Challenger Listed Investments Limited ABN 94 055 293 644.

Compliance Committee means a compliance committee for the Scheme for the purposes of the Corporations Act.

Compliance Plan means the compliance plan for the Scheme for the purposes of the Corporations Act.

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

Distributable Income: see clause 26.2.

Distribution Amount means:

- (a) a Member's portion of the Distributable Income for the Financial Year worked out in accordance with clause 26.4; or
- (b) a Member's portion of an interim distribution for an Interim Distribution Period worked out in accordance with clause 26.6.

Fee Period means each successive calendar month.

Financial Year means a 12 month period ending on 30 June, or a part of such a period:

- (a) from establishment of the Scheme to the first 30 June after establishment; or

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- (b) from the end of the previous Financial Year to the date when the Scheme has been wound up.

Fully Paid Unit means a Unit for which the Issue Price has been paid.

Government Agency means any of the following:

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

GST means the same as in the GST Law and includes any other Commonwealth, State or Territory goods and services tax, and any Commonwealth, State or Territory Tax applying to a transaction in a similar way.

GST Law means the same as "GST law" in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Interest Rate, in a provision of this constitution, means:

- (a) the rate for the time being prescribed by the Responsible Entity for that provision; or
- (b) if no rate is so prescribed - 10% a year.

Interim Distribution Date means a date specified by the Responsible Entity as an Interim Distribution Date for an interim distribution.

Interim Distribution Period means a period starting either on the day after the last day of the previous Financial Year, or if there has since been an interim distribution, on the day after the previous Interim Distribution Date, and ending on the Interim Distribution Date.

Issue Price means the price for a Unit determined under this constitution.

Listing Rules means the listing rules of ASX, and any other rules of ASX that apply while the Scheme is admitted to the Official List, except to the extent of any express written waiver by ASX.

Management Fee means the management fee payable to the Responsible Entity in accordance with clause 18.3.

Market Transfer means a transfer (or change of ownership) that:

- (a) according to the ASTC Settlement Rules, is a proper transfer; or
- (b) is a valid transfer under a computerised or electronic system established or recognised by the Corporations Act, the Listing Rules or the ASTC Settlement Rules for dealings in interests in managed investment schemes.

Market Value means:

- (a) for Units that are Officially Quoted:
 - (i) the arithmetic average of the VWAP for Fully Paid Units, and for any day on which the only Units able to be traded are Partly Paid Units, then the VWAP for Partly Paid Units plus the Uncalled Amount, for each day on which the Units were sold on ASX during:
 - (A) except in the case of reinvestment of income - the period of 10 Business Days ending on the day which is 3 Business Days immediately before the relevant date indicated in this constitution, which is in the following cases:
 - (I) for determining the Issue Price of Units issued as a result of the exercise of an Option - the date of exercise of the Option;
 - (II) in the case of reinvestment of capital - the date determined by the Responsible Entity;
 - (III) where Units are issued to the Responsible Entity or to an Affiliate in payment of fees - the date of issue (or if payment of the fees is deferred, the date on which payment of the fees would otherwise have been due);
 - (IV) in the case of an issue under an offer of Units - the date of the offer and, if the offer is in a product disclosure statement or other offer document, the date of the product disclosure statement or offer document; or
 - (B) in the case of reinvestment of income – a period of 5 Business Days starting on a date determined by the Responsible Entity; or
 - (ii) if there are no sales during that period - the last bid price for such Units during that period (plus the Uncalled Amount if the last bid price was for Partly Paid Units);
- (b) for Stapled Securities that are Officially Quoted – Market Value determined under paragraph (a) as if references to "Units" were references to "Stapled Securities" and with any other necessary changes;
- (c) for Units that form part of Stapled Securities that are that are Officially Quoted – as set out in clause 32.4;
- (d) for Options that are Officially Quoted – the arithmetic average of the VWAP for Options for each day on which the Options (or, if applicable, Options of the relevant class) were sold on ASX during the period of 10 Business Days ending on the day which is 3 Business Days immediately before the relevant date;
- (e) for Options that form part of Stapled options that are that are Officially Quoted - in the same way as set out in clause 32.4 for Units; and

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- (f) for other property or assets (including for other Options, Units or Stapled Securities) - the market value determined by a Valuer appointed by the Responsible Entity to value the asset or property, or determined in such other manner as the Responsible Entity determines in consultation with the auditor.

Meeting means a meeting of Members.

Member means a person whose name is entered in the Register as the holder of a Unit.

Minimum Holding means the minimum holding of Units determined by the Responsible Entity, expressed in either or both dollar terms and number of Units.

Net Income: see clause 26.1.

Net Scheme Value means the Scheme Value less the Scheme Liabilities.

Official List means the official list of ASX.

Official Quotation means quotation on the Official List and the period during which a Unit is Officially Quoted includes a continuous period of suspension of quotation that lasts no more than 60 days.

Option means an option to subscribe for, or to acquire, a Unit or a security other than a Unit issued by the Responsible Entity with a right to convert the security into a Unit (or Units or part of a Unit).

Optionholder means a person whose name is entered in the Register as the holder of an Option.

Ordinary Resolution means a resolution that has been passed at a Meeting by, (on a show of hands) more than 50% of, or (on a poll) at least 50% of, the votes cast by Members entitled to vote on the resolution.

Partly Paid Unit means a Unit for which some of the Issue Price is unpaid (whether or not called).

Proposal means a proposal for Stapling or a proposal for cessation of Stapling.

Redemption Price, for a Unit, means the price determined under clause 28.6 for redemption of the Unit.

Register means, as the case requires:

- (a) the register of Members; or
- (b) the register of Optionholders,

kept as required by the Corporations Act and the Listing Rules and includes a computerised or electronic subregister established and administered under the ASTC Settlement Rules.

Registered Scheme means a managed investment scheme registered under Chapter 5C of the Corporations Act.

Responsible Entity means:

- (a) initially Challenger Listed Investments Limited; or
- (b) if another person holds office as responsible entity or trustee of the Scheme - that person.

Scheme means the trust established under this constitution.

Scheme Liabilities means the total of:

- (a) the amount of losses, Taxes, fees, expenses and other liabilities of the Responsible Entity in relation to the Scheme; and
- (b) amounts the Responsible Entity determines to be reasonable provision for contingent or future losses, expenses and other liabilities of the Responsible Entity in relation to the Scheme,

and includes accrued but unpaid Member entitlements in connection with the Scheme. However, the obligation to account to Members for their interest in the Scheme as Members is not a Scheme Liability even if it is treated as a debt obligation in the financial statements of the Scheme.

Scheme Property means:

- (a) if the Scheme is not a Registered Scheme - property that would be scheme property if the Scheme were a Registered Scheme; and
- (b) if the Scheme is a Registered Scheme - property that is scheme property of the Scheme for the purposes of the Corporations Act, being property held by or for the Responsible Entity in connection with the Scheme.

Scheme Value means the value of the Scheme Property determined under clause 25.

Staple means:

- (a) for Stapled Funds, to link together each Stapled Fund;
- (b) for Units, to link together the rights and obligations which attach to one Unit with the rights and obligations which attach to one unit in each other Stapled Fund; and
- (c) for Options (or other securities), to link together the rights and obligations which attach to one Option (or other security of the Scheme) with the rights and obligations which attach to one option (or equivalent other security) in each other Stapled Fund.

Stapled Fund means the Scheme and each other fund, company or entity to whose units, shares or securities any Units, Options or other securities in the Scheme are from time to time Stapled pursuant to clause 32.

Stapled Security means a security formed by Stapling together one Unit and a unit in each other Stapled Fund.

Tax means a tax, levy, duty, charge, deduction or withholding (however described) imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Uncalled Amount, for a Partly Paid Unit, means the amount of Issue Price that has not been called.

Unit means an undivided share in the beneficial interest in the Scheme Property as provided in this constitution.

Unit Value means the amount worked out by the Responsible Entity using the formula:

$$\frac{\text{Net Scheme Value}}{\text{Units in Issue}}$$

Units in Issue means sum of the numbers of:

- (a) Fully Paid Units in Issue at the relevant time; and
- (b) Units equal to the sum of all the fractions represented by the proportions of the Issue Prices that were paid on the Partly Paid Units in Issue at the relevant time.

Unmarketable Parcel means a parcel of Units of a single class, Registered in the same name or the same joint names, that is:

- (a) less than the number that constitutes a marketable parcel of Units of that class under the Listing Rules; or
- (b) subject to the Corporations Act and the Listing Rules - some other number determined by the Responsible Entity.

Valuer means a valuer appointed by the Responsible Entity.

VWAP means, for any day, the volume weighted average sale price of Units (or Options or Stapled Securities) sold on the ASX on that day but does not include any transaction defined in the ASX Market Rules as "special", crossings prior to the commencement of normal trading, crossings during the after hours adjust phase or any overseas trades or the exercise of Options, or of options over Units comprised in Stapled Securities.

1.2 While the Scheme is not listed

While the Scheme is not admitted to the Official List, ignore references in this constitution to the Listing Rules and the ASTC Settlement Rules.

1.3 Business Days

If the day on or by which a person must do something under this constitution is not a Business Day:

- (a) if the act involves a payment that is due on demand - the person must do it on or by the next Business Day; and
- (b) in any other case - the person must do it on or by the previous Business Day.

1.4 Rules for interpreting this constitution

Headings and notes (including footnotes) are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation), the Listing Rules or the ASTC Settlement Rules is to that legislation or those rules as amended, modified or waived in relation to the Scheme, and as re-enacted, amended or replaced, and includes subordinate legislation or rules issued under that legislation or those rules;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this constitution or to any other document or agreement includes a reference to a permitted substitute or a permitted assign of that party;
 - (iv) a person includes a reference to any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and an executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word that suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

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- (g) A power to do something includes a power, exercisable in like circumstances, to revoke or undo it.
 - (h) A reference to power is also a reference to authority or discretion.
 - (i) A power or function that the Responsible Entity has under this constitution or in relation to the Scheme may be exercised or performed more than once.
 - (j) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
 - (k) A reference to a **unit** in another Stapled Fund includes a share or security in a company or entity that is a Stapled Fund.
 - (l) A reference to the **responsible entity** of another Stapled Fund includes the board of a company or other entity that is a Stapled Fund.
 - (m) A reference to **Stapling** a Unit (or Option) to a unit (or option) in another Stapled Fund includes Stapling one Unit (or Option) to a fixed number of units (or options) in another Stapled Fund.
 - (n) A word (other than a word defined in clause 1.1) defined by the Corporations Act has the same meaning in this constitution when used in the same context.
 - (o) A reference to a section or other provision of a statute is a reference to the provision of the Corporations Act.

THIS CONSTITUTION

2. THIS CONSTITUTION

2.1 Constitution binds Members and Responsible Entity

This constitution binds the Responsible Entity, each Member and any person who claims through any of them.

2.2 No agency or partnership created

None of the following:

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

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

2.3 **If there are exemptions or modifications etc.**

If the Scheme is a Registered Scheme:

- (a) if relief from the provisions of the Corporations Act is given by an ASIC Instrument, then unless the Responsible Entity states in writing that the relief is not relied on, this constitution has effect subject to the ASIC Instrument; and
- (b) subject to paragraph (c), if relief from the provisions of the Corporations Act is given by an ASIC Instrument on condition that this constitution includes specified provisions, then, for so long as the condition applies, the specified provisions:
 - (i) are taken to be included in this constitution; and
 - (ii) prevail over the other provisions of this constitution to the extent of any inconsistency.
- (c) The specified provisions referred to in clause 2.3(b) are taken not to be included in this constitution if the Responsible Entity so states in writing.

2.4 **Compliance with the Listing Rules**

So long as the Scheme is admitted to the Official List, the following apply:

- (a) notwithstanding anything contained in this constitution, if the Listing Rules prohibit an act being done, the act shall not be done;
- (b) nothing in this constitution prevents an act being done that the Listing Rules require to be done;
- (c) 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);
- (d) if the Listing Rules require this constitution to contain a provision and it does not contain such a provision, this constitution is taken to contain that provision;
- (e) if the Listing Rules require this constitution not to contain a provision and it contains such a provision, this constitution is taken not to contain that provision;
- (f) if any provision of this constitution is or becomes inconsistent with the Listing Rules, this constitution is taken not to contain that provision to the extent of the inconsistency.

THE SCHEME

3. NAME

3.1 Initial name

The name of the Scheme is Challenger Wine Trust, but the Responsible Entity may change the name.

3.2 Change of name on the Responsible Entity's retirement or removal

- (a) If the name of the Scheme implies an association with the Responsible Entity or its business and the Responsible Entity retires or is removed, the new Responsible Entity must change the Scheme's name to a name that does not imply the association, or take some other action approved by the retired or removed Responsible Entity.
- (b) In those circumstances the new Responsible Entity must change the Scheme's name (or take that other action) within one month (or a longer period approved by the retired or removed Responsible Entity) after the Responsible Entity's retirement or removal.

4. SCHEME PROPERTY

4.1 Scheme Property held for Members

The Scheme Property shall be vested in and held by the Responsible Entity upon trust for the Members upon and subject to the terms and conditions of this constitution.

4.2 Holding Scheme Property

Scheme Property must be held:

- (a) by the Responsible Entity; or
- (b) if required by law or the Responsible Entity thinks it necessary or appropriate, by a custodian appointed by the Responsible Entity.

4.3 Scheme Property to be clearly identified and held separately

Each of the Responsible Entity, its custodians and nominees must clearly identify Scheme Property it holds as property of the Scheme and hold it separately from its assets.

5. TERM OF THE SCHEME

5.1 Establishing the Scheme

The Scheme is established when the Responsible Entity issues the first Unit.

5.2 Termination

The Scheme terminates on the earliest of the following:

- (a) a date fixed by the Responsible Entity and notified to the Members as the date of termination;
- (b) the Members fix a date of termination, or resolve to terminate the Scheme, by a resolution that has been passed at a Meeting on a poll by at least 50% of the total votes that may be cast by Members entitled to vote on the resolution (including Members who are not present in person or by proxy); or

-
- (c) the occurrence of an event requiring the winding up of the Scheme under a provision of the Corporations Act or of any other applicable law.

UNITS

6. UNITS

6.1 Scheme Property divided into units

The beneficial interest in the Scheme Property is divided into Units.

6.2 Nature of Members' interest in Scheme Property

Subject to the rights attached to a class of Units, each Unit confers on a Member an equal undivided interest in the Scheme Property. A Unit confers on a Member an interest in the Scheme Property as a whole. It does not confer on a Member an interest in any particular Scheme Property.

6.3 Rights attached to Units

Subject to the rights attached to a class of Units (including Partly Paid Units), all Units have the same rights attached to them. However, the Responsible Entity may determine that Units of the same class be issued with different rights or different terms, for example, that a unit issued during a Financial Year or an Interim Distribution Period may participate in distributions of income for that Financial Year or Interim Distribution Period fully, or not at all, or pro rata based on the part of the Financial Year or Interim Distribution Period for which it was on issue.

6.4 Consolidation, division and reclassification of Units

The Responsible Entity may consolidate, divide or reclassify Units (including reorganising the Uncalled Amounts or unpaid instalments for Partly Paid Units), as it thinks fit.

6.5 Classes of Units

- (a) The Responsible Entity may:
- (i) issue different classes of Units; and
 - (ii) divide issued Units into different classes.
- (b) The Responsible Entity must determine the rights attached to a class of Units when it first issues a Unit in the class or divides issued Units into different classes.
- (c) The terms of issue relating to a particular Unit or class of Units prevail over the provisions of this document and a provision of this document that is inconsistent with this clause 6.5 does not have effect to the extent of the inconsistency.

6.6 Minimum holding

The Responsible Entity may determine a Minimum Holding for Units.

6.7 Fractions and rounding of Units

The Responsible Entity may issue fractions of a Unit or round entitlements to Units up or down to the nearest whole number in its discretion.

7. ISSUING UNITS AND ISSUE PRICES

7.1 Responsible Entity may issue Units and Options

Subject to clause 7.2, the Responsible Entity may issue a Unit or an Option. The issue may be on application or under an arrangement made by the Responsible Entity, for example, to reinvest distributions.

7.2 Issues to comply with Corporations Act and Listing Rules

The Responsible Entity must ensure that every issue of Units or Options is subject to and in accordance with the Corporations Act, the Listing Rules and this constitution.

7.3 Powers to issue Units or Options are cumulative

A number of provisions of this constitution give the Responsible Entity power to issue Units or Options. Each of those provisions is to be given full effect, and none of those provisions limits any other such provision.

7.4 Underwriting of issue

- (a) The Responsible Entity may arrange for any of the following to be underwritten by an underwriter:
 - (i) an offer for sale, subscription or issue of Units or Options, or a distribution reinvestment plan or other arrangement;
 - (ii) payment of a Called Amount or of an instalment for a Partly Paid Unit; or
 - (iii) the exercise of an Option.
- (b) The Responsible Entity may decide the terms of the underwriting.
- (c) The Responsible Entity or an Affiliate or any of its or their associates may be the underwriter or a sub-underwriter.
- (d) The underwriter may take up, or cause any other person to take up, any Unit or Option not subscribed for.
- (e) The Issue Price, or the issue price for an Option, for an issue to or at the direction of an underwriter must be the same as for other issues under the underwritten offer, issue, or arrangement.

7.5 What is a valid application

To be valid, an application for Units must be:

- (a) in writing, in a form approved by the Responsible Entity;
- (b) if required by the Responsible Entity or by law, signed by the applicant;
- (c) accompanied by the Application Money; and
- (d) given as the Responsible Entity requires.

If approved by the Responsible Entity, the application may be lodged electronically.

7.6 Standing applications

An application for Units may be a standing application, that is, an application that relates to more than one issue to the same person.

7.7 Deciding applications

The Responsible Entity may reject all or part of an application without giving a reason for doing so.

7.8 What happens to rejected applications

If the Responsible Entity rejects an application for Units, it must:

- (a) give the applicant written notice of the rejection; and
- (b) cause an amount equal to the Application Money (less any Taxes and bank fees in connection with the application) to be paid back to the applicant.

7.9 Application Money

Application Money must be Cash or, at the discretion of the Responsible Entity and subject to any conditions it imposes, an asset (other than Cash), or a combination of such an asset and Cash.

7.10 Issue Price

Without limiting clause 7.11 and subject to this constitution, a Unit, including one issued on the exercise of an Option may be issued at the relevant Issue Price, which is:

- (a) if the Unit is to be Officially Quoted - an Issue Price which is 90% of the Market Value of a Unit (and where there is more than one class of Units Officially Quoted, the Market Value of the relevant class or, if no relevant class, of ordinary Units);
- (b) if the Unit is to be issued to the Responsible Entity, a manager, or an Affiliate in payment of fees of the Responsible Entity or of such a person - an Issue Price which is the Market Value of a Unit (and where there is more than one class of

Units Officially Quoted, the Market Value of the relevant class or, if no relevant class, of ordinary Units); and

- (c) if the Unit is not of the same class as a class of Units which are Officially Quoted - an Issue Price which is the Unit Value as at the time of issue of the Unit.

7.11 Issue Price set by Responsible Entity

The Responsible Entity may, to the fullest extent permitted by law (including in any of the circumstances set out in or permitted by any ASIC Instrument), issue a Unit, including a Unit issued on the exercise of an Option:

- (a) if the Unit is of the same class as a class of Units that are Officially Quoted - for an issue which does not contravene the Listing Rules, subject to paragraph (c), at an Issue Price set by the Responsible Entity; or
- (b) in any other case - subject to paragraph (c), at an Issue Price set by the Responsible Entity; but
- (c) for a rights issue, or reinvestment of a distribution, made in reliance on an ASIC Instrument, the Issue Price (or the exercise price of an Option) set by the Responsible Entity must not be less than 56% of the Issue Price that would otherwise apply under clause 7.10.

7.12 Satisfaction of Issue Price

The obligation to pay the Issue Price may be satisfied as the Responsible Entity determines, including by payment of Cash or by transfer to the Responsible Entity of investments or property acceptable to the Responsible Entity, or by a combination of these methods.

7.13 Rounding of Issue Price

The Issue Price may be rounded up or down as the Responsible Entity thinks fit.

7.14 Number of Units to be issued

The number of Units to be issued on an application for Units is worked out as follows:

$$\frac{\text{Application Money Received}}{\text{Issue Price for the Units proposed to be issued}}$$

If the Responsible Entity has determined a Minimum Holding, it must not issue Units unless the Member concerned will have, after the issue, at least the Minimum Holding.

7.15 Default in payment of Application Money

If the Responsible Entity does not actually receive value for Application Money (because a cheque or similar instrument used to pay the Application Money is dishonoured on first presentation, or for any other reason), the payment is taken never to have been made and any Units issued against the Application Money are void.

7.16 **When Units are issued**

A Unit is taken to be issued when the name of the person to whom it is issued is entered in the Register as the holder of the Unit.

8. **PARTLY PAID UNITS**

8.1 **Terms of issue**

- (a) The Responsible Entity may issue Partly Paid Units on terms and conditions it determines.
- (b) The Responsible Entity may issue Partly Paid Units on terms as to the amount of calls to be paid and the time for payment of those calls which are different as between the holders of those Units. The Responsible Entity may make different calls on different classes of Units.

8.2 **Prepayment of calls**

The Responsible Entity may:

- (a) accept prepayment of some or all of the Uncalled Amount as a payment in advance of calls;
- (b) agree to payment by the Scheme of interest at a rate no higher than the Interest Rate on that part of the advance payment which for the time being exceeds the aggregate amount of the calls then made on the Units in respect of which it was paid; and
- (c) unless otherwise agreed between the Member and the Responsible Entity, repay some or all of the prepayment.

8.3 **Calls made by the Responsible Entity**

Subject to the terms of issue of a Partly Paid Unit and the Listing Rules, the Responsible Entity may:

- (a) make calls on a Member for some or all of the money unpaid on the Unit;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call before the due date for payment.

8.4 **Fixed instalments**

If a Unit is issued on terms that some or all of the Issue Price is payable by instalments, the registered holder of the Unit must pay every instalment to the Responsible Entity when due. The Responsible Entity may postpone the due date for payment of an instalment. If, having been given notice of the instalment in accordance with clause 8.5, the registered holder does not pay it when due, clauses 8.7 to 8.16 and 8.19 apply as if the registered holder had failed to pay a call.

8.5 **Notice of call**

The Responsible Entity must give a Member on whom a call has been made or from whom an instalment is due, written notice of the call or instalment:

- (a) within the time limits; and
- (b) in the form,

required by the Listing Rules.

8.6 **Calls**

The holder of a Partly Paid Unit must pay the amount of a call made by the Responsible Entity in accordance with the terms and conditions of issue of the Unit.

8.7 **Interest on late payment of calls**

If a call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, the holder of the Unit is liable to pay interest at the Interest Rate on the amount due but unpaid (the interest to accrue for the benefit of the Scheme) from the day fixed for the payment to the time the Responsible Entity actually receives payment.

8.8 **Non-receipt of notice of call**

Non-receipt by a Member of a notice given in respect of a call, or the accidental omission to give such a notice to a Member, does not invalidate the call.

8.9 **Deductions for unpaid calls**

If a call in respect of a Partly Paid Unit is not fully paid on or before the date fixed for payment, then, until the call is fully paid, the Responsible Entity may deduct or set off the unpaid amount (together with interest accrued and all costs and expenses incurred by the Responsible Entity because of the non-payment) from any amount payable to the Member in respect of the Unit.

8.10 **Member's rights suspended while call unpaid**

While a call or instalment on a Unit is due and unpaid, the holding of the Unit does not entitle the Member to:

- (a) receive distributions in accordance with clause 26; or
- (b) be present, speak or vote at, or be counted in the quorum for, a Meeting.

8.11 **Forfeiting Partly Paid Units**

- (a) If a call in respect of a Partly Paid Unit is not paid on or before the day fixed for payment, the Responsible Entity may, in its discretion, at any time before the payment of the amount of the call, interest accrued on the call and the costs and

expenses incurred by the Responsible Entity because of non - payment, cause the Unit to be forfeited with effect from a date determined by the Responsible Entity.

- (b) A forfeiture under this clause 8.11 includes forfeiture of all distributions and other moneys payable to the Member in respect of the forfeited Unit and not actually paid before the forfeiture.

8.12 Entry on Register

If a Unit is forfeited under this clause 8, the Responsible Entity must enter in the Register the fact of the forfeiture and its date.

8.13 Disposal of forfeited Units

A forfeited Unit may be sold (including to an Affiliate of the Responsible Entity) by the Responsible Entity, which must use reasonable endeavours to obtain the best possible price:

- (a) on the ASX;
- (b) in accordance with section 254Q of the Corporations Act (other than subsections 254Q(1), (9), (10) and (13)) as if the Unit was a share, the Scheme was a company, the Responsible Entity was the company director, and the unpaid call on the Unit and interest thereon was an unpaid call on the share;
- (c) if no bid is received at the sale under paragraph (b), or the Unit is withdrawn from that sale, at a price negotiated by the Responsible Entity; or
- (d) by a process such as advertisement or tender which the Responsible Entity considers to be an appropriate and effective way to realise the forfeited Unit and which may include sale at a price set or negotiated by the Responsible Entity.

8.14 Annulment of forfeiture

The Responsible Entity may, before a forfeited Unit is sold, annul the forfeiture on conditions it determines.

8.15 Transfer of forfeited Units

- (a) The Responsible Entity may, on a sale of a forfeited Unit, receive the selling price and effect, in the name of the Member whose Unit has been forfeited, a transfer of the Unit to the transferee.
- (b) When the transfer is effected, the transferee must be Registered as the holder of the Unit and the transferee's title to the Unit is not affected by an irregularity or invalidity in connection with its forfeiture or sale.

8.16 **Liability despite forfeiture**

A Member whose Units have been forfeited is, despite the forfeiture, liable to pay the Responsible Entity, and must pay the Responsible Entity on demand, the amount unpaid and all other money payable under this clause 8.

8.17 **Responsible Entity's lien**

The Responsible Entity has a first and paramount lien on each Partly Paid Unit for amounts not paid and other money payable to the Responsible Entity by the Member in respect of the Unit. The lien extends to all distributions and other money from time to time payable in respect of the Unit.

8.18 **Sale of Units to enforce lien**

The Responsible Entity may sell Units subject to a lien, in the same way (making necessary changes) as if they had been forfeited.

8.19 **Proceeds of sale**

The net proceeds of a sale of forfeited Unit under this clause 8 must be applied:

- (a) first, in payment of all the Responsible Entity's costs in relation to the enforcement of the lien or the forfeiture (as the case may be) and the sale (which may include a reasonable amount to recompense the Responsible Entity for the time spent by its employees and officers in connection with the matter); and
- (b) secondly, in satisfaction of the amount of the unpaid call and interest thereon,

and the residue (if any) must be paid to the person Registered as the Member in respect of the Unit immediately before the sale.

8.20 **Where calls underwritten**

Where:

- (a) the Responsible Entity has appointed an underwriter to underwrite the payment of a call in respect of Partly Paid Units;
- (b) in discharging its obligations, the underwriter has bought a Partly Paid Unit at a public auction (with the relevant call credited as paid) at a price which is more than its Market Value on the day of the auction; and
- (c) the Responsible Entity is liable to pay the underwriter an amount equal to the excess of the price paid over the Market Value,

the former holder of the Partly Paid Unit must pay the Responsible Entity the following amounts:

- (d) all money payable by the Responsible Entity to the underwriter as mentioned in clause 8.20(c);

-
- (e) interest (as provided in clause 8.7); and
 - (f) all costs incurred by the Responsible Entity in procuring payment.

To avoid doubt, a Member's liability under this clause 8.20 is not affected by an assignment by the Responsible Entity of its right of action under this clause 8.20.

8.21 **Forgiveness of Uncalled Amount or unpaid instalments**

The Responsible Entity may extinguish wholly or partly the liability of Members to pay Uncalled Amounts or unpaid instalments on Partly Paid Units.

9. **OPTIONS**

9.1 **Issue of Options**

Subject to the Corporations Act, the Listing Rules and this constitution, the Responsible Entity may issue Options on terms and conditions it determines.

9.2 **Entitlement of Option**

Subject to the terms of issue of the Option, each Option entitles the holder to apply for and be issued a Unit on payment to the Responsible Entity of the Issue Price, or if the Unit is to be issued Partly Paid, of so much of the Issue Price as the Responsible Entity determines.

9.3 **Issue price of Options**

- (a) Subject to the Corporations Act and the Listing Rules, the issue price of an Option is whatever the Responsible Entity determines, but if the Responsible Entity is unable or unwilling to make a determination, the issue price is nil.
- (b) The issue price of an Option:
 - (i) must be disclosed in the offer for subscription or sale;
 - (ii) on payment, forms part of the Scheme Property; and
 - (ii) must not form part of the exercise price if an Optionholder exercises the Option.

9.4 **No repurchase of Options**

The Responsible Entity must not be required to repurchase any Options.

9.5 **Consolidation, division and reclassification of Options**

The Responsible Entity may consolidate, divide or reclassify Options (including reorganising the Uncalled Amounts or unpaid instalments for Partly Paid Units to be issued pursuant to Options), as it thinks fit.

9.6 **When Options are issued**

An Option is taken to be issued when the name of the person to whom it is issued is entered in the Register as the holder of the Option.

9.7 **Transfer and transmission of Options**

Clause 29 applies with all necessary amendments to the transfer of Options. Clause 30 applies with all necessary amendments to the transmission of Options.

9.8 **Exercise of Options**

- (a) An Option may be exercised by the Optionholder completing and lodging with the Responsible Entity notice of exercise of the Option in whatever form the Responsible Entity determines, together with:
 - (i) the Option certificate (if any); and
 - (ii) payment of the exercise price of the Option.
- (b) The payment and the issue of Units under this clause 9 is to be dealt with by the Responsible Entity in the same way as if the payment were an application for Units under clause 7.

9.9 **Optionholder's interest**

- (a) An Option does not confer on the Optionholder:
 - (i) a right to participate in any distribution of income or capital of the Scheme; or
 - (ii) an interest in the Scheme Property.
- (b) Optionholders are entitled to receive notices of, and to attend Meetings but, subject to the Corporations Act, are not entitled to speak or vote at any Meeting.

10. **CERTIFICATES OF TITLE**

10.1 **Uncertificated securities**

The Responsible Entity:

- (a) must not issue a certificate for a Unit; and
- (b) may cancel a certificate for any Unit without issuing another certificate,

unless the Listing Rules and the ASTC Settlement Rules allow the Responsible Entity to issue a certificate for the Unit.

10.2 Issue and delivery of certificate

If the Responsible Entity issues a certificate of title to Units in accordance with clause 10.1, it must deliver the certificate to the Member in accordance with the Corporations Act and the Listing Rules.

10.3 Multiple certificates and joint holders

If there is a current certificate for particular Units and the Member asks the Responsible Entity to issue several certificates, each for a part of the Units Registered in the Member's name, the Responsible Entity must do so. For this purpose, joint holders of Units are a single Member. The Responsible Entity may issue only 1 certificate that relates to each Unit Registered in the names of 2 or more joint holders and may deliver the certificate to any of those joint holders.

10.4 Lost and worn out certificates

- (a) If a current certificate for particular Units is lost or destroyed and the Member applies in accordance with the Corporations Act and the Listing Rules, the Responsible Entity must issue a new certificate in its place.
- (b) If a current certificate for particular Units is produced to the Responsible Entity defaced or worn out, the Responsible Entity may issue a new certificate in its place.

11. UNMARKETABLE PARCELS

11.1 Responsible Entity's power of sale

The Responsible Entity may sell a Unit that is part of an Unmarketable Parcel if it does so in accordance with this clause 11. The Responsible Entity's power to sell lapses if a takeover (as defined in the Listing Rules) is announced after the Responsible Entity gives a notice under clause 11.2 and before the Responsible Entity enters into an agreement to sell the Unit.

11.2 Notice of proposed sale

- (a) The Responsible Entity may give written notice to a Member who holds an Unmarketable Parcel:
 - (i) stating that it intends to sell the Unmarketable Parcel; and
 - (ii) specifying a date at least 6 weeks (or a lesser period permitted under the Corporations Act or the Listing Rules) after the notice is given as the date by which the Member may give the Responsible Entity written notice that the Member wishes to retain the holding.
- (b) The Responsible Entity may not give such a notice more than once every 6 months.
- (c) If the Responsible Entity's power to sell lapses, a notice given by the Responsible Entity under clause 11.2(a) is taken never to have been given and the Responsible Entity may give a new notice after the close of the offers made under the takeover.

11.3 No sale where Member gives notice

The Responsible Entity must not sell an Unmarketable Parcel if, by the date specified in a notice given by the Responsible Entity under clause 11.2(a), the Responsible Entity receives written notice that the Member wishes to retain the holding.

11.4 Terms of sale

A sale of Units under this clause 11 includes all distributions payable on those Units and other rights attaching to them. The Responsible Entity must pay the costs of the sale and is entitled to be reimbursed for those costs out of the Scheme Property. Otherwise, the Responsible Entity may decide the manner, time and terms of sale.

11.5 Unit transfers

For the purpose of giving effect to this clause, the Responsible Entity has power to:

- (a) effect a Market Transfer; or
- (b) execute a Unit transfer under clause 29.1,

as agent for a Member who holds an Unmarketable Parcel.

11.6 Application of proceeds

The Responsible Entity must:

- (a) deduct any Called Amount and, subject to the Listing Rules, any costs and expenses incurred in relation to the Called Amount, in respect of the Units sold under this clause 11 from the proceeds of sale and pay the balance into a separate bank account it opens and maintains for that purpose only;
- (b) hold the balance and any distributions, whether income or capital, accruing in respect of the Units in trust for the previous holder of the Units (**Divested Member**);
- (c) as soon as practicable give written notice to the Divested Member stating:
 - (i) what the balance is; and
 - (ii) that it is holding the balance for the Divested Member while awaiting the Divested Members' instructions and return of the certificate (if any) for the Units sold or evidence of its loss or destruction;
- (d) if the Units sold were certificated, not pay the proceeds of sale out of the trust account until it has received the certificate for them or evidence of its loss or destruction; and
- (e) subject to clause 11.6(d), deal with the amount in the account as the Divested Member instructs.

11.7 **Protections for transferee**

The title of the new holder of a Unit sold under this clause 11 is not affected by any irregularity in the sale. The sole remedy of any person previously interested in the Unit is damages, which may be recovered only from the Responsible Entity.

11.8 **Application of clause 11**

This clause 11 applies only to Units in a new holding created by the transfer of an Unmarketable Parcel at the time the Market Transfer was initiated or lodged, as the case may be.

THE MEMBERS

12. **MEMBERS**

12.1 **Joint tenancy**

If two or more persons are Registered as the holder of a Unit, they hold it as joint tenants and not as tenants in common unless the Responsible Entity agrees.

12.2 **Things Members have no right to do**

Except as otherwise provided by this constitution or the Corporations Act, a Member has no right or power, merely because it is a Member:

- (a) to interfere with, or question the exercise or non-exercise of, a power, duty or right of the Responsible Entity;
- (b) to exercise a right in respect of Scheme Property;
- (c) to lodge, in respect of Scheme Property, a caveat or other instrument that prohibits (whether conditionally or not) an action, or the registration of a dealing, in respect of Scheme Property;
- (d) to claim an interest in Scheme Property; or
- (e) to require Scheme Property to be transferred to the Member.

12.3 **Members' liability limited**

- (a) If there is not enough Scheme Property to meet the Scheme Liabilities, a Member does not have to make up the difference or indemnify or make a payment to the Responsible Entity or any of its creditors.
- (b) The liability of a Member is limited to the unpaid part (if any) of the Issue Price of its Units.
- (c) A Member has no liability to the creditors of the Responsible Entity.

13. MEMBERS MEETINGS

13.1 Quorum not present for Meeting requested or called by Members under the Corporations Act

If a Meeting is called by Members, or as a result of a request of Members, under the Corporations Act and a quorum is not present within 30 minutes after the time for which the Meeting is called, the Meeting is dissolved.

13.2 Postponement or cancellation of Meeting

Subject to the Corporations Act, the Responsible Entity may postpone or cancel a Meeting, or change the place for a Meeting, by written notice published in a newspaper that circulates generally throughout Australia.

13.3 Fresh notice of postponed Meeting

If a Meeting is postponed for one month or more, the Responsible Entity must give a new notice of the resumed Meeting.

13.4 Accidental omission

The accidental omission to give notice of Meeting to, or the non-receipt of notice of Meeting by, any of those entitled to it does not invalidate a resolution passed at a Meeting. This clause does not apply to the accidental omission by a Member to give a notice of Meeting to, or the non-receipt of a notice of Meeting given by a Member by, the Responsible Entity, the auditor of the Scheme or the auditor of the Compliance Plan.

13.5 Class meetings

The provisions of the Corporations Act to do with meetings of Members of Registered Schemes, the Listing Rules and this clause 13 apply to a separate meeting of a class of Members or to a separate meeting of Optionholders, as far as they are capable of application and modified as necessary.

13.6 Attorneys to be counted in quorum

In determining whether a quorum is present at a Meeting, also count individuals attending as attorneys. However, if a Member has appointed more than one attorney, count only one of them. If an individual is attending both as a Member and as an attorney, count him or her only once.

13.7 Individual only counted once for quorum

An individual at a Meeting may only be counted once towards a quorum.

13.8 Attendance and voting at Meetings

- (a) Subject to clauses 13.9 and 13.10, and (to the extent permitted by law) subject to the terms of issue of any Unit or class of Units, every Member has the right to attend all Meetings, whether or not entitled to vote.

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- (b) Subject (to the extent permitted by law) to the terms of issue of any Unit or class of Units, each Member has the right to vote at a Meeting in accordance with the Corporations Act.
 - (c) Every director of the Responsible Entity has the right to attend and speak at all Meetings whether or not a Member.

13.9 **Chairman's powers at a meeting of Members**

The chairman of a Meeting:

- (a) is responsible for the general conduct and procedures at the Meeting;
- (b) may, if he or she considers it necessary or desirable for the proper and orderly conduct of the Meeting and subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered by the Meeting;
- (c) may, subject to the law, eject a Member from the Meeting if he or she considers it is necessary or desirable for the proper and orderly conduct of the Meeting;
- (d) may invite a person who is not a Member to attend and to speak at the Meeting; and
- (e) may require the adoption of any procedure that is in his or her opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the Meeting.

A decision by the chairman under this clause 13.9 is final. The chairman's rights under this clause 13.9 are exclusive to the chairman.

13.10 **Admission to Meetings**

The chairman of a Meeting may take any action he or she considers appropriate for the safety of persons attending the Meeting and the orderly conduct of the Meeting and may refuse admission to, or require to leave and remain out of the Meeting, any person who:

- (a) has a camera, sound recorder or the like;
- (b) has a placard or banner;
- (c) has an article the chairman considers to be dangerous, offensive or liable to cause disruption;
- (d) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) behaves or threatens to behave in a dangerous or offensive or disruptive way; or
- (f) is not entitled to receive notice of the Meeting.

The chairman may delegate the powers conferred by this clause 13.10 to any person.

13.11 **Adjournment**

Subject to the Corporations Act, the chairman of a Meeting at which a quorum is present may adjourn it to another time and place, and must do so if directed by Ordinary Resolution.

13.12 **Member's attorney**

A Member may appoint an attorney to act, or to appoint a proxy to act, at a Meeting. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

13.13 **Deposit of proxy forms and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular Meeting unless the instrument effecting the appointment (or a certified copy of it) is received by the Responsible Entity at its registered office or is transmitted to and received at a fax number at that office (or another address specified for the purpose in the relevant notice of Meeting):

- (a) at least 48 hours before the Meeting, or if the Meeting has been adjourned, at least 48 hours before the resumption of the Meeting; or
- (b) by the time specified in the notice of Meeting, which may be a period of less than 48 hours.

13.14 **Evidence of proxy forms, powers of attorneys and other appointments**

The Responsible Entity may require evidence of:

- (a) in the case of a proxy form executed by an attorney - the relevant power of attorney or a certified copy of it;
- (b) in the case of an attorney - the power of attorney or a certified copy of it;
- (c) in the case of a corporate representative - the appointment of the representative;
- (d) in the case of an instrument mentioned in this clause 13.14 transmitted to the Responsible Entity electronically - the identity of the person who made the transmission.

13.15 **Standing appointments**

The appointment of a proxy or attorney may be a standing one.

13.16 **Suspension of proxy or attorney's power if Member present**

A proxy or attorney has no power to act for a Member at a Meeting at which the Member is present:

- (a) in the case of an individual, in person; or

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- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a Member at a Meeting at which the Member is present by attorney.

13.17 **Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a Member is present at a Meeting and the Responsible Entity has not received written notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular Meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to clause 13.17(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

13.18 **More than 2 current proxy appointments**

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular Meeting) if the Responsible Entity receives a further appointment of proxy from that Member which would result in there being more than two proxies of that Member entitled to act at a Meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this item.

13.19 **Continuing authority**

An act done at a Meeting by a proxy, attorney or representative is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment or the authority under which the appointment was made by a third party; or
- (d) transfers the Unit to which the appointment relates,

unless the Responsible Entity has received written notice of the matter before the start or resumption of the Meeting at which the act is done.

13.20 **Determining voting entitlements**

Subject to the Corporations Act, the Listing Rules and the ASTC Settlement Rules, to decide, for the purposes of a particular Meeting, who is a Member and the percentage of votes a Member has, the Responsible Entity must refer only to the Register as it stood 48 hours before the Meeting or a later time required or permitted by the Corporations Act and the ASTC Settlement Rules.

13.21 Casting vote of chairman

If on a show of hands an equal number of votes is cast for and against a resolution at a Meeting:

- (a) if the chairman of the Meeting is not (or, if the chairman were a Member, would not be) entitled to vote - the chairman has no casting vote; and
- (b) otherwise - the chairman has a casting vote whether or not the chairman is a Member.

13.22 Votes of transmittees and guardians

If the Responsible Entity is satisfied at least 48 hours before the time fixed for a Meeting that a person:

- (a) is entitled to the transmission of a Unit under clause 30; or
- (b) has power to manage a Member's property under a law relating to the management of property of the mentally incapable,

that person may vote as if Registered as the holder of the Unit and the Responsible Entity must not count the vote (if any) of the actual Registered holder.

13.23 Voting restrictions

If the Corporations Act, the Listing Rules or this constitution require that some Members are not to vote on a resolution, or that votes cast by some Members be disregarded, in order for the resolution to have an intended effect, those Members have no right to vote on that resolution and the Responsible Entity must not count any votes purported to be cast by those Members. If a proxy purports to vote in a way or in circumstances that contravene the Corporations Act or the Listing Rules:

- (a) on a show of hands - the vote is invalid and the Responsible Entity must not count it; and
- (b) on a poll:
 - (i) if the Corporations Act or the Listing Rules require the vote to be cast in a given way - the vote must be treated as cast in that way; or
 - (ii) otherwise - the vote is invalid and the Responsible Entity must not count it.

This clause only requires a Member not to vote as proxy, attorney or representative of another Member who is entitled to vote on a resolution, and only requires to be disregarded a vote purportedly cast by a Member as proxy, attorney or representative of another Member whose vote if cast may be counted, if the Corporations Act, the Listing Rules or some other provision of this constitution so require.

13.24 **Demand for a poll does not affect continuation of Meeting**

The demand for a poll does not affect the continuation of the Meeting for the transaction of other business.

13.25 **When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the Meeting, the poll must be taken immediately and, subject to paragraph (c), in the manner that the chairman of the Meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to paragraph (c), in the manner that the chairman of the Meeting directs;
- (c) votes that the Corporations Act requires to be cast in a given way must be treated as cast in that way; and
- (d) the result of the poll is the resolution of the Meeting at which the poll was demanded.

13.26 **Scheme not a registered scheme**

If the Scheme is not a Registered Scheme, the provisions of the Corporations Act to do with meetings of members of Registered Schemes apply to Meetings as if the Scheme were a Registered Scheme, but as varied or supplemented as follows:

(a) **General**

Clauses 13.1 to 13.25 apply to Meetings.

(b) **Appointment of Proxies**

An appointment of proxy must be made by written notice to the Responsible Entity:

- (i) that complies with the Corporations Act; or
- (ii) in any other form and mode that is, and is signed or acknowledged by the Member in a manner, satisfactory to the Responsible Entity.

(c) **Short notice of Meeting**

If Members who, together, have power to cast at least 95% of the votes that may be cast at the Meeting agree, a resolution may be proposed and passed at a Meeting of which less than 21 days' notice has been given.

(d) **Written Resolutions**

The Scheme may pass a resolution without a meeting of Members being called or held if the resolution is set out in a document and signed in a way that is in accordance with the requirements of the Corporations Act.

14. POWER OF ATTORNEY

14.1 Power of attorney

Each applicant for Units and each Member hereby irrevocably appoints (despite any conflict of interest and duty) the Responsible Entity and each officer of the Responsible Entity severally to be its attorney (with full power to appoint substitutes and to subdelegate) with power to do anything the attorney thinks fit for the following purposes:

- (a) giving effect to clause 8.13 and clause 8.15; and
- (b) where Stapling applies, transferring to the same transferee as the Unit that has been transferred under clause 8.13 and clause 8.15 a unit in a Stapled Fund to which that Unit is Stapled.

This power is given for valuable consideration, is coupled with a right and is irrevocable.

14.2 Power to include certain matters

An attorney's powers include the following:

- (a) the power to execute and deliver a document, including as a deed;
- (b) the power to date, and to complete blanks in, a document;
- (c) the power to amend, vary, replace, novate, cancel or terminate a document.

14.3 Ratification

On request, an applicant for Units or a Member must ratify and confirm to each person dealing with an attorney taking action under clause 14.1 any action taken in the exercise of the power of attorney granted by this clause 14.

14.4 Indemnity

Each applicant for Units must indemnify an attorney under clause 14.1, and keep the attorney indemnified, against any loss, costs, charges or claim that the attorney suffers or incurs in exercising powers given to it under that clause.

15. REGISTER

15.1 Register

The Responsible Entity must keep and maintain a Register that records:

- (a) the name and address of each Member and Optionholder;
- (b) the number and class of Units the Member holds, whether the Units are part of a Stapled Security and the extent to which the Issue Price for the Units has been paid; and
- (c) the number of Options the Option holder holds and whether the Options are Stapled or in respect of Units which are to be Stapled Securities.

The Register may include any other information the Responsible Entity determines.

15.2 Changes to details in Register

If a Member or Optionholder notifies the Responsible Entity of a change to its particulars in the Register, the Responsible Entity must update the Register accordingly.

15.3 Non-beneficial holders of Units

Subject to this constitution and unless otherwise ordered by a court of competent jurisdiction or required by law, the Responsible Entity:

- (a) may treat the person named in the Register as the holder of a Unit or an Option as the absolute owner of it; and
- (b) need not recognise any equitable or other claim or interest in a Unit or an Option by any person except the Registered holder.

15.4 Register to be evidence

The Register is admissible in evidence in any proceeding and is evidence of the Units, Options or Stapled Securities held by a Member.

THE RESPONSIBLE ENTITY

16. RESPONSIBLE ENTITY

16.1 First responsible entity

The Responsible Entity agrees to act as the responsible entity of the Scheme.

16.2 Retirement of the Responsible Entity

- (a) If the Scheme is not a Registered Scheme, the Responsible Entity may retire on not less than one month's notice to the Members and may appoint a new Responsible

Entity to take its place. If it does not appoint a new Responsible Entity to take its place then the Members may do so by Ordinary Resolution.

- (b) If the Scheme is a Registered Scheme, the Responsible Entity may retire as permitted by the Corporations Act.
- (c) The Responsible Entity must retire as responsible entity if the law requires it.

16.3 Retirement benefits

The Responsible Entity may accept and retain, and need not account to Members for, remuneration or a financial benefit received in connection with its retirement or the appointment of a new Responsible Entity, for example, in a sale of its business to the new Responsible Entity.

16.4 What the Responsible Entity must do on its retirement or removal

On its retirement or removal, the Responsible Entity must:

- (a) cause the Scheme Property to be vested in the new Responsible Entity (or its custodian);
- (b) give the new Responsible Entity all books, documents, records and other property relating to the Scheme that are in the retired or removed Responsible Entity's possession or control; and
- (c) give other reasonable assistance to the new Responsible Entity to facilitate the change of trustee.

16.5 Release for retiring or removed Responsible Entity

Subject to the Corporations Act on the retirement or removal of the Responsible Entity:

- (a) it is released from all obligations, duties and liabilities in respect of the Scheme that arise after its retirement or removal; and
- (b) the new Responsible Entity may exercise all the powers and enjoy all the rights, and is subject to all the obligations and duties, of the Responsible Entity under this constitution in respect of the Scheme.

A release under clause 16.5(a) does not affect a liability of the retired or removed Responsible Entity arising before its retirement or removal.

16.6 Indemnity for retiring or removed Responsible Entity

The new Responsible Entity must execute a deed under which it assumes the powers, rights, obligations and duties referred to in clause 16.5(b). The deed must include provisions under which the new Responsible Entity indemnifies the retired or removed Responsible Entity for future Scheme Liabilities.

16.7 Expenses of Responsible Entity's retirement or removal

The expenses associated with the retirement or removal of the Responsible Entity are expenses of the Scheme.

17. RESPONSIBLE ENTITY'S RIGHTS

17.1 Responsible Entity may hold Units

- (a) The Responsible Entity and its Affiliates, and its and their associates, may hold and deal with Units, Options or Stapled Securities in any capacity.
- (b) Unless otherwise expressly provided by this constitution, the Corporations Act or the Listing Rules, the Responsible Entity and its Affiliates and its and their associates, as Members and Optionholders, have all the rights of a Member or Optionholder (as the case may be) in relation to the Units, Options or Stapled Securities they hold.

17.2 Responsible Entity may deal etc with itself in other capacities

Subject to the Corporations Act and the Listing Rules, the Responsible Entity may:

- (a) deal with itself, with an Affiliate, with an associate of the Affiliate or of the Responsible Entity or with a Member, including:
 - (i) buying Scheme Property; and
 - (ii) selling property into the Scheme,in any capacity, including in its own right or as trustee or responsible entity of another trust or scheme;
- (b) be interested in any contract or transaction with itself (in any capacity), with an Affiliate, with an associate of itself or of an Affiliate or with a Member (all in any capacity), including a contract or transaction for provision of services paid for from the Scheme Property; and
- (c) act in the same or a similar capacity in relation to another trust or scheme.

17.3 Responsible Entity not accountable

The Responsible Entity and its Affiliates do not have to account for, and may retain for their own benefit, any profit or benefit arising from anything referred to in clause 17.2.

18. RESPONSIBLE ENTITY'S FEES AND EXPENSES

18.1 Fees payable to Responsible Entity

The Responsible Entity is to be paid the following fees in relation to the proper performance of its duties in respect of the Scheme:

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- (a) Base Fee
 - (b) Management Fee; and
 - (c) Acquisition and Development Fee.

18.2 Base Fee

The Base Fee for each Fee Period is an amount calculated in accordance with part 1 of schedule 1 and is payable within 14 days of the end of that Fee Period.

18.3 Management Fee

The Management Fee for each Fee Period is an amount calculated in accordance with part 2 of schedule 1 and is payable within 14 days of the end of that Fee Period.

18.4 Acquisition and Development Fee

The Acquisition and Development Fee is an amount calculated in accordance with part 3 of schedule 1 and is payable:

- (a) as to an acquisition - within 14 days of the end of the Fee Period during which the acquisition of, or the completion or settlement of an agreement to acquire, property or another asset occurred; and
- (b) as to any development cost of a property or other asset - within 14 days of the end of the Fee Period during which the development cost was incurred.

18.5 Transition

The fees set out in this clause 18 apply from the start of the first Fee Period to occur after the special resolution of Members modifying the constitution to adopt this clause 18. Before that date, the Responsible Entity's fees are as set out in the constitution before this clause 18 was adopted.

18.6 Responsible Entity's fees accrue daily

The fees payable to the Responsible Entity accrue daily.

18.7 GST

Unless otherwise specified, all fees payable to the Responsible Entity are exclusive of GST.

18.8 Adjustment of Responsible Entity's fees on proportionate basis

If a fee is payable in respect of a period and the fee commences or ceases to be payable during the period, the fee must be adjusted on a proportionate basis.

18.9 How the fees are to be paid

- (a) The Responsible Entity is entitled to payment of its fees from the Scheme Property, but may with the approval of Members by Ordinary Resolution choose to receive payment of some or all of any fee by issue to the Responsible Entity or to an Affiliate of Units at an Issue Price fixed by clause 7.10.
- (b) The Responsible Entity may determine that the Issue Price is to be credited as paid in full by fees, or that the Issue Price is to be credited as partly paid with the Uncalled Amount unpaid. In either case, the fee will be applied against the relevant credited amount and treated as Application Money.
- (c) If the Responsible Entity defers payment of a fee for which it has chosen to receive payment in Units:
 - (i) the Issue Price will be calculated in accordance with clause 7.10; and
 - (ii) if the end of a Financial Year or an Interim Distribution Date occurs between the due date for payment of the fee (**payment date**) and the date of issue of Units in payment of the fee, the Responsible Entity is entitled to payment of an additional fee equivalent to the Distribution Amount it would have received if Units had been issued in payment of the fee on the payment date, and the Issue Price for the Units had been credited as paid in full by the fee, however:
 - (A) if only Partly Paid Units are Officially Quoted on the payment date, the number of Units to be used in calculating the additional fee will be determined as if the Units were issued as partly paid with the same Uncalled Amount unpaid as the Uncalled Amount on the payment date of the Officially Quoted Partly Paid Units; or
 - (B) if on the payment date no Units are Officially Quoted and only Partly Paid Units are on issue, the number of Units to be used in calculating the additional fee will be determined as if the Units were issued as partly paid with the same Uncalled Amount unpaid as the Uncalled Amount of the Partly Paid Units on issue on the payment date.

18.10 Responsible Entity's expenses

All expenses properly incurred by the Responsible Entity in relation to the administration and management of the Scheme and the Scheme Property are payable or may be reimbursed out of the Scheme Property. This includes the following:

- (a) expenses connected with any of the following:
 - (i) setting up the Scheme, making this constitution, and making amendments to it (for example, drafting and stamping them);

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- (ii) causing the Scheme to become a Registered Scheme, obtaining any necessary licences, preparing and lodging any compliance plan or other documents and appointing any compliance committee, causing the Scheme to be admitted to the Official List, causing Units or Options to be Officially Quoted and causing any Units or Options to be Stapled Securities;
 - (iii) making offers or invitations in respect of Units or Options, including costs of preparing, distributing, advertising and promoting disclosure documents (whether required by law or not);
 - (iv) marketing and promoting the Scheme;
 - (v) underwriting arrangements in respect of the Scheme;
 - (vi) any actual or proposed purchase, development, project management, sale, leasing and any other similar dealing with Scheme Property (including investigating and making inquiries into property intended to be acquired for the Scheme);
 - (vii) the insurance, custody, valuation and maintenance of Scheme Property;
 - (viii) any contract or proposed contract relating to the Scheme;
 - (ix) the administration or management of the Scheme and the Scheme Property (including financial institution fees and expenses associated with the use of computers for the Scheme);
 - (x) maintaining records, Registers, accounts and books of the Scheme;
 - (xi) calling and holding Meetings, communicating with Members and Optionholders and implementing any resolution passed by Members or Optionholders;
 - (xii) insurance policies for the benefit of, fees payable to and all other expenses and costs in relation to, the Compliance Committee;
 - (xiii) insurance policies for the benefit of, fees payable to and all other expenses and costs in relation to, the board of directors or governing body of any entity in which the Scheme invests (directly or through any other entity);
 - (xiv) investing in, holding and dealing with Scheme Property (such as travel and marketing expenses);
 - (xv) appointing or engaging any agent, delegate, custodian, nominee, manager, adviser or other person in relation to the Scheme (including legal and asset management fees and expenses on a full indemnity basis);
 - (xvi) preparing and auditing Tax returns and accounts of the Scheme;
 - (xvii) the retirement or removal of the Responsible Entity or any auditor (if any) for the Scheme or Compliance Plan as well as the appointment of a new one;

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- (xviii) investment, audit and compliance committees;
 - (xix) preparing, implementing, amending and auditing of the Compliance Plan;
 - (xx) any court proceedings, arbitration or other dispute concerning the Scheme (including proceedings against the Responsible Entity) but to the extent that the Responsible Entity is found by a court to be in wilful breach of trust or to have been grossly negligent, the Responsible Entity must repay any expenses paid or reimbursed to it under this clause 18.10(xx);
 - (xxi) regulatory and legislative compliance in respect of the Scheme;
 - (xxii) terminating and winding up the Scheme;
- (b) fees, insurance premiums and expenses paid by the Responsible Entity to, or for the benefit of, any director of the Responsible Entity to the extent that those fees are for attendances or work of the director in connection with the administration or management of the Scheme or any Scheme Property;
 - (c) commissions (however described) paid by the Responsible Entity (including to its Affiliates) in connection with the Scheme;
 - (d) Taxes imposed on the Scheme or the Responsible Entity in relation to the Scheme (but not Taxes on the Responsible Entity's own income); and
 - (e) liabilities arising in respect of the Scheme or any Scheme Property (for example, calls on units).

18.11 Rebate, waiver etc

The Responsible Entity may defer, waive or rebate any or all of its fee, and any or all of its entitlement to be paid or reimbursed for expenses and liabilities under clause 18.10, on terms as it determines in its absolute discretion and may do so in favour of one or more Members or Optionholders only.

19. LIMITATION ON RESPONSIBLE ENTITY'S LIABILITY

19.1 Limitation on liability to Members and Optionholders generally

Except as otherwise provided by the Corporations Act, if the Responsible Entity acts in good faith, it is not liable in contract, tort or otherwise to Members or Optionholders for any loss or damage suffered in any way relating to the Scheme.

19.2 Responsible Entity not liable for certain loss or damage

Without limiting clause 19.1, except as otherwise provided by law, the Responsible Entity is not liable for any loss or damage:

- (a) caused by it relying on the Register, or on information or a document given to it by its agent, delegate or adviser, unless it has reason to suspect that it is incorrect;

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- (b) caused by it relying on a document as authentic, unless it has reason to suspect that it is not authentic;
 - (c) caused by it relying on an opinion or information from an expert, unless it has reason to suspect that the expert does not have the appropriate expertise;
 - (d) caused by it relying on an opinion or information from a banker or the auditor (if any) of the Scheme or the Compliance Plan;
 - (e) caused by it complying with a law or an order or direction of a court or Government Agency;
 - (f) that arises as a direct or indirect result of an act or omission of an agent or delegate appointed by the Responsible Entity;
 - (g) that arises because Scheme Property which is auctioned does not attract a particular price; or
 - (h) caused by something the operator of an asset title, transfer or holding system does or does not do.

19.3 Responsible Entity may limit liability

The Responsible Entity is not required to do anything that may involve it incurring a liability unless its liability is limited in a way that the Responsible Entity (acting reasonably) thinks appropriate. The Responsible Entity may limit its liability in this way.

19.4 Other obligations and duties excluded

Except as required by the Corporations Act or the Listing Rules, the obligations and duties of the Responsible Entity that might otherwise be implied or imposed at law or in equity are expressly excluded to the extent the law allows.

20. INDEMNITIES

20.1 Responsible Entity to be indemnified out of Scheme Property

The Responsible Entity is to be indemnified out of the Scheme Property for any loss, damage, expense or other liability incurred by it in properly performing or exercising any of its powers, duties or rights in relation to the Scheme.

20.2 Responsible Entity's indemnity includes liability of its agents etc

To the extent the Corporations Act allows, the indemnity under clause 20.1 includes any loss, damage, expense or other liability incurred as a direct or indirect result of an act or omission of an agent or delegate appointed by the Responsible Entity.

20.3 Responsible Entity's indemnity additional to those at law etc and is a continuing one

The indemnity under clause 20.1:

- (a) is in addition to any indemnity the Responsible Entity may have at law or in equity;
- (b) is a continuing indemnity; and
- (c) subject to the Corporations Act, applies to the Responsible Entity after it retires or is removed as responsible entity of the Scheme.

21. COMPLIANCE COMMITTEE MEMBERS

21.1 Indemnity for Compliance Committee members

Subject to, and so far as permitted by, the Corporations Act, the Responsible Entity may, to the extent the person is not otherwise indemnified, indemnify a member of the Compliance Committee against a liability:

- (a) incurred as a Compliance Committee member to a person (other than the Responsible Entity or a related body corporate), unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred by the Compliance Committee member in defending civil or criminal proceedings in which judgment is given in favour of the Compliance Committee member or in which the Compliance Committee member is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to the Compliance Committee member under the Corporations Act.

21.2 Insurance for Compliance Committee members

Subject to the Corporations Act, the Responsible Entity may enter into, and pay premiums on, a contract of insurance for a person who is or has been a member of the Compliance Committee.

21.3 Deeds

Subject to the Corporations Act and without limiting a person's rights under this clause 21, the Responsible Entity may enter into an agreement with a person who is or has been a member of the Compliance Committee to give effect to the rights of the person under this clause 21 on any terms that the Responsible Entity thinks fit.

22. HOW THE RESPONSIBLE ENTITY DEALS WITH MEMBER COMPLAINTS

If the Scheme is a Registered Scheme, the Responsible Entity must maintain procedures for dealing with complaints by Members in relation to the Scheme which are consistent with the requirements (if any) of the Corporations Act.

22.1 Making complaints

A Member may make a complaint to the Responsible Entity about anything to do with the Scheme:

- (a) by written notice to the Responsible Entity; or
- (b) in any other way acceptable to the Responsible Entity.

When making the complaint, the Member must give the Responsible Entity all information relevant to the complaint that is in the Member's possession or control.

22.2 How complaints are dealt with

The procedure for dealing with a complaint is as follows:

- (a) The Responsible Entity must send the Member a written acknowledgment that it has received the complaint. This must be done as soon as possible, but always within 14 days after the Responsible Entity receives the complaint.
- (b) The Responsible Entity may request the Member to provide any further information the Responsible Entity thinks it needs to consider the complaint and make a decision about it.
- (c) The Responsible Entity must consider the complaint and make a decision about it. This must be done as soon as possible, but always within:
 - (i) if no request for further information is made by the Responsible Entity - 45 days after the Responsible Entity received the complaint; or
 - (ii) if the Responsible Entity requests further information - 45 days after the information is provided.
- (d) As soon as possible, but always within 14 days after the Responsible Entity makes a decision, the Responsible Entity must give the Member written notice of:
 - (i) what the Responsible Entity's decision was;
 - (ii) what remedies (if any) are available to the Member; and
 - (iii) what further avenues are available to the Member if the Member is not satisfied with the Responsible Entity's decision.

22.3 Referral to external complaints resolution scheme

If the complaint is not resolved under these procedures to the Member's satisfaction, the Member may refer the complaint to an external complaints resolution scheme:

- (a) that is approved by ASIC;
- (b) of which the Responsible Entity is a member; and

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- (c) details of which have been advised to the Member.

INVESTMENT AND MANAGEMENT OF THE SCHEME

23. RESPONSIBLE ENTITY'S POWERS

23.1 General powers

Subject to this constitution, the Responsible Entity has:

- (a) all the powers in respect of the Scheme Property that it is possible under the law to confer on a trustee;
- (b) all the powers it would have if it were the absolute owner of the Scheme Property and were acting in its personal capacity; and
- (c) all the powers necessary or desirable for the performance or exercise of its powers, duties and rights in respect of the Scheme (including its obligations under this constitution).

23.2 Particular powers

Clause 23.1 includes the following powers:

- (a) **(power to borrow and use Scheme Property as security)** the power to:
 - (i) borrow, raise money or otherwise obtain financial accommodation, on terms it thinks fit;
 - (ii) give guarantees and other credit enhancements; and
 - (iii) use Scheme Property as security;
- (b) **(investment power)** the power to invest or apply Scheme Property as it thinks fit, including, but not limited to, in real property, securities and derivatives;
- (c) **(management power)** the power to do whatever it thinks proper in the management and operation of the Scheme;
- (d) **(power to disclose information)** the power to disclose information about the Scheme or the Members or Optionholders to such persons, and for such purposes, as it thinks proper;
- (e) **(delegation power)** the power to appoint an agent or delegate to do any act that it can do, or exercise any power in relation to the Scheme that it has, including:
 - (i) the power to appoint a subagent or subdelegate;
 - (ii) the power to appoint an attorney for a dealing with Scheme Property, on terms the Responsible Entity thinks fit (including a provision authorising the attorney to appoint a subattorney); and

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- (iii) the power to appoint a person to act as a custodian or subcustodian of Scheme Property, with the powers, duties and rights specified in the instrument of appointment.

23.3 Provisions about agents and delegates

- (a) An appointment of an agent or delegate may be joint, in which case the agents or delegates may act or exercise a power jointly and severally.
- (b) An agent or delegate may be an Affiliate (or its associate) or employee or associate of the Responsible Entity.
- (c) In the instrument appointing an agent or delegate, the Responsible Entity may include provisions for the protection and convenience of those who deal with the agent or delegate, as the Responsible Entity thinks fit.

23.4 Exercise of discretions by Responsible Entity

The Responsible Entity may fetter its discretions under this constitution or in relation to the Scheme, as it thinks fit. Subject thereto, the Responsible Entity has an unfettered discretion whether or not to exercise, and how and when to exercise, its powers, duties and rights under this constitution.

24. VALUING SCHEME PROPERTY

24.1 Valuation roll to be kept

The Responsible Entity must set up and keep a valuation roll that records the values of Scheme Property.

24.2 When the Scheme Property is to be valued

The Responsible Entity:

- (a) may have the Scheme Property valued by a Valuer at any time; and
- (b) must have the Scheme Property valued by a Valuer at intervals appropriate to the nature of the Scheme Property.

25. SCHEME VALUES

25.1 When the Scheme Value and Net Scheme Value are to be worked out

The Responsible Entity:

- (a) must determine the Scheme Value and the Net Scheme Value each time it is necessary to do so, but at least once each Financial Year; and
- (b) may determine them at any other times it thinks fit, including more than once a day.

25.2 **Effect of determination**

The Responsible Entity's determination of a Scheme Value or Net Scheme Value binds all the Members.

26. **DISTRIBUTIONS**

26.1 **Net Income**

The Responsible Entity must determine the Net Income of the Scheme for each Financial Year in accordance with section 95(1) of the *Income Tax Assessment Act 1936* (Cth).

26.2 **Working out distributable income**

- (a) The Responsible Entity must determine the distributable income of the Scheme for each Financial Year (**Distributable Income**).
- (b) Unless the Responsible Entity determines otherwise in accordance with this clause 26, the Distributable Income for a Financial Year is the Net Income of the Scheme for that Financial Year determined in accordance with clause 26.1.
- (c) The Responsible Entity may in its absolute discretion determine that the Distributable Income of the Scheme for a Financial Year will be some other amount which the Responsible Entity considers appropriate for distribution for that Financial Year and which may include income or capital, or both income and capital.
- (d) If the Responsible Entity prepares financial statements for the Scheme in accordance with the Corporations Act and Australian accounting standards, those financial statements do not determine the Distributable Income.
- (e) The Responsible Entity may make any adjustments to the Distributable Income it considers appropriate, whether or not they are contrary to any principle of law or accounting usually applied to trust funds.

26.3 **Member's present entitlement to Distribution Amount**

Subject to the rights attached to any particular Units, each person who is a Member at 7:00pm (local time in the place where the Register is kept) on the last day of a Financial Year is entitled to share in distribution of the Distributable Income for that Financial Year to the extent of its Distribution Amount, and at the end of the Financial Year has a vested and indefeasible right to, and is presently and irrevocably entitled to receive, its Distribution Amount for that Financial Year.

26.4 **Portions of Distributable Income for Financial Year**

Subject to the rights attached to particular Units and subject to the operation of clauses 26.8 and 26.11, a Member's Distribution Amount, for the Units it holds at the end of a Financial Year, is the amount worked out by the Responsible Entity using the formula:

Balance of Distributable Income for Financial Year X $\frac{\text{Number of Units the Member holds}}{\text{Units in Issue}}$

where any interim distributions made during the Financial Year are subtracted from the Distributable Income before the apportionment is made, the number of Units the Member holds and the Units in Issue are worked out as at 7:00pm (local time in the place where the Register is kept) on the last day of the Financial Year, and a Partly Paid Unit held by a Member is counted as a fraction of a Unit equal to the proportion which the amount of the Issue Price for the Unit that has been paid bears to its Issue Price.

26.5 Interim distributions of income

The Responsible Entity may at any time make to the Members an interim distribution of accruing Distributable Income of the Scheme. If it does:

- (a) the Responsible Entity must specify a date as the Interim Distribution Date;
- (b) the Responsible Entity may determine the amount of the interim distribution; and
- (c) subject to the rights attached to any particular Units, each person who is a Member at 7:00pm (local time in the place where the Register is kept) on the last day of an Interim Distribution Period is entitled to receive an interim distribution for that Interim Distribution Period to the extent of its Distribution Amount.

26.6 Portions of interim distributions

Subject to the rights attached to particular Units and subject to the operation of clauses 26.8 and 26.11, a Member's Distribution Amount, for the Units it holds at the end of an Interim Distribution Period, is the amount worked out by the Responsible Entity using the formula:

Amount of interim distribution determined by $\frac{\text{Responsible Entity for the Interim Distribution Period X Number of Units the Member holds}}{\text{Units in Issue}}$

where the number of Units the Member holds and the Units In Issue are worked out as at 7:00pm (local time in the place where the Register is kept) on the Interim Distribution Date, and a Partly Paid Unit held by a Member is counted as a fraction of a Unit equal to the proportion which the amount of the Issue Price for the Unit that has been paid bears to its Issue Price.

26.7 Member's entitlement to Distribution Amount

Subject to the rights attached to any particular Units, each person who is a Member at 7:00pm (local time in the place where the Register is kept) on the Interim Distribution Date for an Interim Distribution Period is presently and irrevocably entitled at the end of the Interim Distribution Period to its Distribution Amount for the Interim Distribution Period for each Unit it then held.

26.8 Unit day adjustment for newly issued Units

Subject to the rights attached to particular Units:

- (a) the holder of a Unit issued during an Interim Distribution Period is entitled to share in any interim distribution of accruing Distributable Income only for a proportion that is the same proportion that the number of days the Unit was in issue during the Interim Distribution Period bears to the total number of days in the Interim Distribution Period, and the Distribution Amounts of every Member must be adjusted accordingly; and
- (b) the holder of a Unit issued during a Financial Year is entitled to share in the balance of Distributable Income for the Financial Year as follows:
 - (i) if the Unit was issued during an Interim Distribution Period - without apportionment;
 - (ii) if the Unit was issued after the last Interim Distribution Date during that Financial Year - only for a proportion that is the same proportion the number of days that the Unit was on issue during the period between the last Interim Distribution Date and the end of the Financial Year bears to the total number of days in that period, and the Distribution Amount of every Member must be adjusted accordingly; and
 - (iii) if there was no interim distribution during that Financial Year - only for a proportion that is the same proportion the number of days the Unit was on issue during the Financial Year bears to the total number of days in the Financial Year, and the Distribution Amounts of every Member must be adjusted accordingly.

26.9 Transfer of Distribution Amounts to distribution account

As soon as practicable after the end of the Financial Year or after the Interim Distribution Date for an interim distribution, the Responsible Entity must transfer Members' Distribution Amounts to a separate distribution account, to be held for the Members entitled to them. When transferred, these amounts cease to be part of the Scheme Property.

26.10 Deductions that may be made from Distribution Amount

The Responsible Entity may deduct from a Member's Distribution Amount, before payment to the Member or reinvesting it to acquire Units:

- (a) the amount (or the amount it reasonably determines to be the amount) of any Taxes, fees and charges relating to the Member or the Member's interest in the Scheme accrued for the relevant Financial Year or Interim Distribution Period; and
- (b) any fees or other amounts payable by the Member to the Responsible Entity.

26.11 **Adjustment for Tax paid for certain Members**

If the Responsible Entity pays from the Scheme any Tax attributable to the ownership of Units by certain Members, the Responsible Entity may reduce the entitlement of those Members to Distributable Income or to an interim distribution and increase the entitlement of all other Members so that those other Members receive the same Distribution Amounts as they would have received were no such Tax paid from the Scheme.

26.12 **When Distribution Amount is paid**

The Responsible Entity must pay the Member its Distribution Amount within 90 days after the relevant end of Financial Year or Interim Distribution Date or within a longer period allowed by law.

26.13 **Reinvestment of distributions**

The Responsible Entity may allow a Member to reinvest all or some of any distribution to acquire Units. If the Responsible Entity decides to allow reinvestment, it:

- (a) may issue Units for reinvestment or acquire Units to be transferred to those reinvesting;
- (b) must inform Members of the procedure for reinvestment (including for application of Units) and of any changes to the procedure; and
- (c) may adopt any means it considers appropriate to inform Members about the procedures, such as posting information on a website, newspaper advertisements, or announcements.

The Responsible Entity may require the reinvestment by a Member of some or all of a distribution in Units, but not in Partly Paid Units.

26.14 **Transition from distribution reinvestment plan under previous constitution**

Unless the Responsible Entity determines otherwise, a reinvestment request provided by a Member to the Responsible Entity in accordance with the constitution as in force before the adoption of this clause will continue to be effective for any procedure for reinvestment pursuant to clause 26.13 of this constitution.

26.15 **Categories and sources**

The Responsible Entity may maintain separate accounts for income, capital, or Tax attributes such as deductions or credits by source, manner of derivation, category or other characteristic, and subject to the rights attached to particular Units:

- (a) the Responsible Entity may when making a distribution allocate income, capital, or Tax attributes of a particular source, manner of derivation, category or characteristic to particular Members; and
- (b) if the Responsible Entity makes no allocation, the grossed up amount in relation to Tax credits or franking rebates for the Financial Year or Interim Distribution Period

is taken to be distributed to Members in the same proportions as the Distributable Income for the Financial Year or the interim distribution for the Interim Distribution Period.

26.16 Income held over to next period

The Responsible Entity may treat an item of income received or accrued during a Financial Year as having accrued in the next Financial Year, but only if it is not practicable to deal with it in the first Financial Year.

26.17 Unreceived income

If an amount included in the Distributable Income for a Financial Year is not actually received during that Financial Year, the Responsible Entity may set it off against the income for a later Financial Year and make appropriate adjustments to payments and entitlements.

The Responsible Entity may transfer capital to the distribution account to enable distribution to Members of at least an amount equal to the Net Income of the Scheme.

26.18 Capital distributions

The Responsible Entity may distribute capital of the Scheme to the Members at any time. Subject to the rights attached to any particular Units, a person is entitled to the capital as if it were Distributable Income. The capital may be distributed in Cash or as a distribution of Scheme Property in kind or by way of additional Units.

26.19 Final distributions

Upon making a final distribution under clause 31.1, the Responsibility Entity must make a distribution of Distributable Income for the Financial Year in which the final distribution is made.

26.20 Determination whether capital or income

The question whether an amount is capital or income is to be determined by the Responsible Entity.

26.21 Distribution statements to be sent out

The Responsible Entity must send to the Members a distribution statement for each Financial Year or Interim Distribution Period.

26.22 If the Scheme becomes Taxable

If for any Financial Year the Scheme is to be assessed for income Tax as a company:

- (a) the Responsible Entity may:
 - (i) determine that the preceding provisions in clause 26 do not apply for that Financial Year;

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- (ii) make any distribution or interim distribution it sees fit;
 - (iii) fix a record date for any distribution or interim distribution; and
 - (iv) determine how income for that Financial Year is to be worked out;
- (b) unless the Responsible Entity determines otherwise, the Responsible Entity must determine the income of the Scheme in accordance with Australian Accounting Standards; and
- (c) subject to any rights attaching to a particular Unit or class of Units each Member is entitled to a portion of a distribution or interim distribution worked out like a Distribution Amount for an Interim Distribution Period.

27. RESERVES

27.1 Establishing reserves

The Responsible Entity may establish any reserve it thinks fit. Amounts in a reserve are not, despite any other provision of this constitution, required to be distributed to Members.

27.2 Crediting net capital gains and losses to a reserve

The Responsible Entity may:

- (a) separate net realised and unrealised capital gains and losses of the Scheme from other receipts, profits and gains of the Scheme; and
- (b) credit them to a reserve.

27.3 Distributing reserves

The Responsible Entity may distribute reserves to the Members in the same way as Distributable Income.

REDEMPTIONS, TRANSFERS AND TRANSMISSION OF UNITS

28. REDEMPTION OF UNITS

28.1 Redemption rights

A Member has rights of redemption as follows:

- (a) for Units that are Officially Quoted:
 - (i) a Member does not have a right to redemption of Units from the Scheme; and
 - (ii) the Responsible Entity may but does not have to redeem Units from the Scheme;

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- (b) for Units that are not Officially Quoted:
- (i) if the Scheme is liquid - a Member does not have a right to redemption of Units from the Scheme, but the Responsible Entity may, but does not have to, redeem Units from the Scheme; and
 - (ii) if the Scheme is not liquid and the Scheme is a Registered Scheme - redemptions may only be effected in accordance with the Corporations Act.

If a Member ceases to hold the Minimum Holding, the Responsible Entity may, but does not have to, redeem all of a Member's relevant Units.

Without limiting this clause 28.1 the Responsible Entity may decline to redeem Units from the Scheme if, in the Responsible Entity's opinion, it would not be adequately indemnified in respect of the redemption.

28.2 Buy back

For Units that are Officially Quoted the Responsible Entity may offer to acquire, and may use Scheme Property to acquire, Units and may cancel the Units so acquired.

28.3 Buy back price

While Units are Officially Quoted a Unit may only be bought back for its buy back price (and despite any other provision of this document, may be redeemed by the Responsible Entity for the same price), which is:

- (a) if Stapling does not apply, at least 90% of the Market Value of a Unit; and.
- (b) if Stapling applies, a buy back price which when aggregated with the buy back price of a unit in each other Stapled Fund equals at least 90% of the Market Value of a Stapled Security, and which bears the same proportion to the buy back price of a unit in each other Stapled Fund as the Net Scheme Value of the Scheme bears to the net scheme values of the other Stapled Funds worked out under their constitutions.

28.4 Restrictions on right to withdraw

A Member cannot withdraw from the Scheme by redemption of Units:

- (a) after a Meeting has been called to vote on a resolution to terminate the Scheme and before the vote has been taken;
- (b) after the Scheme is terminated; or
- (c) while the Scheme is being wound up.

If the Responsible Entity has determined a Minimum Holding, it must not redeem Units unless after the redemption the Member concerned will have at least the Minimum Holding.

28.5 **Member cannot deal with Units after redemption request**

A Member cannot deal with a Unit it has asked the Responsible Entity to redeem unless the Responsible Entity determines not to redeem it.

28.6 **Working out Redemption Price**

A Unit may be redeemed at its Redemption Price, which is:

- (a) subject to paragraph (c) below, while the Scheme is liquid - the Unit Value as at the preceding 30 June or such other time as determined by the Responsible Entity less the Redemption Provision;
- (b) subject to paragraph (c) below, while the Scheme is not liquid - the Unit Value as at the preceding 30 June or such other time as determined by the Responsible Entity less the Redemption Provision or such other amount worked out by the Responsible Entity; and
- (c) while Units are Officially Quoted - an amount determined in accordance with clause 28.3.

In this clause, "**Redemption Provision**" is the amount (if any) determined by the Responsible Entity in respect of, or as an allowance for, costs and disbursements, commissions, expenses, legal fees, brokerage, stamp duty, Taxes and other costs that may be incurred or are expected to be incurred by the Responsible Entity or its Affiliates in connection with:

- (d) the redemption;
- (e) the realisation and conversion into cash of Scheme Property to satisfy a particular Redemption Request;
- (f) where all or part of the Redemption Price is paid by transferring Scheme Property, the valuation and transfer of the Scheme Property; and
- (g) the acquisition of Units by an Affiliate of the Responsible Entity to fund a redemption.

28.7 **Rounding of Redemption Price**

The Redemption Price may be rounded up or down as the Responsible Entity thinks fit.

28.8 **Deducting redemption fees and other amounts on redemption**

The Responsible Entity may deduct from the amount payable upon redemption to a Member any redemption fees and other amounts owing by the Member to the Responsible Entity on any account whatever.

28.9 Payment of amounts on redemption

The Responsible Entity may pay an amount for redemption of Units:

- (a) in Cash; or
- (b) by transferring Scheme Property to the Member or by Cash and such a Transfer.

In the case of clause 28.9(b):

- (c) the value of the Scheme Property and the Cash paid (if any) must be equal to the amount payable on redemption; and
- (d) the value of the Scheme Property must be based on a valuation made within 1 month before the date of redemption of the Units; and
- (e) the costs associated with valuation and transfer of the Scheme Property are payable or can be reimbursed out of the Scheme Property.

28.10 Register

Units that are redeemed must be cancelled, and the appropriate entry made in the Register.

28.11 Disposal of Scheme Property to satisfy redemption requests

The Responsible Entity may dispose of Scheme Property to satisfy a redemption request.

29. TRANSFERRING UNITS

29.1 Form of transfer

Subject to this constitution, a Member may transfer a Unit by a Market Transfer, or by a written document that:

- (a) relates only to Units of one class;
- (b) is a proper instrument of transfer of securities under the Corporations Act or in any other form approved by the Responsible Entity or ASX;
- (c) is delivered to the registered office of the Responsible Entity or the address of the Register last notified to Members by the Responsible Entity;
- (d) is accompanied by the certificate (if any) for the Units to be transferred or evidence satisfactory to the Responsible Entity of the its loss or destruction; and
- (e) is marked with payment of any stamp duty payable.

Property in and title to a transfer document that is delivered to the Responsible Entity (but not the Units to which it relates) passes to the Responsible Entity on delivery.

The Responsible Entity must not Register a transfer that does not comply with this clause 29.

29.2 Market obligations

The Responsible Entity:

- (a) may do anything permitted by the Corporations Act, the Listing Rules and the ASTC Settlement Rules that the Responsible Entity thinks necessary or desirable in connection with the Scheme taking part in a computerised or electronic system established or recognised by the Corporations Act, the Listing Rules or the ASTC Settlement Rules for dealings in interests in managed investment schemes; and
- (b) must comply with obligations imposed on it by the Corporations Act, Listing Rules or the ASTC Settlement Rules in relation to transfers of interests in managed investment schemes.

29.3 Restricted securities

If Units are classified as restricted securities under the Listing Rules:

- (a) during the escrow period set by the restriction agreement required by ASX in relation to the Units, except as permitted by the Listing Rules or ASX:
 - (i) the Member may not dispose of them (as defined in the Listing Rules); and
 - (ii) the Responsible Entity must not Register a transfer of the Units or otherwise acknowledge a disposal of them; and
- (b) if there is a breach of the Listing Rules or of the restriction agreement in relation to the Units, then, while the breach continues, the holding of the Units does not entitle the Member to be present, speak or vote at, or be counted in the quorum for, a Meeting or to receive a distribution.

29.4 Refusal to Register transfer

The Responsible Entity:

- (a) may refuse to Register a transfer of Units, and may do so without giving any reason, but may do so only if that refusal would not contravene the Corporations Act, the Listing Rules or the ASTC Settlement Rules; and
- (b) must not Register a transfer if the Corporations Act, the Listing Rules or the ASTC Settlement Rules forbid registration.

29.5 Where transfer refused

If, in accordance with the Corporations Act and the Listing Rules, the Responsible Entity applies or asks ASTC to apply a holding lock to prevent a transfer, or refuses to Register a transfer, the Responsible Entity must give the transferee written notice of the refusal and the reason for the refusal within 5 Business Days after the date on which it applied or asked for the holding lock or the transfer was lodged.

29.6 **Transferor remains holder until transfer Registered**

The transferor of a Unit remains the holder of it until:

- (a) if the transfer is a Market Transfer - the time the ASTC Settlement Rules provide that the transfer takes effect; and
- (b) otherwise - the transfer is Registered and the transferee's name is entered in the Register as the holder of the Unit.

29.7 **Powers of attorney**

The Responsible Entity may assume, as against a Member, that a power of attorney granted by the Member that is lodged with or produced or exhibited to the Responsible Entity remains in force, and may so rely on it until the Responsible Entity receives express notice in writing at its registered office of the revocation of the power of attorney or the death, dissolution or insolvency of the Member.

30. **TRANSMISSION OF UNITS**

30.1 **Death of joint holder**

The Responsible Entity must recognise only the surviving joint holders as being entitled to Units Registered jointly in the names of a deceased Member and others. The death of the deceased joint holder does not release his or her estate from liability in respect of the Units.

30.2 **Death of single holder**

The Responsible Entity must not recognise anyone except the legal personal representative of the deceased Member as having any title to Units Registered in the sole name of a deceased Member. If the personal representative gives the Responsible Entity the documents described in the Corporations Act, or other information that satisfies the Responsible Entity of the representative's entitlement to be Registered as holder of the Units:

- (a) subject to clauses 29.3 and 30.4, the Responsible Entity must Register the personal representative as the holder of the Units as soon as practicable after receipt of a written and signed notice to the Responsible Entity from the representative requiring it to do so; and
- (b) whether or not Registered as the holder of the Units, the personal representative:
 - (i) may, subject to clause 29, transfer the Units to another person; and
 - (ii) has the same rights as the deceased Member.

30.3 **Transmission of Units on insolvency or mental incapacity**

Subject to the *Bankruptcy Act 1966* (Cth), if a person entitled to Units because of the insolvency or mental incapacity of a Member gives the Responsible Entity the information

it reasonably requires to establish the person's entitlement to be Registered as holder of the Units:

- (a) subject to clauses 29.3 and 30.4, the Responsible Entity must Register the person as the holder of the Units as soon as practicable after receipt of a written and signed notice to the Responsible Entity from the person requiring it to do so; and
- (b) whether or not Registered as the holder of the Units, the person:
 - (i) may, subject to clause 29, transfer the Units to another person; and
 - (ii) has the same rights as the insolvent or incapable Member.

30.4 Refusal to Register holder

The Responsible Entity has the same right to refuse to Register a personal representative or person entitled to Units on the insolvency or mental incapacity of a Member as it would have if the person were the transferee named in a transfer signed by a living, solvent, competent Member.

WINDING UP THE SCHEME

31. WINDING UP THE SCHEME

31.1 Winding up

Following termination of the Scheme, the Responsible Entity must wind it up by liquidating the Scheme Property and:

- (a) first, paying the expenses of the winding up;
- (b) next, paying all other fees, expenses and liabilities of the Scheme;
- (c) next, paying any preferential payments to Members in accordance with the rights attached to the class of Units they hold;
- (d) next, subject to the rights attached to a class of Units, distributing the balance to Members in proportion to the number of Units they hold, counting a Partly Paid Unit as a fraction of a Unit equal to the proportion which the amount of the Issue Price for the Unit that has been paid bears to its Issue Price.

31.2 Termination and Partly Paid Units

If the Scheme terminates before an Uncalled Amount for a Unit is called or an unpaid instalment is due, then, subject to the terms of issue of the Unit, the Responsible Entity may call the Uncalled Amount or require the uncalled amount to be paid.

31.3 Distribution by instalments

The Responsible Entity may make a distribution under clause 31.1(d) in instalments.

31.4 Transfer of Scheme Property to Member

- (a) The Responsible Entity may transfer Scheme Property to a Member to satisfy a requirement to make a payment or distribution under clause 31.1(d) instead of making it in Cash.
- (b) The value of the Scheme Property to be transferred must be based on a valuation made within one month before the date of transfer. The costs associated with the valuation and transfer are payable by the Member.

31.5 Receipt and discharge

The Responsible Entity may require a Member to give it a receipt and discharge (in a form determined by the Responsible Entity) before it makes a payment or distribution under clause 31.1(d).

31.6 Timing for liquidation of Scheme Property

As far as reasonably practicable having regard to the interests of Members, the Responsible Entity must liquidate the Scheme Property within 12 months after the termination of the Scheme, but the Responsible Entity may extend that period if it thinks it is in the interests of Members to do so.

31.7 Audit on winding up

After the Scheme is wound up, the Responsible Entity must arrange for an independent audit of the Scheme's final accounts by a registered company auditor. This clause 31.7 continues to apply after the date of termination of the Scheme until the audit is finished.

31.8 Provisions continue after termination

The provisions of this constitution continue to apply after the date of termination of the Scheme until the date of final distribution under clause 31.1(d).

STAPLING

32. STAPLING

32.1 When Stapling applies

The Responsible Entity may by written notice (which may be in a document given to ASX) declare that some or all Units, or Options or other securities in the Scheme are Stapled to units, options to subscribe for or acquire units or equivalent securities, in one or more other managed investment schemes, companies or entities. From the date of that declaration (or from a date specified by that declaration) Stapling pursuant to this clause 32 applies despite any other provision of this document. The date specified by the Responsible Entity may be earlier than the date of that declaration, and if so:

- (a) all Units, Options or other securities covered by that declaration are to be treated as if Stapling had occurred on the specified date; and

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- (b) all Units, Options or other securities covered by that declaration are to rank equally in all respects from the specified date (even if the specified date precedes their date of issue).

The provisions of this clause 32 apply to securities other than Units or Options to the extent they are applicable if necessary changes are made. The Responsible Entity may only give a notice making a declaration of Stapling affecting a Unit which is Officially Quoted with the prior approval of Members by Ordinary Resolution.

32.2 **Stapling continues despite changes in Stapled Funds**

Stapling pursuant to this clause 32 continues to apply while any Unit (or Option) remains Stapled to a unit (or option to subscribe for or acquire a unit) in at least one other Stapled Fund, even if:

- (a) Units (or Options) have ceased to be Stapled to units (or options to subscribe for or acquire units) in one or more other Stapled Funds; or
- (b) Units (or Options) have begun to be Stapled to units (or options to subscribe for or acquire units) in a further Stapled Fund.

32.3 **Units or Options and units or options of each other Stapled Fund are Stapled**

While Stapling pursuant to this clause 32 applies:

- (a) **(Stapling)** each Unit (or Option) is Stapled to a unit (or option to subscribe for or acquire a unit) in each other Stapled Fund;
- (b) **(dealings)** there must be no dealing or disposition of any kind in relation to a Unit or an Option unless there is also an identical dealing or disposition by the same parties with each unit or option to subscribe for or acquire a unit in a Stapled Fund to which that Unit or Option is Stapled;
- (c) **(offers of Units or Options)** the Responsible Entity must not offer Units (or Options) for subscription or sale unless:
- (i) it also offers, at the same time and to the same person, the same number of units (or options for the same number of units) in each other Stapled Fund for subscription or sale;
- (ii) the offer is on condition that the offeree may not accept the offer unless the offeree also accepts the offer for units (or for options) in each other Stapled Fund; and
- (iii) any offer of an Option is on terms that the Option may only be exercised if an option to subscribe for or acquire a unit in each other Stapled Fund is also exercised at the same time.
- (d) **(Unit issues, sales)** the Responsible Entity must not issue or sell any Units to a person (including on exercise of a Stapled Option) unless it at the same time issues or sells to that person the same number of units in each other Stapled Fund;

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- (e) **(issue of Partly Paid Units)** the Responsible Entity must not issue a Partly Paid Unit on terms as to the time for payment of the balance of the Issue Price unless it at the same time issues a partly paid unit in each other Stapled Fund on similar terms as to time for payment of the balance of the issue price;
 - (f) **(calls on Partly Paid Units)** the Responsible Entity must not make a call on a Member for money unpaid on a Partly Paid Unit unless it at the same time makes a call on that Member for the same proportion of money unpaid on a partly paid unit in each other Stapled Fund (and the same notice may be used for the calls for each Stapled Fund);
 - (g) **(payment on Partly Paid Unit)** the Responsible Entity must not credit payment of a Called Amount or of an instalment on a Partly Paid Unit unless it has received any called amount or instalment due upon a partly paid unit of the Member concerned in each other Stapled Fund;
 - (h) **(treating as fully paid)** the Responsible Entity must not treat a Partly Paid Unit as being a Fully Paid Unit unless it at the same time treats a partly paid unit in each other Stapled fund as being a fully paid unit;
 - (i) **(forfeiture)** a Partly Paid Unit cannot be forfeited unless a partly paid unit in each other Stapled Fund is also forfeited at the same time;
 - (j) **(reorganisations)** the Responsible Entity must not consolidate, subdivide, cancel or reorganise Units or Options unless at the same time there is a corresponding consolidation, subdivision, cancellation or reorganisation of the units or options in each other Stapled Fund;
 - (k) **(holding lock)** the Responsible Entity must not apply a holding lock or ask ASTC to apply a holding lock to prevent the transfer of a Unit or Option of a Member unless it also applies or asks for a holding lock to apply to an equivalent number of units or options of that Member in each other Stapled Fund;
 - (l) **(transfers)** a Member must not transfer a Unit or Option to a person (and the Responsible Entity must not Register a transfer) unless at the same time the Member transfers to that person the same number of units or options in each other Stapled Fund;
 - (m) **(Unit redemption)** the Responsible Entity must not redeem or buy back Units of a Member unless at the same time the same number of units of the Member in each other Stapled Fund are redeemed or bought back;
 - (n) **(Unit transmission)** Units or Options registered in the name of a Member are not capable of being transmitted to any person unless at the same time the same number of units or options registered in the name of the Member in each other Stapled Fund are transmitted to that person;
 - (o) **(price for issue or redemption of a Stapled Security)** a Stapled Security may be issued or redeemed for a price calculated by aggregating the price for the issue or redemption of a Unit in the particular circumstances fixed by this constitution with

the price for issue or redemption of a unit in each other Stapled Fund in those circumstances fixed by their constitutions;

- (p) **(alternative calculation of prices)** subject to the Corporations Act, the Responsible Entity may keep valuation records and financial records for the Stapled Funds as an economic entity and may use the net scheme value of the economic entity to calculate the issue price or redemption price of a Stapled Security instead of aggregating the unit values of the units comprising a Stapled Security;
- (q) **(regard to interests of holders in Stapled Funds)** in exercising its powers or discretions or performing its functions under this document or in relation to the Scheme, the Responsible Entity may as it sees fit:
 - (i) take into account the interests of holders of units in Stapled Funds other than the Scheme; and
 - (ii) exercise its powers and discretions or perform its functions even though to do so would be for the benefit of those persons and not for the direct benefit of Members;
- (r) **(discretion may be fettered)** the Responsible Entity may in connection with the Stapling fetter its discretions under this document or in relation to the Scheme, as it thinks fit, including by agreeing to consult with, or obtain the consent of, a person administering another Stapled Fund;
- (s) **(indemnity and remuneration)** if the responsible entity of a Stapled Fund is entitled to indemnity, to reimbursement or to payment of remuneration under the constitution of that Stapled Fund, the Responsible Entity may provide indemnity, reimbursement or payment to the responsible entity of that Stapled Fund out of the Scheme Property;
- (t) **(compromises)** the Responsible Entity may with the responsible entity of any other Stapled Fund compromise:
 - (i) any allocation of assets, property, liabilities, expenses or remuneration between the Scheme and any Stapled Fund;
 - (ii) any allocation of application money for Units and units in any other Stapled Fund; or
 - (iii) any other matter between the Scheme and a Stapled Fund that the Responsible Entity considers to be necessary or appropriate in connection with the Stapling or the relationship created by the Stapling;
- (u) **(guarantees)** the Responsible Entity may in connection with the Stapling or the relationship created by the Stapling give any guarantee or indemnity or become liable for the payment of money or the performance of any contract or other obligation by any person including the responsible entity of any other Stapled Fund;

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- (v) (**security for guarantees**) the Responsible Entity may if it thinks fit give security for any such guarantee or indemnity or other liability over all or any part of the Scheme Property;
 - (w) (**consideration**) the Responsible Entity may if it thinks fit in connection with the Stapling or the relationship created by the Stapling exercise all or any of its powers whether or not there is consideration or benefit for the Scheme and either alone or jointly with any person including the responsible entity of any other Stapled Fund or as responsible entity of any other Stapled Fund, and may assume joint and several or several liability in respect of any joint exercise of these powers;
 - (x) (**cooperative operation**) the Responsible Entity may cooperate with the responsible entity of any other Stapled Fund to facilitate the operation of the Stapled Funds as an economic entity for the benefit of Members and of holders of units in each Stapled Fund;
 - (y) (**Register**) a Member must provide to the Responsible Entity the same personal information for the Register and for the register of each Stapled Fund and the Responsible Entity may conduct the Register and issue holding statements jointly with the responsible entity of each other Stapled Fund;
 - (z) (**proxy forms**) a Member must, if the Responsible Entity so determines, use a form of proxy to appoint the same proxy to vote on their behalf in respect of a Unit and a unit in each other Stapled Fund;
 - (aa) (**resolutions at meetings**) the Responsible Entity may arrange for meetings of Members and meetings of members of each other Stapled Fund to be held concurrently and may determine that a vote cast on a resolution by or on behalf of a Member is to be treated also as a vote cast for an equivalent number of that Member's units in each other Stapled Fund; and
 - (bb) (**amendment**) an amendment of this deed that directly affects the terms on which a Unit is held is of no effect unless the units of each other Stapled Fund are affected in the same way.

32.4 Issue Price of a Stapled Security

While Stapling applies, clause 7 applies as if references to "Unit" and "Option" included "Stapled Security" and "option to subscribe for a Stapled Security".

32.5 Market Value of a Unit in a Stapled Security

The allocation of the Market Value of a Stapled Security between the Unit and the unit in each other Stapled Fund must be determined as follows:

- (a) the Responsible Entity and the responsible entity of each other Stapled Fund may determine what part of the Market Value of the Stapled Security is to be allocated to the Unit and to the unit in each other Stapled Fund; and

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- (b) unless otherwise determined by the Responsible Entity and the responsible entity of each of the Stapled Funds, the Market Value must be allocated in proportion to the net assets (adjusted for the net market value of its investments) of the Scheme and of each other Stapled Fund at the relevant date.

32.6 Apportionment of Issue Price of Stapled Securities

The Responsible Entity may apportion the Issue Price of a Stapled Security between a Unit and a unit in each other Stapled Fund as the Responsible Entity sees fit, but if the Responsible Entity makes no apportionment or is not permitted by law to make an apportionment in its discretion, the Issue Price of a Stapled Security must be apportioned between the Unit and the units in each other Stapled Fund comprising the Stapled Security in the same proportions as the Net Scheme Value of the Scheme bears to the net scheme values of the other Stapled Funds worked out under their constitutions.

32.7 Conduct of Stapled Funds

To the extent permitted by law, the Responsible Entity must, while Stapling exists, cooperate with the responsible entity of each other Stapled Fund in everything relating to the Stapled Securities and the Scheme. Without limitation, the Responsible Entity must do everything needed on its part to ensure that the Scheme and the other Stapled Funds:

- (a) **(accounting policies)** adopt consistent accounting policies;
- (b) **(valuation policies)** adopt consistent valuation policies;
- (c) **(proposed investments)** take a consistent approach on proposed investments;
- (d) **(meetings)** hold Members' meetings concurrently or, where necessary, consecutively;
- (e) **(new issues, redemptions)** agree on the terms and timing of all new issues, bonus and rights issues, placements, redemptions and buy-backs;
- (f) **(value)** consult before taking any action (or omitting to take any action) which may materially affect the value of the Stapled Securities;
- (g) **(distribution)** co-ordinate the announcement and payment of distributions;
- (h) **(reinvestments)** co-ordinate any distribution re-investment plan;
- (i) **(partly paid)** co-ordinate all actions connected with partly paid stapled securities; and
- (j) **(reports)** report to Members consistently and at the same times.

32.8 Unstapling

The following provisions apply for cessation of Stapling:

- (a) The Responsible Entity may by written notice (which may be in a document given to ASX) declare that Stapling ceases to apply to some or all Units (or Options) in the Scheme immediately, or upon a stated day. If any Stapled Security is Officially Quoted, the Responsible Entity may only do so with the approval of Members by Ordinary Resolution.
- (b) Stapling will automatically cease to apply to all Units in the Scheme if:
 - (i) the Scheme terminates in accordance with clause 5.2;
 - (ii) the units in any Stapled Fund to which the Units are Stapled cease for any reason to be transferable only with Units; or
 - (iii) the law or the Listing Rules prohibit the Stapling.
- (c) The Members may, by special resolution, determine that Stapling ceases to apply to some or all Units (or Options) in the Scheme.
- (d) If Stapling ceases to apply to a Unit (or Option), the preceding provisions of this clause 32 then cease to apply to that Unit (or Option).
- (e) If Stapling ceases to apply to all Units (and Options) in the Scheme, the Responsible Entity must do everything reasonably necessary to give effect to the cessation of Stapling, including:
 - (i) amending any records of the Scheme;
 - (ii) transferring any property or paying any Tax; and
 - (iii) giving directions or consents to any Stapled Fund to which Stapling will cease to apply, or to the custodian or responsible entity that holds the assets or property of such a Stapled Fund.

32.9 Stapling mechanics and implementation

The following provisions apply for implementing a Proposal:

- (a) The Responsible Entity may do everything it reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit (or Option) or un-Staple a Unit (or Option).
- (b) The Responsible Entity:
 - (i) is appointed irrevocably as agent and attorney of each Member to sign any document or do anything the Responsible Entity reasonably considers to be needed or desirable to implement a Proposal or to Staple a Unit (or Option) or un-Staple a Unit (or Option); and

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- (ii) may (as agent or attorney of the Member) on behalf of the Member:
 - (A) receive and apply returned capital or redemption proceeds (including in kind and including to apply for a Unit or other security of the Scheme);
 - (B) apply for a unit, option or other security in another Stapled Fund (including copying or deriving an application form from a product disclosure statement or offer document given to the Member); and
 - (C) consent to be bound by the constitution of a scheme comprising Stapled Funds.
 - (c) The Responsible Entity may enter into a deed or agreement (including with the responsible entity of another scheme or with a company or other entity) for implementing a Proposal for or for the conduct of Stapled Funds.

32.10 Limitation of liability of and indemnity for Responsible Entity

Subject to the Corporations Act, the following clauses of this constitution apply in connection with a Proposal or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling:

- (a) clause 19.1 and each other provision of this constitution limiting the liability of the Responsible Entity; and
- (b) clause 20.1 and each other provision of this constitution indemnifying the Responsible Entity.

32.11 Expenses of Proposal

The indemnity for expenses and liabilities in clause 18.10 includes all expenses and liabilities in connection with a Proposal or giving effect to a Proposal and in connection with a Stapling, the relationship created by a Stapling, or the cessation of a Stapling, such as due diligence, retaining experts or advisers, and preparing information for Members.

32.12 Stapling provisions paramount

This clause 32 has effect despite any other provision of this constitution (except clauses 2.3 and 2.4) and a provision of this constitution that is inconsistent with this clause 32 does not have effect to the extent of the inconsistency.

MISCELLANEOUS

33. PAYMENT AND DISCHARGE

33.1 How payments can be made

The Responsible Entity may pay money to a Member:

- (a) by paying it into an account with a financial institution nominated by the Member, where the Responsible Entity has not received a written notice that the nomination is withdrawn;
- (b) by sending a cheque crossed "not negotiable" and drawn in favour of the Member or to bearer, by mail to the address of the Member set out in the Register or notified to the Responsible Entity under clause 35.3; or
- (c) in any other way it thinks fit.

33.2 Whole cents

The Responsible Entity may only pay whole cents, and remaining fractions of cents become Scheme Property.

33.3 Cancellation of cheques

The Responsible Entity may cancel a cheque it has issued that is not presented within 6 months after the date the cheque is issued.

33.4 Discharge of Responsible Entity

- (a) If the procedures for a payment in clause 33.1 are followed, the Responsible Entity is discharged in respect of that payment.
- (b) A discharge or release by a Member or, in the case of joint holders of a Unit, by any of them to the Responsible Entity is a good discharge of the liability concerned.

33.5 Deductions for Tax

The Responsible Entity may deduct from any money to be paid to a Member, or received from a Member, any amount of Tax (or an estimate of it) that the Responsible Entity:

- (a) is required or authorised to deduct by law; or
- (b) in its reasonable opinion, thinks should be deducted.

33.6 Unclaimed money

Subject to the Corporations Act, the Responsible Entity must deal with any unclaimed money under this constitution in accordance with the law relating to unclaimed money in South Australia.

34. GOODS AND SERVICES TAX

34.1 GST indemnity

If the Responsible Entity must pay GST on any supply under or in connection with this constitution made in the proper performance or exercise of any of its powers, duties or rights in relation to the Scheme, the Responsible Entity may recover the amount of that GST out of the Scheme Property.

34.2 Refund to Scheme for GST overpaid

The Responsible Entity must refund to the Scheme any over recovery of GST by it out of the Scheme Property. The Responsible Entity need not refund to the Scheme any amount for GST paid to the Commissioner of Taxation unless the Responsible Entity is entitled to a refund or credit for that amount.

34.3 GST on claims

If the Responsible Entity pays money or distributes property to a Member to satisfy a claim or a right to a claim for a breach of duty by the Responsible Entity under or in connection with this constitution (for example, for breach of trust) and that payment gives rise to a liability to pay GST, the Responsible Entity must pay the amount of that GST, and if the Member is liable to pay that GST, the Responsible Entity must indemnify the Member against that amount. The Responsible Entity must not recover out of the Scheme Property any amount for GST paid by it under this clause 34.3.

34.4 GST on expenses

If the Responsible Entity has a claim under or in connection with this constitution for an expense on which it must pay an amount for GST, the claim is for the expense plus the amount for GST (except to the extent that the Responsible Entity is entitled to an input tax credit for any amount for GST).

34.5 Notional liability for GST

References to GST extend to any notional liability of a person for GST and to amounts that are treated as GST under the GST Law, and references to an input tax credit extend to notional input tax credits to which a person is entitled.

34.6 GST groups

If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.

34.7 Interpretation

Words defined in the GST Law have the same meaning in this clause 34.

35. NOTICES

35.1 How to give a notice

A notice, consent or other communication under this constitution is properly given if it is:

- (a) in writing;
- (b) if given by a person other than the Responsible Entity, signed by or on behalf of the person giving it;
- (c) addressed to the person to whom it is to be given; and
- (d) given as follows:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
 - (ii) sent by fax to the fax number (if any) nominated by that person from a machine that produces a report that states that it was sent in full; or
 - (iii) in the case of a notice, consent or other communication given by the Responsible Entity - sent by electronic message to the electronic address (if any) nominated by that person.

35.2 When a notice is given

A notice, consent or other communication that complies with this clause 35 is regarded as given and received:

- (a) if it is delivered or sent by fax or electronic message:
 - (i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by mail to the Responsible Entity - on actual receipt at its registered office; and
- (c) if it is sent by mail to any other person (whether in or out of Australia) - one Business Days after posting.

35.3 Members' addresses for notices

A Member's or Optionholder's address, fax number and electronic address is that set out in the Register, but if the address is not in Australia, the Member or Optionholder may notify the Responsible Entity of an address in Australia to which notices or other communications may be sent.

35.4 **Joint holders**

A notice or other communication to joint holders of a Unit or Option must be given, and need only be given, to the joint holder named first in the Register.

35.5 **Person entitled to a Unit**

A person who becomes entitled to a Unit or Option is bound by every notice in respect of the Unit or Option properly given to the person Registered as the holder of the Unit or Option before its transfer or transmission was entered in the Register.

35.6 **Signature on notices**

The Responsible Entity may sign a notice or other communication by original or printed signature or in any other way it determines.

35.7 **Counting days**

This clause 35.7 does not apply to a notice of Meeting given by the Responsible Entity. If a specified period must pass after a notice is given before an action may be taken, neither the day the notice is given nor the day the action is to be taken is to be counted in working out the period.

35.8 **Certificate of director or secretary**

A certificate signed by a director or secretary of the Responsible Entity stating that a notice or other communication was given by the Responsible Entity is admissible as evidence, and is conclusive evidence, that the notice or other communication was given.

35.9 **Notices to "lost" Members**

If:

- (a) on 2 or more consecutive occasions a notice served on a Member or Optionholder in accordance with this clause 35 is returned and unclaimed or with an indication that the Member or Optionholder is not known at the address to which it was sent; or
- (b) the Responsible Entity believes on other reasonable grounds that a Member or Optionholder is not at the address set out in the Register or notified to the Responsible Entity under clause 35.3,

the Responsible Entity may give effective notice to that Member or Optionholder by exhibiting the notice at the Responsible Entity's registered office for at least 48 hours.

This clause 35.9 ceases to apply if the Member or Optionholder notifies the Responsible Entity of a new address.

36. APPLICATION OF ACCOUNTING PRINCIPLES AND STANDARDS

Despite any other provision of this constitution, the Responsible Entity must apply generally accepted accounting principles as at 31 December 2004 and accounting standards in force on 31 December 2004 (or as at or on such other date determined from time to time by the Responsible Entity in consultation with the auditor of the Scheme) to the financial affairs of the Scheme to the extent needed for any relevant calculation under this constitution.

37. AMENDMENT

Subject to the Corporations Act or the Listing Rules, the Responsible Entity:

- (a) may amend this document by a written document, in any form it thinks fit; and
- (b) must do so if the Members, by a resolution of a majority of at least 75% of those Members present and voting, have approved the amendment.

In this clause, **amend** includes modify, supplement and replace.

38. GENERAL

38.1 Governing law

This constitution is governed by and to be construed in accordance with the law in force in South Australia. The Responsible Entity and the Members submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there, and any court that may hear appeals from any of those courts, for any proceedings in connection with this constitution and waive any right they may have to claim that those courts are an inconvenient forum.

38.2 Waiver of rights by Responsible Entity

The following apply:

- (a) the Responsible Entity only waives a right it has under this constitution by written notice;
- (b) no other conduct of the Responsible Entity (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right by the Responsible Entity on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right by the Responsible Entity does not prevent any further exercise of that right or of any other right.

38.3 Actions by Responsible Entity after 80 years

For the purposes of the laws of a jurisdiction other than South Australia, the perpetuity period applicable to any disposition made by this constitution is the period of 80 years from

the date this constitution established the Scheme on 19 February 1998. If to exercise a power under this constitution after the expiry of the perpetuity period, or to exercise a power in a particular way after the expiry of the perpetuity period, would offend against any rule of law or equity such as the rule against perpetuities, then the Responsible Entity ceases to have power to exercise that power (or to exercise that power in that way) upon expiry of the perpetuity period.

38.4 **Severance**

A provision of this constitution that is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this constitution enforceable, unless to do so would materially change the intended effect of this constitution.

38.5 **Consents**

Where this constitution contemplates that the Responsible Entity may agree or consent to something (however it is described), the Responsible Entity may, unless this constitution expressly contemplates otherwise:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
- (d) agree or consent subject to conditions.

In this clause 38.5, agree includes approve.

SCHEDULE 1

(clause 18)

RESPONSIBLE ENTITY'S FEE

Part 1 - Base Fee

The Responsible Entity is entitled to a Base Fee for each Fee Period equal to:

- (a) for Fee Periods in which Units or a class of Units are Officially Quoted – one twelfth of 0.65% of the Aggregate Value as at the last day of the Fee Period up to and including \$1,000,000,000, plus one twelfth of 0.45% of Aggregate Value as at the last day of the Fee Period in excess of \$1,000,000,000; and
- (b) for Fee Periods in which Units or a class of Units are not Officially Quoted – one twelfth of 2% of the Aggregate Value as at the last day of the Fee Period.

Part 2 – Management Fee

The Responsible Entity is entitled to a Management Fee equal to 1% of Prescribed Income calculated for any Fee Period as follows:

$$\text{Management Fee} = \text{Prescribed Income for that Fee Period} \times 0.01$$

Part 3 - Acquisition and Development Fee

The Responsible Entity is entitled to an Acquisition and Development Fee equal to 1.5% of the GST exclusive purchase price or development cost of any property or other asset acquired or developed by, or on behalf of, the Scheme (including any sub-trust of the Scheme).

Part 4 - Definitions

The following definitions apply in this schedule 1.

Aggregate Value means the consolidated total assets of the Scheme and its controlled entities as a consolidated entity (applying generally accepted accounting principles and accounting standards pursuant to clause 36) as at the last day of the Fee Period.

Prescribed Income means the consolidated total gross rent, interest, dividends and realised gains from derivatives hedging transactions of the Scheme and its controlled entities as a consolidated entity (applying generally accepted accounting principles and accounting standards pursuant to clause 36).